

LEGAL SERVICES TRUST FUND COMMISSION

Meeting Summary and Action Items

Friday, February 26, 2021, 12:00 p.m. – 4:00 p.m.

State Bar of California (Conference Call via Zoom)

Roll Call

Members Present

Co-Chair Eric Isken
Amin Al-Sarraf
Jeffrey Ball
Pamela Bennett
Catherine Blakemore
Will Boschelli
Erica Connolly
Herman L. DeBose
Rebecca Delfino
Corey N. Friedman
Zahirah Mann
James Meeker
Debra Meyers
Richard Reinis
Kim Savage
Christian Schreiber
Christina Vanarelli

Advisors

Judge Lisa R. Jaskol
Justice William J. Murray, Jr.

Liaisons

Mark Toney (State Bar Board of Trustees)
Salena Copeland (Legal Aid Association of California)
Bonnie Hough (Judicial Council)

Members of the Public

Claire Solot (Legal Services Funders Network)

Staff

Donna Hershkowitz
Carolina Almarante
Vicky Avila
Erica Carroll
Brady Dewar
Christine Holmes
Judi McManigal
Doan Nguyen
Dan Passamaneck

Members Absent

Banafsheh Akhlaghi (Co-Chair)
Bob Planthold
Judge Brad Seligman (Advisor)

OPEN SESSION

Co-Chair Eric Isken called the meeting to order at 12:05 p.m.

I. ROLL CALL

Roll was called and quorum was established.

II. CALL FOR PUBLIC COMMENT

Co-Chair Isken invited members of the public to comment on any items on the agenda. The following comment was made: Claire Solot encouraged the Commission and offered to assist it with its work.

III. CONSENT

A. Approval of Meeting Summary and Action Items from December 15, 2020 Meeting

Co-Chair Isken asked whether any member had comments or revisions regarding the Summary of the December 15 Commission Meeting. Commission Member Will Boschelli commented that his written remarks may have been omitted from the Summary Notes. Program Manager Doan Nguyen replied that those comments were intended to be included and will be added if they were omitted. The Chair then invited a motion to approve the December 15, 2020 Meeting Summary and Action Items, with submitted comments. The

Commission approved the motion by unanimous roll call vote (Boschelli moved; Connolly seconded; Bartleson abstained).

IV. STATE BAR REPORTS

A. Report from Managers of the Office of Access & Inclusion

Program Manager Doan Nguyen reported that Andrea Fitanides has resigned her position with the State Bar. Going forward, the Office of Access & Inclusion will be led jointly by Program Managers Elizabeth Hom and Doan Nguyen, with Elizabeth Hom taking primary responsibility for diversity and inclusion efforts and Doan Nguyen taking primary responsibility over grants. One Senior Program Analyst position is being posted, and two new Senior Fiscal Analysts have begun work with a goal of building the office's fiscal capabilities and conducting monitoring visits without contractor support.

B. Update on Board of Trustees Actions

Board of Trustee member Mark Toney introduced himself and reported that the Board has reopened recruitment for an Executive Director. The Board has hired a search firm and hopes to move expeditiously to fill this role.

C. Report on IOLTA and Justice Gap Fund Revenue

Program Supervisor Carolina Almarante and Commission Member Jeff Ball reported that 173 institutions are paying into the Trust Fund program, with more revenue contributed by donations and cy pres. In 2020, total revenue was \$55,086,218; \$27,236,427 had been projected for 2021 but actuals are coming in a little higher than projected, though still behind 2019's figures.

Projecting forward, the Federal Reserve Bank plans to keep rates low until inflation starts to rise. Smaller and medium-sized banks are currently seeking to renegotiate interest rates; donations and cy pres are hard to forecast. These factors complicate forecasts for IOLTA revenue, so staff have developed alternate proposals for IOLTA distribution ranging from a low of \$16 million to a high of \$22.6 million. Projections will be updated for a recommendation to the Commission for 2022 distribution on June 25, and for the Board on July 22. Staff currently lean toward the middle option of \$20 million to maintain funding stability for grantees.

D. Staff Updates on Grants Administration

Program Manager Doan Nguyen reported that 40 monitoring visits are on the schedule for 2021, including 6 held over from 2020. To date, 4 have been completed and 14 more have been scheduled. Members are invited to review the list of upcoming visits on SmartSimple, and to coordinate with Doan Nguyen regarding those they want to visit.

Doan Nguyen further reported that the Partnership Grants Committee has approved a scoring rubric for 2022 grants; it has been incorporated into the application for these grants, which will be due on March 18. An informational webinar about this grants program was well attended.

E. Review of Recusal Procedures

Assistant General Counsel Brady Dewar provided training regarding the Bagley-Keene Open Meeting Act and recusal procedures. Abstention lists are not compliant with a statute that has been interpreted as requiring a statement of conflict on the record at the meeting. Business & Professions Code sections 6036 (a) and (b) respectively define financial and personal conflicts requiring recusal; present or past personal relationships may trigger these rules. Recusal extends to discussions as well as voting, but not to the extent of an omnibus discussion of all the projects when there is a single project causing conflict. This can be addressed by mentioning the conflict and the intention not to discuss that project at the outset of the discussion. Members can vote on omnibus resolutions, by saying “approve as to all except abstaining as to a certain program;” abstentions will be totaled to ensure a valid vote for each project. Members were encouraged to contact Brady Dewar with any questions.

Program Manager Doan Nguyen advised commission members that each would be asked for a list of potential conflicts, so reminders can be provided to recuse or abstain when appropriate. All Commission members must also complete Form 700 to declare any conflicts of interest; if any have not completed this form, please inform Doan Nguyen to receive the necessary materials. Commission Member Will Boschelli expressed interest in reviving some type of mentoring to help newer members navigate these kinds of technicalities.

V. BAGLEY-KEENE OPEN MEETING ACT TRAINING

Assistant General Counsel Brady Dewar provided a brief training. The “Open Meeting” statute known as Bagley-Keene covers the State Bar Board of Trustees, as well as its appointed subentities such as the Legal Services Trust Fund Commission. Under Bagley-Keene rules, agendas must be posted 10 days in advance; “meeting” is broadly defined to include a series of communications relating to a body’s charge, regardless whether all individuals are in a single location. If a majority of members of a body participate in any such communication or series of communications, it becomes a meeting under Bagley-Keene. This can also extend to communications through social media.

The State Bar is also subject to the Public Records Act, so any documents requested by the public must be produced (subject to certain exceptions). “Documents” include email, so when Commission members conduct business, they are requested to copy staff so those communications can be produced if requested.

VI. EXECUTIVE COMMITTEE

A. Report on 2021-2022 Provisionally Licensed Lawyers (PLL) Grants

Program Manager Doan Nguyen reported on the PLL Grants as follows: The Commission delegated authority to staff, in consultation with the Executive Committee, to develop the distribution plan for and approve awards; the Board Executive Committee voted unanimously to support the distribution plan without modification. The enabling rule is in effect from January 1, 2021 through January 1, 2023; funding will be retroactive to the start of that period. Funding is generated through donations made in conjunction with attorney licensing fee payments to fund

salary, payroll taxes, and benefits (not indirect costs) for PLLs at grantee organizations. PLLS must be hired on or after 1/1/21 but this will include re-hires and promotions.

Selection criteria will include impact, support, safeguards, and recruitment; staff will make best efforts to make grants statewide. The scoring rubric is modeled on the Partnership Grants rubric, with applicants rated as “exceeds”, “meets”, or “below expectations.” The rubric also awards extra points for projects that focus on confronting the legal issues facing those suffering due to COVID-19, natural disasters, or who reside in a rural area. The State Bar will conduct outreach to publicize this opportunity. Grantees will be notified on May 17, and will be given a short period to accept before funds are reallocated. Currently about \$550,000 has been received from 2021 attorney license fee statements; given a conservative estimate of receipts for 2022 of \$480,000 a total of approximately \$1 million is projected to be available for this program. The enabling legislation requires that funds be disbursed by June 1, 2022; any remainder will be distributed by IOLTA formula.

The Legal Aid Association of California (LAAC) will convene a call soon to share information about these applications and this process. Claire Solot offered to share the [Legal Service Funders Network](#)’s fellowship materials; their website has a [stakeholder briefing](#) from their 2020 fellowship program that discusses relevant issues.

VII. IOLTA AND EQUAL ACCESS FUND (EAF) GRANTS

A. Review and Approve Late Submitted 2020 IOLTA/EAF Budget Revisions and Carryover Requests

Eligibility and Budgets Committee Chair Erica Connolly and Senior Program Analyst Erica Carroll reported on a second round of requests for budget revisions and carryovers for 2020 IOLTA and EAF grants. These requests follow those approved by the Commission in November 2020. This round included 21 requests from 12 organizations. Approval is not required for requests of less than 10 percent; staff are authorized under the Functional Matrix to approve requests from 10 percent to 25 percent; requests exceeding 25 percent of the grant require Commission review. The Commission has resolved to be flexible regarding revision and carryover requests for 2020 grants due to the impact of the pandemic; this new set of requests cites issues such as staffing disruptions, adjustments to budgets resulting from receipt of emergency funding, and the impact of the pandemic generally.

Additional information was provided during the meeting for three of the requests: Asian Americans Advancing Justice – Los Angeles had submitted their request in November, but it could not be reviewed until this meeting; their requests include recharacterizing funds identified initially as “Other” under the category “Capital Additions.” California Rural Legal Assistance, Inc. had previously requested a revision and carryover request which the Commission had approved. but that program subsequently asked to shift those funds from mortgage service to program personnel expenses. Legal Aid of Marin belatedly discovered a carryover in excess of its expectations, so the meeting materials do not reflect their full request. Staff recommended that these three requests be approved together with the others under consideration.

After discussion, the Commission resolved by unanimous roll call vote (Isken moved; Connolly seconded) as follows:

RESOLVED, the Legal Services Trust Fund Commission approves all of the budget revisions and carryover requests in excess of 25 percent of the grant award listed on the spreadsheet provided to the Commission, as well as the oral update regarding Legal Aid of Marin's carryover request and Asian Americans Advancing Justice – Los Angeles's capital additions included at today's meeting.

B. Discuss Approach to 2021 IOLTA/EAF Budget Revisions and Carryover Requests

In 2020 the Commission resolved to offer flexibility regarding budget revisions, carryover amounts, and carryover spend-down periods. In response, more than 50 organizations submitted a total of 86 requests for revision or carryover of 2020 grants (IOLTA and EAF requests are logged separately).

Organizations have adjusted over the past year to the pandemic, but revenues are still uncertain and forecasts are still complicated. In view of this continuing uncertainty, the Committee's intention is to retain flexibility while reaffirming that grant funds should be expended during the grant period, and so will exercise its discretion regarding large requests in consideration of more specific facts.

In light of the above, the Committee resolved (Connolly moved; Savage seconded) as follows by unanimous roll call vote:

RESOLVED, in recognition of the ongoing challenges posed by the pandemic, significant budget revision and carryover requests will be considered on a case-by-case basis with special attention to the stated need for the change, including the direct and indirect effects of the pandemic, related funding, and any increased client need.

C. Review and Approve Modification to Tests for Eligibility for Pro Bono Allocation for 2022 Funding

Committee Chair Connolly reported on the results of a January 2021 survey regarding eligibility for the pro bono allocation. Many grantees expressed concern about meeting the threshold and eligibility tests, with 35 percent reporting that they were concerned about meeting threshold requirements, 67 percent concerned about meeting Test A, and 66 percent concerned about meeting Test B. The pandemic has depressed participation of existing pro bono volunteers, and has complicated recruitment of new volunteers. Staff recommends the Committee provide guidance to the community that this year Test C will be viewed expansively, taking into consideration such factors as rural settings, natural disasters, and historical approval for the pro bono allocation.

In light of the above, the Committee approved (Ball moved; Isken seconded) as follows by unanimous roll call vote:

RESOLVED, that, when reviewing pro bono allocation applications for grant year 2022, the Commission shall utilize the flexibility of Test C, apply the intention of the Statute to provide additional support to pro bono organizations, and take a flexible view when considering pro

bono allocation applications, with consideration given in particular to organizations with a history of pro bono approval.

VIII. RULES COMMITTEE

A. Update on IOLTA Statutory Change to Increase Income Threshold from 125% of Federal Poverty Level

Senior Program Analyst Erica Carroll reported that the Commission has approved further work toward proposed changes to the IOLTA Statute's client income eligibility threshold. The State Bar held a webinar on this topic which was attended by more than 100 people, and issued a survey in late December 2020 to gather input about possible changes to the client income eligibility standard and the poverty standard used for the QLSP funding formula. Both a 200 percent of Federal Poverty Level (FPL) standard was considered as well as an AMI (Area Median Income)-based approach. A change to 200 percent of FPL for individual client eligibility was favored by or viewed neutrally by 96% of respondents; no consensus supported a change to an AMI-based standard for client eligibility. A majority of survey respondents did not seek a change to the income standard used for the funding formula, regardless of changes to client income eligibility standards. Consequently, staff recommended raising the client income eligibility threshold to 200 percent of FPL and made no recommendation regarding the income level used for the funding formula.

At the December 2020 Commission meeting, the Commission delegated authority to a working group to finalize a recommendation regarding income eligibility levels to the Board of Trustees. This working group approved a recommendation on behalf of the Commission to take action toward raising the income eligibility threshold to 200%; this recommendation was approved by the Board as part of its 2021 legislative priorities.

Program Manager Doan Nguyen reported that this change will not be enacted as part of the State Bar's licensing fee bill, but rather as part of [SB 498](#) (Umberg). A draft of SB 498 includes an additional provision separate from raising the eligibility threshold to 200 percent of FPL which provides that disability compensation from the United States Veterans Administration would not be counted when determining individual indigency. The State Bar is currently analyzing the impact of this addition.

B. Discussion on Request to Legislature Regarding Increase to Equal Access Funds

Program Manager Doan Nguyen reported that that Assembly Judiciary Committee Member Mark Stone has revived his request to add \$20 million as a one-time increase to the base of the Equal Access Fund; staff are asking the Commission and Board to support this legislation. This funding is meant to backfill IOLTA losses, not to fund new services; LAAC is advocating towards similar goals with the Senate Judiciary Committee while separately seeking new funds to increase services around housing and consumer debt. Staff will share the letter from Assembly Member Stone as well as the letter sent by LAAC to assembly member Christina Garcia. After discussion, the Commission resolved (Blakemore moved; Boschelli seconded) as follows by unanimous roll call vote:

RESOLVED, that in order to cover the shortfall in Interest on Lawyer trust Account (IOLTA) funding, the Legal Services Trust Fund Commission recommends that the State Bar's Board of Trustees support the Assembly Committee on Judiciary's request to increase the Equal Access Funds by \$20 million.

C. Update on Rules Committee Work Plan

Rules Committee Chair Amin Al Sarraf thanked staff and LAAC for their work obtaining feedback from the community, and reported that the Rules Committee workplan has been updated as some issues have been delayed or have proven to demand more discussion and consideration. The statutory change in the income eligibility level was prioritized at the end of 2020; in April the Committee will consider Exchanged Funds and Passthrough transactions, as well as the pro bono allocation application. The committee will reach out to some Commission members to request their participation on issues in which they have particular expertise.

IX. BANK COMMUNITY STABILIZATION AND REINVESTMENT (BCSR) GRANTS

A. Discuss and Approve Bank Grants Committee Recommendation for 2020 Budget Revisions and Carryover Requests

Program Manager Doan Nguyen reported that the Bank Grants Committee has recommended that the Commission approve a late request received from the Watsonville Law Center for a carryover of 2020 Bank Grant funding for a low income housing project, due to the extraordinary challenges brought on by the impact of COVID-19. By unanimous roll call vote, the Commission resolved (Isken moved; Boschelli seconded) as follows:

RESOLVED, that the Legal Services Trust Fund Commission approved the requested carryover of 2020 Bank Grant funding from the Watsonville Law Center.

B. Discuss and Approve Bank Grants Committee Recommendation for Timing of Final Bank Settlement Funds Request for Proposal

Bank Grants Committee Chair Kim Savage and Program Manager Doan Nguyen reported that approximately \$4.5 million of this fund remains undistributed, which is inadequate on its own to fund a full project. The terms of this funding allow it to be distributed without a formal proposal process in the future. The Committee therefore resolved not to develop a distribution plan for these funds until 2022 or 2023, at which time the Committee will be better able to target funding most effectively. By unanimous roll call vote, the Commission resolved (Ball moved; Bartleson seconded; Boschelli abstained) as follows:

RESOLVED, the Legal Services Trust Fund Commission approves the Bank Grants Committee's recommendation not to release an RFP in 2021 for funding to commence in January 2022.

X. TERMINATION OF SUBCOMMITTEE OF THE LEGAL SERVICES TRUST FUND COMMISSION

A. Approval of Meeting Summary and Action Items from January 12, 2021 Meeting

B. Approval of Meeting Summary and Action Items from September 22, 2020 Meeting

C. Approval of Meeting Summary and Action Items from September 8, 2020 Meeting

Assistant General Counsel Brady Dewar reported on items A, B, and C at once. The Commission had formed two subcommittees, one to address compliance issues at the Legal Aid Society of San Bernardino, and one to consider and make recommendations regarding income eligibility issues. The work of these Subcommittees has been resolved; all that remains is to approve the Action Summaries from their final meetings, and close out their operations.

After discussion, the Commission resolved (Ball moved; Blakemore seconded; Meyers abstained as to San Bernardino) as follows:

RESOLVED, that the subcommittee of the Legal Services Trust Fund Commission (Income Eligibility) and the subcommittee of the legal Services trust Fund Commission (Legal Aid Society of San Bernardino), two temporary committees created by the Legal Services Trust Fund Commission, are terminated.

FURTHER RESOLVED, that the document entitled "Meeting of the Subcommittee of the Legal Services Trust Fund Commission Meeting – Summary and Action Items -Tuesday, January 12, 2021" is deemed approved as the minutes of the final meeting of the subcommittee of the legal Services Trust Fund Commission (Income Eligibility).

FURTHER RESOLVED, that the document entitled "SUBCOMMITTEE OF THE LEGAL SERVICES TRUST FUND COMMISSION MEETING – Meeting Summary and Items - Tuesday, September 8, 2020" and "SUBCOMMITTEE OF THE LEGAL SERVICES TRUST FUND COMMISSION MEETING – Meeting Summary and Action Items - September 22, 2020" are deemed approved as the minutes of the final meetings of the subcommittee of the Legal Services Trust Fund Commission (San Bernardino).

XI. LIAISON REPORTS (taken out of order before Item X)

A. Judicial Council Report on Program Developments

Judicial Council Liaison Bonnie Hough reported that her office is working to answer questions from the legislature about housing to ensure continued funding for legal services projects.

B. Legal Aid Association of California Report on Program Developments

LAAC Liaison Salena Copeland reported that LAAC is advocating for funding for legal services - both new funding and backfill for lost funding. Many new bills in the legislature could increase benefits or funding for clients, and many legislators have expressed interest in contact with local LSPs about the impact of COVID and how legal aid is part of the safety net.

XII. ADJOURN

There being no other business, the meeting was adjourned at 3:33 p.m.

CLOSED SESSION

NONE