



# The State Bar of California

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**OPEN SESSION**  
**AGENDA ITEM**  
**6.4 JULY 2024**  
**BOARD OF TRUSTEES**

**DATE:** July 18, 2024

**TO:** Members, Board of Trustees

**FROM:** Doan Nguyen, Program Director, Office of Access & Inclusion  
Heidi Slater, Acting Program Manager, Office of Access & Inclusion

**SUBJECT:** Approval of Interest on Lawyers' Trust Accounts Grant Distribution for 2025

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## EXECUTIVE SUMMARY

Annually, the Board of Trustees sets the grant amount available for distribution from Interest on Lawyers' Trust Accounts (IOLTA) to qualified nonprofit legal aid organizations in California. Interest revenue generated by these accounts is the main source of funding for these grants, referred to as IOLTA grants. Over the years, these funds have been supplemented by Justice Gap Fund donations and optional contributions from State Bar licensees as part of their annual licensing fee payments.

After careful review of the revenue projections and consideration of the needs of low-income Californians and legal aid programs, the Legal Services Trust Fund Commission recommends a calendar year 2025 grant distribution of \$252 million, which is a 164 percent increase over the 2024 grant distribution of \$95.3 million. With this recommendation, the IOLTA reserve account, which was established in 2023, will be maintained at \$25 million. All grant funds are exempt from the State Bar's reserve policy.

The Board must approve the commission's recommendation unless it makes a finding in writing that the recommendation conflicts with a statutory, fiduciary, or legal obligation of the State Bar. The Office of General Counsel has reviewed this recommendation and agrees that the proposed distribution does not conflict with any statutory, fiduciary, or legal obligation of the State Bar.

## **RECOMMENDED ACTION**

The commission proposes that the Board of Trustees approve a 2025 grant distribution of \$252 million and maintain \$25 million restricted reserve at the end of 2024.

## **DISCUSSION**

### **IOLTA STATUTE**

In 1981 the Legislature authorized the IOLTA program under Business and Professions Code sections 6210–6228 (IOLTA Act). The IOLTA Act requires lawyers to place nominal client funds, or funds that are on deposit for short periods of time, into interest- or dividend-bearing accounts in which the interest or dividend is paid to the State Bar.<sup>1</sup> Such accounts can only be kept at approved financial institutions certified by the State Bar to ensure compliance with the IOLTA Act.

The interest earned from pooled IOLTA accounts is remitted to the State Bar. The State Bar subtracts its costs in administering the program and then distributes the approved fund amount (based on the IOLTA statutory formula) to organizations that provide free civil legal aid in California to indigent persons,<sup>2</sup> or legal training, legal technical assistance, and advocacy support to the organizations that directly serve indigent persons.

### **DISTRIBUTION OF IOLTA FUNDS AND RESERVE POLICY**

Each year, the commission recommends for approval to the Board of Trustees the amount of IOLTA grants to be made available for distribution in the following calendar year.

The Board of Trustees adopted State Bar Rule 3.683 on November 16, 2023, which sets forth a new IOLTA reserve policy. Under the new policy, the targeted distribution amount for the next year is set at the projected IOLTA revenue for the current year minus State Bar administrative costs and any amount set aside for the reserve. The new policy also established parameters for the reserve, including setting a maximum permissible reserve of \$25 million to maintain emphasis on grant distribution while ensuring the ability to stabilize and mitigate the impact on grantees when revenue is decreasing; guidance to make minimum contributions to the reserve in each year of increasing revenue until the reserve hits the maximum amount; and the creation of a separate restricted account for the reserve funds so it is clear how much has been set aside and when, or under what circumstances, those funds can be accessed.

Given the very large increase in anticipated revenue in 2024, the commission strongly recommends maintaining the reserve of \$25 million.

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<sup>1</sup> If there is a large sum of money involved, or it will be held for a long time, and thus could yield meaningful interest for a client, attorneys should hold the client's funds in an individual account, designated as a Client Trust Account, and so that the interest earned goes to the client.

<sup>2</sup> Per the IOLTA Act, an “indigent person” is an individual 1) whose income is not higher than 200 percent of the federal poverty threshold, or 2) eligible for Supplemental Security Income or free services under the Older Americans Act (seniors 60+) or Developmentally Disabled Assistance Act (Business and Professions Code section 6213(d)).

## **IOLTA COMPLIANCE AND LEADERSHIP BANK PROGRAM**

Financial institutions participating in the IOLTA program have three interest rate options for IOLTA accounts:

1. Comparable rates where financial institutions treat IOLTA accounts the same as similarly situated accounts by offering comparable interest rates;
2. Established Compliance Rate (ECR), which was set by the commission in 2009 and required financial institutions not paying comparable rates as set forth above to provide interest rates for IOLTA accounts of at least 68 percent of the Federal Funds target rate or 0.68 percent, whichever is higher net of reasonable fees; or
3. Leadership Bank program, which set interest rates at ECR or higher with a waiver of all charges and fees.<sup>3</sup>

In 2019, the State Bar established the Leadership Bank program to help sustain revenue by incentivizing banks to offer a minimum interest rate on IOLTA accounts while also eliminating associated fees. In exchange, the State Bar recognizes these banks on its website for attorneys' consideration when opening a client trust account.

## **CHANGES TO THE FEDERAL FUNDS RATE**

Interest rates have remained high throughout 2023 and into 2024. The federal funds interest rate is currently at 5.5 percent, which is a 23-year high where it has been since July 2023. Earlier this year, the Feds signaled that it would likely cut rates three times this year; however, at the latest Feds meeting on June 12, interest rates remained unchanged, and the revised outlook is now one rate drop by the end of 2024. Rate reductions beyond the near term, remain uncertain and difficult to predict.

## **JUSTICE GAP FUND AND OTHER CONTRIBUTIONS**

IOLTA funds are supplemented from sources other than trust account interest revenue, primarily voluntary donations remitted to the State Bar pursuant to various statutory provisions. All of these sources are combined into the Justice Gap Fund and are currently added to IOLTA revenue and distributed by formula.<sup>4</sup> The total revenue for the Justice Gap Fund is typically between \$5 to 10 million annually.

## **RECOMMENDED 2025 IOLTA DISTRIBUTION AND TARGET RESERVE**

The commission proposes that the Board of Trustees approve a 2025 grant distribution of \$252 million and maintain \$25 million restricted reserve at the end of 2024.

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<sup>3</sup> To develop a stable source of interest revenue and in recognition of banks' commitments to increase funding for legal aid, the State Bar established the Leadership Bank program in 2019. The State Bar's ongoing efforts to maintain enrollment in the Leadership Bank program has successfully mitigated some of the loss in IOLTA revenue that would have otherwise occurred over the past two years.

<sup>4</sup> The State Bar, in collaboration with the Legal Aid Association of California, is seeking to amend Business and Professions Code section 6033 to provide the Commission with the flexibility to use revenue collected through the attorney licensing fee statement for the Justice Gap Fund to fund emerging and urgent needs impacting client communities. Currently these funds are distributed via the IOLTA formula. If passed, 2025 Justice Gap Fund revenue will not be included in the 2026 IOLTA distribution.

## **FORECASTING IOLTA REVENUE**

Based on the current revenue trends and analysis of bank remittances in the past year, the commission projects 2024 IOLTA interest revenue of \$169.22 million and total revenue of \$188 million. The projection is based on actual interest revenue remitted through March 2023 and anticipated interest and donation revenue for the remainder of 2024.

## **RECOMMENDATION TO THE BOARD OF TRUSTEES**

The commission under-forecasted IOLTA revenue by \$73.01 million in 2023, increasing the year end fund balance to \$193.24 million at the end of 2023. Given this surplus and the large increase in IOLTA revenue in 2024, the commission recommends a 2025 grant distribution of \$252 million and maintaining a reserve of \$25 million. At a time when the need for free legal services is more critical than ever, this sizable increase from 2024 will enable grantees to cover significant budget shortfalls, such as cuts to state, local, and federal funding as well as from private philanthropy. Moreover, the reserve will provide grantees with some funding stability beyond 2025, which will encourage grantees to adopt long-term strategies for recruitment and retention as well as expanded services to vulnerable and indigent Californians.

## **PREVIOUS ACTION**

None

## **FISCAL/PERSONNEL IMPACT**

Administration of the IOLTA program is fully funded through IOLTA revenue. The recommended distribution is net of the \$3.98 million projected cost to administer the program; the actual amount distributed to grantees in 2025 will be the same as the distribution amount stated herein. Should staff determine that the amount is insufficient to cover the share of staff salaries and other expenses necessary to administer this program, staff will return to the Commission and Board to request approval to allocate additional amounts from the reserve. This recommendation does not affect the State Bar's general fund budget. No additional staff or other expenses will be incurred as a result of this recommendation.

## **AMENDMENTS TO RULES**

None

## **AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL**

None

## **STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS**

None

## **RESOLUTIONS**

Should the Board of Trustees concur, it is:

**RESOLVED**, that the Board of Trustees approve the 2025 IOLTA distribution in the amount of \$252 million and maintain a reserve of \$25 million at the end of 2024.

#### **ATTACHMENTS LIST**

- A.** Distribution Spreadsheet of Revenue and Expenses – Ten Year Financial Data
- B.** IOLTA 2023 Revenue Projections vs. Actual Detail
- C.** IOLTA 2024 Revenue Projections and Grant Distribution Detail
- D.** History of Legal Aid Grants