June 16, 2015

Dear IOLTA Grantee:

Over the course of the last six months, the IOLTA Board engaged in a strategic planning initiative to review existing grant policies and funding allocations. Laura Otten, Ph.D., Director of The Nonprofit Center of LaSalle University’s School of Business, facilitated the meetings and assisted in the writing of the enclosed report, which contains the conclusions reached.

While much of the Board’s grant-making program will remain the same, the changes described in the report will be effective beginning in grant year 2016-17. The grant applications for grant year 2016-17 will be available in November and December 2015, depending on the grant program.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Stephanie S. Libhart
Executive Director
Strategic Planning Report

The IOLTA Board extends its appreciation to Laura Otten, Ph.D. of the Nonprofit Center at LaSalle University’s School of Business for facilitating the Board’s strategic planning meetings and her assistance in writing this report.

Background
From December 2014 through May 2015, the Board and staff of IOLTA engaged in an unprecedented strategic planning process to take a critical, holistic look at the Board’s grant-making priorities and funding allocations that have been in place for nearly 20 years. Specifically, the Board evaluated (1) the current funding allocations between the two funding priorities: legal services to the poor and law school clinical education; (2) the current funding allocation between the two legal services priorities, the Pennsylvania Legal Aid Network (“PLAN”) and the specialized legal services grantees; and, (3) various existing grant policies. To accomplish this end, in addition to its regularly scheduled quarterly meetings, the Board held three face-to-face, five-hour sessions that involved the assessment of reams of data¹ and careful and thorough discussion as to the best courses of action for future fulfillment of IOLTA’s mission “to support the provision of civil legal services to the Commonwealth’s poor and disadvantaged.”

The IOLTA program was initially created in 1988 by the General Assembly’s enactment of the Interest on Lawyers Trust Accounts Act. 62 Pa. C.S.A. § 4021. Under the statutory program, IOLTA funds supported the delivery of legal assistance and the administration of the IOLTA program. In 1996, the Supreme Court adopted Rule 1.15(d)-(i) which established a comprehensive IOLTA program exclusively under the Court’s control and superseded the legislature’s Interest on Lawyers Trust Accounts Act. The Supreme Court identified four possible areas that IOLTA might fund: civil legal assistance to the poor and disadvantaged in Pennsylvania, clinical and internship programs administered by Pennsylvania law schools, the administration and development of the IOLTA program, and the administration of justice in Pennsylvania. Historically, beyond funding its own operating expenses, IOLTA has elected to fund the first two options: providers of civil legal aid and law schools. The focus of this planning process was on these two funding priorities.

Funding Pennsylvania Law Schools
Since 1997, IOLTA has funded clinics and/or internships at all of the law schools in Pennsylvania to achieve two goals: (1) to ensure that students have an opportunity to earn practical lawyering experience and (2) to

¹ Data included, among other things, interviews with the Deans and other personnel of Pennsylvania’s law schools, data on student participation in law schools’ experiential learning opportunities, such as clinics and externships, prior years’ proposals and grant reports, an interview with a member of the American Bar Association Council on Legal Education, law schools in other states, other state IOLTA organizations, and more.
expose students to the legal problems faced by the poor in the hopes of inculcating in students a desire to provide pro bono services throughout their professional lives.

Planning for the Board’s strategic planning effort was underway when, in early Fall 2014, two events occurred which impacted Pennsylvania’s law schools and expanded the scope of the Board’s strategic review of funding law school clinics and internships. First, Pennsylvania State University received approval from the American Bar Association (“ABA”) to operate two independent and separately accredited law schools, increasing the number of law schools in Pennsylvania from eight to nine. Second, the ABA Section of Legal Education and Admissions to the Bar revised the Standards for Approval of Law Schools to require students to earn at least six credits of experiential learning in order to graduate, beginning with first-year students in 2016-17.

In advance of the Board’s strategic review meeting where law school funding was discussed, Board Chair Bryan S. Neft and Executive Director Stephanie Libhart held individual meetings with the Dean and other representatives from each law school. Additionally, Dean Ken Gormley, Duquesne University School of Law, Dean James Houck, Penn State Law, Dean William “Chip” Carter, University of Pittsburgh School of Law, and Dean John Gotanda, Villanova University School of Law attended the Board’s strategic review session on May 13, 2015. The four Deans offered remarks on the importance of IOLTA funding to the law schools and responded to questions from Board members.

Impact of new ABA Experiential Learning Requirements
The Board concluded that the first goal, providing students an opportunity to gain practical lawyering experience, is now satisfied by the new ABA requirement that students must earn six credits of experiential learning. However, the Board was persuaded by the Deans’ assertion that law school poverty clinics and internships have become an integral part of the legal aid system in Pennsylvania, serving as an important referral source for legal aid offices. The Board unanimously agreed to continue funding law schools but with a new goal of expanding access to justice and continuing the existing goal of fostering a pro bono ethic among law students. There were, however, two provisos. First, each law school will be required to provide evidence demonstrating its contribution to the fulfillment of IOLTA’s mission. Second, IOLTA will continue to discuss and scrutinize the value funding law schools lends to IOLTA’s mission, which may, in turn, lead to changes at some point in the future.

In addition to the existing reporting requirements, the Board identified the following benchmarks for law schools to begin reporting in 2016-17:

- the number of cases handled by IOLTA-funded clinics and interns;
- the number of cases referred to IOLTA-funded clinics by their local legal services provider(s);
- the number of graduates one, three and five years out of law school who are handling pro bono cases, the number of cases handled by those graduates and whether the graduates participated in IOLTA-funded programming in law school;
- the amount of university dollars leveraged as a result of IOLTA’s investment (as was repeatedly noted by the Deans) and how that additional funding was used to enhance IOLTA-funded activities; and
• any additional data that the law schools wish to provide in narrative or tabular form that will demonstrate how the schools are helping to fulfill IOLTA’s mission.

Finally, indigent Pennsylvanians living in areas of the state without a law school receive no benefit from the substantial amount of IOLTA dollars allocated to support clinics. As a result, the Board decided that law schools using IOLTA funds to finance summer internships will be required to include Northwestern Legal Services offices and North Penn Legal Services offices on the list of opportunities for IOLTA-funded summer internship placements. There will be no requirement to actually place the students in those offices but the opportunity must be offered.

General Allocation of Funding to Law Schools
The Board considered various alternative methods of allocating funds to each law school. In the end, it was decided that allocating the same amount to each school was fair and appropriate despite concerns that some law schools enjoy greater fundraising prospects than others and student enrollment in the various IOLTA-funded clinics and other measures vary widely from school to school.

Eight Grantees Increase to Nine
On the question of funding nine law schools, the Board considered a number of ways to accommodate a ninth law school grantee. It was decided that the IOLTA fund cannot afford to continue increasing the law school allocation every time a new law school is established nor would it be fair to expect PSU’s two law schools to share one-eighth of the total allocation. Therefore, the funding available for law schools will be divided equally among the nine law schools in the state beginning in 2016-2017.2

Funding Legal Aid
The largest portion of IOLTA funds supports the organizations that provide direct legal services to the poor and disadvantaged. The allocation of funding available for legal aid is driven by an established formula. 85.5% is allocated to the Pennsylvania Legal Aid Network (PLAN), the statewide system of providers serving low-income people in every county in Pennsylvania, for general operations. 14.5% is allocated for discretionary grants awarded through a competitive process to non-PLAN providers across the Commonwealth and PLAN providers for special project grants in rural areas where there are few non-PLAN providers.

The 85.5%/14.5% allocation formula has been in place since 1996. Recent concerns have been raised that the current ratio unfairly favors PLAN organizations. Aggravating the concern among non-PLAN providers, PLAN does not have a formal process for considering new members. PLAN leadership has expressed concern that

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2 In 2005, when the Court directed IOLTA to “stabilize the funding” to the law schools so that the schools could better plan their budgets, IOLTA allocated $200,000 to each of Pennsylvania’s seven law schools, or $1.4 million total, so long as certain revenue conditions are met. When Drexel University established its law school in 2006, the total allocation for law school clinical and internship programs was increased to $1.6 million. At that time, the Board capped the total at $1.6 million and decided that the $1.6 million allocation would be further divided should the number of law schools in Pennsylvania increase beyond eight.
increasing membership would further dilute a shrinking pot of funding. The Board undertook a review of this ratio and determined that the current formula treats non-PLAN providers fairly. The non-PLAN providers are benefitted because the ratio takes into consideration Access to Justice Act (“AJA”) revenue and IOLTA revenue combined. If each revenue source were allocated separately, the non-PLAN providers would receive less. Additionally, the Board remained strongly committed to ensuring the large majority of its funds support the provision of legal aid to all eligible people throughout the Commonwealth. Cases closed by PLAN providers in each county closely track the proportion of people living in poverty in each county. Because a significant number of non-PLAN legal aid providers operate in Philadelphia, 49% of the cases closed by non-PLAN providers were for the benefit of clients living in Philadelphia County.

While affirming the continuation of the 85.5%/14.5% split, the Board also agreed that IOLTA will do what it can to encourage PLAN to formalize and make publicly available the criteria for PLAN membership such that membership could be open to more legal services providers.

**Assessing the financial “fitness” of applicants for discretionary grants**

In order to be a recipient of a discretionary grant, the organization must meet certain criteria, including financial soundness and a demonstrated need for IOLTA funding. Historically, the measure of financial soundness and demonstrated need has been the amount of unrestricted net assets at the end of the organization’s most recently completed fiscal year for which an audit report is available. The acceptable amount of unrestricted net assets has been an amount capable of covering 3 - 9 months of audited expenditures. More than nine months is seen as perhaps not evidencing sufficient need and less than three months is seen as an indication that the organization may be financially unstable. An organization falling outside of the acceptable range is given one year’s notice before it negatively impacts future grant years.³ Until now, this has been an internal guide for grant recommendations and has never been disclosed to applicants at or before the time of application.

The Board decided that this was a valuable yardstick but wanted to extend the upper boundary to twelve months of coverage for operating costs, a best practice for nonprofit organizations, and make this a public criterion. Staff will continue its practice of reviewing six back years of financials in assessing this factor. Should an organization’s funding be at risk of cessation of funding because this criterion has not been met, IOLTA will continue to give one year’s notice. Additionally, a new question will be added to the grant application asking the applicant to explain why the unrestricted net assets represent less than three months or more than twelve months of operating expenses.

**Discretionary Grants: Statewide**

Of the dollars available for discretionary grants, 13% is set aside to fund efforts reaching eligible clients statewide. Both PLAN and non-PLAN legal service providers are currently eligible to apply for this pool of money.

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³ In 2014-15, one organization did not receive an IOLTA grant because its unrestricted net assets represented 20 months of audited expenditures. It had been warned in 2013-14, when its unrestricted net assets represented 15 months of audited expenditures, that excessive unrestricted net assets could negatively impact future grants.
The Board decided the following:

- Because the substantial portion of IOLTA funding supports the statewide delivery of legal aid through the grant to PLAN, PLAN agencies will no longer be eligible to apply for discretionary statewide grants;
- Only 6% of the discretionary funds, as opposed to the current 13%, will be set aside for statewide grants. The remaining 7% will increase the amount available in the six zones serving specific geographic regions of the state in which primarily non-PLAN providers compete;
- Criteria for determining eligibility to receive a statewide grant were formalized as outlined below:

**Geographic Reach**

*For General Operating requests:*  
In the most recently completed fiscal year, the organization must have closed cases for low-income clients residing in all of the six regional zones in the state.

If more than 50% of the closed cases in the most recently completed fiscal year were handled for clients living in a single zone, then the application will be considered in that single zone, and not as a statewide application.

*For Special Project requests:*  
The proposed activities must demonstrate intent and potential to serve eligible clients in each of Pennsylvania’s 67 counties.

**Board of Directors**  
For general operating requests, the applicant organization’s Board of Directors must be appropriately diverse in terms of statewide representation.

**Accessibility**  
If clients are to access the proposed services by phone, then a statewide toll-free number must be available.

**Discretionary Grants: Zones**  
To ensure funding available for discretionary grants is allocated fairly, the State is divided into six geographic zones and funding is allocated based on the proportion of people living in poverty within each geographic zone. Both PLAN and non-PLAN legal service providers are currently eligible to apply for this pool of money.

Because PLAN agencies receive 85.5% of IOLTA funds for general operations, PLAN agencies may only apply for a zone grant for a “special project.” A special project is one that allows the PLAN agency to serve a legal need or population that would otherwise go unmet in the course of the agency’s general operations. Special project funding for PLAN agencies is limited to a maximum of three years—while the project is still “special.” After three years, it is incumbent upon the agency to determine whether or not to incorporate the project into its regularly-available client services supported with general operating funds. The three year limit, however, has not been consistently applied. Thus, there are PLAN agencies still receiving funding for “special
projects” despite the fact that these projects are now part of the agencies’ regular services and should be supported with the general operations grant.

The Board decided that after grant year 2015-2016, a three-year maximum of funding for a special project would be uniformly enforced for PLAN agencies. Those agencies that have received a special project zone grant beyond the three year maximum will receive funding in 2015-2016 (if awarded) and be notified that such funding will no longer be available for that project in the 2016-2017 grant cycle and going forward. Those organizations will be told that they can apply for a zone grant in 2016-2017 but it must be to fund a new special project.

Additionally, PLAN agencies and non-PLAN agencies will be encouraged to incorporate innovative techniques for efficiently and collaboratively delivering civil legal services to the poor and underserved.

**Administration of Justice**

The fourth funding option available to IOLTA—the administration of justice—was addressed in the planning process. Having never allocated funds to or defined this category\(^4\), the Board decided to continue this course of action, recognizing the immense challenge of unambiguously defining “administration of justice” to the point of being able to provide clear and consistent guidelines for what could be funded. Additionally, the Board expressed significant concerns that funding under this category would open the doors to innumerable requests for funding that the Board is not in a position to grant or would lead to a substantial dilution of funds available for its funded priorities.

In conclusion, the Board agreed that it needed to make two changes in its own operations. First, once a year, it needs to set aside some portion of a meeting to assess how well its funding is actually meeting its mission promises by looking carefully at how the decisions it has made in this planning process are working or not. And, second, it needs to develop a mechanism(s) that will encourage free and open discussions among its stakeholders to foster the development of new, and perhaps collaborative, ways of providing legal services to the poor and disadvantaged and encouraging lifetimes of pro bono service.

\(^4\) Approximately 18 years ago, the Court directed the IOLTA Board to fund under the category of administration of justice a single statewide mailing to Pennsylvania attorneys regarding pro bono representation.