

To: Legal Services Trust Fund Program Staff

From: Jocelyn D. Larkin
Executive Director, Impact Fund

Re: Possible Exclusion of New Grant Program Pass-Through Funds From Primary Purpose Calculation

Date: June 28, 2018

I am writing to request a determination from the Trust Fund Commission regarding the treatment of new foundation funding that the Impact Fund's grant program has received this quarter and will receive in the coming months. Because we are concerned that this new funding could affect our eligibility as a Support Center, we want to obtain a determination as soon as possible and take all necessary steps to protect our status. The Impact Fund is committed to its work as a Support Center, which is an integral part of our organizational identity and mission.

Staff has been extremely helpful in thinking through these issues with us and has suggested that the bulk of the new funding could possibly qualify as "pass-through" funds and thereby be excluded from the non-qualifying expense calculation. Should that not be possible, we would likely pursue creating a separate entity for our grant program, a much more cumbersome and undesirable alternative.

Background

The Impact Fund is a legal non-profit that works to ensure that individuals and organizations can join together and use the legal system to protect their families, jobs, and communities. The Impact Fund does so through three programs: advocacy, training, and grants to defray out-of-pocket costs in impact litigation for social justice.

The Impact Fund has been a designated Support Center since approximately 1999. With our EAF funding, we pursue impact litigation and other advocacy in support of low-income Californians and particularly access to justice. We also provide technical assistance to qualified legal services programs with procedural and other questions related to litigation. Through our IOLTA grant, we provide training to California legal services staff in a range of topics – class actions, civil procedure, attorneys' fees, legal writing, cy pres etc. With our Bank grant, we have established the Clean Water project in the San Joaquin Valley to link groups pursuing clean water with legal advocates. As noted below, it includes a \$25,000 budget item for grants to support litigation.

Impact Fund Grant Program

The Impact Fund's grant program provides approximately \$250,000 annually to lawyers and advocates to pay for costs incurred in impact litigation cases on behalf of marginalized communities, such as filing fees, deposition transcript costs, and travel expenses. The program areas include economic justice, civil and human rights, and environmental justice. The average grant is about \$11,000 per case. Where cases are successful and fees and costs are recovered, the grant is repaid with 7% simple interest.

The grants are made to cases across the country and, recently, to a small number of international cases. While the figures vary each year, approximately 20% of the grants are made for cases in California – some to legal services programs and a smaller number to small private firms or solo practitioners.

The Impact Fund exercises *no* control over the cases that we fund; that restriction is explicit in our grant agreement. We do make ourselves available to provide technical assistance if requested and we also make our training programs available to our grantees. Grantees provide an annual report about the status of the litigation and a final report and accounting at the conclusion of the case.

The grant program currently has one staff person. Grant Program Administrator Amy Daniewicz (who works 80% time). The decisions about who will receive grants are made by our volunteer Grant Advisory Committee, composed of veteran impact litigators from a range of practice areas. The grant program is funded through two sources: 1) direct fundraising from individual and firm donors; and 2) repayments of past grants in successful cases. No State Bar funds are used for the program and program expenses (grants, staff and overhead attributable to the grant program) are excluded as “non-qualifying expenses” in our application.

Clean Water Project Grant Program

The Bank Grant (Clean Water Project) does include a \$25,000 annual budget item for re-granting to support litigation for cases to promote clean water in the San Joaquin Valley for low-income communities. That new grant program will launch in September 2018 and we plan to treat the staff time and grants associated with those grants as part of our qualifying expenses.

The New Mosaic Funders Collaborative Funding

Because of the Impact Fund's recognized expertise and track record in funding social justice litigation, we have recently been contacted by a number of foundations and at least two private donors interested in investing in these cases. The need is particularly great now because of the administration's actions and the stalemate in Congress. The courts are seen as the best avenue for protecting the powerless.

The Impact Fund has received \$100,000 from the William and Flora Hewlett Foundation to support re-grants for impact cases to advance environmental justice. We are slated to receive an additional \$400,000 from other foundations in partnership with Hewlett (collectively known as the Mosaic Funders Collaborative) for the same purpose. Those grants are not limited to low-income Californians and could be granted to organizations and lawyers around the country and in Canada and Mexico.

Like our regular grants, the Impact Fund will exercise no control of the litigation of the cases funded by Hewlett/Mosaic foundations. Grant recipients will provide annual and final reports.

Of the total \$500,000 budget, \$388,163 will go directly to grants; the remainder (\$111,837) will cover staff and overhead, including partial funding for a new grant assistant who will work on all parts of our grant program.

Request to Treat Mosaic Funders Collaborative Regrants as Pass-Through Funds

Impact Fund requests that the Mosaic Regrants (\$388,163 or whatever amount is actually granted) be treated as pass-through funds rather than as non-qualifying expenses.

Unlike the Impact Fund's own grant program where the money is raised and committed entirely within the organization based upon the organization's own mission and Board strategy, the Mosaic grant funds (less staff expenses) come from outside sources and are to be used solely for the purpose of re-grants to fund environmental justice cases. We use our expertise to facilitate the funding decisions made by the outside funders.