

# AGENDA ITEM

54-161 MAR

**DATE:** February 14, 2014

**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,  
6-month 2014 IOLTA Grant, including Voluntary and State Bar  
Contributions

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## 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. While called "IOLTA grants," since 2008, these grants have included voluntary donations to the Justice Gap Fund. Over the years, other contributions through the State Bar Dues bill, or from the State Bar itself, have also been added to the amount available for distribution through these IOLTA grants.

IOLTA grants are awarded to qualified nonprofit legal aid organizations to provide civil legal aid to indigent people without charge. This year, the Legal Services Trust Fund Program is in the midst of restructuring its grant program in order to: leverage available resources by streamlining grant administration; and, improve the measurement and collection of outcome data so that we can better articulate the importance of legal aid and justify new funding, as well as identify gaps in services and build regional and substantive collaborations to fill those gaps.

One key element of this restructure is to align all grants to span a calendar year. This requires that we shift IOLTA grants from their current July 1 to June 30 grant year, to a grant year that begins January 1. To that end, this distribution request is only for a 6-month period, from July through December 2014. We will return to the Board for approval of the 2015 grant distribution at your July meeting. After careful review of revenue projections and considering the needs of the legal aid programs, the Legal Services Trust Fund Commission recommends a July to December 2014 (6 month) grant distribution of \$4,808,623, which is half of \$9,617,246 – the equivalent of the same level funding as last year.

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

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## BACKGROUND

In or around March each year, the Board of Trustees sets the amount for distribution to qualified nonprofit legal aid organizations through IOLTA grants. Traditionally, the distribution amount for the grant year beginning July 1 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 before the July inception of the grants. Because the Legal Services Trust Fund Program is restructuring its grants to span a calendar year, at this time, it is seeking Board approval for funding of only the 6-month transitional period of July to December 2014.

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%, where it is today.

Revenue remained flat between 2001 and 2004 (below \$10 million), but showed steady increase beginning with the 2005 grant year, culminating in \$20.2 million in 2008. Because IOLTA funding is a core support for many legal aid 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, due to declining interest rates, IOLTA funds dropped from their \$20 million high to \$7 million and revenue has been below that amount every year since. We now are facing our seventh year of low IOLTA revenue. Thanks to the Board implemented reserve policy combined with new funding sources (the Justice Gap Fund, Temporary Emergency Legal Services fund, the \$2 million contributions from the State

Bar and the recently implemented Legal Services Assistance option on the member dues bill), 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.

The Commission now is bringing its recommendation for 6-month funding for the last half of 2014. 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 recommends that the Board approve a distribution of IOLTA and other State Bar funds, totaling \$4,808,623, half of \$9,617,246, which represents a level of funding equal to that of last year.

## **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 revenue reductions combined with an increasing demand for services. In response, the Commission has strived to manage shrinking IOLTA revenues while distributing as much funding as possible, while cautioning grant recipients that there is little reserve left to cushion future grant distributions.

Fortunately, Justice Gap Fund income and new sources of funding such as the Temporary Emergency Legal Services fund, the State Bar fund balance contribution, the \$30 Legal Services Assistance line on the 2014 dues bill, as well as other State Bar contributions, have mitigated declines in IOLTA revenue, enabling the Trust Fund Program to keep grant funding relatively steady.

On January 16, 2014, 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, and engaged in an extended discussion about the unpredictability of IOLTA and other revenue balanced against the need to maximize legal aid funding. Based on that analysis, the Commission now recommends level funding for the remainder of the 2014 year. It is noteworthy that if the Commission had been forced to project forward for a year and a half, in an abundance of caution, it may have been forced to recommend a reduction in funding because of uncertainty regarding funding sources. As it stands, the Commission now believes it may be in a position to recommend level funding again next year.

The grants will be distributed to the eligible programs under the statutory distribution formula.

As detailed in the Projected Available Funds for Grant Period July – December 2014 (Attachment 1), the Commission requests that the Board approve a 6-month distribution of \$4,808,623, which is the same as current level funding, calculated as follows:

- (1) \$2,250,000 from IOLTA revenue projected to be received by the Legal Services Trust Fund Program from July to December 2014;
- (2) \$2,891,123 from the Trust Fund Program's net assets/fund balance;
- (3) \$180,000 in donations to the Justice Gap Fund;
- (4) \$198,000 contributed by the State Bar;
- (5) \$4,500 in investment income;
- (6) Less projected net administrative costs of \$715,000.

That will leave a projected fund balance of \$2,629,237 at December 31, 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, 2013 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 the distribution of IOLTA grants from the Legal Services Trust Fund Program for the grant period July 1, 2014 through December 31, 2014 in the order and manner provided by Business and Professions Code Section 6216, and the funds distributed shall be \$4,808,623 calculated as follows:

- (1) \$2,250,000 from IOLTA revenue projected to be received by the Legal Services Trust Fund Program from July to December 2014;
- (2) \$2,891,123 from the Trust Fund Program's net assets/fund balance;
- (3) \$180,000 of donations to the Justice Gap Fund;
- (4) \$198,000 contributed by the State Bar;
- (5) \$4,500 in investment income;
- (6) Less projected net administrative costs of \$715,000.

**FURTHER RESOLVED**, that grant payments are to be made from funds received pursuant to California Business and Professions Code, Sections 6212 et seq., 6033 and 6140.03, 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 the distribution of IOLTA grants from the Legal Services Trust Fund Program for the grant period July 1, 2014 through

December 31, 2014 in the order and manner provided by Business and Professions Code Section 6216; and, that the funds distributed shall be \$4,808,623 calculated as follows:

- (1) \$2,250,000 from IOLTA revenue projected to be received by the Legal Services Trust Fund Program from July to December 2014;
- (2) \$2,891,123 from the Trust Fund Program's net assets/fund balance;
- (3) \$180,000 of donations to the Justice Gap Fund;
- (4) \$198,000 contributed by the State Bar;
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- (6) Less projected net administrative costs of \$715,000.

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**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.

#### **Attachment 1 – Projected Available Funds for Grant Period July to December 2014**