

LSTFC Eligibility and Budget Review Committee Meeting

Friday, May 1, 2020

10:00 a.m. – 3:00 p.m.

Held via Zoom Video Conference Meeting:

MEETING SUMMARY AND ACTION ITEMS

The meeting was called to order at 10:05 a.m.

OPEN SESSION

I. ROLL CALL

Committee Members

J. Eric Isken (Chair)
Banafsheh Akhlaghi
Louise Bayles-Fightmaster
Pamela Bennett
Erica Connolly
Herman L. DeBose
Rebecca Delfino
Zahirah Mann
James Meeker
Debra Meyers

Staff

Vicky Avila
Erica Carroll

Brady Dewar
Doan Nguyen
Greg Shin
Kim Warmesley

Liaisons

Bonnie Hough (Judicial Council)
Chris Iglesia (Board of Trustees)
Debbie Manning (Board of Trustees)

Public

Salena Copeland (Legal Aid Association of California)
Lorin Kline (Legal Aid Association of California)

Roll call was taken, and a quorum was established.

II. CALL FOR PUBLIC COMMENTS

Committee Chair Isken led the meeting and requested public comment. No one requested time for public comment.

III. CONSENT

A. Approval of Meeting Summary and Action Items from November 22, 2019 Meeting

The Committee approved by unanimous roll call vote the Meeting Summary and Action Items from the November 22, 2019 meeting (Akhlaghi moved, Meyers seconded).

IV. BUSINESS

A. Update on Impact of COVID-19 on 2020 Monitoring Visit Schedule

Program Supervisor Doan Nguyen and Senior Program Analyst Erica Carroll provided an update on the impact that COVID-19 has had on the 2020 monitoring visit schedule. Given that 2020 monitoring visits were temporarily halted due to COVID-19, staff has been in communication with Bonnie Hough about a “Plan B” in the event that staff and programs are unable to return to their physical offices in the near future. Two options have been discussed:

- 1) Push back all monitoring visits until 2021 which would mean that staff would be conducting almost 70 visits in 2021, which would be extremely difficult; or
- 2) Conduct remote monitoring visits for the remainder of 2020.

Bonnie and Doan agreed on conducting remote monitoring visits if shelter-in-place orders were not lifted at the end of May 2020. Chair Isken asked about the possibility of doing one or two remote monitoring visits on a pilot basis to gauge viability. While never as ideal as doing face-to-face visits, Doan mentioned that in fact, a few remote monitoring visits of programs have been conducted on a piecemeal basis in the past so this is not an entirely new concept and is doable. One of the main challenges, however, is on the review/audit of financial documents which is difficult to do remotely due to privacy/security challenges of viewing and sharing that information online. Staff including Senior Financial Analyst Frank Bittner in conjunction with the State Bar’s Finance Department will develop a formal protocol.

Finally, the five or six programs that staff has identified as potentially having some issues have been flagged and their previously 2020 scheduled visits have been pushed back until 2021 for in-person monitoring visits.

B. Update on Changes to Application Deadline for 2021 IOLTA and EAF Grants

The original May 15, 2020 application submission deadline was changed to June 15, 2020 due to COVID-19. Many programs relayed to staff that they were unable to schedule and complete their annual audits due to office closures. In terms of process, completed audits are required to be submitted along with the applications but given the current situation, staff has been flexible in granting extensions until June 15, 2020. For those programs that are unable to complete their audits and submit them by the June 15 deadline, staff has asked them to submit their applications regardless so that the process is not delayed any further.

Depending on the number of programs that submit applications without a corresponding audit, the application review calendar and Committee meetings may need to be modified.

Staff will keep the Committee updated on this issue and present a number of options during the July 10, 2020 meeting for the Committee to consider. An additional Committee meeting may need to be scheduled after the July 10 meeting depending on the number of issues requiring review, and staff will coordinate scheduling as needed. Chair Isken reminded the other Committee members that based on the information presented above, there is a strong likelihood that Committee members will need to read and review a lot of material starting a week before the meeting and that the Committee members should try to schedule their respective calendars accordingly.

Committee member Akhlaghi suggested that staff spell out very clearly in writing the different scenarios for the Committee to consider in advance of the July 10 meeting so that Committee members can spend their time efficiently.

Finally, Doan provided an update on the ongoing discussions about potential reductions to undistributed 2020 IOLTA grant funds. Several reduction scenarios are being considered to avoid large swings in the annual grants for 2021 and future years based on the recent decline in interest rates. Staff sent out a survey on April 24, 2020 to all programs to solicit their feedback on various IOLTA distribution scenarios and their respective program needs. The survey was followed up by a webinar held on April 30, 2020 which included a presentation of the various scenarios to approximately 150 attendees and provided an opportunity for programs to ask questions. While final survey results will be compiled once responses are collected and analyzed after the May 8, 2020 submission deadline, anecdotally, it appears that the larger programs are open to bigger cuts because they have access to other forms of funding. Smaller programs, however, don't have as much flexibility and could be pressed into conducting layoffs or ceasing operations if distributions are cut. A Doodle poll was sent out to the full Commission to see if another meeting in May could be convened to discuss findings from the survey and to continue discussions on the various options under review. It was recently confirmed that this meeting will be held on May 27, 2020 from 12:00 – 4:00 pm.

C. Update on Status of 2020 Reports and Evaluations from Community Legal

Community Legal was an IOLTA and EAF recipient in 2018 and 2019. In 2019, they received \$14,996 in IOLTA funds and \$12,330 in EAF funds. Staff recently learned that they shut down operations as of January 1, 2020 and have reviewed the final reports that they submitted in conjunction with their ceasing of operations (the reports were late and required a lot of follow-up by staff). Staff wanted to confirm that the grant funds Community Legal previously received were properly spent down and accounted for and upon review of their final reports, staff believes that they have complied with all reporting requirements. In summary, Community Legal engaged in a lot of self-help work related mostly to housing and family law, as well as income maintenance and miscellaneous areas including wills and trusts, CHRO, etc. Their case summary report indicated that they helped 186 people with family, 173 with housing, and dozens more for consumer of income maintenance related work. Staff is comfortable with the information that they provided and will proceed to close out their file.

Community Legal also submitted an application for 2020 funds which didn't include the required audit. As a result, staff was planning to recommend to find them ineligible but they ultimately decided to withdraw their application.

D. Discuss and Approve Grantee Requests to Make Real Property Purchases and/or Capital Additions Using 2020 IOLTA Funds

At its November 1, 2019 meeting, the Committee reviewed requests from eight organizations (California Rural Legal Assistance (CRLA), Disability Rights California (DRC), Greater Bakersfield Legal Assistance (GBLA), Legal Aid Foundation of Los Angeles (LAFLA), Legal Aid Society of San Bernardino (LASSB), Legal Services of Northern California (LSNC), Neighborhood Legal Services (NLS), and Public Counsel) seeking approval to use IOLTA funds for one or more of the following:

- 1) Pre-payment of their mortgage;

- 2) Lowering their mortgage obligations over time; or,
- 3) Construction costs

After review of the requests, the Committee recommended conditional approval of all eight budgets that allocated IOLTA funds for construction costs and/or mortgage service payments (the Commission approved this recommendation during its November 22, 2019 meeting). Final approval was withheld pending receipt and review of appropriate, supporting documentation which was due on March 31, 2020.

Due to COVID-19, four of the eight organizations (GBLA, LAFLA, LSNC, NLS) sought and received an extension to provide the required, supporting documentation. The requests from these four organizations along with the required documentation will be presented for review at the Committee's June 26, 2020 meeting.

The requests from Public Counsel and LASSB do not require further review/approval from the Committee. Staff determined that Public Counsel's \$34,000 request for capital improvements should in fact fall under the guidelines for Management of Personal Tangible Property which does not require a separate approval by the Committee as long as they maintain the appropriate records for inspection. As a result, staff approved Public Counsel's budget. LASSB withdrew its request to purchase a parking lot and make improvements to expand their office building, and the appropriate changes to their budget have been reviewed and approved by the LSTFC through a separate process.

The remaining two requests from DRC for second mortgage pre-payment and office construction costs and CRLA for mortgage pre-payment were on the Committee's agenda for review and approval. Both DRC and CRLA submitted the appropriate documentation to support their proposed use of IOLTA funds for the purposes noted above. Based on its review of the submitted documentation, staff recommended final approval of both organizations' budgets.

After discussion, the Committee unanimously voted to recommend approval of the budgets for DRC and CRLA (Akhlaghi moved, Delfino seconded).

E. Discuss and Approve Impact Cases and Advocacy Activities in 2019 ILAW Reports

Senor Program Analyst Erica Carroll informed the Committee that Staff reviewed the Impact Litigation and Advocacy Work (ILAW) reports for the 2019 reporting period which included a total of 415 impact litigation cases and 417 advocacy activities (each grantee is asked to submit its top 15 impact litigation cases and top 10 advocacy activities, based on the highest number of staff hours).

Staff reviews the ILAW reports to determine the qualifying nature of the activities as set forth in the requirements for qualified legal services projects (QLSPs) and support centers (SCs). Staff's determination then drives whether each organization can count the activities as qualified expenditures which directly impacts how much money they are allocated when staff runs the funding formula for the 2020-2021 IOLTA/EAF grant period.

The statute and State Bar rules don't provide clear guidance on how to evaluate ILAW activities. For example, while QLSPs are required to provide legal services that benefit indigent persons, this is difficult to assess in some impact litigation cases affecting a broad group of people i.e. some in the group might be indigent while others are not.

Staff is elevating the following for the Committee's review:

- 1) Public Advocates' Higher Education advocacy activity (three impact cases from National Immigration Law Center (NILC) were also scheduled to be presented but NILC decided to deduct those cases and not count them as qualifying activities)
- 2) Six categories considered as proxies for meeting the indigency requirement: affordable housing, low-income immigrants, public benefits, education equity, low-wage workers, and youth in detention (the first four categories were presented to this Committee last year)

Erica mentioned that members that served on the Committee last year may have noticed a large decrease in the number of activities that have been elevated for review this year. This is due to the fact that 1) there were a number of activities reviewed last year that have continued this year so based on the Committee's prior determinations, staff was able to better assess whether to approve an activity or deem it as non-qualifying 2) based on the Committee's guidance from last year, staff and programs were more educated about what activities might be considered as qualifying and non-qualifying.

Chair Isken suggested reviewing Public Advocates' Higher Education advocacy activity first. This advocacy activity which broadly focuses on advocating for passage of legislation supporting financial aid packages for low income students pursuing higher education and reforming remedial programs for community college students was deemed to be non-qualifying last year because the organization did not provide sufficient data to show that indigent persons would be primarily benefitting from the activity. This year, however, Public Advocates affirmed that this activity targets low-income students and presented supporting Pell Grant data showing that this activity in fact, primarily benefits indigent persons/students.

A robust discussion ensued about determining how an activity "primarily" impacts indigent persons. Committee member Mann asked whether all students potentially benefitting from this activity were Pell Grant recipients and Public Advocates' position was that 65% of Pell Grant recipients are below the 125% federal poverty level and because the activity is targeting those low income students, their activity should be considered qualifying.

Chair Isken then asked if the Committee needs to find that the majority of persons benefitting from the activity are considered indigent. Doan explained that the term "majority" is not clearly defined in any of statutes or authorities (which is why this issue is being reviewed through the codification process). As a result, the Committee has broad latitude in approving these activities and have historically done so when an organization was able to provide data/documentation showing that the activities primarily and/or disproportionately (emphasis added) benefit indigent persons. Brady Dewar from the Office of General Counsel confirmed that the statutes and State Bar rules are ambiguous on this topic and that this is ultimately a policy call and that the Commission has authority to determine what is qualifying.

Committee member Meeker opined that perhaps the Committee shouldn't have to solely use the "primary" test (generally, 50% + one) to determine indigency but that if an activity benefitted a population where only 10% were considered indigent, that 10% of the total expenditure could be determined to be qualifying. Or put another way, if an activity benefitted a population where 49% were considered indigent, should that activity be considered as non-qualifying based on the "primary" test?

Doan reminded the Committee that the “primary” test is based on office practice and that the statutes and rules don’t specifically spell out or require that this test be used to determine indigency. In fact, through the codification process, staff is reviewing whether using a disproportionate impact test (which looks more at the severity of the impact vs the number of people impacted) might be more appropriate. Chair Isken summarized that based on the information provided, he felt that if the Committee can conclude in good faith that a majority or large component of the beneficiaries of an activity are indigent, the Committee can determine the activity to be qualifying.

The Committee then pivoted to reviewing the six categories that staff believed to have a sufficient nexus to the needs of indigent persons but where the organizations were unable to provide data to show that the indigent primarily benefitted. Erica confirmed that three of the categories (affordable housing, low-income immigrants, public benefits) were approved by the Committee last year and therefore all of the activities that fell into those categories were presumed to primarily benefit the indigent and were approved in 2019. While education equity was not initially approved by the Committee as a category last year, the Committee conducted a review of all of the activities that fell into that category in a subsequent meeting and ultimately approved all of the activities. Low-wage workers and youth in detention were two new categories being presented to the Committee for approval. Doan added that the three categories that were approved last year were being presented again because the Committee is unable to make a sustaining policy and therefore a determination to approve those categories again this year would be required until the codification process is completed.

Subsequent discussion ensued about whether other government program standards could be used to determine indigency (HUD, Section 8, lunch program for kids), and Brady reminded the Committee that ultimately, most of the group that is served by the ILAW activity must meet the statutory standard of indigency which is 125% of the federal poverty level.

After final discussions on a best way to parse out the six categories into a motion, the Committee approved by unanimous roll call vote the recommendation to approve the affordable housing, low-income immigrants, and public benefits categories that were approved last year (Bayles-Fightmaster moved, DeBose seconded).

The Committee then approved by roll call vote the recommendation to approve the education equity, low-wage workers, and youth in detention categories (Bayles-Fightmaster moved, DeBose seconded, Bennett abstained).

The Committee approved by unanimous roll call vote the recommendation to approve Public Advocates’ Higher Education advocacy activity (Isken moved, Meyers seconded).

Finally, staff noticed an increase in the number of census activities that programs were reporting in their ILAW reports. And given that the census is being conducted this year, staff is anticipating that more of these activities will be reported in the 2020 reports. Staff is seeking preliminary feedback/impressions from the Committee on whether census activities should be considered to be primarily benefitting indigent persons since the census affects everyone. Staff’s preliminary view of census activities is inconclusive and there is disagreement as to whether these activities qualify as legal services. Anecdotally, however, there is a general leaning towards determining that these activities are considered qualifying.

Committee member Meeker mentioned that it's important to distinguish which census is being discussed. Unlike the decennial census which occurs every ten years, asks questions about citizenship, and is important for drawing congressional boundaries, the American Community Survey is conducted annually in urban areas and asks for important demographic information which could impact issues related to the funding of legal services organizations. Committee member Mann added that census related work could very well be considered qualifying activity since the data collected in the census is linked to the amount of resources provided to the indigent population. Committee member Connolly also added that general outreach activities to encourage participation in the census should probably not be considered as legal services work. The Committee generally seemed to agree that it would need to see specific details to make final determinations.

V. ADJOURN

The meeting was adjourned at 11:40 a.m.