

## AGENDA ITEM IIIA

### DECEMBER 2016

**DATE:** December 12, 2016

**TO:** Members, Planning and Budget Committee  
Members, Audit Committee

**FROM:** Justin Ewert, Budget and Performance Analyst  
Office of Research and Institutional Accountability

**SUBJECT:** Fund 88 Update

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#### EXECUTIVE SUMMARY

Fund 88 is currently housed within the Sections grouping of funds. Pursuant to the Bar's reserve policy, adopted March 11, 2016, the Sections Funds are categorized as Special Revenue Funds, meaning that although these funds could be accounted for within the General Fund, there is compelling reason to account for the use of these resources separately. Over the past 15 years the Fund 88 balance has grown and is anticipated to total approximately \$2.4 million at the end of 2016. A chart showing the growth of the fund balance over the years is provided as Attachment A.

Last year, the Chief Operating Officer (COO) began to explore the nature of Fund 88, to better understand its relationship to Section operations and the source of its large fund balance. While the Office of Education Director responsible for the Fund, along with leadership from the Council of State Bar Sections, appeared to have a consensus understanding about the nature of Fund 88 – that it was non-Sections education revenue - the COO wanted to conduct further analysis and review. The results of that effort, which are documented below, suggest that the Fund is inappropriately categorized as part of the Sections special revenue funds, and that instead it represents *unrestricted General Fund* revenue. The COO presented these preliminary findings to the Council of State Bar Sections and no objections were raised. The Planning and Budget and Audit Committees are asked to review the work that staff has done to date on this issue, and provide feedback and direction in preparation for a formal recommendation to transfer Fund 88 to the General Fund, scheduled to be presented to the Board of Trustees at its January meeting.

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## **BACKGROUND**

### **Fund 88 Revenue**

Fund 88 serves largely as a clearinghouse for online revenue received from InReach, which hosts the State Bar's online Continuing Legal Education (CLE). This revenue is received quarterly from InReach as a lump sum payment for all CLE. A report from InReach is then used to reallocate a majority of the revenue back out to the Sections that produced the respective educational programs. An example of this report is provided as Attachment B.

In addition to online CLE developed by the Sections, InReach hosts other programming, including Lawyering Skills Programs, Ethics, Substance Abuse, Legal Services and Elimination of Bias. Revenue from these programs has not historically been reallocated, but has instead remained in Fund 88. A chart showing this revenue by year is provided as Attachment C.

An additional Fund 88 revenue source relates to a relatively new benefit added to the State Bar's professional liability insurance program. In 2012, the Bar amended its contract for the program to provide policy holders with 25 units of State Bar online CLE at no cost, a 50% Solo Summit registration discount, a \$200 Annual Meeting discount, and a free first year membership in a new Section of their choice. As compensation for the value of these benefits, the program broker has made payments to the Bar through 2015 totaling \$430,000. These payments have all been deposited in Fund 88.

Mosaic Event Management contracts with the Sections for Hotel Site Selection and Contract Negotiation Services. As part of the contract, Mosaic pays the State Bar 10% of all commissions they receive from bookings on behalf of the State Bar Sections. In addition, the Sections have a contract with Documation for design, printing and mailing services for all of the educational promotion pieces and each year Documation provides a royalty annually to the Sections based on work produced per annum. The total amount of rebate revenue identified was approximately \$320,000.

In addition, this fund also received minimal amounts of revenue from sponsorships, pamphlets, rebates, Section Education Institute, Solo Summit and other workshops. This miscellaneous revenue has been allocated back to the Sections as appropriate, with some amounts not associated with a particular Section remaining in Fund 88.

### **Fund 88 Expenses**

Expenses necessary to produce the revenue for Sections related CLE are charged directly to the individual Sections. Expenses that are necessary to generate non-Section CLE have been charged to Fund 88. In addition, costs associated with producing the Annual Meeting, such as videographers, have been charged to Fund 88, rather than to the Annual Meeting Fund or a specific Section. Historically these charges have averaged approximately \$18,000 annually.

In 2016, a percentage of a number of Office of Education staff are being charged to Fund 88. This was done to address concerns raised by the Sections regarding increased cost allocation to their funds. For 2016, the budgeted Fund 88 salary allocation totaled \$168,000. Prior to 2016, there was no salary charged to Fund 88.

## DISCUSSION

### Fund 88 Analysis and Review

In 2015, the Bar contracted with Moss-Adams to conduct a review of Fund 88 to better understand the nature of the Fund and to determine if any of the fund balance needed to be transferred to Sections funds. While the review identified some nominal needed reallocations of revenue, both to and from Fund 88 (and the Sections), no significant transfer was recommended, and no concerns were identified regarding the methodology underlying decisions about what revenue remained in Fund 88. The Moss-Adams review is provided as Attachment D.

Subsequent to the Moss-Adams review, which served as a useful initial indication of the appropriate characterization of Fund 88 as non-Sections Fund revenue, staff in Finance and the Office of Research and Institutional Accountability have undertaken a detailed review of every Fund 88 deposit and expenditure dating back to 2003. The InReach data used for comparison went back to 2007, the first year for which such records are available. This work has specifically involved:

- Obtaining transaction level data from the InReach system for the years 2007-2015 (over 800,000 records);
- Sorting this data using statistical software into two groups, Sections and non-Sections CLE by using the “primary category”;
- Taking the non-Section CLE and further sorting into type of program provided to identify resources responsible for production while comparing this against previous Annual Meeting program listings;
- Identifying the resources responsible for production for those programs not listed in the Annual Meeting program;
- Reconciling these revenue amounts against the Oracle system revenue report totals; and
- Creating a percentage allocation from the available data to apply to the non-Section CLE fund balance.

This closer look at Fund 88 has identified revenue that should be transferred out of the Fund as follows:

- Rebate revenue. As described above, revenue has been generated through provider rebates. This revenue should be reallocated from Fund 88 to the Sections. These funds were originally left in Fund 88 to help offset costs associated with creating the content at the annual meeting (e.g. videographer). Since it is now being proposed that this rebate revenue go back to the individual Sections, a portion will be reduced from the transferable amount to cover these expenses.
- CLE Gift Card Program – Insurance. Actual utilization of free CLE, reduced cost solo summit and Annual Meeting Registration, and section membership benefits should be identified. Costs associated with those benefits should be borne by the \$430,000 deposit housed in Fund 88.
- CLE programs produced by the Lawyer Assistance Program (LAP) and the Council on Access and Fairness. Two major primary categories for CLE are Substance Abuse and

Elimination of Bias. From those categories, the programs produced by the LAP and Access and Fairness Commission should be identified.

Though not fully completed, as a result of this effort, staff believes that the majority of the remaining Fund 88 fund balance is *inappropriately* categorized as a Section Special Revenue Fund. Instead, it should be transferred to either the General Fund or the fund responsible for generating the revenue (e.g. LAP where appropriate).

After these adjustments are made, it is estimated that the remaining Fund 88 balance will total 1.7 million<sup>1</sup>. This amount should be transferred to the GF. In addition, ongoing new non-Sections CLE revenue should attrite to the GF.

#### **FISCAL/PERSONNEL IMPACT**

TBD

#### **RULE AMENDMENTS**

None.

#### **BOARD BOOK IMPACT**

None.

#### **BOARD COMMITTEE RECOMMENDATIONS**

None.

#### **ATTACHMENT(S) LIST**

- A.** Fund 88 Balance Growth
- B.** Sample InReach Report
- C.** Non-Section CLE Revenue
- D.** Moss Adams Fund 88 Review

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<sup>1</sup> At its July 22, 2016 meeting, the Board of Trustees designated \$600,300 from this fund to pay for the new case management system for the Office of the Chief Trial Counsel.