

OPEN SESSION

AGENDA ITEM

DATE: March 3, 2018

TO: Members, Lawyer Assistance Program Oversight Committee

FROM: Donna S. Hershkowitz, Chief of Programs

SUBJECT: Policy on Transfer of Excess Funds Pursuant to Bus. & Prof. Code §6140.9

EXECUTIVE SUMMARY

As part of its efforts to identify additional funds available to support the Client Security Fund, the Legislature amended Business and Professions Code §6140.9 to allow excess funds in the Lawyer Assistance Program (LAP) budget to be transferred to support the needs of the Client Security Fund. Specifically, the statute was amended to provide: “Any excess funds not needed to support the [LAP] program, including reserve funds, may be transferred to fund the Client Security Fund established pursuant to Section 6140.5, provided there are sufficient funds available to fully support the program.” This agenda item recommends a policy to implement that provision. The policy adopted by the Committee would be presented to the Board of Trustees at its May 2018, meeting.

BACKGROUND

The Bar’s 2018 budget projected the Lawyer Assistance Fund ending reserve balance in 2017 to be just under \$3.6 million. Based on expected revenue and currently budgeted expenditures for 2018, the Fund is projected to end 2018 with a reserve balance of just under \$3.5 million. Current Board policy establishes 30% of operating expenditures as the current maximum a fund should have, with 17% as the minimum. The 2018 projected year end reserve is 154% of operating expenditures.

DISCUSSION

In evaluating the extent of LAP funds that may be available for transfer, an examination of the current budgeted revenue and expenditures is insufficient. As noted above, the statute authorizes the transfer of funds “provided there are sufficient funds available to fully support the program.” The current budget does not include projected costs for implementing key program goals. Staff conducted a preliminary forecast of costs to implement the LAP Strategic Plan, as well as the recommendations from the 2017 Krill Report and the 2016 Workforce Planning report. Among other things, the forecast calculated costs for the development of printed educational and outreach materials, conducting outreach, including at law schools, conducting a market analysis of attorneys to determine their needs and how to disseminate information, and developing an online self-assessment to help identify mental health disorders and substance

use issues for attorneys and law students. Because the current budgeted expenditures for LAP includes personnel costs for the Public Information Officer position not yet hired as well as an additional Senior Program Analyst not yet under recruitment, these costs did not need to be factored. The preliminary projected costs for implementation of the recommendations of these important governing documents (including \$50,000 for a consultant to assist in the implementation of some of these costs) is \$150,000. (Note that this includes the cost savings that would result from the elimination of the Evaluation Committees, discussed in another agenda item before the Committee at the March 3, meeting.)

After taking into account current budgeted revenue, expenditures, and estimated expenditures necessary to support the implementation of the LAP Strategic Plan, Krill report, and other recommendations for program growth and improvement, and leaving the fund with an appropriate level of reserves (25%), there could be roughly \$2.7 million eligible for transfer to the Client Security Fund. This amount would be recalculated upon a more final assessment of the costs of implementing the Strategic Plan et al.

Complicating the possibility of a transfer of funds, however, is the pending question currently under review of whether the LAP, and its clients, would be better served if a portion of LAP were either contracted out to private entities or spun off to its own private entity. This question will be part of the review of Board committees and commissions being conducted at the recommendation of the Governance in the Public Interest Taskforce. Those recommendations will be presented to the Board in September 2018. Should the decision be made that the best interests of the program would be served by spinning off LAP, the calculus of how much of the excess reserves would be available for transfer to CSF would be exceedingly different. If the LAP were to operate on its own, it would likely need much if not all of the reserves as startup capital.

FISCAL/PERSONNEL IMPACT

Because this policy proposes the transfer of funds only after consideration of full funding for LAP, although there is technically a fiscal impact, as funds will be leaving the LAP Fund, there should be no operational impact on LAP. The addition of these funds will allow CSF to pay out additional claims. In 2017, the average amount paid out to victims was just over \$7,000. At this rate, the infusion of \$2.7 million could allow payment on approximately 380 additional applications.

RULE AMENDMENTS

None

BOARD BOOK AMENDMENTS

None

RECOMMENDATION

It is recommended that the LAP Oversight Committee approve the following motion:

Moved, that the LAP OC recommends that the Board of Trustees adopt the following policy to implement the provisions of Business and Profession Code section 6140.9:

- 1) To ensure there are sufficient funds available to fully support LAP, the amount available for transfer shall be calculated by adding to the prior year's reserve balance the

budgeted revenues for the current year, and then subtracting the following: a) the amount of budget expenses and indirect costs; 2) the funds necessary to meet targets for growth and program enhancement and improvement, and implement the current LAP Strategic Plan or any successor plan; and 3) an amount necessary to maintain the year end reserve balance at 25% of operating expenditures.

- 2) In determining the funds necessary to meet targets for growth and program enhancement and improvement, and implement the current LAP Strategic Plan or any successor plan, the Chief Financial Officer, or his or her designee, shall consult with the LAP Oversight Committee or its designee.
- 3) No funds be transferred in 2018 until after the Appendix I review is considered by the Board and a determination is made with respect to LAP's continued relationship with the State Bar of California.

After discussion at the March 3, 2018 meeting, #3, above, is revised as follows:

- 3) No funds be transferred until December 31, 2020, after the Appendix I review is considered by the Board and a determination is made with respect to LAP's continued relationship with the State Bar of California, and the LAP is reasonably able to estimate the anticipated costs associated with targeted program growth, enhancement and modification.

ATTACHMENT LIST

None