

## LEGAL SERVICES TRUST FUND COMMISSION MEETING

### Meeting Summary and Action Items

Monday, December 13, 2021, 9:00 a.m.–1:00 p.m.

State Bar of California (Conference Call via Zoom)

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#### Roll Call

##### Members Present

Co-Chair Kim Savage  
Co-Chair Richard Reinis  
Co-Vice Chair Christian Schreiber  
Amin Al-Sarraf  
Jeff Ball  
Pamela Bennett  
Catherine Blakemore  
Will Boschelli  
Erica Connolly  
Jason Galkin  
Eric Isken  
Hon. Diana Kruze  
Joseph Lee  
Tammy Mahoney  
Zahirah Mann  
James Meeker  
Bob Planthold

##### Advisors

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

##### Liaisons

Salena Copland  
Bonnie Hough  
Melanie Snider

##### Public Members

Zach Newman, Judicial Council of California  
Lorin Kline, Judicial Council of California  
Karen Keene, Disability Rights California  
Susan Podesta, California Rural Legal Assistance, Inc.  
Amagda Perez, California Rural Legal Assistance Foundation

##### Staff

Doan Nguyen  
Elizabeth Hom  
Christal Bundang  
Erica Carroll  
Danielle MacRae  
Christopher McConkey  
Dan Passamaneck

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##### Members Absent

Co-Vice Chair Christina Vanarelli  
Banafsheh Akhlaghi  
Louise Bayles-Fightmaster  
Corey Freidman

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#### OPEN SESSION

Co-Chair Kim Savage called the meeting to order at 9:02 a.m.

#### I. ROLL CALL

Roll call was taken, and quorum was established.

#### II. CALL FOR PUBLIC COMMENT

Co-Chair Kim Savage invited members of the public to comment on any items on the agenda. No public comments were made.

Commissioner Mann and Justice Murray, who are stepping down from their roles on the commission, were recognized for their work on the commission.

### **III. CONSENT**

#### **A. Approval of Meeting Summary and Action Items from August 13, 2021 Meeting**

The Legal Services Trust Fund Commission (commission) approved the Meeting Summary and Action Items from the August 13, 2021 meeting (Planthold moved, Schreiber seconded). The vote was as follows:

Yes (13): Savage, Reinis, Schreiber, Ball, Bennett, Blakemore, Boschelli, Isken, Kruze, Lee, Mann, Meeker, Planthold

No (0): None

Abstain (2): Galkin, Mahoney

Absent (2): Al-Sarraf, Connolly

#### **B. Approval of Meeting Summary and Action Items from November 17, 2021 Meeting**

The commission approved the Meeting Summary and Action Items from the November 17, 2021 (Planthold moved, Reinis seconded). The vote was as follows:

Yes (13): Savage, Reinis, Schreiber, Bennett, Blakemore, Boschelli, Isken, Kruze, Lee, Mahoney, Mann, Meeker, Planthold

No (0): None

Abstain (2): Ball, Galkin

Absent (2): Al-Sarraf, Connolly

### **IV. 2021 ADMINISTRATIVE ACTIVITIES**

#### **A. Report on IOLTA and Justice Gap Fund Revenue**

Program Manager Doan Nguyen reported that the Interest on Lawyer Trust Accounts (IOLTA) and Justice Gap Fund revenues have been calculated through October. State Bar staff projected 16 million in remittances through October but collected close to 17 million. State Bar staff anticipate exceeding projected revenues of 21 million by the end of the year.

#### **B. Review of Administrative Calendar**

Program Manager Doan Nguyen reported that State Bar staff updated committee assignments and member terms. Program Specialist Kim Warmesley has sent calendar invitations for commission meetings and executive committee meetings.

Outstanding committee meeting invitations will be sent in the coming weeks; the Bank Grant committee dates are still being finalized.

The commission roster will be updated on the State Bar website soon. Co-Chair Kim Savage solicited volunteers to serve on the nominations committee. Isken and Bennett have volunteered.

## **V. LIAISON REPORTS**

### **A. Judicial Council Report on Program Developments**

Melanie Snider, Judicial Council, reported that housing and funding contracts are in process and should be available shortly.

### **B. Legal Aid Association of California Report on Program Developments**

Salena Copeland, Legal Aid Association of California (LAAC), provided a summary to the commission on the purpose and history of LAAC. The organization was founded with the passage of IOLTA statutes and expanded with the creation of the Equal Access Fund (EAF). The State Bar provides \$130,000 to LAAC annually to provide further support to grantees. LAAC does advocacy work, and works to secure new funds for, or connect existing funds to, civil legal aid in California. LAAC also hosts conferences, webinars, and fellowships.

Commissioners asked whether LAAC works with organizations to ensure know-your-rights materials that programs create are not duplicative. Salena noted that organizations like to have materials tailored to their specific clients' needs, including county- or city-specific protections. Programs share materials through a list serv. LAAC posts material online and the California courts have a self-help website that allows people to enter their county and legal issue to be connected to local organizations.

## **VI. IOLTA AND EQUAL ACCESS FUND (EAF) GRANTS**

### **A. Discuss and Approve Eligibility and Budget Review Committee Recommendations for All Outstanding 2020 and 2021 IOLTA and EAF Budget Revisions and Carryover Requests**

Commissioner Connolly reported on behalf of the Eligibility and Budget Review Committee on carryover and budget revision requests. A working group followed up with programs with large requests to gather more information on the percent of the organizations' budgets they are requesting to carry over and what they plan to spend carried over funds on.

The committee recommends the commission approve outstanding 2021 IOLTA/EAF carryover and budget revision requests, but the committee does so hesitantly. The commission's role is oversight of these funds. State Bar staff assist programs with

providing required information, but it is organizations' responsibility to get the necessary information to the State Bar and commission in a timely manner. The committee and State Bar staff are planning to update SmartSimple to ask the programs that request carryovers in the future why the funds weren't spent down in the grant period, and how they plan to spend down carryover funds. The committee has been flexible with organizations in 2020 and 2021 because of the extraordinary circumstances of the COVID-19 pandemic, but the committee will be less flexible with requests in the future. The committee will be reluctant to approve carryover requests greater than 50 percent of the grant award at the end of 2022.

The commission passed the following motion (Planthold moved, Reinis seconded):

RESOLVED, given extraordinary circumstances in 2020-2021, the Legal Services Trust Fund Commission has exercised its discretion to permit a flexible approach to carryover requests. In light of that exercise of discretion, the commission approves the remaining budget revision and carryover requests above 25 percent of the 2021 IOLTA/EAF grant awards. The commission does not anticipate such extraordinary circumstances going forward and therefore will no longer apply that flexible approach when considering future requests.

The vote was as follows:

Yes (11): Savage, Reinis, Schreiber, Bennett, Boschelli, Connolly, Galkin, Isken, Kruze, Mahoney, Meeker, Planthold

Yes, but abstain as it relates to Disability Rights California (3): Blakemore, Lee, Mann

No (0): None

Abstain (0): None

Absent (2): Al-Sarraf, Ball

Two programs also requested 2020 IOLTA/EAF budget revisions greater than 25 percent of the grant award, Asian Americans Advancing Justice – Los Angeles and Los Angeles Center for Law and Justice. Both organizations were moving funds into personnel and program expenses. Both organizations received federal Paycheck Protection Program (PPP) loans. The committee recommends approval.

The commission passed the following motion (Planthold moved, Blakemore seconded):

RESOLVED, that the Legal Services Trust Fund Commission approves the 2020 budget revision requests submitted by Asian Americans Advancing Justice – Los

Angeles and Los Angeles Center for Law and Justice in excess of 25 percent of its IOLTA grant awards.

The vote was as follows:

Yes (16): Savage, Reinis, Schreiber, Ball, Bennett, Blakemore, Boschelli, Connolly, Galkin, Isken, Kruze, Lee, Mahoney, Mann, Meeker, Planthold

No (0): None

Abstain (0): None

Absent: Al-Sarraf

**B. Discuss and Approve Dismissal of Client Complaint from Legal Services of Northern California**

Co-Chair Reinis reported on the client complaint filed against Legal Services of Northern California (LSNC). The commission has jurisdiction to investigate claims made against IOLTA/EAF-funded programs. Most complaints do not reach the commission unless 90 days have passed without a resolution. The commission's charge is to determine whether LSNC was out of compliance with Trust Fund Program rules and policies.

At that last commission meeting, the commission decided to allow time for the complainant to respond to the State Bar's findings before voting to dismiss the complaint. The complainant has not provided any additional substantive information. At the last commission meeting, State Bar staff recommended dismissal of the complaint.

The commission discussed sending a letter to LSNC about the commission's authority to review the complaint, because the commission's authority was questioned in materials provided by LSNC. Program Manager Doan Nguyen reported that State Bar staff spoke with LSNC's executive director after the last commission meeting to give him an update. He was appreciative of that outreach. State Bar staff plan to facilitate a meeting between LSNC's executive director and Co-Chair Savage to discuss the commission's authority.

The commission passed the following motion (Reinis moved, Isken seconded):

RESOLVED, that the Legal Services Trust Fund Commission, after review of the staff report and Legal Services of Northern California's (LSNC) November 15, 2021 letter to the Executive Committee of the commission, exercising its authority under State Bar Rule 3.692, finds that LSNC has met the requirements

of Trust Fund Program rules and policies with respect to the matters raised in the complaint, and dismisses the complaint received in March 2021.

The vote was as follows:

Yes (16): Savage, Reinis, Schreiber, Ball, Bennett, Blakemore, Boschelli, Connolly, Galkin, Isken, Kruze, Lee, Mahoney, Mann, Meeker, Planthold

No (0): None

Abstain (0): None

Absent: Al-Sarraf

## **VII. HOMELESSNESS PREVENTION GRANTS**

### **A. Discuss and Approve 2022 Homelessness Prevention Competitive Grants**

Acting Program Supervisor Chris McConkey and Senior Program Analyst Danielle MacRae reported on the authorizing legislation for the homelessness prevention competitive grant funds, the scoring rubric, and the process by which the scoring team reached consensus scores for all proposed projects. Thirty-four programs submitted applications for competitive grant funding, seeking a total of about \$33,800,000 combined. Twenty-nine applicants were qualified legal services projects (QLSPs) and five were support centers. All incorporated a focus on serving underserved communities and 26 incorporated a focus on serving rural communities.

The scoring team, comprised of three State Bar staff and Commissioner Meeker, reached a consensus score for each applicant on each row of the scoring rubric. The scoring team recommended funding the 23 highest-scoring proposals and the Homelessness Prevention Funds Committee agreed at its December 2, 2021, meeting. The scoring team and committee then reached recommended funding levels for each application based on factors such as the proportionality of deliverables to the project budget, the fiscal conservatism in the proposed budget, and the comparative size of the program's homelessness prevention formula award, if any.

Together, the recommended projects articulate a clear nexus to homelessness prevention, focus on rural and underserved communities, and would together serve every county but focus on 24 in particular.

Commission members asked what "underserved communities" means in the context of providing legal services to indigent clients. The authorizing legislation did not define the term, but the committee adopted a description in the Request for Proposal that asks programs to "describe any focus on particularly underserved

clients” and “explain how the [clients] face even higher barriers to accessing civil justice than does the low-income community generally.” In reviewing the project proposals, examples of underserved communities included veterans, survivors of domestic violence or elder abuse, and indigenous clients.

Commissioner Meeker, as the chair of the Homelessness Prevention Funds Committee, made recommendations for future homelessness prevention competitive grant processes. He suggested future Requests for Proposal include different wording regarding the evaluation criteria, in line with suggestions made by Commissioner Isken in the partnership grants process. He suggested the commission request more information from grantees on their partnerships with non IOLTA-funded partners and the activities of those partners, as well as on the underserved communities that programs plan to serve.

Because of the compressed timeline in which these grants were reviewed, the committee utilized a staff-led scoring process with the use of the scoring team. The commission discussed the relative merits of this approach versus a committee-led scoring process where committee members form working groups to review proposals. The two approaches vary in their level of committee participation, scoring validity, and scoring reliability.

Commission members asked how homelessness prevention grants would be evaluated at the end of the grant term. These grants are supported by federal dollars, which require more reporting and evaluation. Programs will need to report housing outcomes, similarly to outcomes reported for EAF funding. State Bar staff have received and analyzed data from the first tranche of homelessness prevention grants and plan to share that data with the commission in 2022.

The commission passed the following motion (Boschelli moved, Planthold seconded):

RESOLVED, that the Legal Services Trust Fund Commission recommends the 2022-2024 homelessness prevention competitive grant recipients and amounts as described in staff’s December 13, 2021, memo for agenda item VII.A. (“Discuss and Approve 2022 Homelessness Prevention Competitive Grants”).

The vote was as follows:

Yes (12): Savage, Reinis, Schreiber, Ball, Bennett, Blakemore, Boschelli, Connolly, Galkin, Isken, Kruze, Mahoney

Yes, but abstain as to Legal Aid Foundation of Los Angeles (1): Al-Sarraf

Yes, but abstain as to Public Law Center (1): Meeker

Yes, but abstain as to Bay Area Legal Aid (1): Planthold

No (0): None

Abstain (0): None

Absent (2): Lee, Mann

**B. Approval or Requests to Revise 2021-2023 Homelessness Prevention (HP II) Grant Budgets**

The Homelessness Prevention Funds committee was not able to discuss HP II budget requests at its December 2, 2021, meeting, so Acting Program Supervisor Chris McConkey asked the commission to postpone discussion on this issue until early 2022.

**VIII. RULES COMMITTEE**

**A. Discuss and Approve Recommendations Regarding Passthrough and Exchange Funds**

Senior Program Analyst Dan Passamaneck reported on the Rules Committee's work on passthrough expenditures and exchanged funds. He presented on the authorities and key terms, the State Bar and commission's current practices related to these transactions, and the proposed changes.

Given the funding formula for QLSPs, programs with larger qualifying expenditures receive larger shares of IOLTA/EAF funding in the counties where they provide services. Expenditures attributable to the representation of indigent persons constitute the organization's budget for the purposes of the formula allocation and the "primary purpose and function" test that programs must pass to qualify for funding.

Funding that a program receives from a third-party for the sole purpose of giving it to somebody else (via sub-grant, for example) is excluded from the organization's budget and expenditures as "passthroughs." The primary purpose and function criterion is applied after passthroughs are removed. After a program is determined to be eligible based on its qualified expenditures and primary purpose and function, State Bar staff determine the basis for calculating grants after deducting additional funds including IOLTA/EAF grants, Shriver funds, and funds exchanged between two QLSPs ("exchanged funds.")

The codification issue is statute presumes that an organization's expenditures reflect its own services and activities and that all expenditures relate to unique services; however, passthrough expenditures do not relate to the applicant's own services or



activities and exchanged funds are not unique expenditures for unique activities. State Bar staff have developed work arounds for passthrough transactions that should be codified. Community feedback indicated programs may have administrative costs associated with passthroughs, which should be treated as qualified expenditures.

The working group and Rules Committee proposes a State Bar rule that defines passthrough expenditures and states that these expenditures shall not be considered part of an applicant's budget or expenditures when determining primary purpose and function nor when calculating grant allocations.<sup>1</sup>

Members of the commission discussed the meaning of oversight and control over sub-recipients as it pertains to fiscal sponsorship relationships. Senior Program Analyst Dan Passamaneck indicated that most fiscal sponsorships tend to be with small organizations that are doing their own work with positive results but are not a 501(c)(3) to receive their own funds. State Bar staff also expect to give scrutiny to these transactions to ensure the rule is being implemented as intended.

The commission passed the following motion (Planthold moved, Connolly seconded):

RESOLVED, that the Legal Services Trust Fund Commission approves the recommendations of the Rules Committee regarding passthrough expenditures as set forth in the December 13 memorandum, to request that the State Bar Board of Trustees release this proposed Rule for a 45-day public comment period.

The vote was as follows:

Yes (14): Savage, Reinis, Schreiber, Al-Sarraf, Ball, Bennett, Blakemore, Boschelli, Connolly, Galkin, Isken, Mahoney, Meeker, Planthold

No (0): None

Abstain (1): Lee

Absent (2): Kruze, Mann

Senior Program Analyst Dan Passamaneck reported that the working group advice and community feedback pertaining to exchanged funds was that current State Bar staff practice should be codified. Exchanged funds should only be deducted for

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<sup>1</sup> See agenda item VII.A "Discuss and Approve Recommendations Regarding Passthrough and Exchange Funds" and the accompanying memo, "Amendments to Rules of the State Bar Regarding Passthrough Expenditures" for a more detailed description of the definition of passthrough transactions and the proposed State Bar rule language: <https://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000028443.pdf>

purposed of calculating grant allocations, and only when they will lead to double-counted expenditures. Funds exchanged with or by a support center should not be deducted as an exchanged fund transaction (because they do not impact the formula allocation), but support centers should report these funds to the State Bar.

The working group proposed a rule defining exchanged funds as those paid by any applicant for IOLTA grants to any other applicant. The proposed rule states that “if both the payor and recipient are QLSPs, only one may count the exchanged funds for purposes of calculating grant allocations. Absent a written agreement that states otherwise, funds exchanged between two QLSPs shall be credited to the recipient for purposes of determining grant allocations.”<sup>2</sup> The proposed rule codifies existing office practice that has been in place since 1983 and has not raised any concerns.

The commission passed the following motions (Reinis moved, Ball seconded):

RESOLVED, that the Legal Services Trust Fund Commission approves the recommendations of the Rules Committee related to the definition and treatment of exchanged funds and will request that the State Bar Board of Trustees release this proposed rule for a 45-day public comment period; and it is

FURTHER RESOLVED, that the Commission approves the recommendation that Support Centers should report on exchanged funds in the same manner as Qualified Legal Services Projects.

The vote was as follows:

Yes (15): Savage, Reinis, Schreiber, Al-Sarraf, Ball, Bennett, Blakemore, Boschelli, Connolly, Galkin, Isken, Lee, Mahoney, Meeker, Planthold

No (0): None

Abstain (0): None

Absent (2): Kruze, Mann

## **B. Review of 2022 Rules Committee Work Plan**

Program Manager Doan Nguyen reported on the Rules Committee work plan for 2022. There will be six committee meetings with one-to-three issues discussed in each. Each topic will have a working group. For 2022, the Rules Committee aims to have two members of the Rules Committee and one commissioner who is not on the

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<sup>2</sup> See agenda item VII.A “Discuss and Approve Recommendations Regarding Passthrough and Exchange Funds” and the accompanying memo, “Amendments to Rules of the State Bar Regarding Exchanged Funds” for a more detailed description of the definition of exchanged funds and the proposed State Bar rule language:

<https://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000028444.pdf>

Rules Committee in each working group. Nguyen requested commissioners volunteer to serve on working groups for issues they might be interested in.

Commissioner Al-Sarraf thanked commissioners who have served on the working groups. Commissioners who volunteer to serve on a working group can expect to participate in one-to-three meetings with staff on the issue to discuss recommendations and community feedback.

## **IX. LEGAL AID GRANT EVALUATIONS**

### **A. Discuss and Approve Recommended Changes to Homelessness Prevention Grant Evaluations**

The Homelessness Prevention Funds committee was not able to discuss changes to homelessness prevention grant evaluations at its December 2, 2021, meeting, so Program Manager Doan Nguyen asked the commission to postpone discussion on this issue until early 2022.

### **B. Discuss and Approve Recommended Changes to Equal Access Fund Grant Evaluations**

Senior Program Analyst Christal Bundang reported on the proposed updates to 2022 EAF grant evaluations. The Budget Act of 2021 requires the State Bar to provide a report to the Judicial Council including funding allocations, annual expenditures, and program outcomes by service area and service provider for all EAF and federal funding. The Judicial Council must provide the report to the Department of Finance by January 1 of each year.

The 2022 EAF reporting requirements seek information specific to the EAF grants. Currently, State Bar grantees report outcomes across all funding sources. The January 1 deadline also requires programs to submit mid-year EAF evaluations in addition to the final report. The mid-year report would be released July 1, 2022 and have a deadline of July 29, 2022. The final report would be released in January 2023 and have a deadline of March 2023.

The State Bar and Judicial Council held a webinar in October to alert programs to the proposed updates. The changes aim to leverage existing processes and reports to gather more specific data and fewer narrative descriptions.

The commission passed the following motion (Planthold moved, Ball seconded):

RESOLVED, that the Legal Services Trust Fund Commission approve the proposed changes, as set forth in the attached PowerPoint, to the 2022 Equal Access Fund Evaluations.

Yes (15): Savage, Reinis, Schreiber, Al-Sarraf, Ball, Bennett, Blakemore, Boschelli, Connolly, Galkin, Isken, Lee, Mahoney, Meeker, Planthold

No (0): None

Abstain (0): None

Absent (2): Kruze, Mann

**C. Discuss and Approve Recommended Changes to Partnership Grant Evaluations**

Senior Program Analyst Christal Bundang reported on the recommended changes to Partnership Grant evaluations. The changes are largely in-line with the proposed changes to the EAF evaluation and would also require programs to submit mid-year evaluations. Narrative questions would be streamlined, and the evaluation would include more checkbox questions.

Commission members asked whether the evaluation would allow State Bar staff to compare proposed activities and actual reported activities. Senior Program Analyst Christal Bundang reported that the evaluation form pulls data on the grantee's proposed activities and includes narrative questions to ask the grantee to explain discrepancies.

The commission pass the following motion (Planthold moved, Reinis seconded):

RESOLVED, that the Legal Services Trust Fund Commission approve the proposed changes, as set forth in the attached PowerPoint, to the 2022 Partnership Grants Evaluations.

Yes (15): Savage, Reinis, Schreiber, Al-Sarraf, Ball, Bennett, Blakemore, Boschelli, Connolly, Galkin, Isken, Lee, Mahoney, Meeker, Planthold

No (0): None

Abstain (0): None

Absent (2): Kruze, Mann

**X. PRESENTATION BY GRANTEES**

**A. Informational Presentation by East Bay Community Law Center**

East Bay Community Law Center staff were unable to attend the commission meeting.

**B. Informational Presentation by California Rural Legal Assistance Foundation**

Amagda Perez, California Rural Legal Aid Foundation (CRLAF), provided a summary on the work of CRLAF. CRLAF is a statewide support center that provides training, technical assistance, and advocacy support to QLSPs, particularly those working with agricultural workers and low-wage workers in rural areas of the state. CRLAF does not receive federal funds and can represent undocumented immigrants that are not eligible for federally funded legal services.

CRLAF has traditionally provided naturalization assistance, working with law school clinics and QLSPs to increase capacity to assist eligible applicants to apply for naturalization. Under Deferred Action for Childhood Arrivals (DACA), they also provided training and technical assistance to law school programs that assisted childhood arrivals with applying for DACA benefits. They also provided removal defense assistance to unaccompanied minors and separated families.

CRLAF has experience in labor and employment, rural housing, and rural health. They are more recently expanding their immigration law services and building that capacity in the rural communities they serve.

**XI. ADJOURN**

There being no other business, the meeting was adjourned at 12:48 p.m.