



Date: March 15, 2023

To: Members, Legal Services Trust Fund Commission

From: Legal Services Trust Fund Commission Eligibility & Budget Review Committee

Subject: Unapproved 2020 and 2021 Budget Deviations Disclosed During 2022 Monitoring Visits

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### EXECUTIVE SUMMARY

All recipients of State Bar-administered grants are subject to monitoring visits conducted by Office of Access & Inclusion (OAI) staff. These visits occur every three years and ensure compliance with grant requirements and offer opportunities to provide grantees with additional technical assistance and resources as needed. A number of monitoring visits conducted in 2022 revealed that grantees had revised their prior year IOLTA/EAF budgets, either without submitting a formal request or without following proper procedure and timing to do so. After reviewing and discussing staff recommendations, the Eligibility & Budget Review Committee recommends that the Legal Services Trust Fund Commission (LSTFC) approve these deviations with clear indication that, should this issue recur, grantees will be required to return the misspent funds.

### GOVERNING AUTHORITIES

Pursuant to the Functional Matrix approved by the State Bar's Board of Trustees, grantees must request and receive approval for any budget deviation and/or carryover of funds that amounts to more than 10 percent of their grant award. Requests between 10 and 25 percent of the grant amount may be approved by the Director of OAI; any request above 25 percent must be reviewed and approved by the LSTFC.

Moreover, grant agreements between the State Bar and grantee organizations specify that grantees must "notify the State Bar within five (5) business days of any material change in the planned activities or proposed budget contained in the Application Materials or any revision thereto."

Under the General Grant Provisions of the Legal Services Trust Fund Program, Article XI, section 9.01, states that a grantee “shall be deemed in default upon the occurrence of any of the following: ... 2. Any use of Grant Funds not in substantial accordance with the Approved Budget and Budget Narrative including approved revisions for that Grant Period. ...”

Further, section 9.02 specifies that the remedies for default may include conditioning current year grant payments on curing the default, terminating the grant entirely, or requiring return of funds.

## **BACKGROUND**

### **BUDGET REVISION PROCESS**

Grantees are supposed to notify OAI within five business days of a known budget deviation. However, this provision has not been strongly enforced in recent years. Consequently, the period for submitting carryover requests towards the end of the calendar year also typically functions as the last opportunity for grantees to obtain approval for budget deviations that occurred during the year.

OAI has developed forms and processes for grantees to submit their budget revision requests through the SmartSimple grants platform. Historically, OAI has set the administrative deadline to submit these requests in late October to allow the LSTFC to review and approve them before the end of the year.<sup>1</sup> Despite sending various announcements and reminders about the deadline, it is not uncommon for OAI to receive several budget revision and carryover requests in December and January, requiring the LSTFC to revisit this topic at its first meeting of the year. Regardless of the timing, it is rare for these requests to be denied.

### **FISCAL MONITORING VISITS**

OAI staff conduct monitoring visits with grantee organizations every three years. The visits comprise program and fiscal components, including interviews with staff and review of relevant documentation. The fiscal portion of the visit entails an audit of the grantee’s expenditures of State Bar-administered funds in the prior calendar year (in this case, 2021—and any 2020 carryover amounts—since the visits were conducted in 2022). These are compared with what was reported to the State Bar, which sometimes results in findings that the grantee has erred in its reporting. This may require award allocation adjustments, repayment, etc.

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<sup>1</sup> For the 2022 grant year, OAI staff implemented a January deadline to minimize late requests. However, discussion will focus on prior practice as none of the grants implicated in this memorandum are from the 2022 grant year.

When the finding is significant and pertains to IOLTA/EAF grants, staff reports these findings to the Eligibility & Budget Review Committee. However, when the grantee agrees with the finding, these reports typically take the form of an update and do not require committee action. When the grantee contests the recommended action, or staff's recommendation involves the use of discretion, then the issue is brought to the committee for resolution.

### **GRANTEE ORGANIZATIONS WITH UNAPPROVED BUDGET DEVIATIONS**

The three organizations that evidenced significant unapproved budget deviations as part of their 2022 monitoring visits either submitted no request or did so outside of the approved process, such that it was not immediately apparent and thus not formally approved. The organizations are as follows:

#### **Child Care Law Center**

Child Care Law Center (CCLC) substantially deviated from its approved budget for three of its grants. The 2020 IOLTA grant had a budget deviation of 18 percent, the 2021 IOLTA deviation amounted to 26 percent of the grant award, and 2021 EAF budget deviated by 33 percent.<sup>2</sup> The 2021 budget deviations would have required commission approval. CCLC did not seek approval of a budget modification, the deadline for which was October 29, 2021. Instead, it attached an explanation of its budget deviations along with its 2021 Q4 expense report, submitted on January 30, 2022.

This explanation did not meet State Bar requirements for timeliness or proper form for such a request. Consequently, CCLC did not receive approval for the budget revisions. In its response to the monitoring visit findings, CCLC acknowledged its error and detailed steps it is taking, or has already taken, to address this issue, including expanding and strengthening its finance team and increasing oversight by the finance committee of its board of directors.

#### **Greater Bakersfield Legal Assistance**

Greater Bakersfield Legal Assistance (GBLA) substantially deviated from its approved budget for three of its grants. The 2020 EAF grant had a budget deviation of almost 20 percent, 2021 IOLTA deviation amounted to almost 25 percent of the grant award, and 2021 EAF deviated by 56 percent. Though GBLA sought approval of its budget modifications for its 2021 IOLTA and EAF awards, State Bar staff learned through this monitoring visit that further deviations occurred that went unreported.

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<sup>2</sup> For some of these grants, the grantees did in fact submit a prior budget revision that was approved. However, in those cases, the deviations cited here are for subsequent modifications of the already-revised budgets that went unreported.

In its response to the monitoring visit findings, GBLA acknowledged its mistake, stated that this was an anomaly, and indicated that staff simply did not recognize that the changes made to the budget would trigger a formal approval process. Steps the organization has taken since the monitoring visit to come into compliance include: implementing a compliance checklist to flag when material deviations occur; communicating regularly with State Bar staff regarding their current (2022) revisions; and providing additional training to fiscal staff. The organization further reiterated and assured State Bar staff that the funds were spent on qualifying activities.

#### **Inland Empire Latino Lawyers Association, Inc.**

Finally, Inland Empire Latino Lawyers Association, Inc. (IELLA) substantially deviated from its approved 2020 EAF budget by 15 percent. Based on the organization's response to the monitoring visit findings, it became apparent that there is confusion around the appropriate way to calculate budget deviations that would trigger a request to State Bar staff or the commission. Staff is working with IELLA to provide additional technical assistance and instruction to ensure future compliance.

### **DISCUSSION**

Staff believed that these unapproved budget deviations constituted a breach of the grantees' grant agreements, placing them in default. Staff was originally inclined to recommend return of the funds, consistent with section 9.02 of the General Grant Provisions. However, after speaking with the organizations and reviewing their replies to the monitoring visit findings, staff believed that it would produce undue hardship to seek return of the funds now.

Staff reported to the Eligibility & Budget Review Committee that one major deficiency in the budget revision context is that many grantees experience confusion about the process, particularly related to calculating their budget deviation percentage. As a result, this can lead to unreported deviations that grantees do not recognize as requiring approval (as with GBLA and IELLA). Staff also reported that the flexibility that has been accorded to grantees in recent years—for example, agreeing to review significantly late requests without any substantial consequence—coupled with the fact that IOLTA and EAF budget deviations requiring review are routinely approved, may have unintentionally communicated that it is not imperative to follow the prescribed procedure. This appeared to be the case with CCLC, which was aware of its substantial budget deviation yet did not submit a request through the proper channels.

Moreover, the requirements around budget revisions are not memorialized in statute or State Bar Rules. The codification process will address budget revisions later this year, proposing the creation of a rule regarding such requests, which will include clear explanation of grantee requirements and possible consequences for noncompliance.

At its meeting on March 10, the Eligibility & Budget Review Committee discussed staff's recommendations and also spoke with all three grantees who attended the meeting. The grantees provided assurances that they are establishing safeguards to avoid this issue in the future. After discussion and providing feedback for staff to consider regarding the codification process related to budget deviations, the committee voted to recommend that the LSTFC approve these belated budget deviations. The committee further recommends that the LSTFC provide a warning to the grantees involved regarding possible consequences in the event this issue were to recur in the future.

## **RECOMMENDATION**

Should the LSTFC concur with the Eligibility & Budget Review Committee's recommendations, adoption of the following is advised:

**RESOLVED**, that the LSTFC approves the unreported 2020 and 2021 IOLTA/EAF budget deviations from Child Care Law Center, Greater Bakersfield Legal Assistance, and Inland Empire Latino Lawyers Association, Inc.

**And it is FURTHER RESOLVED**, that LSTFC warns these three organizations that future unreported budget deviations will not be approved, and the LSTFC will pursue any of the remedies available to it under the General Grant Provisions.