



January 18, 2019

Leah Wilson, Executive Director
Members, LSTF Commission Stakeholder Process Working Group
The State Bar of California
180 Howard St.
San Francisco, CA 94105

Re: Public comments: January 22, 2019 meeting

Dear Ms. Wilson and Working Group Members:

Thank you again for the opportunity to participate in the Legal Services Trust Fund Commission Stakeholder Process Working Group. As mentioned at our last meeting, I am impressed with the hard work and dedication of the LSTF Commissioners as well as the State Bar staff working with the Commission.

These comments are in response to the draft Report prepared for review by the LSTFCSP Working Group. The Report and its accompanying Matrix will be considered at our phone meeting on January 22, 2019. Please include these comments regarding the draft report in the public record.

The Report contains background information that was not presented or reviewed by the Working Group.

As background, the Working Group Report provides historical information about a State Bar Task Force that was implemented in May 2017, as well as various directives issued by the Board of Trustees and sub-committee resolutions regarding review of State Bar “sub-entities”, including the Legal Services Trust Fund Commission. Although detailed fully in the Report, much of this information was not presented to the Working Group at any of its meetings. As a result, the Working Group did not have this background information to form any of its discussions, nor did the Working Group ratify inclusion of this background statement in its Report. Moreover, the draft report refers to reports, presentations and Committee resolutions included as Attachments A, B, C and D—attachments that were not presented to the Working Group or

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even included in the draft report for review.

Moreover, the review described in the Background section includes an analysis of the size of the LSTFC and an apparent intent by the State Bar not to fill any expiring term memberships. As a result, there are seven unfilled and current vacancies of the 21 voting member commission. Under the current process, the number of vacancies will continue to increase as terms expire. It should be clarified that although the Working Group met five times between October 15, 2018 and January 9, 2019, the intention to not fill vacancies was not raised, presented or discussed until the last meeting of the Working Group. As a result, the Working Group was not fully informed about the status of the Commission in terms of size and vacancy. Failure to provide this important information circumvented the Working Group's goal of transparency and accountability, leaving the Working Group to operate with a deficit in all meetings prior to January 9, 2019.

The Working Group Recommendations must be correctly identified as majority decisions, and supporting language should be included.

As background, the Working Group discussed and voted on nine separate items at the January 9, 2019 meeting.¹ These items should be clearly listed and clarified as majority recommendations. For additional clarification, the final tally of the voting members should be attached to the report to reflect that the minority votes were made by very few members.

Despite the clear votes and recommendations, the report purports to outline three different sections: "consensus recommendations", "majority" and "minority" recommendations. The Report first outlines recommendations made as consensus, *but these recommendations were made by an overwhelming majority vote*. Thus, by leading with "consensus" information, the Report reduces the impact of the majority decisions made by the Working Group, and makes

¹ The exact recommendations voted by the Working Group at the January 9, 2019 meeting are as follows:

- No recommended statutory changes at this time.
- The LSTF Continues to exist.
- Status quo division of responsibilities between staff and the Commission remains the same except as reflected in the matrix (and only consensus changes in the matrix).
- No recommended changes to the size of the LSTFC. (Note: a minority of votes suggested including language "at this time", but that language was not accepted by majority vote.)
- LSTFC vacancies must be filled immediately.
- Any recommendation to change the LSTFC size should return to the Working Group.
- All procedures, policies, and practices governing the allocation and/or administration of grant funds should be codified in guidelines and/or State Bar Rules and approved by the Board of Trustees.
- The Board should receive training and regular reports about the activities of the LSTFC and the legal services funded by the State Bar.
- The Commission and the State Bar Board of Trustees should seek additional funding for legal services.

the report confusing and repetitive. Accordingly, the “consensus” section should be eliminated from the Report.

In addition to eliminating the consensus section, the remaining structure of the report should be changed. It appears that the drafters of the report intended the “consensus” recommendations to reflect agreement between the majority and minority of voting members. Any minority statements should immediately follow the majority recommendations. This will avoid confusion, ensure simplicity and ensure that minority statements are taken as a whole. Moreover, if the voting minority members ultimately agree with the majority of votes taken and therefore “consensus” is obtained, there is no need to add any “minority comment” to the report.

To obtain further clarity and record the correct actions of the Working Group at its January 9, 2019 meeting, the report should be revised as follows:

A. Statutory Changes

#1. Majority Vote: “No recommended statutory changes at this time.”

This was the first recommendation made at the January 9th meeting. Despite objection by Board of Trustee representatives and Ms. Wilson, this position statement was held to a vote. It passed by an overwhelming majority decision. It was not a consensus decision.

In addition, the use of the word “believe” in the explanatory text does not convey the strong majority objection to considering any statutory changes. In fact, the text is misleading and should be revised to state that the “Working Group strongly objects to pursuing any statutory changes at this time.”

B. Non-Statutory Changes to Grant Administration and/or Allocation

As clarification, no group recommendation was made regarding the collection of data. However, there was discussion and consensus was made by the working group at the December 19, 2018 meeting. This section should be changed to read as follows:

The Working Group determined that collection of complete and correct data is necessary to support an accurate analysis of the demographic composition of clients served by IOLTA and EAF to ensure that services are equitably provided to all indigent populations.

The LSTFC Working Group reviewed and analyzed some data suggesting that certain populations may be under-served when comparing statewide demographics to reported client data. However, there was consensus by the Working Group that most of the data presented was insufficient and improperly analyzed, and does not allow for an accurate or robust analysis of this issue. Due to the importance of correct data, the Working Group supports the collection of data; however, care must be given to ensure that data is correctly collected and analyzed. For example, the analysis should not include structural “zeros”, *i.e.* a zero should not be given when an organization’s charge is limited to only providing services to a certain demographic.

Moreover, data collection efforts should not be duplicated. The Working Group received information about the Reboot Committee and its comprehensive review over the past five years. The Reboot Committee activity was regularly on LSTF Commission agendas, and its activities were regularly reported to the Board of Trustees. As a result of that process, regulations were proposed in 2018 and a full report will be given in 2019. The Reboot Committee Report will include data information and therefore, duplicative efforts to collect data is unnecessary.

C. Governance

The following corrections must be made in the Report:

#1: The LSTFC Working Group recommends that the LSTFC continue to exist. This recommendation was made by majority vote, not consensus. This recommendation, and the following recommendations made by majority vote, will be made clearer once the consensus section is removed.

#2: No recommended changes to the size or composition of the LSTFC. This recommendation also was made by majority vote.

The following language should be included to Item #2:

The Working Group learned that it was the intention of the to leave vacancies unfilled in order to reach a pre-determined size of seven members. The Working Group determined that the size of the LSTFC is statutory and subject to legislative oversight, and the size of the Commission should not be changed.

#3: The LSTFC Working Group recommends that all LSTFC vacancies be filled immediately. Again, this recommendation was made by majority vote, not consensus. As noted, several working group members abstained.

With regard to #3, the following language should be included:

The Working Group determined that full membership of the LSTFC is statutory and subject to legislative oversight. Moreover, the Working Group did not accept the determination of State Bar General Counsel that vacancies could simply remain unfilled for long periods of time without violation of the statute. Finally, the duties and responsibilities of the Commission (made of volunteer members) and its staff require a fully filled and functional Commission.

#4: A majority of the group also voted affirmatively that “any recommendation to change the LSTF Commission size should return to the Working Group for analysis and recommendation.” The current version states that proposals to size and composition “should be considered” by the Working Group. The Working Group recommendation went further to ensure that the Working Group will analyze any proposal and make a recommendation, not just consider such a proposal. This recommendation in the report should be changed to reflect the true recommendation of the Working Group.

With regard to #4, the following language should be included:

While the Working Group was presented with information that other state volunteer boards may have a reduced membership level, it was not fully informed of the State Bar’s informal goal to reduce the LSTF Commission from 21 voting members to seven members. Indeed, no formal proposal or policy to reduce the Commission size or composition exists. Therefore, the Working Group could not discuss any particular size (other than 21 voting members). Accordingly, after review of the statutory requirements and the responsibilities and duties of the Commission and staff, the Working Group concluded that all vacancies must immediately be filled. Due to the lack of information on any formal proposal regarding size, any future proposed changes to the size and composition must be brought back to the Working Group for additional analysis and recommendation(s).

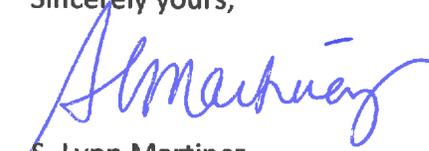
#5, #6, #7: Other than removing the entire “consensus” section to correctly identify majority decisions, the remaining recommendations—items #5 (no changes with respective roles), #6

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(codification of procedures, policies and practices), and #7 (training and reports)—are correct in the report.

With the inclusion of the above items in the Working Group Report, the report will accurately reflect the decisions, discussion and recommendations of the Working Group. Thank you for your attention, and again we appreciate the opportunity to participate in this important review.

Sincerely yours,



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