



The State Bar of California

OPEN SESSION AGENDA ITEM 4.2 AUGUST 2023 LEGAL SERVICES TRUST FUND COMMISSION

DATE: August 10, 2023

TO: Members, Legal Services Trust Fund Commission (LSTFC)

FROM: Members, LSTFC Eligibility and Budget Review Committee

SUBJECT: Approve Recommendation Regarding IOLTA/EAF Applicants' Eligibility for Pro Bono Allocation in Grant Year 2024

EXECUTIVE SUMMARY

As part of the Interest on Lawyers' Trust Accounts (IOLTA) and Equal Access Fund (EAF) grant application process, certain legal services projects may qualify for additional funds if they demonstrate that their "principal means" of service delivery is through the use of pro bono attorneys. Organizations must qualify in each county where they apply for funding. Nineteen organizations applied for the pro bono allocation in 2024. The Eligibility and Budget Review Committee (Committee) recommends finding 18 of the organizations as eligible for the allocation, and one organization, Law Foundation of Silicon Valley, as ineligible. It further recommends that one of the eligible organizations, Legal Aid Society of San Bernardino, only receive the allocation in San Bernardino County, but not Riverside County due to its inability to meet the "substantial numbers" threshold in terms of pro bono recruitment.

BACKGROUND

The IOLTA statute (Business and Professions Code sections 6210-6228) provides for additional funding for qualified legal services projects (QLSPs) that apply and qualify for a pro bono allocation in one or more counties where they receive funding. To be found eligible, applicants must demonstrate that their "principal means" of legal services delivery is through pro bono attorneys who provide free legal representation to indigent persons or to qualified legal services projects in California. Ten percent of the funds in each county are set aside each year for pro bono allocation recipients, and those funds are divided on a pro rata basis depending on

the number of organizations found eligible for the allocation in the respective county. (Business and Professions Code section 6216(b)(1)(B).)

The Eligibility Guidelines for Legal Services Projects (Guidelines) set forth the criteria for QLSPs to qualify for pro bono allocations. The Commentary in Guideline 2.6.3.1 requires that applicants meet a “substantial numbers” threshold test to qualify for the pro bono allocation. The threshold requires the applicant to have “recruited at least 30 attorneys who provided services in the previous calendar year,” or the applicant to have “recruited at least 5 percent of the licensed attorneys in the county in the previous calendar year,” or that the attorneys recruited “donated at least 1,000 hours of legal services for clients in the previous calendar year.”

If an applicant satisfies this threshold requirement, the commentary in Guideline 2.9.2 sets forth the additional requirement that the applicant utilize private attorneys as its “principal means” of providing legal services. QLSPs can demonstrate that they meet this requirement in one of three ways:

1. Confirm that the number of service hours provided by volunteer attorneys exceeded the number of service hours worked by staff attorneys in the previous calendar year (Test A);
2. Establish through a formula involving volunteer attorney and paralegal hours compared with staff attorney and paralegal hours that they meet the requirements. The applicant must show: (1) that the attorneys recruited actually provided substantial free civil legal services; (2) that the combined number of hours of service by volunteers, both attorneys and paralegals, exceeds the combined number of hours of service by staff attorneys and paralegals; and (3) that the number of hours of service by volunteer attorneys is more than half as many as the combined number of hours of service by staff attorneys and paralegals (Test B); or
3. Provide a narrative explanation for its method of calculating the delivery of services through volunteer attorneys (Test C).

DISCUSSION

This year, all 19 pro bono allocation applicants met the “substantial numbers” threshold test in at least one county. If the threshold requirement was met, applicants that satisfied Tests A and/or B did not require Committee review. It is longstanding office practice that applicants meeting Tests A and/or B are presumed eligible for the allocation. Only applicants requesting an allocation under Test C are elevated to the Committee for individual review.

Nine applicants qualified for the allocation under Tests A and/or B, and 11 applicants applied for the pro bono allocation under Test C.¹ The Committee recommends that the LSTFC find all applicants eligible except for Law Foundation of Silicon Valley (LFSV), and Legal Aid Society of San Bernardino (LASSB) for its Riverside County operations.

LFSV has not received the pro bono allocation before. The Committee was not persuaded that it had demonstrated that its principal means of service delivery is through pro bono volunteers. LASSB was recommended as ineligible in Riverside County because it failed to meet the threshold test of recruiting at least 30 attorneys, 5 percent of the county attorney population, or 1000 hours in donated attorney time in Riverside (but it did meet this test, and is recommended as eligible, in San Bernardino County).

FISCAL/PERSONNEL IMPACT

None

RECOMMENDATIONS

Should the LSTFC concur with the Eligibility and Budget Review Committee's recommendation, passage of the following resolution is advised:

RESOLVED, that the **Legal Services Trust Fund Commission** finds all 19 pro bono allocation applicant organizations eligible or ineligible for the allocation in 2024 as reflected in Attachment A to this August 10, 2023, memorandum.

ATTACHMENT(S) LIST

A. 2024 IOLTA/EAF Pro Bono Allocation Applicants

¹ Note that there are only 19 applicant organizations. One organization, Lawyers' Committee for Civil Rights, qualified under Tests A and/or B for most counties where it applied, but it sought the allocation under Test C for Sacramento County and is thus counted in both categories.

2024 IOLTA/EAF Pro Bono Allocation Applicants

| # | Program Name | County | Recommend as Eligible for Pro Bono Allocation? |
|----|--|----------------|--|
| 1 | Alliance for Children's Rights | Los Angeles | YES |
| 2 | Bet Tzedek Legal Services | Los Angeles | YES |
| 3 | Capital Pro Bono Inc. | Sacramento | YES |
| 4 | Casa Cornelia Law Center | San Diego | YES |
| 5 | Community Legal Services in East Palo Alto | San Mateo | YES |
| | Community Legal Services in East Palo Alto | Santa Clara | YES |
| 6 | Disability Rights Legal Center | Los Angeles | YES |
| 7 | Harriett Buhai Center for Family Law | Los Angeles | YES |
| 8 | Inland Empire Latino Lawyers Association, Inc. | Riverside | YES |
| | Inland Empire Latino Lawyers Association, Inc. | San Bernardino | YES |
| 9 | Justice & Diversity Center of the Bar Association of San Francisco | San Francisco | YES |
| 10 | LACBA Counsel for Justice | Los Angeles | YES |
| 11 | Law Foundation of Silicon Valley | Santa Clara | NO |
| 12 | Lawyers' Committee for Civil Rights | Alameda | YES |
| | Lawyers' Committee for Civil Rights | Contra Costa | YES |
| | Lawyers' Committee for Civil Rights | Imperial | YES |
| | Lawyers' Committee for Civil Rights | Marin | YES |
| | Lawyers' Committee for Civil Rights | Sacramento | YES |
| | Lawyers' Committee for Civil Rights | San Francisco | YES |
| | Lawyers' Committee for Civil Rights | Santa Clara | YES |
| | Lawyers' Committee for Civil Rights | San Mateo | YES |
| 13 | Legal Access Alameda | Alameda | YES |
| 14 | Legal Aid Society of San Bernardino | San Bernardino | YES |
| | Legal Aid Society of San Bernardino | Riverside | NO |
| 15 | Public Counsel | Los Angeles | YES |
| 16 | Public Law Center | Orange | YES |
| 17 | Riverside Legal Aid | Riverside | YES |
| 18 | San Diego Volunteer Lawyer Program | San Diego | YES |
| 19 | Veterans Legal Institute | Los Angeles | YES |
| | Veterans Legal Institute | Orange | YES |