



THE STATE BAR OF CALIFORNIA

DATE: October 22, 2010

TO: Members, Board Committee on Stakeholder Relations

FROM: Jon Streeter, Chair; Karen Goodman, Committee Member; Mary Lavery Flynn, Director, Office of Legal Services; and Stephanie Choy, Managing Director, Legal Services Trust Fund Program

SUBJECT: Emergency Legal Services Voluntary Fund [AB 2764]: Implementation Process

EXECUTIVE SUMMARY

At its first meeting of the year, the Board Committee on Stakeholder Relations discussed the proposed process for implementing the new Emergency Legal Services Voluntary Fund, which is designed to help cushion the impact of significant reductions in IOLTA funding caused by the recession. Committee members agreed that it would be helpful to have a written agenda item for their November meeting to:

- review the provisions in AB 2764 and prior legislation that call for establishment of the new fund;
- provide an overview of current funds and the distribution formula used for those funds; and
- explain the process the Bar will go through to implement this new legal services funding source.

Background on Emergency Legal Services Fund

This year's State Bar's dues bill, AB 2764, established the Emergency Legal Services Voluntary Fund. The bill provides that the funds shall be used "for the purposes established pursuant to Section 6033..." By referencing Section 6033, the bill incorporated the following language from AB 2301 (2006):

There is an increasingly dire need for legal services for poor Californians. Due to insufficient funding, existing programs providing free services in civil matters to indigent and disadvantaged persons, especially underserved groups such as elderly, disabled, children, and non-English-speaking persons, do not adequately meet the needs of these persons.

AB 2301 called on the State Bar to facilitate contributions to legal services, and led to the Bar's launching of the Justice Gap Fund for 2007.

While AB 2301 is intended to help close a long-recognized gap between available funding for legal services and the need for those services, AB 2764 addresses the urgent additional gap in need and available legal services that has resulted from the economic downturn. AB 2764 provides that ten dollars (\$10) of the membership fee for both active and inactive members shall be allocated to the "Temporary Emergency Legal Services Voluntary Assistance Option", except to the extent that a member elects not to support those activities. The fee statement submitted to all State Bar members will allow attorneys to opt out of this contribution, and will be included with other "opt out" provisions, such as the elimination of bias fund. This provision is to remain in effect until January, 2014, unless otherwise changed by statute.

Description of the Legal Services Funding Crisis:

The new Emergency Legal Services Fund was included in the Bar's dues bill because of the significant funding crisis being faced in the state and across the country. The federal Legal Services Corporation (LSC) has said that legal services funding is at a 35-year low, and a recent international study found that civil legal services programs in the United States lag behind all other industrial nations and are comparable to third world countries.

The recent recession exacerbated an already difficult situation. The Bar's IOLTA program relies on interest earned on lawyers' IOLTA trust accounts, but those interest rates are at historic lows. The Bar has reduced its IOLTA grants 10% and then 15% over the last two years, and is faced with a potential 50% cut next year if more is not done to increase available funds.

During last April's legislative hearing called by Assembly Judiciary Committee Chair Mike Feuer, significant testimony emphasized the impact that lack of funding is having in areas across the state. The Bar was thanked for its implementation of the Justice Gap Fund, which has brought in over \$2.5 million for civil legal services over the last three years. However, after receiving over \$1 million in grants the first year, contributions have dropped in the two succeeding years – just over \$800,000 in FY 2009, and below \$750,000 for FY 2010.

As a result of these factors, and also drops in government, foundation and private funding, legal services programs across the state are facing reductions in

services and staff lay-offs – at a time when client need has increased, including significant levels of foreclosures and foreclosure-related evictions, as well as domestic violence and elder abuse concerns.

Implementation of the new Emergency Legal Services Fund will provide significant help to the nearly 100 legal aid organizations receiving funds from the Trust Fund Program, and will go a long way toward cushioning the impact of the projected IOLTA cuts next year.

Overview of Funding Distribution from the Legal Services Trust Fund Program:

The State Bar’s Legal Services Trust Fund Program currently administers three funds – IOLTA, Equal Access Funds and Justice Gap Funds:

- **Interest on Lawyers’ Trust Accounts:** When lawyers hold client funds that are too small in amount or held too briefly to earn interest for the client or third party, those funds are pooled in an IOLTA account, and interest generated from those accounts is distributed by the State Bar to qualified legal aid programs throughout the state. In California, this program is governed by statute, Business & Professions Code 6210 et seq.
- **Justice Gap Fund:** This fund is created through a \$100 option on State Bar dues bill. The Board of Governors approved distribution of the fund according to the IOLTA distribution formula. The fund raised \$1 million the first year, but has dropped to just over \$700,000 per year.
- **Equal Access Funds:** The Equal Access Fund consists of a general fund appropriation and filing fee monies. Distribution for the Equal Access Fund follows the IOLTA formula distribution with the exception that 10% of all funds are dedicated to supporting legal services programs providing services to self-represented litigants in collaboration with local courts, called “Partnership Grants.”

With slight modifications, all three of these funds are distributed using the statutory IOLTA distribution formula, as follows:

Setting Amount for IOLTA Distribution: The Board of Governors sets and authorizes a total amount to be distributed for each grant year (July 1 through June 30), based on information provided by staff concerning the amount available for distribution. This figure is arrived at using a combination of actual and projected revenue, less administrative expenses.

Allocation of Funds: The system for allocating the money among programs is defined in §6216 of the California Business and Professions Code.

- **Support Centers:** First, 15% of the amount for distribution is allocated to statewide “support centers” and is divided equally among all the qualified support centers.
- **Legal Services Projects:** The remaining 85% of the money goes to “legal services projects” that provide direct legal services to indigent persons in California. The money is divided among the 58 California counties based on the state’s poverty population. The amount distributed to each county is divided among the qualified legal services projects based on how much they spent in qualified expenses during the previous calendar year.
- **Adjustments for Pro Bono Programs:** Counties with pro bono programs set aside 10% of the county’s money for the pro bono allocation. A project whose principal means of delivering legal services is through the contributions of private volunteer attorneys receives additional funding. Among the qualified pro bono projects in the county, that 10% set aside is divided based on how much money they spent in the previous calendar year. If a county has no qualified pro bono programs, no money is set aside.

Process for Implementing Emergency Legal Services Fund:

The Board Committee on Stakeholder Relations will take the lead to implement this Emergency Fund. In doing so, the Committee expects to consult with the Legal Services Trust Fund Commission as well as with the California Commission on Access to Justice and the Legal Aid Association of California (LAAC).

As is made clear in the legislative history of AB 2764 and at the legislative hearing held by the Assembly Judiciary Committee last April, there is a great need to cushion the impact of IOLTA funding cuts to all the legal services programs across the state that rely on those funds. At its October 16, 2010 meeting, the Stakeholder Relations Committee discussed whether the Emergency Funds should be distributed using the statutory formula for distribution of IOLTA funds. The Committee concluded that, while AB 2764 is silent on any specific formula for distribution, the rationale for making the Emergency Funds available clearly suggests an expectation that we will follow the IOLTA distribution formula. Accordingly, the sense of the Committee, for now, is that the best way to cushion the impact of cuts in legal services funding is to distribute the new Emergency Funds using the same statutory distribution formula that is used for IOLTA, as described above. Going forward, if after further study and consultation with key stakeholders in Sacramento -- in light of

experience with the “opt out” mechanism for Emergency Funds, whether there continues to be a shortfall in the Justice Gap Fund, and where the most pressing legal services needs are -- the Committee were to conclude at some future point that some different formula for distributing the Emergency Funds would best address the state’s most pressing legal services needs, it is possible we could recommend taking a different approach. This year, however, we have no plans to do so.

The Committee anticipates that, in 2011, the new Emergency Funds will be added to the Justice Gap Fund, since those contributions will be received at the same time. Distribution of those funds will be included in the March agenda item on distribution of IOLTA for the Board Committee and the Board, as has been true for the past three years since the Justice Gap Fund was established.

The Joint Committee on the Justice Gap Fund will continue their active efforts over the coming months to maximize the revenues available for distribution, and the Bar will keep the legislature updated on the funds made available as a result of this important new Fund.