

**LEGAL SERVICES TRUST FUND COMMISSION
ELIGIBILITY AND BUDGET REVIEW COMMITTEE MEETING
Meeting Summary and Action Items**

Friday, August 13, 2021, 9:30 a.m. – 12:00 p.m.
State Bar of California (Conference Call via Zoom)

Roll Call		
Members Present Chair Erica Connolly Banafsheh Akhlaghi Louise Bayles-Fightmaster Pamela Bennett Catherine Blakemore Herman DeBose Rebecca Delfino Zahirah Mann Jim Meeker Bob Planthold	Advisors None Liaisons Zach Newman, Legal Aid Association of California Bonnie Hough, Judicial Council Public Members Betty Nordwind, Harriett Buhai Center for Family Law Martina Cucullu Lim, Eviction Defense Collaborative Pablo Ramirez	Staff Erica Carroll Brady Dewar Elizabeth Hom Danielle MacRae Chris McConkey Doan Nguyen Kim Warmesley ----- Members Absent Corey Friedman Kim Savage

OPEN SESSION

Chair Erica Connolly called the meeting to order at 9:33 a.m.

I. ROLL CALL

Roll call was taken, and quorum was established.

II. CALL FOR PUBLIC COMMENT

Chair Connolly invited members of the public to comment on any items on the agenda. It was determined that members of the public would provide comments during discussion of the relevant agenda item.

III. CONSENT

A. Approval of Meeting Summary and Action Items from June 25, 2021 Meeting

The Eligibility and Budget Review Committee approved the June 25, 2021 meeting summary and action items by unanimous roll call vote (Planthold moved, Bayles-Fightmaster seconded).

B. Approval of Meeting Summary and Action Items from July 16, 2021 Meeting

The committee approved the July 16, 2021 meeting summary and action items by unanimous roll call vote (Planthold moved, Bayles-Fightmaster seconded).

IV. 2021/2022 IOLTA/EAF APPLICATIONS

A. Review Support Center Deeming Results

Senior Program Analyst Erica Carroll reminded the committee that support centers established after December 31, 1980 need to be deemed as of special need by Qualified Legal Services Programs (QLSPs) to be found eligible for IOLTA/EAF funding. This year, four support centers needed to be deemed. A survey was sent to 78 QLSPs and the State Bar received 67 responses. Each support center needed 40 votes to be deemed eligible, and all four exceed 40 votes. Therefore, the following four programs are recommended as eligible by staff:

1. California Advocates for Nursing Home Reform
2. California Women's Law Center
3. Public Interest Law Project
4. Worksafe, Inc.

B. Discuss Final Audits Received and Any Remaining Audit/Financial Review Issues

Senior Program Analyst Erica Carroll summarized past committee actions related to audit extensions (six programs were granted an audit extension and two more met with Chair Connolly to determine whether an extension was appropriate). All programs that were granted an audit extension but one—Harriett Buhai Center for Family Law (HBCFL)—submitted their materials by the extension deadline of August 2. HBCFL encountered a delay because it was unclear whether the organization needed to conduct a single audit for federal funding received. HBCFL submitted its final audit after the deadline but prior to this meeting, and staff believe it conforms to the draft audit previously submitted. Staff therefore recommend the committee accept the late audit.

Executive Director of HBCFL, Betty Nordwind, attended the meeting to extend her apologies on behalf of the program for the late audit and provide additional context for the delay.

A motion (language below) to accept Harriett Buhai Center for Family Law's late audit was moved by Blakemore and seconded by Planthold. The motion passed and the vote was as follows:

Yes (8): Connolly, Bayles-Fightmaster, Blakemore, DeBose, Delfino, Mann, Meeker, Planthold

No (1): Bennett

Absent (1): Akhlaghi

RESOLVED, given the extraordinary circumstances shown by Harriett Buhai Center for Family Law in requiring an audit extension beyond August 2, 2021, the Eligibility & Budget Review Committee grants further extension and accepts the final audit that was submitted on August 11, 2021, as part of the organization's 2022 IOLTA/EAF application.

C. Discuss and Act on Eviction Defense Collaborative's Requests to Consider Rental Assistance Disbursement Component (RADCo) Expenditures as Legal Services

Senior Program Analyst Erica Carroll reported that Eviction Defense Collaborative (EDC) is continuing to request costs for staff time devoted to its Rental Assistance Disbursement Component (RADCo) be considered legal services expenditures. EDC posits that its rental assistance program provides legal

services because staff work closely with the Director of Litigation, negotiate on tenants' behalf, and help tenants avoid eviction through rental assistance.

Executive Director Lim reported that RADCo staff who conduct negotiations are not attorneys, but staff receive training from an eviction defense attorney. RADCo staff rely, in part, on RADCo's long-standing relationship with landlords and property managers to gain positive outcomes for clients. Executive Director Lim noted that RADCo is separated from other full-representation legal services at EDC to ensure there are no conflicts of interest with represented clients; however, the committee expressed concern that this deliberate separation from traditional legal services may indicate the services provided by RADCo are not legal services.

The committee discussed whether there are services provided by other non-legal staff – social workers, for example – in other organizations that are categorized as legal services. Staff indicated there is work provided by social workers funded in other programs but drew a distinction between that arrangement—where the social workers are typically working at the direction of an attorney—and the RADCo structure, which by design is not directly under attorney supervision.

Senior Program Analyst Erica Carroll noted for the committee that EDC's percentage of qualified expenditures might fall below the 75 percent threshold for the primary purpose presumption after accounting for the committee's decisions on what expenditures were qualifying. State Bar staff recommend that the committee find EDC demonstrates primary purpose even if the percentage falls below 75 percent.

After discussion, the committee passed the following motion:

RESOLVED, the Eligibility & Budget Review Committee finds Eviction Defense Collaborative's RADCo activities related to consultations with attorneys and assisting the legal clinic with intakes, as well as cross-trainings between RADCo and legal staff to be qualifying legal services for the purposes of the 2022 IOLTA/EAF application.

EDC is directed to deduct expenses related to property manager/landlord negotiations in order to preserve tenancies and/or prevent homelessness in the amount of \$426,370.81 from its qualified expenditures.

If the resulting percentage of qualified expenditures falls below 75 percent, the Eligibility & Budget Review Committee further finds that EDC has demonstrated its primary purpose and function of providing free legal services to indigent persons.

The motion passed by unanimous roll call vote (Planthold moved, Akhlaghi seconded).

D. Actions on Applications That Do Not Meet Presumption of Primary Purpose and Function

EDC was the only remaining applicant whose application might not meet the presumption of primary purpose and function. The motion passed in agenda item IV.C resolved this concern.

E. Discuss Outcome of Eligibility Review Conferences for Catholic Charities Diocese of San Diego, Community Lawyers, Inc., and East Bay Family Defenders

Senior Program Analyst Erica Carroll reported that three programs seeking first-time eligibility participated in eligibility review conferences. The working groups were comprised of committee members and State Bar staff.

Catholic Charities Diocese of San Diego

Catholic Charities Diocese of San Diego provides wrap-around social services. One component of those services is legal services on issues of immigration. They have about \$13 million in total expenditures, and \$1 million (about seven percent) of that is on legal services. This does not meet the 75 percent presumption of primary purpose. Catholic Charities staff reported they separate legal services from the rest of its programs and do not commingle funding, and therefore believe expenditures on other services should not be considered. However, statute requires the Commission look at the entire organization's budget when running primary purpose calculations. The working group recommends the committee find Catholic Diocese of San Diego ineligible.

East Bay Family Defenders

East Bay Family Defenders (EBFD) represents parents in dependency court proceedings. Attorneys are court-appointed. They are currently unfunded and applied last year but were found ineligible. Last year, the program did not conduct income screenings. In response to guidance provided, the program started income screening in July 2020. They reported difficulties successfully screening clients and only screened about 40 percent of clients from June 2020 to July 2021. They estimated 64-68 percent of clients were income-qualifying.

EBFD's estimate of 64-68 percent does not meet the 75 percent presumption for primary purpose, and questions arose regarding whether the 64-68 percent estimate is accurate. If the estimate is incorrect, that would impact not only EBFD's allocation, but other programs in the Alameda County as well. Other applicants come close to 100 percent of screening; therefore, the working group did not feel EDC met an acceptable standard, and recommend the committee find the program ineligible.

Brady Dewar provided further context that EBFD is the second organization exclusively offering dependency services that the committee has considered funding, and this is an issue the Rules Committee may discuss, because dependency cases, and some probate matters, such as conservatorships, could be considered fee-generating since their services are largely compensated through a contract with courts.

Community Lawyers, Inc.

Community Lawyers, Inc. (CLI) primarily coordinates pro bono services for clinics on immigration and family law rather than providing in-house legal services. In the immigration clinic, attorneys offer brief services and limited scope representation. The family law clinic is more of a self-help clinic. CLI applied for funding before but was not funded. They failed to submit a timely and complete application last year, including a financial review from an independent CPA. They submitted all required documents this year.

The organization has one paid attorney, the half-time interim Executive Director who oversees the immigration matters, and a volunteer board member who reviews the family law matters. A full-time services coordinator is responsible for most client interactions and form preparation. The main question

was whether the organization maintains sufficient attorney oversight to ensure high-quality, safe, and effective pro bono services under the governing authorities. The working group concluded that it is possible CLI is complying with the Standards for the Provision of Civil Legal Aid expectations for very small service providers. The recommendation is to find CLI eligible.

The working group further recommended an early monitoring visit, if found eligible, for State Bar staff to confirm accuracy of the organization's spoken assurances regarding quality controls. Program Manager Doan Nguyen noted that all programs are subject to a site visit in the first year of eligibility, but this program would get a visit within the first six months to ensure adequate quality controls are present.

A motion (language below) was introduced in which the committee adopted the working groups' recommendations as its own recommendations to the Legal Services Trust Fund Commission regarding eligibility of new applicants for 2022 IOLTA/EAF funding (Bayles-Fightmaster moved, Planthold seconded). The motion passed by unanimous roll call vote.

RESOLVED, the Eligibility & Budget Review Committee adopts its working groups' recommendations as its own recommendations to the Legal Services Trust Fund Commission regarding eligibility of the following new applicants for 2022 IOLTA/EAF Funding:

- Eligible:
 - Community Lawyers, Inc.
- Ineligible:
 - Catholic Charities Diocese of San Diego
 - East Bay Family Defenders

F. Discuss Outstanding Eligibility Issues

Program Manager Doan Nguyen reported that, given recent increases in EAF funding, the staff proposes the Commission allow programs to create two-year budgets for EAF funding.

A motion (language below) to support the staff proposal was introduced (Blakemore moved, Planthold seconded). The motion passed by unanimous roll call vote.

RESOLVED, given the substantial increase in Equal Access Funds (EAF), the Eligibility & Budget Review Committee recommends that the Legal Services Trust Fund Commission allow grantees to propose a two-year budget from 2022 through 2023 for their EAF grant award. Grantees may still have the option to propose a one-year budget if it is more suitable for their program.

G. Recommend Applicants to the Legal Services Trust Fund Commission as Eligible or Ineligible for 2022 IOLTA/EAF Funding

For 2022 funding, the State Bar initially received 108 applications. Two organizations withdrew, leaving a total of 106 applicants. There were six new applicants in 2022, three of which had eligibility review conferences. The other three presented no eligibility concerns, so staff have included them in the list of recommended eligible programs. Staff are recommending Family Legal Assistance at CHOC Children's be found ineligible because the program failed to submit a reviewed financial statement. After discussions, the organization reported they would not be able to comply with application documentation requirements, so they did not proceed with their application; however, they did not formally withdraw the application.

Staff recommended 103 applicants as eligible, and three as ineligible (Catholic Charities Diocese of San Diego, East Bay Family Defenders, and Family Legal Assistance at CHOC Children's).

A motion (language below) to accept staff recommendations was introduced (Planthold moved, Akhlaghi seconded). The motion passed by unanimous roll call vote. The votes were as follows:

Yes: Akhlaghi, Bayles-Fightmaster, Bennett, Blakemore, Connolly, Debose, Delfino, Mann, Meeker, Planthold

Abstentions: Bayles-Fightmaster (Law Foundation of Silicon Valley), Blakemore (Disability Rights California), Connolly (Community Legal Services in East Palo Alto), Mann (Disability Rights California), Meeker (Public Law Center), Planthold (Bay Area Legal Aid)

RESOLVED, the Eligibility & Budget Review Committee recommends 103 applicants to the Legal Services Trust Fund Commission as eligible and three applicants (Catholic Charities Diocese of San Diego, East Bay Family Law Defenders, Family Legal Assistance at CHOC Children's) as ineligible, as reflected in the meeting materials provided to the Committee for this meeting.

Staff report on accounting of capital additions expenses:

Senior Program Analyst Erica Carroll reported that in 2020 IOLTA/EAF budgets, because of large increases in funding, organizations could use more funding than typical toward things like capital additions and paying down mortgages. When applying for IOLTA/EAF funding, organizations report their IOLTA/EAF expenditures in the prior year net of capital additions, because the State Bar has the authority to ask for that funding back in the future. Two of three approved programs did not include that spending in their expenditures, but instead converted it to an asset that will depreciate over time (which is consistent with how it is reported in their audit). One organization expensed it this year, but State Bar staff had them deduct the spending from their 2021 IOLTA/EAF expenditures in the application, to ensure accuracy in allocation calculations. Staff did not require committee action but wanted to bring it to the committee's attention because it impacted this year's IOLTA/EAF applications. Staff wanted to allow for discussion if there were any questions or concerns from the committee about staff's approach. An alternative approach would be to require programs to deduct all spending in one year rather than allow it to be depreciated over time.

The Rules Committee may need to review capital additions and how the commission will handle these expenses moving forward, and how and whether the commission will seek reversionary interest on capital addition expenses in the future.

V. ADJOURN

There being no other business, the meeting was adjourned at 11:45 a.m.