



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 20-178

For business meeting on September 25, 2020

Title

Equal Access Fund: Distribution of One-Time Funding for Housing Issues

Agenda Item Type

Action Required

Effective Date

September 25, 2020

Rules, Forms, Standards, or Statutes Affected

None

Date of Report

September 8, 2020

Recommended by

Legal Services Trust Fund Commission
Banafsheh Akhlaghi, Chair

Contact

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Executive Summary

Assembly Bill 83 (Stats. 2020, ch. 15, Sec. 1), effective June 29, 2020, amended Government Code section 12531(d) to provide for a one-time \$31 million allocation to the judicial branch to augment the Equal Access Fund to provide legal services in landlord-tenant matters. The Budget Act provides that the Judicial Council allocate these funds to the State Bar, which distributes the funding to eligible legal services agencies. The State Bar's Legal Services Trust Fund Commission requests approval of the distribution of the \$31 million, minus administrative costs, according to the formula specified in the Budget Act.

Recommendation

The Legal Services Trust Fund Commission recommends that the Judicial Council, effective, September 25, 2020:

1. Direct staff to distribute Equal Access Funds to the State Bar for distribution to legal services agencies that meet the eligibility requirements stated in the Budget Act; and
2. Report back to the Judicial Council at its May 2021 meeting on the grants made.

Relevant Previous Council Action

The Budget Act requires the Judicial Council to distribute Equal Access Fund monies to legal services providers through the State Bar Legal Services Trust Fund Commission. The State Bar created the commission to administer the law regulating attorneys' interest-bearing trust accounts (IOLTAs [Interest on Lawyers' Trust Accounts]). (Bus. & Prof. Code, § 6210 et seq).

The Budget Act states that “[t]he Judicial Council shall approve awards made by the commission if the council determines that the awards comply with statutory and other relevant guidelines. ...”¹ The Judicial Council may establish additional reporting or quality control requirements.” All recipients of Equal Access Funds submit annual reports on the services they provide.

The Chief Justice, as chair of the Judicial Council, appoints one-third of the voting members to the commission: five attorney members and two public members, one of whom is a court administrator. The Chief Justice also appoints three nonvoting judges to the commission: two trial court judges and one appellate justice.

The Budget Act of 2019 provided a one-time \$20 million allocation to the judicial branch to augment the Equal Access Fund. Funds are to be used for qualified legal services providers and support centers to provide legal services to low-income persons for landlord-tenant issues, including legal assistance for counseling, renter education programs, and prevention of evictions. At its business meeting on July 24, 2019, the Judicial Council authorized staff to distribute that one-time allocation to the State Bar for distribution to legal services agencies that meet the eligibility requirements stated in the Budget Act. The Judicial Council accepted a report on the distribution of the funds at its meeting on January 17, 2020.

The Judicial Council has approved the distribution of Equal Access Funds proposed by the Legal Services Trust Fund Commission for the past 20 years.

Analysis/Rationale

Background

In 2012, California entered a national multistate settlement with the country's five largest loan servicers. This agreement, the National Mortgage Settlement, stemmed from successful resolution of federal court action (Consent Judgment, *United States v. Bank of America* (No. 1:12-cv-00361, Banzr. D.C. Apr. 4, 2012)). AB 83, authored by the Committee on Budget and enacted on June 29, 2020, provides for distribution of the funds from the National Mortgage settlement. Government Code section 12531(e)(1)(A) was amended to provide that \$300 million be administered by the California Housing Finance Agency for housing counseling services and for mortgage assistance to qualified California households. The remainder of the funds are to be distributed as follows:

¹ The text of AB 83 is available at Link A. Government Code section 12531 is available at Link B.

(B) Thirty-one million dollars (\$31,000,000) to the Judicial Council for distribution through the State Bar to qualified legal services projects and support centers to provide eviction defense or other tenant defense assistance in landlord-tenant disputes, including preeviction and eviction legal services, counseling, advice and consultation, mediation, training, renter education, and representation, and legal services to improve habitability, increase affordable housing, ensure receipt of eligible income or benefits to improve housing stability, and prevent homelessness. These funds shall be allocated as follows:

(i) Seventy-five percent shall be distributed to qualified legal services projects and support centers that currently provide eviction defense or other tenant defense assistance in landlord-tenant disputes as set forth in this subparagraph.

(I) To receive funds, a program shall be eligible for 2020 Interest on Lawyer Trust Fund Account (IOLTA) funding. Each eligible program shall receive a percentage equal to that legal services project's 2020 IOLTA allocation divided by the total 2020 IOLTA allocation for all legal services projects eligible for the funding.

(II) To ensure meaningful funding, a minimum amount of fifty thousand dollars (\$50,000) shall be allocated to an eligible program unless the program requests a lesser amount, in which case any funds that would have otherwise been allocated to the program shall be distributed proportionally to the other qualified legal services projects.

(III) These funds shall be distributed as soon as practicable and shall not supplant existing resources.

(ii) Twenty-five percent shall be allocated through a competitive grant process developed by the Legal Services Trust Fund Commission of the State Bar to award grants to qualified legal service projects and support centers.

(I) The grant process shall ensure that a qualified legal service project or support center to receive funding demonstrate that funds received will be not used to supplant existing resources and will be used to provide services to tenants not otherwise served by that qualified legal service project or support center.

(II) The commission shall determine grant awards, and preference shall be given to qualified legal aid agencies that serve rural or underserved communities which serve clients regardless of immigration or citizenship status.

(III) Any funds not allocated pursuant to this competitive grant process shall be distributed pursuant to clause (i).

(2) No more than 5 percent of the allocations...shall be spent for the administration of those services.

(Gov. Code, § 12531(e)(1)(B)–(2).)

Based on this language, the Legal Services Trust Fund Commission staff has contacted all 2020 IOLTA-funded programs in California. Each of these programs was previously approved as eligible for Equal Access Funds by the Judicial Council at its meeting on September 24, 2019. Programs have been surveyed to determine whether they currently “provide eviction defense or other tenant defense assistance in landlord-tenant [rental] disputes, including pre-eviction and eviction legal services, counseling, advice and consultation, mediation, training, renter education, and representation and legal services to improve habitability, increase affordable housing, ensure receipt of eligible income or benefits to improve housing stability, and prevent homelessness” (Gov. Code, § 12531(e)(1)(B)).

Based on the results of that survey, the formula will be applied so that eligible programs will receive funds in a percentage equal to their 2020 IOLTA allocation divided by the total 2020 IOLTA allocation for all legal services projects and support centers eligible for this funding. (Gov. Code, § 12531(e)(1)(B)(i)(I).)

A minimum grant of \$50,000 will be allocated to each eligible program unless the program requests a lesser amount, in which case the additional funds shall be distributed proportionately to the other qualified legal services projects and support centers. (Gov. Code, § 12531(e)(1)(B)(i)(II).)

Programs will then be asked to submit a budget and plan to the Legal Services Trust Fund Commission for spending the funds in accordance with the statute and to document that they will not be using these funds to supplant existing funding.

A separate request for proposals for the 25 percent discretionary funds has been issued and proposals will be reviewed in accord with Gov. Code. § 12531(e)(1)(B)(ii)(I) and (II).

The Legal Services Trust Fund Commission will approve the final formula allocations and the competitive grants. The programs will be required to enter into a grant agreement with the State Bar that provides that (1) funds will not supplant existing resources, (2) the program will track grant funds separately from other grant funds, (3) the program will separately track and report on clients served and main benefits achieved for matters funded with these grants, and (4) the program will report to the State Bar at the conclusion of the grant period. Those results will then be provided to the Judicial Council. Grants will commence on January 1, 2021.

Distributing the \$31 million in funds to the commission will allow it to carry out the terms of the Budget Act by distributing the funds as quickly as possible to legal services providers who supply legal assistance to prevent homelessness. This is a one-time allocation of funding, which follows a similar model as the one-time housing allocation under the Legislature in the Budget Act of 2019.

Policy implications

This recommendation helps implement Goal I of the Judicial Council’s Strategic Plan for California’s Judicial Branch—Access, Fairness, and Diversity—by increasing representation for low-income persons.

Comments

The statutory scheme does not contemplate public comment.

Alternatives considered

There are no viable alternatives to distributing the funds according to the recommendations of the Legal Services Trust Fund Commission. The Budget Act requires the council to approve the distribution if it finds that the statutory and other relevant guidelines are met.

Fiscal and Operational Impacts

These grants require no court implementation. Council staff will work with the Legal Services Trust Fund Commission to oversee administration of the Equal Access Fund, including fulfilment of requirements for reports on the commission’s administration of the fund. Staff will also provide support to the commission—including the third of its members appointed by the Chief Justice—to facilitate administration of the Equal Access Fund.

The recommendations contained in this report will have no direct fiscal effect on the courts; nevertheless, the courts will indirectly benefit from assistance provided to self-represented litigants. Council staff support will be covered by the provision for administrative costs in the appropriation.

Attachments and Links

1. Link A: Assem. Bill 83,
https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB83
2. Link B: Gov. Code, § 12531,
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=12531&lawCode=GOV