

DATE: June 16, 2009

TO: Members, Board Committee on Stakeholder Relations

FROM: Hon. Douglas Miller and Mr. Richard Odgers, Co-Chairs, Joint Committee on the Justice Gap Fund;
Stephanie Choy, Director, Legal Services Trust Fund Program
Mary Lavery Flynn, Director, Legal Services Outreach

SUBJECT: Proposed Modification of Justice Gap Fund Procedures: Approval to Release for Public Comment

Executive Summary

The Joint Committee on the Justice Gap Fund includes representatives of the Legal Services Trust Fund Commission and the California Commission on Access to Justice. The Joint Committee oversees the Justice Gap Fund, which was established pursuant to 2006 legislation intended to expand lawyer contributions to support free legal services for the poor through the State Bar fee statement (AB 2301).

The Board implemented AB 2301 by establishing the Justice Gap Fund in 2008, requesting a \$100 contribution from all California lawyers in their annual fee statement. The funds are distributed to legal services programs using the Bar's IOLTA distribution formula.

The legislation also called on the State Bar to do a review after two years of operation of the Fund, and consider whether the Board of Governors should make any changes in its procedures. The Joint Committee has conducted a review of the Justice Gap Fund, concluding that no changes should be made at this time in the amount of funds requested or in the distribution formula; however, the Joint Committee wishes to recommend that the Board establish one higher recognition level for \$1,000 donations to the Fund.

This is a request from the Joint Committee to circulate for public comment its proposed recommendation to maintain the existing Justice Gap Fund system, and to add one higher recognition level for \$1,000 contributors.

For further information about this project, please contact Mary Lavery Flynn at (415) 538-2251 or at mary.flynn@calbar.ca.gov.

BACKGROUND

AB 2301 was signed into law by the Governor on August 28, 2006, authorizing the State Bar to facilitate collection of voluntary contributions to legal services programs, and calling on the Bar to appoint a task force, in consultation with the Chief Justice and the Judiciary

Committees of the Assembly and Senate, to study the issues and recommend implementation methods.

In July, 2008, the State Bar Task Force on Lawyer Support for Legal Services received approval from the Board of Governors to establish the Justice Gap Fund by adding a request to attorneys for a \$100 voluntary contribution through the State Bar's annual Member Fee Statement, beginning with the Fee Statement for 2008. The Bar's Legal Services Trust Fund Program was designated to administer the fund, which initially was to be distributed to qualified legal services recipients of the Trust Fund Program based on the statutory formula established in Business and Professions Code Section 6210, et seq. Distribution of the Justice Gap Fund should be reviewed after the initial two years, and then every five years thereafter, to determine if any change in the distribution of these funds may be warranted.

The method and any recommended voluntary contribution amount adopted by the Board of Governors of the State Bar of California shall be implemented for the 2008 fiscal year, and shall be reviewed and adjusted as needed after two years and, hereafter, every five years as needed, in consultation with affected service providers and other key stakeholders. [AB 2301; Assembly Judiciary Committee, 2006]

During its first year of work the Task Force developed the concept for the Justice Gap Fund and implemented a successful first year campaign, raising over \$1 million dollars for legal services.

Following the 2 years of work done by the Task Force, the ongoing work of overseeing the Justice Gap Fund was turned over to existing entities – the Legal Services Trust Fund Commission and the California Commission on Access to Justice, which together formed this Joint Committee on the Justice Gap Fund.

OVERVIEW OF THIS PROPOSAL

As required by statute, the Joint Committee on the Justice Gap Fund has examined the protocols developed for the first two years of the Justice Gap Fund. The Joint Committee has solicited feedback from key constituencies, including the Funding Committee of the Access to Justice Committee. It also sought input from legal services advocates and private attorneys across the state at the annual Statewide Legal Services Stakeholders Conference held on June 10, 2009. The \$100 contribution requested of lawyers raised over \$1 million in the first year, and was determined to be an appropriate amount to request. The contributions for the second year will be down 15 to 20% due to the economy, but the Committee hopes to increase contributions over the coming year, and to increase the number of lawyers contributing to the Fund.

With regard to the distribution of the Justice Gap Fund, again based on feedback from the community, the Committee has determined that given this difficult economy the funds should continue to be distributed to existing recipients of the Legal Services Trust Fund Program, using the statutory IOLTA formula. Not only is there a continuing need for legal services from these programs, these programs are already approved recipients of the

IOLTA and Equal Access Funds, so that eases administration of the Justice Gap Fund. There was extensive discussion about the possibility of modifying the formula used for distribution, providing some level of discretion in the allocation of these funds. At some point, the Joint Committee may recommend such a step, so that the Justice Gap Fund can fill some of the more extreme gaps in the state's delivery system, such as to expand resources in rural areas. However, because of the uncertainty brought on by the recession and the drop in other funding available for legal services programs, the Committee has determined that it is not a good time to add one more element of uncertainty by taking away the formula-driven nature of the IOLTA distribution formula that has been used for the Justice Gap Fund distribution during its first two years.

The only change that the Committee would like to recommend is to add one higher recognition level for \$1,000 donations to the Fund. In this way, we may be able to encourage higher contributions to the Fund, but in a way that does not unduly detract from local fundraising.

Therefore, the Joint Committee requests the authority to circulate for public comment this change in the Justice Gap Fund protocols. Following review of all comments, the Joint Committee will finalize its recommendation to the Board of Governors at its September, 2009 meeting.

LENGTH OF PUBLIC COMMENT PERIOD

The Joint Committee recommends a 45-day comment period beginning July 17, 2009.

PERSONNEL/BUDGET IMPLICATIONS

The costs for this proposal are covered under current approved budgets.

BOARD BOOK/ADMINISTRATIVE MANUAL IMPACT

None

PROPOSED RESOLUTION

Should the Board Committee on Stakeholder Relations agree to approve the request from the Task Force on Lawyer Support for Legal Services, it would be appropriate to adopt the following resolution:

RESOLVED, that the Board Committee on Stakeholder Relations authorizes staff to make available for public comment for a period of 45 days the proposal to add a recognition level for those contributing \$1,000 or more to the Justice Gap Fund, and otherwise to maintain other Justice Gap Fund procedures;

FURTHER RESOLVED, that this authorization for release for public comment is not, and shall not be construed as, a statement or recommendation of approval of the proposed item.