

**Meeting of the Legal Services Trust Fund Commission (LSTFC)**

**Meeting Summary and Action Items**

**Tuesday, December 15, 2020**

**12:00 p.m. – 4:00 p.m.**

**Zoom Conference**

**OPEN SESSION**

Co-Chair Isken called the meeting to order at 12:01 p.m.

**I. ROLL CALL**

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

**Members**

Banafsheh Akhlaghi (Co-Chair)  
Eric Isken (Co-Chair)  
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  
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)  
Bonnie Hough (Judicial  
Council)

**State Bar Staff**

Carolina Almarante  
Vicky Avila  
Christal Bundang  
Erica Carroll  
Brady Dewar  
Andrea Fitanides  
Christine Holmes  
Elizabeth Hom  
Chris McConkey  
Judi McManigal  
Joshua Mire  
Doan Nguyen  
Dan Passamaneck  
Ron Pi

**Members of the Public**

(No members of the public  
identified themselves.)

Co-Chair Isken welcomed everyone and reported that, on November 19, the State Bar Board of Trustees formally approved Commission Member Ball's nomination. The Board also filled the Commission's Executive Committee seats so that they now include Akhlaghi and Isken as Co-Chairs and Reinis and Savage as Co-Vice Chairs.

**II. CALL FOR PUBLIC COMMENT**

No members of the public offered comments during this meeting.

### **III. CONSENT**

#### **a. Approval of Meeting Summary and Action Items from November 13, 2020 Meeting**

The Chair invited questions about the minutes for the meeting on November 13, 2020. One Member asked staff to explain financial figures on page three of the record, pertaining to meeting agenda item “VIII. A. Update on 2021 Formula and RFP Grants”. The sentences in question read, “Review is ongoing for competitive [Homelessness Prevention Grant] proposals. Approximately \$7 million has been reserved for these discretionary grants; the total requested is just less than \$40 million.” Staff explained that the reference to “\$7 million” refers to the portion of the \$31 million in Homelessness Prevention Grant funding that will go to competitive—rather than formula—awards. The reference to “\$40 million” refers to the combined amount that programs requested in their applications for competitive funding.

The Committee approved the motion by unanimous roll call vote (Bennett moved, Planthold seconded; Ball abstained)

### **IV. GRANTS ADMINISTRATION**

The Commission took several items out of order to accommodate presenter availability.

#### **a. Discuss and Approve Process for Exploring IOLTA Statutory Change to Increase Threshold From 125 Percent of Federal Poverty Level**

Staff reported that the Commission’s Rules Committee met a few months ago to examine issues in the Committee’s workplan. Two issues before the Committee were: (1) Defining “primary purpose” for Qualified Legal Services Projects and (2) defining “indigency” for the client income cutoff for receiving Interest on Lawyers’ Trust Accounts (IOLTA)-funded services. Both the income eligibility cutoff for clients to qualify for IOLTA-funded legal aid and the statutory formula that determines IOLTA grant amounts consider incomes that are at or below 125 percent of the Federal Poverty Level (FPL) as establishing indigency. Staff noted, therefore, that if California redefines “indigency” for the client income threshold to receive IOLTA-funded services, so too might it update its income proxy for indigency in the funding formula to keep them in parity.

California Business and Professions Code Section 6213(d) defines “indigency” for the purposes of setting client eligibility for IOLTA-funded legal aid. Californians can qualify for services by income if they live at or below 125 percent FPL. Californians can also qualify under the Older Americans Act or Developmentally Disabled Assistance Act. A separate income threshold—at or below 75 percent of the maximum income for low-income households as defined in Section 50079.5 of the Health and Safety Code—applies to programs that primarily coordinate *pro bono* legal services.

Staff circulated tentative recommendations to the legal aid community via the Legal Aid Association of California. The community's initial feedback was that the Commission should recommend raising the income threshold so that more very low-income Californians can qualify for IOLTA-funded help. The community suggested looking to the federal Legal Services Corporation's use of 200 percent FPL as well as its list of income exceptions. They also suggested looking at the U.S. Department of Housing and Urban Development's use of Area Median Income (AMI).

Commission Liaison Copeland commented that the pandemic has made raising the threshold an urgent priority since it has introduced countless Californians to grave economic need. The Legal Aid Association of California plans to reconvene its members in January 2021 to seek consensus about the amount by which it recommends raising the income threshold. Additionally, State Bar staff plan to collect community feedback via their own survey this month.

The Commission proceeded to discuss what raising the income threshold would mean for grants to each county. Staff reported that at 200 percent FPL, the eligible population in urban California would increase by about four million people and in rural California by about one million people. If the funding allocation formula changed to remain in parity with the eligibility cutoff, then some funding would shift from rural counties to urban ones. To avoid any shift in funds away from rural California, which has especially few legal aid resources, staff recommended raising the eligibility threshold to 200 percent FPL without changing the allocation formula.

The Commission heard from Principal Program Analyst Ron Pi in the State Bar Office of Research & Institutional Accountability (ORIA). ORIA presented data on the percent change in IOLTA grant funding if the allocation formula were to look at 200 percent FPL. Thirty-one counties would gain funding with about \$300,000 shifting from rural counties to urban ones. Compared to urban communities, rural areas tend to have a significant percentage of people living at or below 125 percent FPL—the current measure for allocating funding. Urban counties, by contrast, tend to have a comparatively significant percentage of people living between 125 percent FPL and 200 percent FPL—the proposed alternative measure.

The Commission discussed whether the shift in dollars would help meet a need for more funding to serve Californians who live above 125 percent FPL. They also discussed the possibility of reducing the burden on grantees that have funders with 200 percent FPL cutoffs.

Staff then presented their evaluation of AMI thresholds as a way to measure indigency. The U.S. Department of Housing and Urban Development creates annual AMI charts. For California, there are AMI thresholds for each county. Living at or below 50 percent of a county's AMI would be "very low-income". AMI varies from county to county with urban thresholds much higher than rural ones since the metric considers the regional cost of living.

Staff explained that AMI would be an unfeasible tool for allocating funding since the IOLTA funding formula would become exceedingly complex, requiring unique income cutoffs for each county and leaving staff unable to rely on American Community Survey data. The Commission could, however, still

recommend AMI as the basis for client eligibility for IOLTA services. Staff also examined consumer price indices to consider differences in the cost of living between areas. These metrics also proved untenable, however, because the Consumer Price Index is available for only metropolitan areas, thereby requiring staff to create their own measurement for rural ones.

The Commission proceeded to discuss whether to delegate authority to a working group to advance a recommendation to the State Bar Board of Trustees. Commission Members Al-Sarraf, Blakemore, and Meeker would sit on the working group. The working group would have authority to recommend directly to the Board of Trustees whether and how to raise the IOLTA income-eligibility threshold and/or to change the IOLTA funding formula. The Board would then decide whether to recommend this change to the Legislature.

With the Commission having reviewed staff's research, Commission Member Schreiber moved to adopt, and Co-Chair Isken seconded, the following resolution:

RESOLVED, the Legal Services Trust Fund Commission delegates authority to a three-member working group (comprised of Amin Al-Sarraf, Catherine Blakemore and Jim Meeker) to make a final recommendation to the Board of Trustees regarding whether to pursue a statutory change in conjunction with the legal services community, and if so, which alternative measure to use for the IOLTA statute's income eligibility threshold and/or funding formula.

The following Commissioners voted yes: Al-Sarraf, Ball, Banafsheh, Bennett, Blakemore, Boschelli, Connolly, DeBose, Delfino, Friedman, Isken, Meeker, Meyers, Reinis, Savage, Schreiber, and Vanarelli. The following Commissioners voted no: Mann and Planthold. The motion passed.

## **V. HOMELESSNESS PREVENTION GRANTS**

### **a. Discuss and Approve Recommendation of 2021-2023 Competitive Homelessness Prevention Awards**

Commissioner Schreiber reminded everyone that, in response to the pandemic, the Legislature gave \$31 million for homelessness prevention legal services. Seventy-five percent of those funds will go to existing, qualifying grantees by a modified IOLTA formula allocation. The remaining 25 percent will go to qualifying providers through a competitive process.

The Committee received 39 proposals seeking more than \$39 million. The eight-person Committee met several times with four groups analyzing about 10 applications each. The scoring groups and full Committee used a rubric to evaluate each proposal, calibrating scores at both the group and Committee levels. After careful review and discussion, the Committee voted to recommend 12 projects (see meeting materials item IV. D. "Recommendation for 2021 - 2023 HP RFP Funding").

Staff summarized a handful of the projects and presented a map showing the many regions of California to which the competitive funding would be going. Commission members asked the Homelessness Prevention Committee how it applied certain rubric categories, such as “proposal quality”, and considered factors like an applicant’s sophistication with writing competitive grant applications. Committee members responded with their unified thinking about those questions.

With the Commission having reviewed the recommendation for 2021-2023 Competitive Homelessness Prevention Grant awards, Commission Member Schreiber moved to adopt, and Co-Chair Isken seconded, the following resolution:

RESOLVED, the Legal Services Trust Fund Commission approves the Homelessness Prevention RFP grant award recommendations as listed in the meeting materials.

The Committee approved the motion by unanimous roll call vote (Boschelli abstained and Al-Sarraf abstained with respect to Legal Aid Foundation of Los Angeles only). The motion passed.

**b. Discuss and Approve Recommendation of Redistribution Plan for Unspent 2019 Formula EAF Homelessness Prevention and 2020 EAF Homelessness Prevention Competitive Grant Funds**

Legislation requires the State Bar to ensure that grantees finish spending their 2019-2021 Homelessness Prevention Grants by June 30, 2021. To avoid leftover funds, staff directed grantees to complete a financial report earlier this fall. The report projected programs’ future spending based on their September 2020 data, thereby predicting whether any funds would remain at the end of the grant period. If funding would remain, then the program would have to return that amount for the State Bar to reallocate to existing projects. The expenditures report allowed programs to specify whether they could spend extra Homelessness Prevention Grant funding by June 30 should funding become available.

If a program disagreed with the automatic spending projections, it could submit its own spending plan for the remaining months of the grant. If electing this option, the program would need to explain the basis for its assessment. Most grantees reported that they would spend their entire award on time. In total, \$259,219 in formula funds will return to the State Bar to reallocate to existing projects. Forty grantees will receive a percentage share of that formula-based amount. A total of \$74,077 in competitive funds will return with 11 grantees to share the returned amount.

The most common explanations for differences in how the online form and individual grantees projected their October 2020-June 2021 spending cited use of federal Paycheck Protection Program loans, delays in hiring, pauses in services, and changes in non-personnel spending such as lower-than-expected travel—all due to the pandemic. Staff reviewed and approved all cases where a grantee offered a differing forecast for its October-June spending.

With the Commission having reviewed the recommendation for redistributing these funds, Commission Member Ball moved to adopt, and Schreiber seconded, the following resolutions:

RESOLVED, due to the extraordinary challenges brought by COVID-19, the Legal Services Trust Fund Commission approves all narrative explanations of projected expenses for the remainder of the grant period.

FURTHER RESOLVED, that the Legal Services Trust Fund Commission approves redistributing returned competitive grant funds based on a proportionate share of the competitive grant allocations.

The Committee approved the motion by unanimous roll call vote (Blakemore, DeBose, and Mann abstained with respect to Disability Rights California, Al-Sarraf abstained with respect to Legal Aid Foundation of Los Angeles, and Planthold abstained with respect to Bay Area Legal Aid).

**c. Discuss and Approve Recommendation of Budget Revision Requests for 2019 Formula EAF Homelessness Prevention and 2020 EAF Homelessness Prevention Competitive Grant Funds**

Staff reported that just three grantees, Bay Area Legal Aid, Public Law Center, and Yuba-Sutter Legal Center for Seniors, require Commission approval to revise their 2019 Formula Homelessness Prevention or 2020 Competitive Homelessness Prevention budgets since the variance exceeds 25 percent of their award. Eleven other requests had variances lower than 25 percent with staff already having reviewed and approved each of them.

The most common reason for budget variances were the same as for the redistribution plan: Use of federal Paycheck Protection Program loans, delays in hiring, pauses in services, and changes in non-personnel spending due to the pandemic. After the Commission finished reviewing the list of projected budget deviations above 25 percent of grant amounts, Co-Chair Isken moved to adopt, and Commission Member Savage seconded, the following resolution:

RESOLVED, due the extraordinary challenges brought by COVID-19, the Legal Services Trust Fund Commission approves all budget revision requests exceeding twenty-five percent of the total grant award.

The Committee approved the motion by unanimous roll call vote (Al-Sarraf abstained with respect to the Legal Aid Foundation of Los Angeles and Planthold abstained with respect to Bay Area Legal Aid).

**d. Discuss and Approve Recommendation of 2021-2023 Formula Homelessness Prevention Awards**

To qualify for 2021-2023 Formula Homelessness Prevention funding, organizations had to be doing qualifying work already. Staff reviewed 71 applications that arrived by the deadline. The Homelessness Prevention Committee found these timely submissions to be eligible. Staff had to deny one application since it arrived after the deadline. The Homelessness Prevention Committee later reviewed and approved all formula grant budgets.

Commission Member Boschelli submitted written comments. During the meeting, he highlighted his primary disagreement with the Commission's decision to spread the 2021-2023 Formula Homelessness Prevention Grants over three years rather than awarding the full amounts at one time.

With the Commission having reviewed the recommendations for these awards, Co-Chair Isken moved to adopt, and Commission Member Ball seconded, the following resolutions:

RESOLVED, the Legal Services Trust Fund Commission approves the Homelessness Prevention Formula applications of all eligible programs as listed in the meeting materials.

FURTHER RESOLVED, that the Legal Services Trust Fund Commission approves the Homelessness Prevention Formula budgets of all eligible programs

The Committee approved the motion by unanimous roll call vote (Boschelli abstained; Blakemore, DeBose, and Mann abstained with respect to Disability Rights California, Al-Sarraf abstained with respect to Legal Aid Foundation of Los Angeles, and Connolly abstained with respect to Community Legal Services in East Palo Alto).

## **VI. PARTNERSHIP GRANTS**

### **a. Review and Approve 2020 Partnership Grant Budget Revisions and Carry-Over Requests**

The Commission next considered partnership grant budget revision and carry-over requests. On June 26, 2020, the Commission voted to adopt a flexible approach to approving these revisions and requests due to the exigencies of COVID-19. Requests to revise and carry forward funds were due on November 20.

On December 1, the Partnership Grants Committee unanimously voted to approval all 14 requests that it had received. Three requests were for amounts less than 25 percent of the award allowing staff to review and approve them. Eleven requests exceeded 25 percent of the award, thereby requiring Commission approval.

One grantee, Community Legal Aid SoCal, requested a 50 percent reduction in its 2020 award due to pandemic-induced disruptions to its unlawful detainer workshop at Norwalk Superior Court. This award had yet to disburse on account of delays in the partnership MOU. The returned amount would become part of 2022 distributions.

With the Commission having reviewed the revision and carry-over recommendations, Commission Member Planthold moved to adopt, and Commission Member Ball seconded, the following resolution:

RESOLVED, that the Legal Services Trust Fund Commission approve the 2020 Partnership Grant Budget Revisions and Carry-Over Requests

The Committee approved the motion by unanimous roll call vote.

**b. Review and Approve Proposed Rubric for 2022 Partnership Grants Application Review**

Commission Member Vanarelli reminded everyone that since Partnership Grants are discretionary awards, the Board of Trustees has tasked the Commission with creating a scoring rubric to promote transparency, clarity, and equity in making award decisions.

On November 13, the Partnership Grants Committee discussed, and on December 1 it approved, a scoring rubric in concept. Much of the Committee's thinking about the purpose and strategy of a rubric is available in the memorandum from staff dated December 1. Currently, three Committee members are piloting the rubric. The pilot entails applying the rubric to three proposals that the Committee has already approved.

The Partnership Grants Committee proposed that the Commission delegate to the Committee authority to finish the rubric pending results of its ongoing pilot. Staff confirmed that any changes that the Commission might make to a post-pilot version would be okay provided they follow existing State Bar rules and policies.

With the Commission having reviewed the proposed rubric in concept, Chair Akhlaghi moved to adopt, and Commission Member Planthold seconded, the following resolution:

RESOLVED, that the Legal Services Trust Fund Commission approve the 2022 Partnership Grants Scoring Rubric in concept, and delegate authority to the Partnership Grants Committee to finalize the Rubric.

The following Commissioners voted yes: Al-Sarraf, Ball, Banafsheh, Bennett, Blakemore, Connolly, Delfino, Friedman, Isken, Meeker, Meyers, Planthold, Reinis, Savage, Schreiber, and Vanarelli. Commissioner Boschelli voted no. Commissioners DeBose and Mann abstained. The motion passed.

**VII. VI. GRANTS ADMINISTRATION (CONTINUED)**

**a. Discuss Improvements to Grants Administration Process**



Co-Chair Isken reported that the Commission's Executive Committee met briefly last week and will meet quarterly going forward. There were no decisions at last week's Committee meeting.

The Commission discussed the selection process for Executive Committee members with multiple Commission members asking about non-attorney representation on the Committee. Currently, the Executive Committee has four seats and no rules barring non-lawyers from serving. Staff clarified that the appointments process is centralized at the Board of Trustees level. Specifically, the State Bar's appointments liaisons recommend Commission officers to the Board. The Executive Committee has existed for many years although this year it temporarily dropped to just two members before returning to its usual size of four members.

#### **b. Discuss and Approve 2021 Legal Services Trust Fund Commission Work Plan**

Program Supervisor Doan Nguyen displayed the Commission's updated work plan, having added to Goal Four the language: "Based on recommendations from the Justice Gap Study, [the Commission will] research and explore recruitment and retention strategies for legal aid attorneys, including the creation of a statewide Loan Repayment Assistance Program (LRAP)." Staff reported that the Council on Access and Fairness heard a presentation about LRAP programs, which they found to be very helpful and engaging. Staff are ready to preform preliminary research on LRAPs and look forward to starting this work soon.

With the Commission having reviewed the updated work plan, Commission Member Planthold moved to adopt, and Co-Chair Isken seconded, the following resolution:

RESOLVED, the Legal Services Trust Fund Commission approve the 2021 Legal Services Trust Fund Commission Work Plan as listed in the meeting materials.

The Committee approved the motion by unanimous roll call vote (Al-Sarraf was absent).

#### **c. Discuss Audit Extension Requests**

Program Supervisor Nguyen reported that audited or reviewed financial statements are due on May 1. Staff can approve extensions through the due date of the application, which is in mid-May. After the application deadline, however, only the Commission can approve extension requests under extraordinary circumstances. Given the pandemic-induced delays for some programs' audits, staff recommend flexibly approving statement uploads through May 31 while keeping the IOLTA/EAF application deadline on May 14.

The Commission proceeded to discuss language for a resolution that would provide programs with greater flexibility for extension requests, given the delays and challenges brought on by the pandemic. The State Bar Office of the General Counsel confirmed that the Commission can delegate to staff its authority to approve these requests. Before considering a motion, the Commission noted that it would

revisit the audit upload timeline next calendar year to assess whether the pandemic will need other changes.

Following a discussion of the wording, Commission Member Ball moved to adopt, and Blakemore seconded, the following resolution:

RESOLVED, due to the extraordinary challenges brought by COVID-19, the Legal Services Trust Fund Commission will be flexible in considering late audit and financial review requests. To be eligible for 2022 IOLTA/EAF funding, the Commission strongly encourages organizations to submit audits and reviews by the May 1, 2021 deadline. However, for COVID-19 related reasons, staff is delegated authority to consider and approve requests for extensions of the deadline for submitting audits and financial reviews through no later than May 31, 2021.

The Committee approved the motion by unanimous roll call vote (Bennett abstained; Akhlaghi, Al-Sarraf, and Friedman were absent).

**d. Discuss and Approve Process for the Administration of Provisional Licensed Attorney Grant Awards**

Staff next briefed the Commission on the status of the Provisional Licensed Attorney Grants. Until January 2023, California Assembly Bill 3362 increases from \$40 to \$45 the opt-out donation on attorney fee statements. The extra five dollars per licensee will help qualified legal services projects and support centers to hire law school graduates that will have temporary provisional licenses from the State Bar. Staff estimate that the increase will be enough to fund three to five provisional licensees. The eventual number will become clear after the State Bar finishes collecting dues in 2021.

Staff intend to move quickly to create and consider Provisional Licensed Attorney Grant applications since potential fellows are eager to apply. In the first quarter of 2021, staff will design the application and look at whether the nonprofits that host licensees should contribute to the fellows' compensation.

With the Commission having reviewed the authorizing legislation and other information in the meeting materials, Commission Member Ball moved to adopt, and Commission Member Planthold seconded, the following resolutions:

RESOLVED, the Legal Services Trust Fund Commission delegates authority to staff, in consultation with the Executive Committee, to develop the grant application and selection criteria for temporary provisional licensees funded by the additional five dollar opt-out donation.

FURTHER RESOLVED, the Legal Services Trust Fund Commission delegates authority to staff, in consultation with the Executive Committee, to review and approve grant awards for temporary provisional licensees. If there are significantly more funds or grant applications than anticipated,

the Executive Committee may recommend the Commission reconvene to approve a different approach.

The Committee approved the motion by unanimous roll call vote (Boschelli abstained; Akhlaghi, Al-Sarraf, and Friedman were absent).

#### **VIII. ADJOURN**

The Co-Chair thanked everyone for their very hard work this fall and adjourned the meeting at 3:54 p.m.