

AGENDA ITEM

ITEM IIIA

163 JULY 2017

DATE: May 31, 2017

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 2018 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 Fee 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 2018 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 2018 grant distribution of \$14,009,353, a 26% increase over the 2017 grant distribution of \$11,107,919. This is the first year since 2008 that the Commission's recommendation applies the "cash on hand" reserve policy that the Board of Governors adopted in 2006.

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 2018 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 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 Legal Services 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 the recession and 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. While still below \$7 million, IOLTA revenue has been slowly increasing, and revenue is anticipated to be around \$6.6 million this year. Moreover, 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 fee bill, which supplemented IOLTA revenue in 2017 by over \$7 million.

Because of these additional sources of revenue, last year, the Commission recommended that the Board approve a 20% increase over its 2016 grants for the 2017 grant year. However, that recommendation was tempered by a request that the Board give the Commission authority to determine a final grant distribution amount depending on whether or not a fee bill was passed. (The grants administration timing was too tight to enable the Trust Fund Program to go back to the Board later for a revised distribution amount and still fund timely grants.) The Trust Fund Commission requested and the Board approved a contingency distribution amount if necessary. If the fee bill was not passed in time, the Commission had authority to apply a decrease of up to 17.5% of the prior year grant. Unfortunately, a fee bill was not passed on time. Based on the information then available, the Commission opted for a distribution based on level funding, neither an increase nor a decrease from the prior year distribution of \$11,107,919.

DISCUSSION

The Board of Governors each year sets an amount for distribution of IOLTA grants to be administered by the Legal Services Trust Fund Program. In the first eight years of the program, 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 Legal Services 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 30%, and has been as low as 25%. Although the Commission reduced the cash on hand target over time, it always has projected revenue conservatively to ensure that sufficient cash is available to fund the grant distribution amount. The bar is protected by grant agreement wording – if revenue is insufficient to cover the projected grant distribution, the Bar has no obligation to fund the grants beyond the revenue received. However, the Commission recognizes that it would be an immense hardship to grantees were the Trust Fund Program to be unable to meet grant obligations, and therefore it always projects revenue conservatively.

Last year, because of the uncertainty surrounding the fee bill, the Commission conservatively opted to provide grants based on funding level with the prior year. Fortunately, the State Bar did ultimately receive authority to process attorney fees, and the Bar received 2017 contributions through the bill of over \$7 million to legal services, that were not contemplated in the projected budget.

Thus, for the first time since 2008, the Commission requests that the Board apply the cash on hand policy that the Board adopted in 2006: when revenue is higher than the prior year, grants are held to a smaller increase so as to increase cash on hand. In years when revenue is decreasing, the cash on hand can be spent down in an attempt to maintain grant levels. The following three-step calculation was approved by the Board in 2006, for applying in years in which revenue is increasing:

- The amount for distribution is allowed to increase by 5% before increasing cash on hand above the current 30% target.
- Funds representing the next 10% increase go to building the cash on hand/stabilization reserve.
- In years when revenue increases more than 15% (5% to grantees and 10% to the stabilization reserve), the additional amount is to be divided equally between increased grants and increased reserve, up to a cap of 75 percent of the previous year's available funds.

Applying this formula results in a requested distribution of \$14,009,353, which is a 26% increase over last years' grants.

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 the Board adopts the recommendation of the Legal Services Trust Fund Commission to approve the distribution of \$14,009,353 in IOLTA grants for the 2018 year, which is a 26% increase over current level funding of \$11,107,919, calculated as follows:

- (1) \$11,107,919 grant distribution amount for 2017
- (2) \$555,396 increase representing 5% of 2017 grants to program
- (3) \$2,346,038 increase representing one-half of the amount over 15% of prior year net revenue

leaving a projected fund balance of \$7,456,830 at December 31, 2018, which includes close to 30% for cash on hand of \$4 million, plus an additional reserve of \$3,456,830 (10% of 2107 grant amount plus one-half of the amount over 15% of prior year net revenue) after applying the Board's cash on hand policy to build the reserve fund.

ATTACHMENT(S) LIST

- A. Projected Available Funds for Calendar Year 2018 Grants