

**OPEN SESSION
AGENDA ITEM
54-133 JULY 2018
PROGRAMS COMMITTEE ITEM III.E.**

DATE: July 19, 2018
TO: **Members, Programs Committee**
Members, Board of Trustees

FROM: **Stephanie Choy, Interim Program Director II, Office of Legal Services**

SUBJECT: Legal Services Trust Fund: Approval of Interest on Lawyers' Trust Accounts (IOLTA) Distributions

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 supplemented the amount available for distribution. This request is for the Board to approve the distribution of grant funds for the 2019 calendar year. After careful review of revenue projections and consideration to the needs of the legal aid programs, the Legal Services Trust Fund Commission recommends a calendar year 2019 grant distribution of \$27,603,000, a ninety-seven percent (97%) increase over the 2018 grant distribution of \$14,009,353.

Questions regarding this agenda item should be directed to Stephanie Choy, Interim Program Director II, Office of Legal Services, at (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.

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 then Board of Governors adopted a cash-on-hand policy to hold only 75% of a year's cash on hand. Over the years, subsequent interest rate declines led to further reductions in this target to 25-30%.

Revenue remained flat between 2001 and 2004 (below \$10 million), but showed steady increase beginning with the 2005 grant year. 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, after receiving feedback from the legal aid community, 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. Revenue reached a high of \$20.2 million in 2008. However, at the end of 2008, due to the recession and declining interest rates, IOLTA funds dropped from its \$20 million high to \$7 million, and revenue remained below that amount for ten years, rising only as high as \$6.35 million in 2017. Funds put aside because of the cash on hand reserve policy and additional revenues from sources such as the options to contribute to the Justice Gap Fund and to the Legal Services Assistance fund with the attorney fee bill, supplemented IOLTA revenue, keeping grants relatively stable. Because of these additional sources of revenue and under projections resulting from the fee bill uncertainty the prior year, last year the Commission recommended that the Board approve a 26% increase in grants for 2018 over the amount proposed for 2017.

Since that time, increases in amounts on deposit in IOLTA accounts, and a significantly improving economy that has resulted in six increases in the Federal Funds Target Rate in the last two years, have created a situation in which we anticipate sharp increases in IOLTA revenue. In 2018, IOLTA revenue is anticipated to be around \$18.9 million. Moreover, the additional revenue sources such as the Justice Gap Fund and the Legal Services Assistance options on the attorney fee bill will continue to result in revenue of about \$7.2 million.

DISCUSSION

In 2016, because of uncertainty regarding the attorney fee bill, the Commission conservatively opted to provide grants based on funding that was level with that provided in 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 included in the projected budget. In 2017, the Board applied the Cash on Hand Policy, preserving a portion of increased receipts to reserves according to the formula adopted in 2006 that was designed as a hedge against future declines in revenue. This policy should be applied again this year.

Under the policy, when revenue is higher than in the previous year, grants are held to a smaller increase so as to increase cash on hand. Applying the policy this year results in the following calculus.

- Increase the prior year distribution by 5% (\$700,412) before increasing cash on hand.
- Funds representing the next 10% increase (\$1,400,824) go to building the cash on hand/stabilization reserve.
- Revenue projections of more than 15% (5% to grantees and 10% to the stabilization reserve), are divided equally between increased grants and increased reserve (\$12,894,352).

- The policy sets the reserve cap (subject to annual adjustment if necessary) at 75 percent of the previous year's grant. This year's cash on hand reserve of \$14,295,176, after \$8,300,000 set aside for 30% of 2019 grants, is \$9,452,006, which is 67.5% of last year's distribution amount.

This year, for the second year in a row, anticipated IOLTA revenues support a request for application of the Cash on Hand policy. Applying this formula to set aside a total of \$14,295,176 for reserves, will still result in a requested 2019 distribution of \$27,603,000, which is a 97% increase over last years' grants – the largest percentage increase in the history of the IOLTA program. This increase is largely the result of the Bar's ongoing recertification of financial institutions in light of rising interest rates, to ensure compliance with statutory requirements that in order to qualify to hold IOLTA accounts, financial institutions must pay rates comparable to those they pay to similarly situated customers.

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.

FISCAL/PERSONNEL IMPACT

The recommended distribution is net of the \$2.1 million projected cost to administer the program. Should staff determine that the amount is insufficient to cover the proportionate share of staff salaries or other appropriate expenses necessary to administer this program, staff will return to the Board to request approval to allocate additional amounts from the cash on hand. Administration of the IOLTA program is fully funded through IOLTA revenue. 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

None

BOARD BOOK AMENDMENTS

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: 4. Support access to justice for all California residents and improvements to the state's justice system.

Objective: a: Support increased funding and enhanced outcome measures for Legal Services.

RECOMMENDATION

It is recommended that the Programs Committee and 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 \$27,603,000 in IOLTA grants for the 2019 year, while setting aside a total reserve of \$14,295,176.

ATTACHMENT(S) LIST

- A.** Projected Available Funds for Calendar Year 2019 Grants

ATTACHMENT A:**State Bar of California - Legal Services Trust Fund Distribution****Projected Available Funds for 2019 Grants**

| | | <u>AMOUNT</u> | |
|--|---------------------|------------------------------------|----------------------|
| A. Revenue - January through December 2018 | | | |
| Jan-April actual IOLTA Revenue | \$ | 2,886,854 | |
| May-Dec projected IOLTA Revenue | | 14,000,000 | |
| Justice Gap Funds including cy pres (Q1 Actual) | | 1,000,000 | |
| Fee Statement Contributions (Q1 Actual) | | 6,200,000 | |
| Projected Interest & Actual Q1 Tax Intercept Funds | | 87,146 | |
| Total Revenue: | | 24,174,000 | |
| B. Expenses - January through December 2018 | | | |
| IOLTA Grant Distributions - 2018 | | 14,008,236 | |
| Administration, Net of EAF | | 2,000,000 | |
| Total Expenses: | | 16,008,236 | |
| C. Projected 2018 Revenue less Grants & Admin Expenses | | \$ 8,165,764 | |
| D. Projected Net Assets at December 2018 | | | |
| Available Net Assets at 12/31/2017 (net of \$3,456,830 reserve approved in 2017) | | 7,704,510 | |
| Projected Revenue over Expenses 2018 | | 8,165,764 | |
| Projected 2018 Ending Net Assets: | | \$ 15,870,274 | |
| E. 2019 Projected Revenue & Expenses | | | |
| IOLTA Revenue | | 20,750,000 | |
| Justice Gap Revenue | | 1,000,000 | |
| Fee Statement Contributions - assume flat | | 6,200,000 | |
| Interest Income | | 77,901 | |
| Administration, Net of EAF | | (2,000,000) | |
| Revenue after Administrative Expenses: | | 26,027,901 | |
| Projected 2018 Ending Net Assets: | | 15,870,274 | |
| Funds Available: | | \$ 41,898,175 | |
| <u>Cash on Hand Policy & Additional Reserve</u> | <u>Total</u> | <u>Reserve & Cash on Hand*</u> | <u>To Programs</u> |
| Grant distribution 2018 (baseline) | 14,008,236 | | 14,008,236 |
| 5% of 2018 Grants to Programs | 700,412 | | 700,412 |
| 10% of 2018 Grants to Stabilization Reserve | 1,400,824 | 1,400,824 | |
| Remainder Split between Reserve/Cash and Programs | 25,788,703 | 12,894,352 | 12,894,352 |
| Total | \$41,898,175 | \$ 14,295,176 | \$ 27,603,000 |
| 2019 Grant Distribution | | \$ | 27,603,000 |
| Percentage Increase over 2018 Grant Allocation | | | 97% |

* Reserve & Cash on Hand, including \$3,456,830 reserve approved in 2017, is projected to be \$17,752,006, which includes \$8,300,000 cash on hand (30% of 2019 grants) and additional reserve balance of \$9,452,006, which is 67.5% of 2018 grant distribution.