

Legal Services Trust Fund Commission
Commission Meeting
August 17, 2018
Held in person at:

State Bar of California, 180 Howard Street, San Francisco
State Bar of California, 845 Figueroa Street, Los Angeles

MINUTES

I. ROLL CALL

The following Commission members and advisors were present:

- In San Francisco: Corey Friedman, Co-Chair, Fred Bailard, Louise Bayles-Fightmaster, Justice William Murray, Bob Planthold, Kim Savage, Hon. Brad Seligman, Paul Staley
- In Los Angeles: Richard Reinis, Co-Chair, Hon. Michael Convey, Eric Isken, Jim Meeker, Sue Ryan, Christina Vanarelli
- By Telephone: Parissh Knox; Melanie Snider

The following Commission members and advisors were not present: Co-Vice Chairs Banafsheh Akhlaghi and Christian Schreiber, Amin Al-Sarraf, Kim Bartleson, Herman DeBose, Rebecca Delfino, Judge Jack Sutro

The following staff were present:

- In Los Angeles: Donna Hershkowitz, Doan Nguyen
- In San Francisco: Elizabeth Hom, Dan Passamaneck, Catherine Borgeson, Rocio Avalos, Frank Bittner

The following guests were present:

- In San Francisco: Salena Copeland, Legal Aid Association of California
- By Telephone: Bonnie Hough, Judicial Council; Lisa Jaskol, Judge of the Superior Court of Los Angeles County

At the time the meeting began a quorum had not yet been achieved, so non-action items were addressed first. Abstention lists were circulated for general eligibility and Partnership decisions. Quorum was established prior to addressing any matter as to which action was required.

II. CALL FOR PUBLIC COMMENT

No comments were offered by members of the public.

III. CONSENT: APPROVAL OF MINUTES FROM JULY 27, 2018

Minutes of the July 27, 2019 Commission Meeting were approved on voice vote.

IV. STATE BAR REPORTS

A. Co-Chair Report on Developments Impacting the Legal Services Trust Fund Commission

Co-Chair Richard Reinis reported that terms are expiring for Commission members Kim Savage, Paul Staley, Judge Jack Sutro, and Christina Vanarelli, as well as for Judicial Council Appointees Judge Convey and Susan Ryan. Co-Chairs Richard Reinis and Corey Friedman will have their terms extended through the end of 2018 so they can fulfil their duties on the Executive Committee. Warm thanks were offered for all those to be departing.

Pending resolution of Appendix I issues (further discussed below), the Bar will not be filling these vacancies, leaving this body with 15 voting members and two advisors; as a result the quorum will drop to eight members.

B. Board of Trustees Report on Board Actions

Donna Hershkowitz reported that the Programs Committee was meeting today, where Donna will provide a presentation on the Appendix I review of committees and commissions. In her presentation, staff will recommend *not* proceeding with a report or recommendation for the Legal Services Trust Fund Commission or the Access Commission. Staff will request additional time to work with stakeholders to develop a formal proposal for the Board's consideration.

V. 2019 Partnership Grant Applications

A. Committee Report and Discussion on Recommendations for Funding of Partnership Grants

Partnership Grants Committee Co-Chair Christina Vanarelli reported on that Committee's meeting earlier this day, and referred the Commission to the new 2019 Distribution Recommendations among the meeting materials.

Judge Seligman recommended that any guidelines developed this year for guiding Committee considerations, be formally considered and approved for purposes of transparency and consistency. Pilot Guidelines will be circulated for the Commission's approval at its next meeting. Bob Planthold moved, and Fred Bailard seconded, a motion that the Commission consider new draft guidelines for Partnership Grants at its next meeting. On a roll call vote, the motion was unanimously approved.

VI. 2019 IOLTA and Equal Access Fund Grant Applications

A. Recommendations for 2019 IOLTA and EAF Applicant Eligibility

Doan Nguyen reported on the application review process.

i. The Applicant Pool

Four applicants had not previously received Trust Fund Program grants, and two current grantees will not be seeking refunding for 2019. We received twenty applications for pro bono allocations, and four Support Centers were successfully deemed per Business & Professions Code §6215(b)(2). A total of six programs did not establish presumptive eligibility by establishing that 75% of their expenditures were for qualified activities, but each was approved upon individual examination.

ii. Individual Applicant Issues

a. Applicants for First-Time Funding

Of the four applicants seeking first-time Trust Fund funding, two presented some concerns that were discussed by the full Commission.

1. The Family Legal Assistance Clinic at Children's Hospital of Orange County

This program has only recently spun off from a larger non-qualifying parent corporation; their application included the parent corporation's audit for 2017 with a separate schedule for clinical expenses, as permitted by our Rules and Guidelines. Based on that audit together with their other submissions, the Commission found this program eligible for 2019 funding. However, because this program remained part of the parent corporation through the first part of 2018, it will be unable to submit a separate audit next year covering its own operations for the entirety of 2018. Agreement has been reached that, for the application due in 2019 for 2020 grants, this program may submit audited financial statements for the parent corporation covering the portion of 2018 during which the clinic had not yet been independently incorporated, and may submit its own audit for the remainder of that year. These two documents together will meet the Trust Fund Program's requirement of submitting an audit as part of the application process for 2020 funding.

2. The Leadership Council for Justice and Accountability

This program's application left many unanswered questions regarding the scope and focus of their work. The Commission was unable to determine, despite holding a separate eligibility review conference with program representatives, specifically what legal services were being provided, for whom, and what share of the people for whom those services were provided were indigent. The program's recordkeeping was insufficient to connect specific expenditures to specific activities, or to establish the qualified nature of those activities. The Commission was therefore unable to find this program eligible for Trust Fund Program grants for 2019.

b. Grantmaker Grantee Expenditures

Grantee/Applicant The Impact Fund has reported that it has received a significant foundation grant of funds to be used solely for the purpose of making grants to legal aid programs. The program has requested that these grant disbursements be excluded from their budget, for purposes of determining their primary purpose and function. The State Bar's Office of General Counsel has advised that, regardless whether the program's expenditures are such that their eligibility could be presumed under Rule 2.671(B), the Commission has discretion under Rule 3.671(C) to find that this program has satisfactorily demonstrated a qualifying primary purpose and function "by other means." The

Commission agreed, on voice vote, that the organization has met its primary purpose requirement and can be found eligible regardless of the additional grantmaking activities.

c. Law School Clinic Allocated Costs Limitation

Law School Clinic grantee/applicants McGeorge Community Legal Services and USD School of Law Legal Clinics submitted applications citing non-personnel expenses calculated according to an allocated cost ratio of approximately 40% of salary costs. This led these programs to report non-personnel costs that were proportionately significantly higher than is typical across the legal services sector generally. These include components that are related to their function as a law school, such as grounds keeping or student outreach and recruitment fees, that are not related to their function as a legal clinic. These programs have been unable to explain how these allocated non-personnel expenses actually break down on a line item basis. However, they have provided assurance that their *qualified* non-personnel costs were no less than 30% of their total salary costs. Given these assurances, the Trust Fund Program has agreed to limit the qualified portion of the allocated non-personnel costs submitted by these applicants to no more than 30% of salary costs; any additional allocated non-personnel expenses will be treated as non-qualified.

d. Pro Bono Eligibility

Dan Passamaneck described the tests for qualifying as a Pro Bono program for Trust Fund Purposes, and reported that some rural or isolated programs have asked for flexibility in our application of these tests. The Commission was not prepared to loosen or change these tests in the midst of the application cycle. Consequently, San Luis Obispo Legal Aid Foundation was unable to qualify for the Pro Bono allocation. The Commission expressed willingness to consider revisions in these standards for future applications.

iii. Action on Applications for Eligibility

A handful of other programs are still finalizing their applications or their responses to staff inquiries. In all these cases, eligibility is not in question and qualified expenditures are on track for final resolution in time for allocations to be run so programs can be notified on a timely schedule. Programs will then have 30 days to submit budgets for expenditure of those funds.

Staff recommends approval as discussed above, of all programs that submitted applications, with the exceptions of the Leadership Council for Justice and Accountability, for the reasons set forth above, and Pro Bono Project Silicon Valley, which withdrew its application due to its inability to provide a fiscal audit. A motion to approve was made by Bob Planthold, seconded by Kim Savage, and unanimously approved on a roll call vote.

B. Action on Tracking Support Center Deeming Results

Catherine Borgeson reported on a proposal to provide deemed Support Centers with information on the number of votes they received and the total number of votes cast and available. Voting QLSPs would not be identified, and information about other deemed SCs would not be included. This is intended to improve the transparency of the Deeming process, and to make it more informative for the Support Centers that undergo it. Corey moved, and Bob seconded, that this information be made available going forwarded. The motion was approved unanimously on a roll call vote.

VII. Report from Ad Hoc Committee and Discussion about Sub-Entity Review

Richard Reinis reported that, at the Commission's August 15 meeting on the status of commissions and committees at the State Bar, no public commenter spoke in favor of reducing or disbanding the Trust Fund Commission. A draft letter to the State Bar Board is in the meeting materials, proposing options such as an enhanced liaison function.

The Commission discussed these issues in detail, including how they are impacting other similarly situated sub-entities, and how the legal services community is responding. Louise Fightmaster moved, and Kim seconded, that the letter included with the meeting materials be further developed and sent promptly to the Bar's Board of Trustees, detailing the Commission's views on this issue. The motion passed unanimously on a roll call vote. Staff will poll Commission members for a date to develop this letter further.

VIII. Liaison Reports

A. Judicial Council Report on Program Developments

Bonnie reported on next week's Self-Represented Litigant and Family Law Conference.

B. Legal Aid Association of California Report on Program Developments

Salena also reported on the upcoming Self-Represented Litigant and Family Law conference, and on the Justice In Government project to open new funding sources for legal aid such as through VOCA.

IX. Review of Grants Calendar and Upcoming Meeting Dates

Catherine will poll for available dates for a full Commission meeting in late September. The Bank Grant Committee meeting on October 16 is cancelled but that Committee is still scheduled to meet on November 16. The Eligibility and Budgets Committee will meet November 2 (time to be determined but possibly 10 to 3). The whole Commission will meet again on the morning of November 16 to finalize recommendations for budgets. The Partnership Committee will meet to approve draft policies for submission to the full Commission.

CLOSED SESSION

None

There being no further business before this Commission, Bob moved to adjourn at 3:40 pm; the motion was passed by unanimous acclamation.