

Legal Services Trust Fund Commission Meeting

Friday, November 22, 2019

12:00 p.m. – 4:00 p.m.

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

NOTES AND ACTION SUMMARY

The meeting was called to order at 12:12 p.m.

I. CO-CHAIR'S REPORT

A. ROLL CALL

Commission Members

Banafsheh Akhlaghi (SF)
J. Eric Isken (LA)
Amin Al-Sarraf (LA)
Kim Bartleson (phone)
Louise Bayles-Fightmaster (SF)
Pamela Bennett (LA)
Will Boschelli (LA)
Erica Connolly (SF)
Herman L. DeBose (LA)
Rebecca Delfino (phone)
Corey N. Friedman (SF)
Erin Lewellen (phone)
Zahirah Mann (LA)
James Meeker (LA)
Robert Planthold (SF)
Richard Reinis (phone)
Susan Ryan (LA)
Kim Savage (SF)
Christina Vanarelli (phone)

Advisors

Judge Lisa R. Jaskol (LA)
Justice William J. Murray, Jr. (phone)
Judge Brad Seligman (SF)

State Bar Staff

Rocio Avalos (SF)
Brady Dewar (SF)
Elizabeth Hom (SF)
Hellen Hong (LA)
Doan Nguyen (SF)
Greg Shin (LA)

Liaisons

Salena Copeland (LAAC liaison, phone)
Bonnie Hough (Judicial Council liaison, SF)
Melanie Snider (Judicial Council, phone)

Public

Antoinette Balta
Scott Garner
Creighton Mendivil
KellyAnn Romanych

Roll call was taken and quorum was established. Commission Chair Akhlaghi led the meeting and requested public comment. No one came forward to make a public comment.

In the interest of time and in recognition of the members of the public that were attending, Commission Chair Akhlaghi suggested taking out of order agenda items IX. Pending Appeals of Denials of 2020 Applications For IOLTA and EAF Funding and XI. Discussions Regarding Potential Litigation Related to Pending Appeals of Denials of 2020 Applications for IOLTA and EAF Funding. The Commission then went into closed session at 12:25pm to discuss Agenda Item XI.

OPEN SESSION

At 1:30 p.m., the Commission reconvened in open session. Roll call was taken and a quorum was established.

IX. PENDING APPEALS OF DENIALS OF 2020 APPLICATIONS FOR IOLTA AND EAF FUNDING

The Chair called item IX, the informal conference for reconsideration of a Commission decision to find Veterans Legal Institute (VLI) and Senior Citizens Legal Services (SCLS) ineligible for IOLTA and EAF funding for grant year 2020, pursuant to set forth in State Bar Rule 3.691(B)(2).

Scott Garner, attorney for VLI, was provided the opportunity to present information on behalf of VLI in its appeal of the Commission's decision to find VLI ineligible for IOLTA and EAF funding for grant year 2020. Mr. Garner stated that VLI meets the primary purpose requirement for qualified legal services projects, and that the \$140,000 VLI provided to the spinoff organization in 2018 should have been classified as pass-through funds and should not count towards the primary purpose calculation. Should the Commission disagree with that classification, VLI states that it properly amortized the \$140,000 amount over 20 years following advice from its auditor, that the Commission should have accepted VLI's revised audit, and the revised audit, reflecting the amortization, demonstrates that more than 50% of VLI's qualified expenditures are for the provision of legal services to the indigent. Mr. Garner further commented that the State Bar rules and guidelines are not well written and require that VLI work with staff to figure out what to do and that this process should not be used against VLI and that the lack of internal controls is given as a reason for denial in the rejection letter without explanation of what internal controls are lacking. When Mr. Garner concluded, Commission members posed questions to Mr. Garner, VLI Executive Director Antoinette Balta, and VLI Deputy Executive Director KellyAnn Romanych.

A question was asked about the speed with which VLI's auditor made the \$140,000 amortization adjustment. Ms. Romanych responded that the audit was not done quickly but that the change (adjustment to amortize the \$140,000) was handled quickly to accommodate and address the State Bar's concerns. She noted that the auditor concluded that the amortization adjustment was appropriate and within generally accepted accounting principles, so required minimal time to adjust the audit. Commissioner Planthold asked whether the auditor had ever had to rebook only a single entry in a prior audit and Ms. Balta responded not to her knowledge. Commissioner Isken requested that VLI provide follow-up information and/or documentation about if/when the Board was informed and approved the \$140,000 amortization adjustment and the original audit. Ms. Balta responded that she needs to review

VLI records to determine if there was a Board resolution; she reported that the issue was brought up and agreed upon but is unsure whether there was a formal resolution.

Mr. Garner expressed concern about State Bar staff's use of the term "international" in describing VLI's auditor but could not provide context or more specificity as to when and how the term was used. Commissioner Bartleson asked for clarification on how the term was used and why VLI believes that it was used against them in the Commission's determination. VLI believes that the auditor's nationality (Chinese American) and/or his location at the time of making the amortization adjustment is irrelevant and didn't understand the basis for the Commission's question. VLI confirmed that the auditor's office is located in California but is capable of doing international work if necessary.

Commissioner Seligman asked VLI to describe the specific context in which the phrase "international" was used by State Bar staff and/or Commissioners. Ms. Balta said she recollected that the term was used at the August 23 Committee or Commission meeting but could not recall the specific context.

Commissioner Boschelli requested a copy of the letter/finding from the auditor about the \$140,000 amortization adjustment and asked if he provided any other services to VLI. VLI confirmed that the auditor also creates their Form 990 but that from an accounting/auditing standpoint, he is totally independent. VLI has a separate bookkeeper (Patricia Burns) that handles their accounting.

VLI was asked where they received the \$140,00 that was provided to the spinoff organization, and they responded that the money was raised by during a special fundraiser that was organized for the think tank spin-off. VLI was asked to provide additional information and a detailed accounting about the November 2018 fundraiser including: information and documentation regarding whether the fundraiser was held specifically for purposes of the co-founder's think tank being spun off from VLI and whether the \$80,000 donation was earmarked for the spinoff. VLI was asked to provide an accounting of the fundraising event.

Commissioners raised additional questions regarding VLI's board's oversight responsibilities and whether State Bar funds were used in the \$140,000 payment to the think tank.

Ms. Balta reiterated that this was a unique situation and that the issues involving the co-founder and the spin-off were transparently discussed with the State Bar. She indicated that the State Bar was not clear in its discussions or materials about why the \$140,000 couldn't be classified as a pass-through expense, contending that it was in fact a pass through. The \$140,000 was provided to the co-founder's think tank in two installments and none of that money remains with VLI. Going forward, VLI believes that its primary purpose percentage could be in the 60%+ range and that once again, this situation was an anomaly.

Ms. Romanych confirmed that no State Bar funds were used to pay the think tank nor to fund over-income or out-of-state clients.

The Commission then provided Creighton Mendivil, Executive Director of SCLS, the opportunity to present information on behalf of SCLS in its appeal of the Commission's decision to find SCLS ineligible for IOLTA and EAF funding for grant year 2020. Mr. Mendivil confirmed that he has not been able to provide adequate management of SCLS's operations given his ongoing personal issues and that the Board has generally taken a hands-off approach in its oversight activities.

Judge Seligman asked what type of help was available within the organization to assist Mr. Mendivil. Mr. Mendivil reiterated that SCLS is a small three-person organization but that with the addition of a front office manager to help manage day-to-day activities, the current situation at SCLS will improve going forward. Further discussion then ensued between Mr. Mendivil and the Commission about the potential need for significant reforms including a change in the level of the Board's current engagement and a review of staff roles and responsibilities.

Mr. Mendivil acknowledged the significant delay in responding to the State Bar's questions and requests for materials, and reported that the main driver of the delays was because the audit was not completed in a timely fashion; he mentioned that they planned to use a different auditor going forward. He noted that he also had discussions with Salena Copeland at LAAC about potential assistance that could be offered to SCLS during this "transition period." Commissioner Friedman asked about the impact of SCLS's organizational issues on clients and Mr. Mendivil reported that fortunately, there's been minimal negative impact and that Staff Attorney, Malia Powell, continues to do a strong job in representing its clients.

Another question was asked about SCLS's budget and Mr. Mendivil stated that its annual budget is approximately \$300,000 and that in 2020, the State Bar's roughly \$100,000 allocation would represent about a third of its budget.

The Commission then went into closed session. The Commission reconvened at 3:36 p.m. Roll call was taken and a quorum was established. The Commission reported that during the closed session, it unanimously approved by roll call vote (Connolly moved, Isken seconded) creation of a committee comprised of Akhlaghi, Bayles-Fightmaster, Boschelli, Connolly, Isken, Savage, and Seligman to further review the pending appeals of denials of 2020 applications for IOLTA and EAF funding for VLI and SCLS. It was decided that a committee meeting and a subsequent Commission meeting will be held in December (date to be determined) for a final determination.

II. CONSENT

A. APPROVAL OF ACTION SUMMARY FROM 8/23/19 MEETING

This item was deferred in the interest of time.

III.STATE BAR REPORTS

This item was deferred in the interest of time.

IV. STAFF UPDATES ON GRANT ADMINISTRATION

This item was deferred in the interest of time.

VII. LIAISON REPORTS

This item was deferred in the interest of time.

V. ELIGIBILITY AND BUDGET

A. DISCUSS AND APPROVE ELIGIBILITY AND BUDGET REVIEW COMMITTEE RECOMMENDATIONS FOR 2019 IOLTA AND EAF BUDGET REVISION AND CARRYOVER REQUESTS

The Commission unanimously approved by roll call vote (Friedman moved, Connolly seconded) the Committee's recommendations for 2019 IOLTA and EAF Budget Revision and Carryover requests for organizations 1-10 on the agenda item.

B. DISCUSS AND APPROVE ELIGIBILITY AND BUDGET REVIEW COMMITTEE RECOMMENDATIONS FOR 2020 IOLTA AND EAF BUDGET SUBMISSIONS

The Commission unanimously approved by roll call vote (Akhlaghi moved, Savage seconded) the Committee's recommendations for 2020 IOLTA and EAF Budget Submissions with conditional approval for the 8 grantees with capital additions proposed in the budgets. Commissioners abstained as follows regarding particular organizations: Isken (Bet Tzedek), Al-Sarraf (LAFLA), Bayles-Fightmaster (Legal Aid of Sonoma County), Bennett (California Indian Legal Services), Connolly (Advancing Justice-LA), DeBose (Disability Rights California, Disability Rights Education and Defense Fund, Disability Rights Legal Center), Friedman (California Rural Legal Assistance, Worksafe, Inc), Mann (Disability Rights California), Meeker (Public Law Center), Ryan (Inland Empire Latino Lawyers Association, Riverside Legal Aid).

VI. BANK COMMUNITY STABILIZATION AND REINVESTMENT (BCSR) GRANTS

A. DISCUSS AND APPROVE BANK GRANTS COMMITTEE RECOMMENDATION FOR 2019 AND 2020 BUDGET REVISION REQUESTS

The Commission unanimously approved by roll call vote (Connolly moved, Akhlaghi seconded) the Committee's recommendation for 2019 and 2020 Budget Revision requests with the following abstentions: Mann.

B. DISCUSS AND APPROVE BANK GRANTS COMMITTEE RECOMMENDATION FOR 2020-2022 BCSR AWARDS

The Commission unanimously approved by roll call vote (Isken moved, DeBose seconded) the Committee's recommendations for 2020-2022 BCSR Awards with the following abstentions regarding particular organizations: Akhlaghi (Lawyers Committee for Civil Rights), Friedman (California Rural Legal Assistance, Worksafe, Inc).

The meeting adjourned at 4:10 p.m.