



The State Bar *of California*

OPEN SESSION AGENDA ITEM 50-6 NOVEMBER 2019

DATE: November 14, 2019

TO: Members, Board of Trustees

FROM: Brady R. Dewar, Assistant General Counsel, Office of General Counsel

SUBJECT: Appointment of Office of General Counsel as Counsel for Legal Services Trust Fund Commission Pursuant to State Bar Rule of Procedure 4403

EXECUTIVE SUMMARY

Legal Services Trust Fund Program grant applicants whose applications are denied (or whose existing funding is terminated) are afforded, by statute and State Bar rule, the opportunity to challenge the denial of funding in State Bar Court. Rules of Procedure of the State Bar of California, Rule 4303 (Rule 4303), provides that the Legal Services Trust Fund Commission (Commission) shall have counsel in such State Bar Court proceedings “selected as determined by the Board of Trustees.”

This agenda item requests that the Board of Trustees appoint, pursuant to Rule 4303, the Office of General Counsel (OGC) as counsel for the Commission for any future proceedings in the State Bar Court initiated by a Legal Services Trust Fund Program grant applicant seeking review of any Commission funding decision.

BACKGROUND

Applications for Interest on Lawyers’ Trust Accounts (IOLTA) and Equal Access Fund (EAF) funding from the Legal Services Trust Fund Program are reviewed and decided by the Legal Services Trust Fund Commission (Commission). By statute, applicants whose applications are denied are entitled to review by an impartial hearing officer:

A denial of an application for funding or for future funding or an action by the State Bar to terminate an existing grant of funds under this article shall not become final until the applicant or recipient has been afforded reasonable notice and an opportunity for a timely and fair hearing. Pending final determination of any hearing held with reference to termination of funding, financial assistance shall be continued at its existing level on a month-to-month basis. **Hearings for denial shall be conducted by an impartial hearing officer whose decision shall be final.**

(Cal. Bus. & Prof. Code § 6224 (emphasis added).)

The State Bar, in turn, has adopted regulations that provide applicants whose applications are denied the right to request reconsideration by the Commission and then, if reconsideration is denied, the right to request review by the State Bar Court. (Rules of the State Bar of California, Rule 3.691.) The rules also provide for representation by counsel of the Commission in any such State Bar Court proceedings; Rule 4303 provides, in relevant part: “In proceedings conducted pursuant to these rules, the Commission established pursuant to rule 4 of the Trust Fund Rules and an applicant or recipient shall be represented by their respective counsel. The Commission’s counsel shall be selected as determined by the Board of Trustees.”

This year, at its August 23, 2019 meeting, the Commission found five applicants not eligible for 2020 IOLTA and EAF grants. Of those, two applicants have requested re-consideration by the Commission within the time allowed for such requests. These requests will be addressed by the Commission at its November 22, 2019 meeting. Should the Commission reaffirm its decision, those applicants will then have thirty days from receipt of written notice of such decision in which to seek review by the State Bar Court. Should such State Bar Court proceedings begin, the Commission will need to be represented by counsel.

OGC has not located any previous resolutions by the Board of Trustees appointing counsel for the Commission pursuant to Rule 4303. The last appeal by an applicant to the State Bar Court appears to have been filed in 1999. The Commission was represented in those proceedings by the Heller Ehrman White & McAuliffe law firm; it is not clear whether this law firm was formally appointed pursuant to Rule 4303.

DISCUSSION

Due to the pending requests for reconsideration discussed above, it is reasonably likely that, within the next two months, one or two applicants for funding from the Legal Services Trust Fund Program will file an appeal in the State Bar Court of the Commission’s denial of their applications for funding. Should such proceedings be initiated, the Commission will need representation in the State Bar Court. Pursuant to Rule 4303, the Commission’s counsel “shall be selected as determined by the Board of Trustees.”

OGC requests and recommends that the Board of Trustees appoint OGC as counsel for the Commission in any future proceedings in the State Bar Court initiated by a Legal Services Trust Fund Program grant applicant seeking review of a Commission funding decision.¹

Appointing OGC as counsel to the Commission is consistent with Section 7.3 of the Board of Trustees Policy Manual, which provides that OGC “is the designated legal counsel to the State Bar as an entity, including the State Bar’s subentities, subject to the direction of the Board and its Executive Committee.” Additionally, OGC regularly provides legal services to the Office of Access & Inclusion and the Commission; for instance, an OGC attorney regularly attends Commission meetings and answers legal questions as they arise. As such, OGC already has familiarity with both the facts and the relevant laws and regulations that would be implicated in any State Bar Court proceedings initiated by a Legal Services Trust Fund grant applicant.² Thus, organizational competencies and efficiencies would be served by appointing OGC as the Commission’s counsel pursuant to Rule 4303.

FISCAL/PERSONNEL IMPACT

Minimal; the same OGC attorney(s) currently working on Commission matters would represent the Commission in any State Bar Court proceedings.

RULE AMENDMENTS

None

BOARD OF TRUSTEES POLICY MANUAL AMENDMENTS

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: 4. Support access to legal services...and promote policies...programs to eliminate bias and promote an inclusive environment in the legal system...and strive to achieve a statewide attorney population that reflects the rich demographics of the state's population

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

¹ The resolution set forth below appoints OGC as the Commission’s counsel for future proceedings as well, obviating the need for OGC to return to the Board of Trustees on this issue in the future.

² While OGC has the subject matter expertise to represent the Commission in such proceedings, OGC recognizes that OCTC has much greater experience with State Bar Court proceedings generally. Hence, OGC raised this issue with OCTC and confirmed that OCTC concurs with OGC’s request that OGC be appointed as the Commission’s counsel pursuant to Rule 4303.

RECOMMENDATIONS

It is recommended that the Board of Trustees approve the following resolution:

RESOLVED, that, pursuant to Rules of Procedure of the State Bar of California, Rule 4303, the Board of Trustees appoints the Office of General Counsel as counsel to the Legal Services Trust Fund Commission in any State Bar Court proceeding initiated by a Legal Services Trust Fund grant applicant seeking review of a decision by the Legal Services Trust Fund Commission.

ATTACHMENT(S) LIST

None