

Meeting of Legal Services Trust Fund Commission (LSTFC)

Meeting Summary and Action Items

Friday, November 13, 2020

12:00 p.m. – 4:00 p.m.

Zoom Conference

OPEN SESSION

Chair Banafsheh Akhlaghi called the meeting to order at 12:00 p.m.

I. ROLL CALL

Roll was called and quorum was established.

Members

Banafsheh Akhlaghi (Chair)
Eric Isken (Vice Chair)
Amin Al-Sarraf
Kim Bartleson
Louise Bayles-Fightmaster
Pamela Bennett
Catherine Blakemore
Will Boschelli
Erica Connolly
Herman L. DeBose
Corey N. Friedman
Zahirah Mann
James Meeker
Debra Meyers
Bob Planthold
Richard Reinis
Kim Savage
Christian Schreiber
Christina Vanarelli

Advisors

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

Liaisons

Salena Copeland (Legal Aid
Association of California)
Christine Gonong (Board of
Trustees)
Bonnie Hough (Judicial
Council)
Also
Ryan Harrison (Council on
Access & Fairness)

State Bar Staff

Andrea Fitanides
Carolina Almarante
Christal Bundang
Erica Carroll
Brady Dewar
Christine Holmes
Elizabeth Hom
Doan Nguyen
Dan Passamaneck

Members of the Public

Jeffrey Ball (Incoming and
former member of the Trust
Fund Commission)
Preeti Mishra (Dependency
Advocacy Center)

The Chair welcomed new Commission member Catherine Blakemore, incoming member Jeff Ball, and new Office of Access & Inclusion (OA&I) Director Andrea Fitanides.

II. CALL FOR PUBLIC COMMENT

Chair Akhlaghi called for comments from members of the public; none were offered.

Several items were taken out of order to accommodate attendee's schedules.

XI. LIAISON REPORTS

A. Council on Access and Fairness Report on Program Developments

Ryan Harrison, Sr., Council on Access and Fairness (COAF) Vice Chair, described COAF's work as operationalizing the State Bar's mandate to diversify the legal profession. The State Bar's First Annual Diversity Report Card provides a snapshot of the current diversity of the profession as well as recommends specific calls to action for both employers and attorneys. COAF is also engaged in a media project with diverse attorneys in nontraditional legal areas to encourage young people to imagine a future in a legal profession. COAF works with staff to develop Diversity Summits to bring together stakeholders to diversity in the profession and steps forward. COAF also has liaisons from CaliforniaLAW (an organization that encourages high school and community college students to consider legal careers) and the California Lawyers Association to facilitate communication and coordination on diversity and inclusion efforts. Mr. Harrison suggested that the Justice Gap Study and the LAAC's recruitment and retention study for the legal aid community could provide common ground for COAF to work together with the Commission. COAF is also interested in supporting legal internships for college students, and other opportunities to collaborate.

IX. RULES COMMITTEE

Rules Committee Chair Al-Sarraf referenced the updated Rules Committee work plan. Working groups have been formed to address different topics; the groups' reports to the Rules Committee form the basis for recommendations to the Commission.

The Committee was on hiatus from April until September, in response to the COVID-19 crisis. In October, the Committee considered how to determine "primary purpose" for Qualified Legal Services Projects, and whether to codify an office practice of funding all applicants with more than 50 percent qualified expenditures. These issues will be revisited again before the Committee presents recommendations to the Commission.

A. Discuss Exploration of Revision to Statutory IOLTA Indigency Threshold

Staff reviewed the authorities relating to "indigency." Client indigency is defined at Business & Professions Code section 6213(d), primarily in terms of households earning 125 percent or less of the Federal Poverty Level (FPL). This "125 percent" figure is also cited at section 6216(a) as the basis for allocating funds among counties. The Rules Committee is considering supporting a statutory change to increase the indigency standard to a higher FPL standard or to an Area Mean Income (AMI) standard that would vary from county to county. One option under consideration would use one indigency standard for establishing client eligibility, and another for allocating funds among counties.

The Rules Committee is also considering how to provide more guidance with respect to defining qualified "impact" services – services provided for the benefit of groups of indigent people. Grantees must report on their impact work, and deduct the costs of any litigation or advocacy that was not undertaken for the benefit of indigent people.

Staff will survey the legal aid community about their preferences regarding possible changes to client income eligibility standards; staff is also working on projections related to the potential impacts of changes in either the by-county funding allocation rules or the client income-eligibility criteria.

The Committee will present a proposal on this issue at the Commission's December 15 meeting, which will then be presented to the Board of Trustees in 2021. If the Board approves, OA&I will then partner with LAAC to effectuate these recommendations through the legislative process.

Chair Akhlaghi acknowledged the work of Committee Chair Al Sarraf, the Rules Committee, and staff, for their handling of these complex matters.

VIII. HOMELESSNESS PREVENTION GRANTS

A. Update on 2021 Formula and RFP Grants

Homelessness Prevention Grants Committee Chair Christian Schreiber reported on administration of the \$31 million of grant funding authorized under AB 83. Three-quarters of that funding is to be disbursed as formula grants, primarily to support ongoing tenant defense and homelessness prevention services; one-quarter of the funding is to be distributed under a competitive process intended to focus funding on services that are less often provided.

A convening regarding these funds was held on September 16, bringing together more than 140 people including statewide leaders to collaborate on innovative strategies and to forge non-traditional partnerships to serve new communities and areas.

Formula applications were due before the competitive proposals; staff reviewed the formula applications to ensure applicants identified qualified activities. After Commission approval, the funding formula was run to allocate grant funds with a \$50,000 minimum allocation. Projects are now preparing budgets for staff review and Committee and Commission approval.

Review is ongoing for competitive proposals. Approximately \$7 million has been reserved for these discretionary grants; the total requested is just less than \$40 million. All proposals have been distributed among Review Teams consisting of two Committee members and one staff; all members of each team read all the proposals in their portfolio and then assign a score to each one using a rubric. The Committee will review and make recommendations on competitive grant applications at its December 3 meeting.

B. Update on 2019 EAF Homelessness Prevention Formula and 2020 EAF Homelessness RFP Grants

There was no update with respect to these items.

III. CONSENT

A. Approval of Meeting Summary and Action Items from August 14, 2020 Meeting

The Chair inquired whether any member had comments or revisions regarding the Summary of the August 14 Commission Meeting. Commission member Mann noted that a reference on page 6 should read \$31 million rather than \$31. The Chair then invited a motion to approve the August 14, 2020 Meeting Summary and Action Items, as corrected. The Committee approved the motion by unanimous roll call vote (Meyers moved, Planthold seconded; Bartleson, Blakemore, and Meyers abstained).

IV. STATE BAR REPORTS

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

Director of the Office of Access & Inclusion Andrea Fitanides introduced herself to the Commission. She reported that Senior Program Analyst Greg Shin and Senior Fiscal Analyst Frank Bittner have departed the office, and that two new Senior Program Analysts will be joining at the end of the month: Judi McManigal and Chris McConkey. The office is also recruiting to hire two Senior Financial Analysts.

Director Fitanides also reported that an agenda item would be presented to the Board of Trustees on November 19, to appoint a new Chair for the Paraprofessional Working Group. The Chair had earlier noted that the Board of Trustees is considering a revised Executive Committee structure to include Eric Isken as co-chair serving beside herself, and Kim Savage and Richard Reinis as co-vice chairs.

Director Fitanides further notified the Members of an upcoming survey to assess the diversity of this Commission and requested their participation. She stated that she was not aware of any current data on OA&I staff diversity but agreed to explore that matter further. Finally, she underscored the need for strategic thinking to make Phase 2 of the Justice Gap Study most useful.

B. Update on Board of Trustees Actions

Christine Gonong, new Board of Trustees Access Liaison, comes to this role with deep experience in, and engagement with, access to justice issues. Trustee Gonong looks forward to working with this Commission on opportunities to make justice more meaningful and accessible.

C. Report on IOLTA and Justice Gap Fund Revenue

Staff provided a year-to-date update on IOLTA revenue, with projections. The decrease in revenue due to declines in federal interest rates has not been as steep as initially projected, as many top banks have committed to leadership or “established compliance rate” rates. Program Supervisor Carolina Almarante gave credit for these encouraging results to the OA&I fiscal team, and also to newly automated processes that helped staff build better relationships with banks. The Commission commended staff for their work.

D. Staff Updates on Grants Administration

Staff reported that 34 monitoring visits are scheduled to be conducted in 2021. These are currently all being conducted remotely by Zoom; in-person visits will resume when safe and appropriate. Commission members were encouraged to participate in at least one monitoring if possible.

Staff have been streamlining and coordinating grant agreements to make them more consistent and to include some standard contractual provisions and compliance requirements. They are on schedule for timely release.

V. IOLTA AND EQUAL ACCESS FUND (EAF) GRANTS

Eligibility & Budget Review Committee Chair Eric Isken began his report by commending all staff for the heavy lift this year, particularly Erica Carroll and Doan Nguyen.

Senior Program Analyst Erica Carroll thanked the committee members for their voluminous work on a tight schedule this summer.

A. Discuss and Approve Eligibility and Budget Review Committee Recommendations for 2020 IOLTA and EAF Budget Revisions and Carryover Requests

The Commission previously approved, at its June 28 meeting, a more flexible approach toward carryover and budget revision requests for the 2020 grant year, both due to the impact of COVID-19 and because of the anticipated decrease in IOLTA funding for 2021. In response, many grantees have requested budget revisions to shift funding from non-personnel to personnel items; many have also requested carryovers of significant portions of their grants, for spenddown over a twelve-month period.

Revisions or carryover requests of less than 10 percent of the total grant do not require approval. Requests for amounts of 10 percent or more, but less than 25 percent, may be approved by staff. Staff have reviewed those requests and approved them all. Requests concerning 25 percent or more of the grant must be approved by the Commission. This year, 33 requests were received regarding carryover or revisions of 25 percent or more of the total grant; six concerned amounts exceeding 50 percent of the grant. The Eligibility & Budget Review Committee has reviewed all those requests. Many organizations cited Paycheck Protection Program loans as a reason for their requests, as well as a desire to prepare for anticipated reductions in IOLTA grant funding. The Committee recommends approval of all requested 2020 IOLTA and EAF budget revision and carryover requests, because of the impact of COVID-19 and to be consistent with the Commission's own messaging.

Staff noted that continued flexibility in the amount and duration of carryovers next year could potentially result in serial carryovers, and a sequestration of funding from the available pool during a period of shrinking IOLTA revenues. Staff will prepare an analysis for the Commission's February meeting to inform the Commission's deliberations on this question so an approach can be identified that provides guidance and assurance to the grantee community going forward.

The Chair invited a motion to approve the Eligibility and Budget Review Committee's recommendations to approve the budget revision and carryover requests for 2020 IOLTA and EAF grants. The motion passed on unanimous roll call vote (Planthold moved, Isken seconded; Mann abstained as to Disability Rights California; Friedman abstained as to California Rural Legal Assistance, California Rural Legal Assistance Foundation, and Worksafe).

B. Discuss and Approve Eligibility and Budget Review Committee Recommendations for 2021 IOLTA and EAF Budget Submissions

The Chair invited a motion to approve the recommendations of the Eligibility and Budget Review Committee to approve the 2021 IOLTA and EAF budgets. The motion was approved on unanimous roll call vote (Friedman moved, Bennett seconded; Mann abstained as to Disability Rights California; Friedman abstained as to California Rural Legal Assistance, California Rural Legal Assistance Foundation, and Worksafe).

C. Report on Programs Found Ineligible for 2021 IOLTA and EAF Grant Funding

Staff reported that seven programs had submitted applications for new funding in the last cycle; five were not found eligible. Those five applicants received letters with their determination notifications in August. State Bar Rule 3.691(B)(1) provides thirty days to request reconsideration of a determination that an applicant is not eligible for grants, from the date that notice was provided. No responses had been received prior to the expiration of the period for requesting reconsideration.

The Chair expressed appreciation for the efforts of staff and subcommittee members throughout the eligibility review process.

VI. PARTNERSHIP GRANTS

A. Review and Approve Recommendation from Partnership Grants Committee Regarding Santa Clara Law's Katharine & George Alexander Community Law Center's 2021 Partnership Grant

Partnership Grants Committee Chair Christina Vanarelli and staff reported on an application for a 2021 Partnership Grant that had been submitted by Santa Clara Law's Katherine & George Alexander Law Center (KGALC). Last August, the Commission approved thirty-five proposals for 2021 Partnership Grant funding. The following month, as part of regular program monitoring, staff discovered that SCU had submitted an application for 2021 funding that had been miscoded as a 2020 application in the grants administration database. As a result, SCU's application had not been considered during the 2021 application review process. The Committee Chair and the Judicial Council were promptly informed, and an expedited but full review process was conducted. The Committee recommended a grant award of ~~\$58,518~~ \$58,868 and staff identified reserve funds to cover the recommended grant; if approved, this grant must also be approved by the Judicial Council at its January 2021 meeting.

The Chair invited a motion to approve the recommendation of the Partnership Grants Committee to issue a 2021 Partnership grant ~~\$58,518~~ \$58,868 to the Santa Clara Law's Katherine & George Alexander Community Law Center. The motion was approved by unanimous roll call vote (Blakemore moved; Bayles-Fightmaster seconded).

B. Review and Approve Proposed Rubric for 2022 Partnership Grants

Based on committee feedback, this item was deferred for further development and discussion.

VII. BANK COMMUNITY STABILIZATION AND REINVESTMENT (BCSR) GRANTS

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

BCSR Grants Committee Chair Savage reported on committee review of requests for budget revisions and to carryover funds budgeted but unspent for 2020. In view of the Commission's messaging regarding flexibility in the face of the pandemic, the Committee took action to recommend Commission approval of all budget revisions and carryover requests as reflected in the meeting materials.

The Chair invited a motion to approve the BCSR Committee's recommendation that, due to challenges brought on by COVID-19, the Commission approve the 2020 Bank Grant budget revisions and carryover requests. The motion passed on unanimous roll call vote (Bayles-Fightmaster moved; DeBose seconded; Mann abstained as to Disability Rights California; Friedman abstained as to California Rural Legal Assistance, California Rural Legal Assistance Foundation, and Worksafe).

B. Update on Release of Potential 2022 Request for Proposal

BCSR Committee Chair Savage reported that discussion of the disposition of the remaining \$6 million of BCSR funding was being tabled by the Committee until January, so program staff and committee members will all have a better understanding of future needs before developing a distribution proposal.

LAAC Liaison Salena Copeland commented that the remaining BCSR funding could be used to recruit and retain new legal services staff, or to provide loan repayment support or other options to improve the take-home pay of legal service workers. The Commission directed staff to coordinate with LAAC, COAF, and other stakeholders as appropriate, to discuss these options further in light of the Justice Gap study and other ongoing work.

X. 2021 ADMINISTRATIVE ACTIVITIES

A. Discuss and Approve 2021 Legal Services Trust Fund Commission Work Plan

Staff reported that the 2021 work plan will largely resemble the 2020 work plan, due to the cyclical nature of the IOLTA/EAF grants administration process. However, staff noted revisions to plans for Phase 2 of the Justice Gap Study. Originally, Phase 2 was to be conducted in 2021, replicating Phase 1 in five additional languages. The ongoing public health crisis has rendered those plans unfeasible, so Phase 2 of the Justice Gap Study is currently on hold for further planning.

Staff highlighted a new activity that was added to the 2021 LSTFC Work Plan related to provisionally licensed lawyers (PLL). The State Bar's licensing authorization bill provides for a new \$5 opt-in, to be used to support provisional licensed lawyers in a program similar to fellowships. The Commission will select the recipients of these awards, a process that will entail drafting a Request for Proposals, reviewing the proposals themselves, and selecting recipients. Funding is expected to support between three and five provisional licensees.

The issue of the recruitment and retention of Commission members was identified for future discussion. This topic will be added to the Commission's proposed Work Plan, for further consideration and a vote at the next Commission meeting.

Given the current public health crisis, the Commission has determined to postpone consideration of possible changes to the procedure for administering Justice Gap funding, until later in 2021 or 2022. As this issue falls under Goal 4 of the State Bar's Strategic Plan, it might represent an opportunity to work cooperatively with COAF or the California Access to Justice Commission. The Commission discussed the value of maintaining a broad spectrum of options for use of these funds, including but not limited to loan repayment, at least until more information on the merits of different options becomes available. A reconstituted Executive Committee could discuss this and identify paths forward in advance of the December 15 meeting.

B. Review of Committee Assignments

Staff reviewed the 2021 committee assignments as provided in the meeting materials. Most are unchanged but some Commission members have fewer assignments. All Commission members are invited to contact Program Supervisor Nguyen with any questions or concerns. Commission members noted that non-lawyers should be proportionately represented on the Executive Committee.

C. Review of Administrative Calendar

Staff introduced the proposed 2021 administrative calendar as provided in the meeting materials. Commission members were asked to check the four dates for standing Commission meetings, and advise of any which may pose a scheduling conflict. Staff can prepare calendars with committee meetings for individual Commission members upon request.

Staff acknowledged the heavy burden shouldered by commission members in 2020, and invited suggestions on ways to ease the burden. Discussion included the following suggestions:

- Staff could review past practices for opportunities for the Commission to defer detailed review to staff.
- Fewer emails with more content would be preferable to numerous emails with less information.
- The Commission's request that documents be provided seven days in advance, two days earlier than Bagley Keene requires, has increased the burden on staff.
- Relegate background materials to appendices to reduce the length of written materials.

D. Review Agenda for December 15 Commission Meeting

Staff reminded Commission Members that quorum will be needed for approval of Homelessness Prevention grants on December 15.

XI. LIAISON REPORTS

B. LAAC Report on Program Developments

LAAC Liaison Salena Copeland noted the upcoming Diversity Summit (December 11), and that LAAC is working to extend AB 38's eviction moratorium and prepare providers for the tidal wave once the moratorium lifts. She also reported that LAAC is working with State Bar staff and others to open up more funding for legal services, and that LAAC continues to provide Wellness Summits to support the physical and mental wellbeing of provider staff.

C. Judicial Council Report on Program Developments

Judicial Council Liaison Bonnie Hough reported that the Chief Justice and the Administrative Director of the Courts have been meeting with legal service directors and LAAC to discuss how COVID-19 has impacted access to courts and services. She further reported that the Judicial Council will submit a cost-benefit analysis on self-help centers late in November, including data from a satisfaction survey that is recommended for use with Partnership Grant projects too. Additionally, she reported that the new series of Shriver grants started in October; the Council is building new evaluation tools for those projects.

XII. ADJOURN

There being no further business before the Commission, the Chair invited a motion to adjourn. The motion was approved by acclamation and the meeting adjourned at 3:40 p.m. (Planthold moved, Mann seconded).