

AGENDA ITEM

162 JULY 23 2015

DATE: June 26, 2015

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 Amount for Distribution, 2016
IOLTA Grants, including Voluntary and State Bar Contributions

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," over the years, the Justice Gap Fund and other contributions through the State Bar Dues bill, or from the State Bar itself, have been added to the amount available for distribution through these IOLTA grants.

This request is for the Board to approve the distribution of grant funds for the 2016 calendar year. After careful review of revenue projections and consideration to the needs of the legal aid programs, the Legal Services Trust Fund Commission recommends a calendar year 2016 grant distribution of \$11,107,919, a 10% increase over the distribution you approved at your July 2014 meeting for the 2015 grant year.

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

BACKGROUND

Every year, the Board of Trustees sets the amount of IOLTA grants available for distribution to qualified nonprofit legal aid organizations. It is now time for the Board to approve the 2016 grant distribution.

For each of the Trust Fund 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, such that 100% of the money for grants was "on hand" for distribution throughout the following year.

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 has since been reduced to 25-30%.

Revenue remained flat between 2001 and 2004 (below \$10 million), but showed steady increase beginning with the 2005 grant year, which reached a high of \$20.2 million in 2008 (the year in which an amendment to the IOLTA statute requiring banks to treat IOLTA the same as similarly situated accounts was adopted). 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 then. This year, as last year, IOLTA revenue will be around \$5 million. Thanks to the Board, the State Bar has implemented new funding sources, such as the Justice Gap Fund and the Legal Services Assistance option on the member dues bill, such that cuts in distribution levels have not nearly reflected the actual decrease in IOLTA revenue. In fact, if approved, this year will reflect the second consecutive year of IOLTA increases – last year IOLTA grants were increased 5% over prior year, and this year the Commission is recommending a 10% increase over last year.

At this time, the Commission recommends that the Board approve a distribution of IOLTA and other State Bar funds, totaling \$11,107,919, which is a 10% increase in funding, compared to funding last year of \$10,098,108. This recommendation is based upon careful consideration of the needs of the IOLTA-funded programs and the clients that they serve, coupled with cash flow considerations and projections of revenue for the next few years.

CONCLUSION

The Commission requests that the Board approve the 2016 grant distribution amount in order to complete grant administration by the start of that grant year. Upon Board approval and grantee demonstration of eligibility for grant funds, staff will calculate and notify grantees of their allocated share of grant funding, and then legal aid organizations will be asked to develop and propose budgets for expenditure of those funds. The

Commission and staff will review and approve the budgets and obtain fully executed grant agreements before the January 2016 inception of the grants.

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

As detailed in the Projected Available Funds for Calendar Year 2016 Grants (Attachment A), the Commission requests that the Board approve a distribution of \$11,107,919, which is a 10% increase over current level funding, calculated as follows:

- (1) \$5,200,000 from IOLTA revenue projected to be received by the Legal Services Trust Fund Program from January to December 2016;
- (2) \$1,300,919 from the Trust Fund Program's net assets/fund balance;
- (3) \$850,000 in donations to the Justice Gap Fund;
- (4) \$5,270,000 Legal Services Assistance option on dues statement;
- (5) \$12,000 interest income;
- (6) Less projected administrative costs of \$1,525,000.

That will leave a projected fund balance of \$4,403,261 at December 31, 2016.

Note that while the Board of Trustees only is responsible for approving the IOLTA distribution, each year the Legal Services Trust Fund Program also administers Equal Access Fund grants to the same legal aid organizations that qualify for IOLTA funding. Those grants, authorized in budget trailer language in the court budget have ranged from \$10 million to about \$16.5 million since 1999. A portion of Equal Access Funds are allocated to the administration costs of the State Bar and Courts, and the administrative fees identified herein reflect projected reimbursements.

DISCUSSION:

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.

Fortunately, and thanks to the support of the Board, Justice Gap Fund revenue and new sources of funding, such as the \$40 Legal Services Assistance line on the 2015 dues bill, have mitigated declines in IOLTA revenue, enabling the Trust Fund Program to keep grant funding relatively steady. The recommendation to increase the IOLTA

distribution by 10% is a direct result of the State Bar's inclusion of the Legal Services Assistance option on the dues bill.

However, because cash on hand now is at 25-30%, the Commission must project funds conservatively to ensure that there is sufficient funding to pay grant obligations – although the State Bar is only obligated to pay out funds based on revenue received, if the State Bar needs to cut funding mid-year because revenue is less than projected, it would cause significant and possibly disastrous consequences for the legal aid programs that have budgeted based on anticipated revenue. Moreover, the Commission looks to keep funding relatively stable, and in giving out as much funding as possible this year, must also look to the outlook for the following year.

On June 26, 2015, the Commission met to review IOLTA and other State Bar revenue to arrive at a recommendation for distribution for the 2016 grant year. The Commission reviewed the two-year outlook for projected revenue. The Commission carefully considered the unpredictability of IOLTA and other revenue as well as cash flow issues resulting from administration of the Equal Access Funds, and fluctuation in revenue connected to the dues bill, balanced against the need to maximize legal aid funding. Based on those considerations, the Commission now recommends a 10% increase in funding over 2015. This will be the second consecutive year of increase – after two years of level funding, last year the Commission recommended a 5% increase in funding.

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 the end of May 2015, and revenue and expense projections through December 31, 2016.

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 January 1, 2016 through December 31, 2016 be made in the order and manner provided by Business and Professions Code Section 6216, and the funds to be distributed shall be \$11,107,919, calculated as follows:

- (1) \$5,200,000 from IOLTA revenue projected to be received by the Legal Services Trust Fund Program from January to December 2016;
- (2) \$1,300,919 from the Trust Fund Program's net assets/fund balance;
- (3) \$850,000 in donations to the Justice Gap Fund;
- (4) \$5,270,000 Legal Services Assistance option on dues statement;
- (5) \$12,000 interest income;
- (6) Less projected administrative costs of \$1,525,000.

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.

ATTACHMENTS

A. Projected Available Funds for Calendar Year 2016 Grants