

AGENDA ITEM

168 JULY 2016

DATE: July 8, 2016

TO: **Members, Stakeholders and Access to Justice Committee**
Members, Board of Trustees

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

SUBJECT: Legal Services Trust Fund – Set Amount for Distribution, Jan to Dec 2017 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, have been added to the amount available for distribution. This request is for the Board to approve the distribution of grant funds for the 2017 calendar year. After careful review of revenue projections and consideration to the needs of the legal aid programs, the Legal Services Trust Fund Program recommends a calendar year 2017 grant distribution of \$13,329,503, a 20% increase over the distribution you approved at your July 2015 meeting for the 2016 grant year. However, because such a large portion of the anticipated revenue is from line items on the State Bar dues bill, in light of the current uncertainty regarding that dues bill and because of the tight grant schedule timeline, the Legal Services Trust Fund Program now requests the Board approve a contingency distribution amount of no less than \$9,164,033, that it can apply in the event that a dues bill is not passed.

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 2017 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 prior 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 the legal aid programs that receive that 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, IOLTA revenue is slowly increasing, and revenue is anticipated at around \$6 million. Thanks to the Board, the State Bar has implemented new revenue sources, such as the Justice Gap Fund and the Legal Services Assistance options on the member dues bill. In 2015, those lines on the State Bar dues bill brought over \$7.4 million in revenue, keeping IOLTA grant distributions higher than they otherwise would have been. In fact, if the legislature approves the State Bar dues bill and the Board agrees to the Trust Fund Program’s current recommendation, this year will reflect the third consecutive year of an IOLTA grant increase – from 5% in 2015, to 10% last year, to 20% (\$13,329,503) this year.

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 2016 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 20%, to \$13,329,503, is based on a reasonable but conservative estimate of anticipated revenue from the State Bar’s inclusion of the Justice Gap Fund and the Legal Services Assistance option on the dues bill (see Attachment A) .

However, because a significant amount of the revenue projections are based on contributions to legal aid through the Bar dues bill, the Trust Fund Program requests that the Board approve a contingency distribution in case a bar dues bill is not passed despite best efforts. This is

necessary because without the line items on the dues bill, revenue will be inadequate to support a 20% increase in IOLTA grant amounts, and the grants administration timing is too tight to enable the Trust Fund Program to come back to the Board for a revised distribution amount and still fund timely grants. In order to accomplish timely funding of the 2017 grants, the total distribution amount and each grantees share of that distributed amount, divided by county, must be released in early September. Therefore, at this time the Trust Fund Program requests that the Board approve a contingency distribution of \$9,164,033, which reflects a reduction from the 2016 total distribution amount by 17.5%. (See Attachment B) This is a worse-case scenario and the Commission requests discretion to adjust the worse-case scenario upwards depending on actual circumstances, but no higher than the approved 20% increase amount.

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.

BOARD GOALS & OBJECTIVES

Goal 4.1: Support increased funding and enhanced outcome measures for Legal Services.

BOARD COMMITTEE RECOMMENDATIONS

The Stakeholders and Access to Justice Committee recommends that the Board of Trustees approve the following resolution:

RESOLVED, that assuming there is no change in the State Bar dues bill that significantly impacts the Justice Gap Fund and the Legal Services Assistance Option revenue, the Board of Trustees approve the distribution of \$13,329,503 in IOLTA grants for the 2017 year, which is a 20% increase over current level funding, calculated as follows:

- (1) \$6,000,000 from IOLTA revenue projected to be received by the Legal Services Trust Fund Program from January to December 2017;
- (2) \$3,166,503 from the Trust Fund Program's net assets/fund balance;
- (3) \$500,000 in donations to the Justice Gap Fund;
- (4) \$5,250,000 Legal Services Assistance option on dues statement;
- (5) \$13,000 interest income;
- (6) Less projected administrative costs of \$1,600,000.

leaving a projected fund balance of \$4,055,401 at December 31, 2017; and it is

FURTHER RESOLVED, that should the dues bill despite best efforts be delayed in such a way as to potentially impact projected Justice Gap Fund and Legal Services Assistance Option funds revenue, or should it not pass, the Legal Services Trust Fund Program is authorized to reduce the distribution amount to \$9,164,033, which is a 17.5% reduction from last year's grants. This is a worse-case scenario and the Trust Fund Program has discretion to adjust the worse-case scenario upwards, but no higher than the approved 20% increase amount, depending on actual circumstances.

ATTACHMENT(S) LIST

- A.** Projected Available Funds for Calendar Year 2017 Grants
- B.** Projected Available Funds for Calendar Year 2017 Grants – Alternate Scenario