

LEGAL SERVICES TRUST FUND COMMISSION MEETING

Meeting Summary and Action Items

Friday, August 13, 2021, 12:00 p.m. – 4:00 p.m.

State Bar of California (Conference Call via Zoom)

Roll Call

Members Present

Co-Chair Banafsheh Akhlaghi
Co-Chair Eric Isken
Amin Al-Sarraf
Jeff Ball
Louise Bayles-Fightmaster
Pamela Bennett
Catherine Blakemore
Will Boschelli
Erica Connolly
Herman DeBose
Corey Friedman
Zahirah Mann
James Meeker
Bob Planthold
Christian Schreiber
Christina Vanarelli

Advisors

Hon. Lisa R. Jaskol
Hon. William J. Murray, Jr.
Hon. Brad Seligman

Liaisons

Bonnie Hough
Salena Copeland
Mark Toney, PhD

Public Members

Zach Newman (LAAC)

Staff

Doan Nguyen
Erica Carroll
Brady Dewar
Donna Hershkowitz
Elizabeth Hom
Danielle MacRae
Christopher McConkey

Members Absent

Co-Vice Chair Richard Reinis
Co-Vice Chair Kim Savage
Kim Bartleson
Rebecca Delfino

OPEN SESSION

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

I. ROLL CALL

Roll call was taken, and quorum was established.

II. CALL FOR PUBLIC COMMENT

Co-Chair Akhlaghi acknowledged that there is an agenda item regarding the definition of civil legal services related to expungements, infractions, record sealing to be discussed.

Co-Chair Akhlaghi invited members of the public to comment on any items on the agenda. No public comment was made.

III. CONSENT

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

The Commission approved the June 25, 2021 meeting summary and action items by majority roll call vote (Isken moved, Planthold seconded).

The vote was as follows:

Yes (12): Akhlaghi, Isken, Ball, Fightmaster, Blakemore, Boschelli, DeBose, Mann, Meeker, Planthold, Schreiber, Vanarelli

No (0)

Abstention(s) (2): Al-Sarraf, Connolly

(Bennett and Friedman were absent for this vote.)

IV. RECENT DEVELOPMENTS

A. Co-Chairs' Report

Co-Chair Akhlaghi reported that this would be the last meeting that she and Co-Chair Isken would lead. At the Commission's next meeting, Richard Reinis and Kim Savage would be installed as co-chairs, and Chris Schreiber and Christina Vanarelli would become the new co-vice chairs

B. State Bar Report on Board of Trustees' Actions

Board of Trustee liaison Toney stated that he had no updates at this time.

C. Staff Update on Grant Administration

Program Manager Doan Nguyen and Chief of Programs Donna Hershkowitz presented.

Nguyen reminded the Commission that Governor Newsom signed the fiscal year 21-22 budget in July, and it includes a significant increase to legal aid funding, including a \$50 million increase to the existing \$20 million of Equal Access Funds (EAF), with \$45 million to be administered by the commission and \$5 million to the California Access to Justice Commission for infrastructure and innovation grants.

She reported that up to \$5.5 million of filing fee revenue would be appropriated to support legal services as well. Funding from filing fees varies from year to year. Especially in recent years, there have been significant fluctuations in this revenue.

In addition, another \$40 million had been marked for funding homelessness prevention services.

Nguyen also provided updates on SB 498, the pending bill to increase the income eligibility threshold from 125 percent of the federal poverty level to 200 percent, which will likely pass, and AB 1847, which establishes ongoing homelessness prevention funds in future years.

Hershkowitz then commented on SB 211, which will codify the Trust Fund Commission. This, too, will likely proceed soon, as some committees are still working on amendments in the legislature. She mentioned that this change is an important recognition of the work of the Commission in administering carefully administering legal services funding and capably overseeing the disbursement of increasing amounts of funds.

V. BUSINESS

A. Discuss and Approve Recommendations for 2022 Partnership Grant Funding

LSTFC member and chair of the Partnership Grant committee Christina Vanarelli presented on this topic. There were 36 Partnership Grant proposals submitted, requesting a little over \$3 million

when \$2.5 million was available. Vanarelli described the scoring rubric process that informed the committee's decision-making regarding grant award recommendations and explained that if the commission approves the recommendations, these will be reviewed by the Judicial Council at its meeting in the fall.

The commission approved the following resolution by unanimous roll call vote (Planthold moved, Ball seconded):

RESOLVED, that the Legal Services Trust Fund Commission approves the list of 2022 Partnership Grant allocation recommendations, as recommended by the Partnership Grants committee, and list in Attachment C.

B. Discuss and Approve Recommendation Regarding Proposed Timeline and Distribution Plan for Additional Partnership Grant Funding

Vanarelli provided an update regarding additional funding that recently became available. The July 12 state budget appropriated significantly more funding to the Equal Access Fund than normal, more than doubling the amount available for Partnership Grants. An additional \$3.8 million would need to be allocated, and the Partnership Grant committee met to discuss possible way to distribute the funding. Two proposals emerged: one would allow organizations that did not receive all the funding requested in their initial application for 2022 funding to submit another request related to that project, which would take place on a shortened timeline (April to December); the other proposal was to allow organizations to propose a completely new project that would take place over 21 months to encourage larger and/or more innovative proposals.

Vanarelli clarified that the committee was recommending against carryovers of funding, and she also clarified that unused funding, for any reason, would be incorporated into general EAF funding.

The Commission approved the following resolution by unanimous roll call vote (Ball moved, Schreiber seconded):

RESOLVED, that the Legal Service Trust Fund Commission approves the proposed timeline and distribution plan for Partnership Grants 2.0.

C. Discuss and Approve Recommendation of Eligible and Ineligible Applicants for IOLTA and EAF Funding for Grant Year 2022

LSTFC member and chair of the Eligibility & Budget Review committee Erica Connolly, and Senior Program Analyst Erica Carroll, presented on this topic, providing an overview of the IOLTA/EAF application review process, including Eligibility Review Conferences conducted with organizations whose applications raised eligibility questions that warranted further attention. Carroll provided specific details regarding the organizations that participated in

ERCs and the outcomes of those conferences, as well as the names of the new applicants recommended as eligible. In particular, Carroll noted the reasons that the Eligibility & Budget Review Committee recommended three organizations ineligible (two for eligibility concerns largely related to primary purpose and one for an incomplete application).

After discussion, the commission found three organizations—Catholic Charities Diocese of San Diego, East Bay Family Defenders, and Family Legal Assistance at CHOC Children’s—ineligible for 2022 IOLTA/EAF funding. The motion was approved by majority roll call vote (Isken moved, Planthold seconded). The vote was as follows:

Yes (15): Akhlaghi, Isken, Al-Sarraf, Ball, Bayles-Fightmaster, Bennett, Blakemore, Connolly, DeBose, Friedman, Mann, Meeker, Planthold, Schreiber, Vanarelli
No (0)
Abstentions (2): Boschelli, Friedman (only as to East Bay Family Defenders)

The commission then approved 103 organizations as eligible for 2022 IOLTA/EAF funding as reflected in the list provided as part of the meeting materials. The motion was approved by unanimous roll call vote, with abstentions as to particular organizations (Ball moved, Planthold seconded).

Abstention(s) (8): Isken (Bet Tzedek), Al-Sarraf (Legal Aid Foundation of Los Angeles), Blakemore (Disability Rights California), Connolly (Community Legal Services of East Palo Alto), Mann (Disability Rights California), Meeker (Public Law Center), Planthold (Bay Area Legal Aid), Schreiber (Impact Fund, Legal Aid at Work, Open Door Legal)

Given the very large increase to EAF funding in 2022, Program Manager Nguyen also presented the option to allow organizations to budget their 2022 EAF funds over a period of two years instead of one, based on the preferences and needs of grant recipients. Commissioners asked questions regarding the logistics of such a plan but generally endorsed the flexibility of such an approach to allow programs to plan accordingly and avoid possibly extreme fluctuations in funding from year to year. A motion to approve this proposal was made:

RESOLVED, given the substantial increase in Equal Access Funds (EAF), the Legal Services Trust Fund Commission allows 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.

The motion was approved by unanimous roll call vote (Blakemore moved, Bayles-Fightmaster seconded).

D. Discuss and Approve Recommendation Regarding IOLTA/EAF Applicants’ Eligibility for Pro Bono Allocation in Grant Year 2022

While addressing the prior agenda item regarding 2022 IOLTA/EAF eligibility, the subject of pro bono allocations was discussed. Carroll presented on this topic detailing the number of organizations presumed eligible for the allocation by meeting certain numeric standards, and others which required review by the Eligibility & Budget Review Committee. She also added information on the two organizations recommended as ineligible in 2022, Inland Empire Latino Lawyers Association (did not meet numeric threshold test) and Learning Rights Law Center (still developing its pro bono program).

The commission approved the following motion by unanimous roll call vote, with abstentions as to particular organizations (Planthold moved, Friedman seconded):

RESOLVED, that the Legal Services Trust Fund Commission finds 17 organizations eligible for a pro bono allocation and two organizations ineligible in 2022 (as reflected in Attachment B to the meeting memorandum).

Yes (16): Akhlaghi, Isken, Al-Sarraf, Ball, Bayles-Fightmaster, Bennett, Blakemore, Boschelli, Connolly, DeBose, Friedman, Mann, Meeker, Planthold, Schreiber, Vanarelli

No (0)

Abstentions (2): Isken (Bet Tzedek), Meeker (Public Law Center)

E. Discuss and Approve Timelines and Delegation of Authority for the New Homelessness Prevention Formula and Competitive Grants

Senior Program Analyst Chris McConkey presented on AB 164, which establishes a new round of both formula and competitive grant funding. This bill provides \$40 million in additional homelessness prevention (HP funding) in the next year, and another \$40 million total are anticipated in the following two years. Services provided using this funding include eviction defense, other tenant defense in landlord-tenant disputes, and foreclosure preventions.

Seventy-five percent of the funding (after administrative costs) is planned for formula grants, with the remaining mount going to competitive grants. Formula grants are a minimum of \$50,000 unless the grantee requests less, and there is a requirement not to supplant other funds. The legislation also demonstrates a preference for rural or underserved communities when making a determination on competitive grants. These funds also come partially from the federal government, which may require additional reporting or use of the single audit.

McConkey then reviewed the timelines for both formula and competitive grants that were discussed at the HP Committee level. Formula grant applications will be released on August 16 and applicants will have a little less than one month to apply. Those organizations cannot submit proposed budgets yet because they do not know the tentative allocation. There was discussion about the importance of deadlines and whether to extend the timeline for the application, but staff noted that the formula application process should be easier than the competitive grant application because many of the organizations can recycle some of their prior grant application information, given the similarities with prior HP funding.

Due to the short timelines, there were several suggestions in the memorandum for streamlining the process. Staff noted the challenge in balancing the time needed to go through this application and review process versus distributing the funds as soon as practicable based on the legislation's instructions. Members of the HP committee also provided context for decision as to timing, mentioning the need to consider organizations' ability to absorb significant additional funding, staff's ability to prepare and administer disbursement of the funds, and the legislature's expectations regarding the timing and execution of this process. Salena Copeland of LAAC also commented in favor of the proposed timeline for formula grant period to begin on December 1 but also reported that the legal aid community would likely be supportive of a January 1 start date as well. Other commission members highlighted the importance of meeting immediate client needs and moving quickly given the end of the eviction moratorium.

McConkey then presented on the HP competitive grant process, with an anticipated release date of September 1 for the application and a due date of October 1 deadline. This process will entail a scoring rubric, so though there is a short turnaround time, organizations will have more information for planning purposes. If the commission were to accept the proposed scoring rubric and delegate authority to staff, staff would review and score the applications after a calibration session of three to five applications. Staff would then give a recommendation to the committee in late October with explanations and justification for the scores. The HP Committee would assess those recommendations, and the commission would vote on awards in November. Unlike formula grants, organizations would submit their proposed budget based on their initial application.

There was discussion of other commission members attending upcoming HP committee meetings to listen in if there is interest in the topic while ensuring there would be no concerns related to the Bagley-Keene Act.

The commission approved the following resolution by majority roll call vote (Ball moved, Planthold seconded):

RESOLVED, that the Legal Services Trust Fund Commission approves the December 1, 2021, timeline for 2021 Homelessness Prevention (HP) formula grants and January 1, 2022, timeline for 2022 HP competitive grants, as presented in the HP Funds Committee's August 13, 2021, memo; and it is

FURTHER RESOLVED, that the commission delegates authority to staff to review and the committee to approve eligibility and allocations for 2021 HP formula grants; and it is

FURTHER RESOLVED, that the commission delegates authority to staff to approve budgets for 2021 HP formula grants; and it is

FURTHER RESOLVED, that the commission delegates authority to the committee to approve the request for proposals, including scoring rubric, for the 2022 HP competitive grants and to staff to score applications in consultation with the committee.

The vote was as follows:

Yes (14): Akhlaghi, Isken, Al-Sarraf, Ball, Bayles-Fightmaster, Bennett, Boschelli, Connolly, Friedman, Mann, Meeker, Planthold, Schreiber, Vanarelli

No (0)

Abstentions (2): Blakemore, DeBose

Staff then reported on a logistical matter that arose after sending the memorandum to the commission. After talking with the Department of Finance, staff learned that the HP funds can be used to make three-year formula and competitive grants totaling \$80 million. Staff asked the commission to approve a resolution to allow three-year grants instead of one-year grant cycles over the course of three years.

There was discussion about how the funding would be divided, and staff reported the need to confirm whether the funding can be divided evenly over three years or if \$40 million in the first year, and \$20 million per year would be more appropriate in the subsequent two years. There was also discussion about whether funding was guaranteed and how to ensure complete spenddown.

The commission approved the following motion by unanimous roll call vote (Blakemore moved, Boschelli seconded):

RESOLVED, that the Legal Services Trust Fund Commission will administer the 2021 Homelessness Prevention (HP) formula and 2022 HP competitive awards as three-year grants with an expected total appropriation of \$80 million combined.

F. IOLTA Revenue Update

Program Manager Nguyen provided an update on recent IOLTA remittances. The May 2021 remittance was \$1.9 million and June 2021 was \$2 million, both of which were ahead of projections by \$1.7 million. This amount will go into reserves for future distribution, as the commission and Board of Trustees already approved the amount for 2022 funding.

G. Update Regarding the Treatment of Expungement, Infractions, and Similar Legal Services Work for the Purposes of Primary Purpose of Qualified Expenditure Determination

Assistant General Counsel Brady Dewar provided an update. The last update the commission received related to the staff proposal to include expungement, infractions and similar work as qualified expenditures but not fund the work using IOLTA/EAF funds, as necessitated by statute. This summer there was movement in the community to approach the legislature to

make changes to allow these services to be funded by IOLTA/EAF. A working group of commission members, with input from LAAC, addressed concerns about changes to the language in the IOLTA statute. The proposal clarified that expungement, infractions, and similar work would be considered civil legal services, both for qualified expenditures and budgeting, noting that expungements, record sealing and record clearance that don't challenge the underlying criminal conviction, and infractions, are included under "civil."

Dewar responded to questions about where "civil" is defined elsewhere but indicated there was no intent to come up with an all-encompassing definition to what has traditionally been considered "civil," just that these services will be included with civil because they are typically characterized as criminal legal services.

Another member noted that the language proposed is consistent with the Legal Services Corporation's approach for at least the past 20 years and that LAAC seemed comfortable with that approach.

This language will be added to SB 498, which is pending.

VI. LIAISON REPORTS

A. Judicial Council Report on Program Developments

Bonnie Hough of the Judicial Council provided an update. Work is underway regarding updating EAF reporting requirements. The Judicial Council informed federal funders that data is collected but updates are required.

She also reported that, of the increase in EAF funding in 2022, \$5 million of that funding will be administered by the California Commission on Access to Justice, not only for IOLTA-funded organizations, but other legal services organizations, to support infrastructure and innovation.

B. Legal Aid Association of California Report on Program Development

Salena Copeland of LAAC provided an update. Regarding the HP funds, she confirmed that the funding for the next two years is included as part of the multi-year budget, but it will not be given to Judicial Council for distribution until future years. This is federal funding that has not been completely allocated yet, and LAAC is advocating for this funding to be spent in support of legal needs of indigent persons. She also spoke in support of the commission's action allowing three-year grants for HP funding, indicating it will provide stability for hiring of new staff.

Copeland also shared that LAAC is working with the California Commission on Access to Justice and the State Bar regarding loan repayment assistance program options, providing training for legal aid attorneys and advocates in understanding their loans, including hiring a loan expert to do a training. The organization has noticed that crushing debt seriously impacts recruitment and retention in the legal aid community.

She echoed commission members' comments on updating the statutory language regarding expungements and infractions and acknowledged that it was a lot of work but an important change.

VII. ADJOURN

The co-chairs finishing their term thanked the commission and staff. There being no other business, the meeting was adjourned at 3:10 p.m.

DRAFT