

AGENDA ITEM

MARCH 163

Legal Services Trust Fund Program:
Set Amount for Distribution for
2008-2009 IOLTA Grants

DATE: February 8, 2008

TO: Members of the Board Committee on Stakeholder Relations
Members of the Board of Governors

FROM: Stephanie Choy, Managing Director, Legal Services Trust Fund Program

SUBJECT: Legal Services Trust Fund Program:
Set Amount for Distribution for 2008-2009 IOLTA Grants

Executive Summary

Each year, the Board of Governors sets the grant amount available for distribution from interest on lawyers' trust accounts ("IOLTA"). Since 1992, the distribution amount has been calculated by using a process that determines the amount of prior year's revenue, subtracts administrative costs, then adjusts the net revenue figure by an amount by which cash on hand as of June 30 is projected to be more or less than a specific percent of the prior year's net revenue. This year, the amount of revenue generated in IOLTA accounts will be impacted by the legislation that requires banks to treat their IOLTA accounts comparably to their similarly situated accounts, and by attorney contributions to the new Justice Gap Fund. While we previously had hoped to more than double IOLTA revenue through the comparability requirements, the precipitous fall in interest rates between November and now significantly impacts projected revenue. Fortunately, receipts from the new Justice Gap Fund will increase funding. Because we are still in the midst of implementing the new comparability requirements and are watching rates closely, and because the State Bar has not tallied all of the Justice Gap donations, we will provide a recommended amount for distribution at the time of the Board meeting.

Questions regarding this agenda item should be directed to Stephanie Choy, Managing Director, Legal Services Trust Fund Program (415) 538-2249.

BACKGROUND

The Board of Governors each year sets an amount for distribution of IOLTA grants to be administered by the Legal Services Trust Fund Program. That amount is distributed for the grant year beginning July 1. The amount is set in March or April, depending on the

board meeting schedule, so that the Trust Fund Commission can notify recipient programs of a grant amount, give them 30 days to prepare proposed budgets, review the budgets, fully execute grant agreements, and begin to distribute funds in July.

For each of the first eight grant periods (1984 - 1992), the amount approved for distribution was the total money projected to be on hand as of the end of the year, less administrative costs during the same period. In other words, the program collected money for a year and then gave it out in the following year. At the beginning of the grant year, 100% of the money for grants was “on hand” for grants the following year. While grants were disbursed in quarterly payments, the money that came in would be held for the following year’s grants, so the program always had on hand about one full year’s revenue.

In response to low interest rates and declining revenue, in 1992 the Board of Governors adopted the recommendation of the Legal Aid Association of California and the Trust Fund Commission to hold less than a year’s cash on hand to enable releasing more funds for immediate distribution. That year, the target cash on hand was set at 75 percent of the prior year’s grant. In response to subsequent and dramatic interest rate declines, the target was reduced to 60 percent and then to 30 percent, where it remained for a 12-year period until 2006, when the Board of Governors (on the recommendation of the Trust Fund Commission) adopted a proposal to revise the cash on hand policy to build a reserve to stabilize grant awards in lean years.

Under this cash on hand policy, when revenue is higher than the prior year, grants are held to a smaller increase so as to increase cash on hand. In years when revenue is decreasing, the cash on hand can be spent down in an attempt to maintain grant levels. The following three-step calculation has been applied for years in which revenue is increasing:

- The amount for distribution will be allowed to increase by 5% before increasing cash on hand above the current 30% maximum.
- Funds representing the next 10% increase will go to building a stabilization reserve.
- In years when revenue increases more than 15%, the additional amount will be divided equally between increased grants and increased reserve, up to a cap of 75 percent of the previous year’s available funds.

CURRENT AND PROJECTED REVENUE AND CASH ON HAND

In the past, the Trust Fund Program used the first two quarters of actual prior year revenue, and two quarters of estimated revenue (as adjusted for anticipated increases or decreases), to arrive at a projected amount for distribution the following year. However, the LSTFP anticipates increased IOLTA revenue, both as a result of the new IOLTA “comparability” rule and from the new Justice Gap Fund. Therefore, last year’s numbers need to be adjusted for the anticipated gain from the implementation of the comparability requirements.

We are working with almost 300 financial institutions to determine the appropriate bank rates for each institution. (Rates often vary depending on the average daily balances held in each IOLTA account.) Until that process is complete, it is difficult to accurately assess the amount by which IOLTA revenue will increase. This is particularly difficult at this time, given that the Federal Funds Target Rate (which is one indicator of bank rates) has decreased 1.5 points in the last three months, and is anticipated to drop further in March. Had comparability not been implemented this year, we might be projecting a significant decrease in IOLTA revenue in the 2008 – 2009 grant year. Fortunately, while decreasing interest rates reduces our anticipation of an increase in revenue, we still project a moderate increase in IOLTA revenue due to comparability. At the March meeting, we will be able to provide a conservative recommendation for distribution of grant funds based on best-case and worst-case interest scenarios.

By the same token, to date we have received total Justice Gap Fund revenue of \$762,042 from 8,363 lawyers. Because only 68% of attorneys' dues have been entered into the database, we do not have an accurate prediction of the total revenue that will be generated, but we hope that the number might reach \$1 million! We will have close to a final number at the time of the March meeting, and that figure will be calculated into the recommendation regarding the 2008 – 2009 IOLTA distribution.

Because money will continue to be disbursed as it is received, the Trust Fund Commission will monitor revenue closely throughout the year and will return with recommendations if there are significant variances from the projections. The agreement signed with grant recipients includes language to make clear that distribution of grant funds is contingent upon the Legal Services Trust Fund Program having sufficient money on hand from IOLTA revenue to make the scheduled payments. In addition, the Trust Fund Commission will continue to evaluate the effectiveness of the procedures used this year and determine what changes should be made in the future.

RECOMMENDATION

We will provide our recommendations regarding distribution of grants, based on actual experience and qualified projections for the new comparability laws, at the March meeting.

BOARD BOOK/ADMINISTRATIVE MANUAL IMPACT: None.

FISCAL/STAFF IMPACT: None.

PROPOSED RESOLUTION

The Board Committee on Stakeholder Relations will have information for a recommendation to the Board on a proposed resolution at the time of the March meeting.