

**Meeting of the Eligibility and Budget Review Committee
of the Legal Services Trust Fund Commission**

Meeting Summary and Action Items

Friday, July 10, 2020

10:00 a.m. – 1:00 p.m.

Zoom Conference

OPEN SESSION

In the absence of the chair, the Committee approved a motion by roll call vote to designate Banafsheh Akhlaghi, as acting Committee Chair (Delfino moved; Bennett seconded). Acting Chair Akhlaghi then called the meeting to order at 10:02 a.m.

I. ROLL CALL

Roll was taken and quorum was established. All members were present on Zoom or by phone.

Commission Members

Banafsheh Akhlaghi
Louise Bayles-Fightmaster
Pamela Bennett
Erica Connolly
Herman DeBose
Rebecca Delfino
Corey Friedman
Zahirah Mann
James Meeker
Debra Meyers
Bob Planthold
Kim Savage
Christian Schreiber
Christina Vanarelli

State Bar Staff

Vicky Avila
Erica Carroll
Christine Holmes
Brady Dewar
Elizabeth Hom
Doan Nguyen
Dan Passamaneck
Greg Shin

Liaisons

Salena Copeland (LAAC)
Bonnie Hough (Judicial Council)

Public

Evelyn Hickman, Cindy Liou (Kids in Need of Defense)
Keith Wattley (UnCommon Law)

II. CALL FOR PUBLIC COMMENT

The Chair invited members of the public to comment on any items on the agenda.

On behalf of Kids in Need of Defense (KIND), Evelyn Hickman (Grants Manager) and Cindy Liou (California Policy Director) spoke regarding KIND's national organizational structure, explaining that the two California field offices only serve eligible clients in California and operate, essentially, as their own organizations. All clients are unaccompanied juvenile immigrants, and receive assistance with removal defense – often first by seeking Special Immigrant Juvenile Status orders. Social work is provided only to support legal services – a structure designed with input from LAAC.

On behalf of UnCommon Law, Keith Wattley, founder and Executive Director, introduced himself and his organization, describing their work assisting incarcerated people with a sentence of life with parole to navigate the parole hearing process. He described parole hearings as non-adversarial administrative proceedings in which the rules of evidence and procedure do not apply.

III. CONSENT

A. Approval of Meeting Summary and Action Items from June 28, 2020 Meeting

This item was deferred to the Committee's July 28, 2020 meeting.

IV. BUSINESS

A. Update on 2019 IOLTA/EAF Budget Revisions and Carry-Overs

Acting Program Manager Doan Nguyen reported on the administration of 2019 IOLTA budget revision and carryover requests. Pursuant to the functional matrix, staff has approved budget revision and carryover requests of up to 25 percent of the grant, which are mostly due to staffing changes.

B. Update on 2020 Monitoring Visits

Senior Program Analyst Erica Carroll reported that staff has begun resuming monitoring visits, remotely on the Zoom platform. Committee members were invited to check the SmartSimple database to identify any upcoming visits they would like to join.

C. Discuss New Applications for 2021 IOLTA/EAF Funding

The 2021 applications include seven new applicants, all seeking eligibility as qualified legal services projects (QLSPs.)

1. Community Lawyers

Senior Program Analyst Christine Holmes presented the issues: Community Lawyers has reported 100 percent qualifying expenditures, but it is unclear whether their lawyer referral service activities are qualifying activities. Community Lawyers' financial review may not have been conducted by a certified public accountant. The applicant was granted an extension until August 1 to submit additional documents. Staff recommends that Community Lawyers be invited to an Eligibility Review Conference for further exploration of these issues.

2. East Bay Family Defenders

Senior Program Analyst Greg Shin presented the issues: East Bay Family Defenders (EBFD) was founded in September 2018 to provide court-appointed legal representation in Alameda County in dependency proceedings and related matters, with services that include social worker support. They plan to start income-screening for services but have not yet begun to do so; they estimated their non-qualified expenditures for this application, by adopting the methodology and formulas used by the Dependency Advocacy Center, which serves Santa Clara County. It is unclear whether that methodology is accurate and appropriate for this organization, or how they will account for non-qualified expenditures going forward; clarity is also desired regarding the qualified nature of their social worker services. Staff recommends the East Bay Family Defenders be invited to an Eligibility Review Conference for further exploration of these issues.

3. Housing Rights Center

Senior Program Analyst Erica Carroll presented the issues: This applicant seeks eligibility in Los Angeles and Ventura Counties, for work to ensure equal access to housing. This work includes both litigation and investigation, and also landlord-tenant counseling and community education. Much of their work is funded by Community Development Block Grants, which utilize a higher income eligibility threshold than IOLTA grants, but the application makes no deductions for non-qualifying activities. The application was initially submitted with missing information about non-qualified expenditures and activities. Additional questions have arisen regarding the methodology for allocating expenses between the two counties. Staff recommends that the Housing Rights Center be invited to an Eligibility Review Conference for further exploration of these issues.

4. Kids in Need of Defense

Acting Program Manager Nguyen presented the issues: Kids In Need of Defense is a national organization with headquarters in Washington D.C., which provides legal assistance to immigrant children. On initial review, the application does not reflect deductions commensurate with the out-of-state services this organization provides. Staff recommends inviting Kids in Need of Defense to an Eligibility Review Conference for further exploration of these issues.

The Committee called upon Cindy Liou, California Policy Director for Kids in Need of Defense, for background regarding the organization's fiscal and organizational structure. Ms. Liou explained that the organization's local field offices each have their own budgets, all spent within that office's service area. Two of their ten field offices are in California (and one of those has a satellite office also in California); other field offices are located in Houston, Boston, Baltimore, Virginia, Atlanta, and Newark. Ms. Liou agreed to confirm whether the California-based expenditures represent 57 percent of the total organizational budget, as represented in the application.

5. Social Justice Collaborative

Senior Program Analyst Holmes presented the issues: The Social Justice Collaborative provides legal assistance to low income immigrants in Central California. Their application reflects a qualified expenditures rate of 53.44 percent, and clarity is desired regarding whether their claimed non-qualified expenditures were accurately calculated. Staff recommends inviting the Social Justice Collaborative to an Eligibility Review Conference for further exploration of these issues.

6. UnCommon Law

Senior Program Analyst Dan Passamaneck presented the issues: UnCommon Law seeks eligibility as a QLSP; their headquarters are in Oakland and they seek an allocation in 20 counties. Their legal services are provided entirely in the area of applications for parole by incarcerated individuals. As it is not clear whether these are civil matters or criminal proceedings, staff have requested guidance from the State Bar's Office of General Counsel, and recommend inviting UnCommon Law to an Eligibility Review Conference for further exploration of these issues.

7. USC Gould School of Law Immigration Clinics

Senior Program Analyst Passamaneck presented the issues: The USC Gould School of Law Immigration Clinics is a returning applicant, having last been an IOLTA/EAF grantee in 2012. As a law school clinical program under Business & Professions Code section 6213(a)(2)(A), they are not separately incorporated; as an entity that is not separately incorporated, they submitted an independent financial audit for the School of Law as a whole, together with internally-generated documents reflecting the expenditures of the clinical program itself. As the audit is primarily used to confirm the expenditures cited in the application, office practice has required law school clinical programs to submit audited financial statements that include a statement specific to the expenditures of the clinical program. This applicant requests an extension until August 1 to produce documentation responsive to the audit requirement. If such documentation has not been submitted by that time, staff recommends that this application be considered incomplete and not approved.

D. Update on Support Center Deeming Process for 2021 Funding

Acting Program Manager Doan Nguyen reported on the deeming process under Business & Professions Code section 6215, which requires Support Centers to be deemed of special need unless they had been in operation prior to December 31, 1980. Deeming is conducted on a triennial schedule, and four organizations are scheduled for deeming in 2020: Family Violence Appellate Project; Impact Fund; Legal Services for Prisoners with Children; and National Immigration Law Center. Staff has sent a deeming ballot and information about the deeming candidates to all QLSPs; more than half must affirmatively vote yes, with only one vote per organization. Results are expected within a few weeks.

E. Discuss and Approve Late or Incorrect Audited/Reviewed Financial Statements

The Commission approved by roll call vote, a motion to grant audit extensions through August 1 to Kids in Need of Defense and the USC Gould School of Law Immigration Clinic, applicants requiring additional time to submit their audited or reviewed financial statements confirming their expenditures. (Bennett moved; Bayles-Fightmaster seconded).

F. Review and Approve Applications That Do Not Meet Presumption of Primary Purpose and Function Requirement

Acting Program Manager Nguyen reviewed the definition of "primary purpose" under Business & Professions Code section 6213(a)(1) and (a)(2)(a), and State Bar Rule 3.671(A); and the provision of Rule 3.671(A, B) that organizations with qualified expenditures of 75 percent or more of their total expenditures, are presumed to be qualified. Organizations that do not meet this threshold are

presented to the Commission for determinations regarding their eligibility for grants. For the 2021 applications, seven organization fall below the 75 percent presumption level:

1. The Eviction Defense Collaborative

Senior Program Analyst Carroll presented the issues: First funded in 2020, this organization's last application cited qualified expenditures of just over 50 percent. This year, though questions remain regarding some of their expenditures, their application currently reflects 74 percent qualified expenditures, and this figure is not expected to decrease significantly.

2. The Family Violence Law Center

Senior Program Analyst Erica Carroll presented the issues: The Family Violence Law Center explains their perennially low qualified expenditures percentage, as a result of a holistic service model that includes empowerment, education, and other ancillary needs of their clients. Appropriate deductions are being taken but those services are considered integral to client success. Their current 70 percent ratio is typical for this organization.

3. Legal Assistance for Seniors

Senior Program Analyst Shin presented the issues: Legal Assistance for Seniors comprises three core programs – direct legal representation and assistance in guardianship cases; HICAP services; and community education for older adults and other community members. Their 2021 application cites a qualified expenditures percentage of 66 percent, which is consistent with prior submissions and appears to be correctly calculated.

4. Social Justice Collaborative

Senior Program Analyst Holmes noted the previous discussion of the Social Justice Collaborative, including their qualified expenditure percentage of 53 percent, and the staff recommendation that this organization be invited to an Eligibility Review Conference to discuss this and other issues.

5. Kids In Need of Defense

Acting Program Manager Nguyen noted the previous discussion of Kids in Need of Defense, and the questions regarding their qualified expenditure percentage, and the prior determination to invite this organization to an eligibility review conference.

6. Family Legal Assistance at CHOC

Senior Program Analyst Holmes presented the issues: Family Legal Assistance at CHOC has revised their application consistent with those from prior years, to reflect 100 percent qualified expenditures. They have requested an extension to August 1 to submit an audit; assuming this document is timely received, the application does not currently raise eligibility concerns.

7. Housing Rights Center

Senior Program Analyst Carroll noted the previous discussion of the Housing Rights Center, and the questions regarding their qualified expenditures, and the prior determination to invite this organization to an eligibility review conference.

Staff recommends that the Eviction Defense Collaborative, Family Legal Assistance at CHOC, Family Violence Law Center, and Legal Assistance for Seniors be found to meet the primary purpose test for eligibility for 2021 grants without requiring them to attend an eligibility review conference. No action need be taken to accept this recommendation.

G. Review and Discuss Other Eligibility Issues: Pass-Through Funding

Acting Program Manager Nguyen provided background on how pass-through funds have been handled historically, and highlighted that the Commission reviewed the issue at its March 27, 2020 meeting and decided to defer this issue to the codification process and to leave the existing definition in place for the 2021 proposals. Given the definition now in effect, staff reported that they found no basis to dispute any of the 21 pass-throughs identified in the 2021 applications.

The Committee's discussion addressed the following issues:

- Which organizations have identified pass-throughs, and how much of their budgets these transactions represent
- How pass-through funds are actually used, and who benefits from those activities or payments
- Whether the transactions identified as pass-throughs are sufficiently similar to each other to be treated similarly; the level of fact-finding necessary for clarity on this issue
- The methodology for reviewing and analyzing pass-through requests
- Reliance by applicants on Office of Access & Inclusion past practice as to the definition of pass-throughs

Given the existing broad definition of pass-through funds and the limited information offered in this section of the application, staff recommended accepting the amounts reported as pass-through funds without requiring additional information at this stage to confirm whether the definition of pass-through was correctly applied. However, staff reiterated its recommendation to revisit this question through the codification process. The Commission adopted the staff recommendation by roll call vote (Bayles-Fightmaster moved; Mann seconded; Planthold abstained).

Acting Chair Akhlaghi requested Commission Member Meeker's assistance in helping to prepare the Rules Committee to address issues relating to pass-through funds.

H. Discuss and Determine Which Programs Require Eligibility Review Conferences

The Committee approved by roll call vote a motion to invite the following programs to Eligibility Review Conferences: Community Lawyers; East Bay Family Defenders; Kids in Need of Defense; Social Justice Collaborative; UnCommon Law (Planthold moved; Bayles-Fightmaster seconded).

The Committee approved by roll call vote a motion to invite the Housing Rights Center to an Eligibility Review Conference (Friedman moved; Planthold seconded; Mann and Savage abstained).

Senior Program Analyst Erica Carroll reported that application review is ongoing and staff may still identify additional eligibility questions for other organizations in the coming weeks. She requested that the Committee delegate staff the authority to schedule additional Eligibility Review Conferences without

requiring prior Committee approval. The Committee approved by roll call vote a motion to delegate staff the authority to schedule additional Eligibility Review Conferences as staff deems necessary (Planthold moved; Bennett seconded).

Senior Program Analyst Carroll then outlined the upcoming timeline for scheduling Eligibility Review Conferences and Committee meetings. The Committee is scheduled to meet on July 28, from 9:00 a.m. to 1:00 p.m., to review any Eligibility Review Conferences completed to date, and to consider programs requesting the pro bono allocations; and on August 6, from 9:00 a.m. to 1:00 p.m., to resolve any remaining eligibility issues. The Committee's recommendations on eligibility issues will be brought to the Legal Services Trust Fund Commission for discussion and approval on August 14.

Carroll then provided a brief tutorial on navigating the SmartSimple platform to review applications and monitoring visit information.

V. ADJOURN

With thanks from the Chair to staff and liaisons, and there being no further business before the Commission, the meeting was adjourned at 1:03 p.m.

CLOSED SESSION

(None)