

AGENDA ITEM

54-161 MAR

DATE: February 15, 2013

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,
2013-2014 IOLTA Grants, Justice Gap Fund and Temporary
Emergency Legal Services Fund

EXECUTIVE SUMMARY

Each year, the Board of Trustees sets the grant amount available for distribution from Interest on Lawyers' Trust Accounts ("IOLTA") to nonprofit legal aid organizations in California. Since 2008, this distribution has also included contributions to the Justice Gap Fund; and, since 2011 it has included funds from the Temporary Emergency Legal Services Voluntary Assistance Option ("TELS") Fund. Last year, the \$10,685,829 distribution also included the first of two \$2 million contributions from the State Bar's non-dues revenue pursuant to SB 163.

These funds are granted to qualified nonprofit legal aid organizations to provide civil legal aid to indigent people without charge. The IOLTA-recipient organizations continue to have insufficient funding in these economic hard times, and are at the same time struggling to serve the overwhelming numbers of people needing their help. These organizations rely on consistent IOLTA funding to sustain their services. Therefore balancing the needs for immediate grant assistance to programs now, against avoiding a precipitous reduction in distributions for following years, the Legal Services Trust Fund Commission now recommends a 2013-2014 grant distribution of \$9,617,246, which reflects a 10% reduction from the 2012-2013 grant distribution.

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

BACKGROUND

In around March each year, the Board of Trustees 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 now, 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 and obtain fully executed grant agreements in order that distribution of grant funds can begin in July.

For each of the program's 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 so that more funds could be immediately released for distribution. That year, the cash on hand target was set at 75% of the prior year's grant. In response to subsequent and dramatic interest rate declines, the 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 assistance programs, the Commission prioritizes stabilizing grants to avoid big fluctuations in funding amounts. In 2006, the Commission proposed, and the Board of Governors approved, revising the cash on hand policy to build reserve funds 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's wisdom in revising the cash on hand policy to allow for building reserves is apparent. Following 2008, IOLTA funds dropped from its \$20 million high to \$7 million and revenue has been below that amount each year since. We now are facing our sixth year of low IOLTA revenue. Thanks to the Board implemented reserve policy combined with new funding sources (Justice Gap Fund, TELS and the contributions from the State Bar pursuant to SB 163), the Commission has been able to stabilize grant distributions such that cuts in distribution levels do not nearly reflect the actual decrease in IOLTA revenue. (Cuts from prior year funding were 10%, 15%, and 10% for 2009-2010, 2010-2011, and 2011-2012, respectively)

Because of the important role that legal aid organizations hold in the administration of justice, last year, SB163 provided for increased funding for legal services in 2012 and 2013 – both by doubling the voluntary contribution option through the dues bill 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. Because of this contribution, the Board was able to approve level funding for IOLTA grants last year.

The Commission now is bringing its recommendation with respect to the 2013-2014 grant distribution. After careful consideration of the needs of the IOLTA-funded programs and the clients that they serve, coupled with projections of revenue for the next few years, the Commission now recommends that the Board approve a distribution of IOLTA and other State Bar funds totaling \$9,617,246, which represents a funding level of 10% lower than last year's allocation.

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 struggled since 2009 with reduced revenue and increasing demand for their services. In response, the Commission has striven to manage shrinking IOLTA revenues while distributing 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 enhance the amount available for grant distribution the following year.

Fortunately, Justice Gap Fund income and new sources of funding such as the TELS and the State Bar fund balance contribution, have mitigated declines in IOLTA revenue, enabling us to keep grant funding relatively steady. We caution that future projections are less sanguine: current IOLTA revenue already shows a decline of over \$450,000 for the period from July through December 2012 against the same period in 2011.

On January 18, 2013, the Commission met to review IOLTA and other State Bar revenue to arrive at a recommendation for distribution for this year. The Commission reviewed the two-year outlook for projected revenue, including the sunset of SB 163 after this year, and an extended discussion about the unpredictability of IOLTA revenue balanced against the need to maximize stability for legal aid funding. Based on the amounts projected to be available for distribution this year, with an eye to the impact that the distribution will have on the 2014-2015 distribution, the Commission now recommends a 10% decrease in grant funding as outlined 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 2013-2014 (Attachment 1), the Commission requests that the Board approve a distribution of \$9,617,246, which represents a 10% decrease in funding from 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 2013 through June 2014;
- (2) \$5,437,246 from the Trust Fund Program's net assets/fund balance;
- (3) \$800,000 of donations to the Justice Gap Fund;
- (4) \$200,000 contributed by the State Bar from its non-dues fund balance;
- (5) \$330,000 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, 2013 through June 30, 2014.

That will leave a projected fund balance of \$2,161,925 at June 30, 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, 2012 and revenue and expense projections through June 30, 2014.

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, 2013 through June 30, 2014 shall be made in the order and manner provided by Business and Professions Code Section 6216, and the funds to be distributed shall be \$9,617,246 calculated as follows:

- (1) \$4.5 million from IOLTA revenue projected to be received by the Legal Services Trust Fund Program from July 2013 through June 2014;
- (2) \$5,437,246 from net assets/fund balance;
- (3) \$800,000 from contributions to the Justice Gap Fund;
- (4) \$200,000 from State Bar reserves;
- (5) \$330,000 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, 2013 through June 30, 2014; 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, 2013 through

June 30, 2014 shall be made in the order and manner provided by Business and Professions Code Section 6216, and the funds to be distributed shall be \$9,617,246 calculated as follows:

- (1) \$4.5 million from IOLTA revenue projected to be received by the Legal Services Trust Fund Program from July 2013 through June 2014;
- (2) \$5,437,246 from net assets/fund balance;
- (3) \$800,000 from contributions to the Justice Gap Fund;
- (4) \$200,000 from State Bar reserves;
- (5) \$330,000 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, 2013 through June 30, 2014; 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 recommend changes to the grant amount, if necessitated by significant variances between projected and actual revenue.

Attachment 1 – Projected Available Funds for Grant Period 2013-2014