

AGENDA ITEM

54-161 MAR

DATE: February 16, 2012

TO: Members, Stakeholder Relations Committee
Members, Board of Trustees

FROM: Stephanie Choy, Managing Director
Legal Services Trust Fund Program

SUBJECT: Legal Services Trust Fund – Set Amounts for Distribution,
2012-2013 IOLTA Grants

EXECUTIVE SUMMARY

Each year, the Board of Governors sets the grant amount available for distribution from Interest on Lawyers' Trust Accounts ("IOLTA"). Since 2008, this distribution has also included contributions to the Justice Gap Fund, and last year, for the first time, it included funds from the new Temporary Emergency Legal Services Voluntary Assistance Option ("TELS") Fund. This year, the distribution additionally includes contributions pursuant to SB163 of \$2 million for each of 2012 and 2013 from the State Bar's non-dues revenue.

The IOLTA-funded nonprofit legal aid organizations continue to suffer the harsh effects of the down economy, while at the same time struggling to provide services for the increasing numbers of people needing civil legal aid. Therefore, the Legal Services Trust Fund Commission again recommends that the Board of Trustees approve maximizing the grant distribution, at the same time recognizing the need to maintain 30% of the projected grant distribution for cash flow purposes and as a cushion against continuing low IOLTA revenue. The Commission recommends distributing \$10,685,829 in the 2012-2013 grant year in IOLTA, Justice Gap, TELS and contributions from the State Bar's non-dues fund balance.

The recommended IOLTA distribution reflects level funding this year, which in turn follows on prior year cuts of 10%, 15% and 10% in the preceding three years. Level funding is only possible because of the increase in recommended TELS contributions on the dues bill from \$10 to \$20, and from the \$2 million contribution of the State Bar for the next two years.

Questions regarding this agenda item should be directed to Stephanie Choy, Managing Director, Legal Services Trust Fund Program (415) 538-2249.

BACKGROUND

The Board of Trustees each year sets the amount of Interest on Lawyers' Trust Account (IOLTA) funds for distribution during the next grant year, beginning July 1. The amount is set in March or April, depending on the board meeting schedule, so that the Trust Fund Commission can notify recipient programs of a grant amount; the legal aid organizations have 30 days to prepare proposed budgets; and, the staff and the commission can review the budgets, obtain fully executed grant agreements, and begin to distribute funds in July.

For each of the first eight grant years (1984-1992), the amount approved for distribution was the total money projected to be on hand as of the end of the year, less administrative costs during the same period. In other words, the program collected money for a year and then gave it out in the following year. At the beginning of the grant year, 100% of the money for grants was "on hand" for distribution throughout the following year. While funds were disbursed in quarterly payments, financial institutions continued to remit interest earned, so the program always had on hand about one full year's revenue.

In 1992, in response to low interest rates and declining revenue, the Board of Governors adopted the recommendations of the Trust Fund Commission and the Legal Aid Association of California (LAAC), to hold less than a year's cash on hand in order that more funds are immediately released for distribution. That year, the target cash on hand was set at 75% of the prior year's grant. In response to subsequent and dramatic interest rate declines, that target was later reduced to 60% and then to 30%.

Revenue remained flat between 2001 and 2004 (below \$10 million), but showed steady increase in the grant years ended 2005 (\$11.6 million), 2006 (\$14.9 million), 2007 (\$17.1 million), and 2008 (\$20.2 million). Because IOLTA funding is a core support for many legal aid programs, the Commission prioritizes stabilizing grants to avoid big fluctuations in funding amounts. The Commission proposed revising the cash on hand policy to build a reserve that could be distributed during lean years. Then, as now, the Commission recognized that the ability to rely on stable IOLTA funding is critical to the health and survival of legal aid programs that receive IOLTA and other State Bar funding. The Board of Governors approved that policy in 2006 and it is these reserved amounts that have enabled the Commission to supplement projected revenue with monies held in the IOLTA fund balance for the last four years.

We now are facing our fifth year of substantially reduced IOLTA revenue. Because of the important role the legal aid organizations hold in the administration of justice, SB163 supported increased funding for legal services this year – both by doubling the voluntary contribution option from \$10 to \$20 per member, and by including a State Bar contribution of \$2 million annually in 2012 and 2013 from the Bar's non-dues fund balance. Based on these added funding sources, we are able to recommend level funding on this year's grants, notwithstanding that we anticipate interest rates on Lawyers' Trust Accounts will continue to drop.

CURRENT AND PROJECTED REVENUE AND RESERVE

Historically, staff developed a recommended amount for distribution using two quarters of actual revenue and two quarters of projections, adjusted to account for administrative costs and funds to be held in reserve. This methodology worked well when interest rates fluctuated within normal market conditions, but was not a reliable predictor in 2008, when revenue increased substantially because of the newly enacted IOLTA comparability statute, or in 2009, when the federal funds target rate (which is a predictor of interest rates) dropped to the lowest in history.

In what has been called the worst recession of our time, the IOLTA-funded legal aid organizations have been struggling since 2009 with reduced revenue while more and more people are in need of their services. In the last four years, the Commission has struggled with the need to distribute as much funding as possible, even recognizing (and cautioning grant recipients) that if revenue did not outperform projections, there would be little reserve left to add to the grant distribution the following year.

Fortunately, each year we have been able to stay ahead of IOLTA and Justice Gap Fund projections, and/or add new sources of funding such as the TELS and the State Bar fund balance contribution, in order to keep grant funding relatively steady. Any monies collected in excess of projected at the time of determining the grant amount is held in the fund balance for distribution the following year. This year, given the dire straits that many programs are in, the Commission was even more aggressive in its grant distribution recommendation, with a strong warning to programs that in a worst case scenario, if revenue does not hold steady, grants may be cut mid-year.

On January 20, 2012, the Commission met to review IOLTA and other State Bar revenue to arrive at a recommendation for distribution for this year. After a review of projected revenue, and an extended discussion about the unpredictability of IOLTA revenue balanced against the need to maximize funding for legal aid, the Commission arrived at the recommendations below. The grants will be distributed to the eligible programs under the statutory distribution formula.

As detailed in the Projected Available Funds for Grant Period 2012-2013 (Attachment 1), the Commission requests that the Board approve a distribution of \$10,685,829, which represents level funding with last years' grants, calculated as follows:

- (1) \$4.5 million from IOLTA revenue projected to be received by the Legal Services Trust Fund Program from July 2012 through June 2013;
- (2) \$2,230,829 from net assets/fund balance reserve;
- (3) \$3.25 million from total contributions on the member dues bill, including donations to the Justice Gap Fund in the amount of \$750,000, and contributions to the TELS Fund in the amount of \$2.5 million;

- (4) \$2 million contribution from State Bar non-dues fund balance;
- (5) \$355,000 in other revenue, including investment income and reimbursement for administration of the Equal Access Fund;
- (6) Less administrative costs, projected at \$1,650,000 for the period July 1, 2012 through June 30, 2013.

That will leave a projected fund balance of \$4,570,843 at June 30, 2013. Note that SB163 provided for a State Bar contribution of \$2 million per year in each of 2012 and 2013. To maximize the grant amounts and for cash flow purposes, both of those contributions are calculated into the 2012-2013 grant allocation. However, assuming total revenue meets or exceeds projections, the State Bar's 2013 contribution will be available for distribution out of the IOLTA fund balance in 2013-2014.

FISCAL / PERSONNEL IMPACT:

This recommendation does not affect the general fund budget. No additional staff or other expenses will be incurred as a result of this recommendation.

RULE AMENDMENTS:

No rule amendment is necessary.

BOARD BOOK IMPACT:

None.

RECOMMENDATION

The attached schedule shows the calculation, based on actual experience through December 31, 2011 and revenue and expense projections through June 30, 2013.

Because money will continue to be disbursed as it is received, the Trust Fund Commission will monitor revenue closely throughout the year and will return with recommendations if there are significant variances from the projections. The agreement signed with grant recipients includes language to make clear that distribution of grant funds is contingent upon the Legal Services Trust Fund Program having sufficient money on hand from IOLTA revenue to make the scheduled payments.

PROPOSED BOARD COMMITTEE RESOLUTION:

Should the Stakeholder Relations Committee agree with the above recommendation, the following resolution would be appropriate:

RESOLVED, that the Stakeholder Relations Committee recommends that the Board approve that the distribution of IOLTA grants from the Legal Services Trust Fund Program for the grant period July 1, 2012 through June 30, 2013 shall be made in the order and manner provided by Business and Professions Code Section 6216, and the funds to be distributed shall be \$10,685,829 calculated as follows:

- (1) \$4.5 million from IOLTA revenue projected to be received by the Legal Services Trust Fund Program from July 2012 through June 2013;
- (2) \$2,230,829 from net assets/reserve;
- (3) \$3.25 million from total contributions on the member dues bill, including donations to the Justice Gap Fund in the amount of \$750,000, and contributions to the TELS in the amount of \$2.5 million;
- (4) \$2 million contribution from State Bar reserves;
- (5) \$355,000 in other revenue, including investment income and reimbursement for administration of the Equal Access Fund;
- (6) Less administrative costs, projected at \$1,650,000 for the period July 1, 2012 through June 30, 2013; and it is

FURTHER RESOLVED, that grant payments are to be made from funds received pursuant to California Business and Professions Code, Sections 6212 et seq. and Section 6033, and that payment of grants is contingent upon the State Bar having sufficient money on hand, after deducting for administrative costs, from such sources to make the scheduled payments; and it is

FURTHER RESOLVED, that the Legal Services Trust Fund Program is directed to monitor program revenue during the grant year, and to implement changes to the grant amount, if necessitated by significant variances between projected and actual revenue.

PROPOSED BOARD OF TRUSTEES RESOLUTION:

Should the Board concur with the Stakeholder Relations Committee's recommendation, the following resolutions would be in order:

RESOLVED, that upon the recommendation of the Stakeholder Relations Committee, the Board hereby approves that the distribution of IOLTA grants from the Legal Services Trust Fund Program for the grant period July 1, 2012 through June 30, 2013 shall be made in the order and manner provided by Business and

Professions Code Section 6216, and the funds to be distributed shall be \$10,685,829 calculated as follows:

- (1) \$4.5 million from IOLTA revenue projected to be received by the Legal Services Trust Fund Program from July 2011 through June 2012;
- (2) \$2,230,829 from net assets/reserve;
- (3) \$3.25 million from total contributions on the member dues bill, including donations to the Justice Gap Fund in the amount of \$750,000, and contributions to the TELS in the amount of \$2.5 million;
- (4) \$2 million contribution from State Bar reserves;
- (5) \$355,000 in other revenue, including investment income and reimbursement for administration of the Equal Access Fund;
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FURTHER RESOLVED, that grant payments are to be made from funds received pursuant to California Business and Professions Code, Sections 6212 et seq. and Section 6033, and that payment of grants is contingent upon the State Bar having sufficient money on hand, after deducting for administrative costs, from such sources to make the scheduled payments; and it is

FURTHER RESOLVED, that the Legal Services Trust Fund Program is directed to monitor program revenue during the grant year, and to recommend changes to the grant amount, if necessitated by significant variances between projected and actual revenue.

Attachment 1 – Projected Available Funds for Grant Period 2012-2013