

IN THE SUPREME COURT OF IOWA

IN THE MATTER OF THE
LAWYER TRUST ACCOUNT
COMMISSION

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ANNUAL REPORT
& FY 2021-2022 GRANT
RECOMMENDATIONS

This report is intended to fulfill the requirements set forth in Iowa Court Rule 43.2(4) regarding the administration of the fund, along with the attached audit report prepared and certified by an Iowa certified public accountant.

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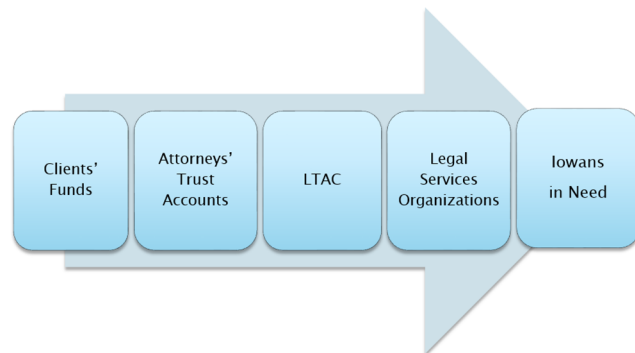
Almost all attorneys engaged in the private practice in Iowa are required to have a trust account for the retention of funds advanced by, belonging to, or held for their clients. These “pooled client trust accounts” hold client funds when the funds are either small in amount or held for such a brief period of time that it is not economically beneficial or practicable to open a separate trust account for the client. If the funds are large enough or will be held for a long enough period

of time to generate net interest that is sufficient to allocate directly to the client, then a client specific trust account is created.

Up until 1985, the pooled trust accounts maintained by Iowa’s lawyers did not earn any interest. This changed when the Iowa Supreme Court joined the national Interest on Lawyers Trust Account (IOLTA) program and created the Lawyer Trust Account Commission (LTAC). The Commission became the mechanism by which the Court received the interest on lawyers’ pooled client trust accounts and then distributed those funds back to entities which provide legal services to low income persons in civil cases or specific law-related programs designed to improve the administration of justice in Iowa.

The IOLTA program provides an opportunity for Iowa's banks and credit unions to work with Iowa's legal profession in helping Iowans in need. Lawyers practicing law in Iowa are required

to deposit clients' funds in the pooled interest-bearing trust accounts maintained by Iowa’s banks and credit unions. There are



currently 4,274 active lawyer trust accounts in 248 financial institutions located in Iowa. The financial institutions remit the interest earned on the pooled client trust fund directly to the Commission on a monthly or quarterly basis.

Current Fiscal Year IOLTA Grant Summary

Each year the Iowa Supreme Court awards grants from fund received from the IOLTA program. Since the start of the IOLTA program in July of 1985, over twenty-five million dollars has been awarded to organizations that are either assisting low-income Iowans with civil legal problems or involved in law-related education projects. Last fiscal year the Court approved \$432,489.64 in grant funding to eleven organizations in twelve separate grants:

- **Iowa Legal Aid—\$289,934.** For legal staff in Iowa Legal Aid regional offices for an established program of civil case assistance to low-income Iowans (service area: statewide).
- **Muscatine Legal Services—\$12,000.** For legal staff to maintain an existing program of civil legal assistance to low-income residents (service area: Muscatine County).
- **Polk County Bar Association Volunteer Lawyers Project—\$62,925.** For staff for volunteer lawyer referral service in Polk County serving the low-income community (service area: Polk County).
- **Civil Legal Assistance Fund, Second Judicial District—\$10,500.** Funds civil legal assistance to low-income fathers, mothers, or children involved in dissolution of marriage or modification cases in which other legal assistance is not available (service area: Second Judicial District).
- **Know Your Constitution Committee of the Young Lawyers Division, The Iowa State Bar Association—\$1,954.** Funds for the Know Your Constitution Program, which provides education to Iowa high school students about the United States Constitution (service area: statewide).
- **Clinical Law Program, Drake University Law School and University of Iowa College of Law Legal Clinics—\$17,645.** Funds for the Poverty Law

Internship Program, a clinical law program in which upper level law students intern with legal assistance providers throughout the state (service area: statewide).

- **Iowa Legal Aid Legal Hotline—\$42,133.** For legal staff support for the Legal Hotline for Older Iowans (service area: statewide).
- **Iowa Justice For Our Neighbors—\$12,168.** Funds legal services to low-income immigrants involved in removal proceedings or other immigration-law matters (service area: statewide).
- **Kids First Law Center—\$6,547.** Funds legal services to children in high-conflict divorce and custody cases when their parents cannot afford counsel for them (service area: Linn and Johnson counties).
- **Appanoose County Bar Association—\$6,163.** Funds civil legal assistance for economically disadvantaged individuals in the Appanoose County and Monroe County areas (Service area: Appanoose and Monroe counties).
- **Civil Legal Assistance Fund, Third Judicial District—\$3,000.** Funds civil legal assistance to low-income fathers, mothers, or children involved in dissolution of marriage or modification cases in which other legal assistance is not available (service area: Third Judicial District).
- **Legal Aid Society of Story County (Ames)—\$13,981.** Funds legal services in civil case assistance to low-income Iowans (service area: Story County).

All of these grants have been distributed on a quarterly basis, other than three which are issued on an “upon request” basis. Any of those funds not disbursed will return to the general funding pool for distribution in the next fiscal year’s grant process.

Bank of America Settlement Funded Grants Summary

In addition to interest remittances from lawyer trust accounts, the Commission also occasionally receives funds via other methods. In April of 2015, the Commission received \$246,655 in such funds as part of a \$16.65 billion settlement with Bank of America and its former and current subsidiaries, including Countrywide Financial Corporation and Merrill Lynch. The settlement resolved civil investigations relating to residential mortgage-backed securities, collateralized debt obligations, and practices concerning the underwriting and origination of loans. More than \$30 million of the settlement was allocated to IOLTA programs in the U.S. for foreclosure prevention programs and community redevelopment legal services.

Starting in fiscal year 2016-17, the Commission began a separate grant application process for the Bank of America funding. In June of 2016 the Commission received an additional \$2,816,719 of settlement funds. \$1,816,719 of these funds were awarded in two-year grants (for FY17-18 and FY18-19). The remaining \$1,000,000 was awarded in two-year follow-up grants (for FY19-20 and FY20-21) to three organizations and seven separate grants:

- **Iowa Legal Aid Foreclosure Prevention Project—\$200,000.** For a project providing community outreach to educate targeted communities about the foreclosure processes and other services which would be of benefit to individuals dealing with a foreclosure situation. (service area: statewide).

- **Muscatine Legal Services—\$32,000.** For a project focusing on informing the public of the risks of foreclosure and providing legal services regarding debt restructuring and negotiations with mortgage companies when facing foreclosure. (service area: Muscatine County).
- **Drake University Law School Redevelopment and Entrepreneurial Legal Clinic—\$250,000.** For a project to support business development and revitalize neighborhoods by providing legal educational resources, direct legal representation, and legal advocacy services aimed directly at business and community-based nonprofit organizations. (service area: Polk Count).
- **Iowa Legal Aid Race Equity Project—\$150,000.** For a project providing legal assistance in expungement issues and other employment barriers which have arisen from criminal justice involvement (service area: Polk, Black Hawk, Scott and Dubuque counties).
- **Iowa Legal Aid Community Economic Development Project—\$150,000.** For a project providing legal services to low-income individuals seeking to start and run local businesses (service area: statewide).
- **Iowa Legal Aid Community Stabilization Project—\$118,000.** For a project providing early intervention in housing issues (service area: Waterloo, Council Bluffs, Des Moines).
- **Iowa Legal Aid Immigration Stabilization Project—\$100,000.** For a project implementing a state wide immigrant legal services hotline for immigrants and refugees seeking legal assistance (service area: statewide).

All of these grants have been distributed on a quarterly basis and concluded with the final payment on April 1, 2021. The Commission does not anticipate receiving any additional funding from the Bank of America settlement.

LTAC Operations and Current Financial Status

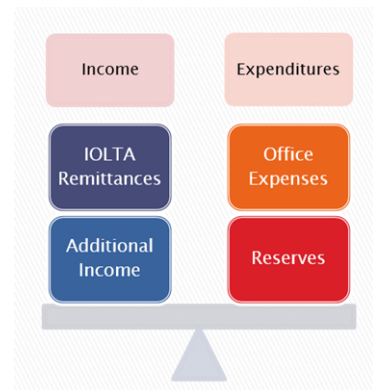
Information regarding the Commission's financial operations may be found in the accompanying financial audit, which reviews the financials for FY2019-20. The operating budget for FY2020-21 was \$154,528.37, and the Commission is currently operating at budget. It should be noted that this operating budget was much higher than in previous years as \$50,000 of the budget was allocated to the programming of the software application (SCC Application 2.0) that financial institutions use for remitting the trust account interest and the Commission uses for tracking of attorney trust account data. Two other entities, the Client Security Commission and the CLE Commission, also use the software application. The budgets for those entities also included similar financial allocations.

IOLTA remittances received through the first nine months of the current fiscal year total \$257,805, which is \$273,310 less than had been received the previous year. It is anticipated that the decrease in remittances will continue through the remainder of this fiscal year and likely into much of the next fiscal year.

FY2021-2022 IOLTA Grants

The Commission utilizes a three-step process when making its funding recommendations to the Court. First, it calculates the anticipated available amount of funding. It then reviews the grant applications and makes a selection of which entities the Commission believes should or should not receive funding. It then takes the last step and determines the individual grant awards.

Funding for IOLTA grants comes from a combination of IOLTA remittances and any additional income earmarked specifically for such grants or earned by the remittance funds. Subtracted from that amount are the office expenditures (anticipated budget for the next fiscal year) and funds, if any, recommended to be held in reserve.



The Commission's prime concern is in not recommending more funding to be awarded than will have been earned or carried-forward. While the Commission strives to be revenue neutral, in the past it has carried forward a slight positive fund balance so as to try and ensure some stability in funding for the recipient grantees. This was particularly true after the financial crises of 2008 when IOLTA remittances plummeted and then plateaued for a number of years. A similar balance was carried over from last year's remittances but is not being included in this year's funding calculations so as to provide a slight reserve for next year in case remittances continue to decrease.

Estimated FY21-22 IOLTA Funding Pool

Starting in December of 2019 there began a marked decrease in the amount of IOLTA remittances as seen on the following table:

MONTHLY REMITTANCES	July 16 - June 17	July 17 - June 18	July 18 - June 19	July 19 - June 20	July 20 - June 21	% of FY 19-20	% of 18-19 to 19-20 Average
July	\$37,439.44	\$42,180.16	\$65,494.20	\$86,844.50	\$42,492.72	48.93%	65.54%
August	\$21,460.70	\$22,614.47	\$42,664.59	\$72,074.16	\$21,602.47	29.97%	47.18%
September	\$19,803.00	\$21,460.23	\$39,745.58	\$43,739.10	\$19,656.19	44.94%	56.19%
October	\$35,673.89	\$42,833.99	\$72,445.87	\$85,203.45	\$46,372.32	54.43%	69.39%
November	\$18,854.74	\$22,219.96	\$31,328.50	\$43,358.27	\$22,479.89	51.85%	69.59%
December	\$18,933.82	\$32,666.57	\$53,968.74	\$40,435.08	\$16,864.08	41.71%	39.81%
January	\$34,943.85	\$53,998.70	\$82,537.79	\$84,120.50	\$45,176.34	53.70%	61.42%
February	\$22,898.47	\$28,587.28	\$43,205.02	\$39,177.04	\$23,708.79	60.52%	64.10%
March	\$14,934.27	\$23,882.07	\$60,381.66	\$36,163.72	\$19,452.40	53.79%	48.46%
April	\$41,567.03	\$54,132.79	\$98,117.87	\$59,028.92		0.00%	0.00%
May	\$18,844.19	\$30,117.69	\$49,608.22	\$28,300.25		0.00%	0.00%
June	\$18,309.66	\$30,635.38	\$38,851.80	\$20,809.96		0.00%	0.00%
Fiscal Year Total	\$303,663.06	\$405,329.29	\$678,349.84	\$639,254.95	\$257,805.20		
comparison	\$224,942.18	\$290,443.43	\$491,771.95	\$531,115.82	\$257,805.20	168.01%	

This downward trend was exacerbated by the pandemic, the impact of which began to show in the remittances received after April of 2020. The decrease in remittances continued throughout the rest of last fiscal year and into this current one. As of the end of March of this year, there was a \$273,310 decrease in remittances as compared to last year at the same date. Staff and the Commission have reviewed historical data and have forecasted that the remaining three months of this calendar year will be at a 56% reduction as compared to last year's final months' remittances should be expected in the final quarter. **Accordingly, it is anticipated that there will be another \$60,556 expected for FY20-21, bringing the total remittances for this fiscal year to**

an anticipated \$317,000. That will put FY20-21 just above FY16-17 for total annual remittances.

While the budget for next fiscal year has yet to be submitted or approved, it is anticipated that it will remain at approximately the same as last year, or \$105,000, with an additional \$15,000 reserved for implementation of the SCC application. As mentioned earlier in the report, all three main SCC application using commissions have contributed to funding for the initial programming and installation of the SCC application. In the first year each entity was assessed a \$100,000 line-item in their budgets. Last year, each was assessed a \$50,000 implementation line-item. While the anticipated “go live” date is in the next few months, inevitably there will be unexpected issues which will need to be addressed to ensure continuity of operation and to fix any issues which may appear as the system us being used. In this regard each entity will include a \$15,000 line-item in their proposed budgets to cover these costs.

The Commission usually recommends a 1% funding reserve to account for any disparities between the last quarter’s predictions and the actual amount of IOLTA remittances received, but that is not being recommended this year. Thus **the Commission anticipates that there will be \$197,000 in funds available**

to award to the IOLTA grantees. All grant funding scenarios will be made using this figure.¹

Recommendation of Grant Applicants

In December of 2020 the Lawyer Trust Account Commission announced that applications for grants under the IOLTA program were being accepted for the upcoming grant cycle. A January 29, 2021, filing deadline was established for applications. Potential applicants were advised that grantees would be announced in late May or early June of 2021. Due to the decline in IOLTA remittances, the prior grant recipients were informed that remittance levels were far below what had been received in the prior fiscal years and it was anticipated that the total amount available for grant funding would be substantially decreased. No specifics were given as to the actual numbers, but a warning was extended so grant applicants did not anticipate grant awards on par with the recent years and could take steps to seek other funding sources.

Thirteen requests for funding were received, from twelve different applicants. Eleven of the requests were received from existing IOLTA grantees for continued funding of their operations or programs. The Know Your Constitution Committee

¹ In the event the amount of remittances exceeds the forecasted amount to a significant degree, the Commission will reconvene and make a subsequent recommendation for an additional distribution order. This is how additional funding has been handled in the past. The Commission recommends this process so that grant funding in an amount higher than the ultimate remittance total is not awarded.

of the ISBA’s Young Lawyers Division, did not submit a grant application this year as their prior grant awards were for the statewide luncheon which is not being held in person due to the pandemic. They will be submitting grant requests again once their program returns.

Of the other two requests, one was from the Iowa Coalition Against Sexual Assault (ICASA), which also submitted a grant request last year. ICASA had previously been an IOLTA grant recipient through FY2016-17. The other grant application, “School of Thoughts” was from an inmate seeking funds—and an acquittal of all pending criminal charges—neither of which meets the eligibility requirements² nor purpose³ of the grant funding per the rules, so is not further discussed in this report.

With regard to the current IOLTA grant applicants, the Commission recommends the Court continue the funding of those programs:

- **Iowa Legal Aid.** For legal staff in Iowa Legal Aid regional offices for an established program of civil case assistance to low-income Iowans (service area: statewide).
- **Muscatine Legal Services.** For legal staff to maintain an existing program of civil legal assistance to low-income residents (service area: Muscatine County).

² Iowa Court Rule 44.4 sets forth the eligibility requirements, which include qualification as an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1954 or is an organization with a charitable purpose and project.

³ Iowa Court Rule 44.2(2) limits IOLTA funding to legal services to low income persons in civil cases as well as educational and other specific law-related programs designed to improve the administration of justice in Iowa.

- **Polk County Bar Association Volunteer Lawyers Project.** For staff for volunteer lawyer referral service in Polk County serving the low-income community (service area: Polk County).
- **Civil Legal Assistance Fund, Second Judicial District.** Funds civil legal assistance to low-income fathers, mothers, or children involved in dissolution of marriage or modification cases in which other legal assistance is not available (service area: Second Judicial District).
- **Clinical Law Program, Drake University Law School and University of Iowa College of Law Legal Clinics.** Funds for the Poverty Law Internship Program, a clinical law program in which upper level law students intern with legal assistance providers throughout the state (service area: statewide).
- **Iowa Legal Aid Legal Hotline.** For legal staff support for the Legal Hotline for Older Iowans (service area: statewide).
- **Iowa Migrant Movement for Justice f/k/a Iowa Justice For Our Neighbors.** Funds legal services to low-income immigrants involved in removal proceedings or other immigration-law matters (service area: statewide).
- **Kids First Law Center.** Funds legal services to children in high-conflict divorce and custody cases when their parents cannot afford counsel for them (service area: Linn and Johnson counties).
- **Appanoose County Bar Association.** Funds civil legal assistance for economically disadvantaged individuals in the Appanoose County and Monroe County areas (Service area: Appanoose and Monroe counties).
- **Civil Legal Assistance Fund, Third Judicial District.** Funds civil legal assistance to low-income fathers, mothers, or children involved in dissolution of marriage or modification cases in which other legal assistance is not available (service area: Third Judicial District).

- **Legal Aid Society of Story County (Ames).** Funds legal services in civil case assistance to low-income Iowans (service area: Story County).

Much of the focus of the Commission was on whether or not the Iowa Coalition Against Sexual Assault (ICASA) sought funding that would fall within the IOLTA grant requirements. Last year ICASA was denied funding for an IOLTA grant for a non-lawyer “Legal Advocate” to provide assistance to campus and secondary school survivors of sexual assault and to provide training to non-lawyer sexual assault victim counselors. The “Legal Advocate” described was a college student and not a licensed attorney.⁴ While this was a laudable goal, the Commission determined and the Court agreed that it was outside of the scope of the IOTLA grant funding requirements. The IOLTA program is intended to fill a critical need for legal services to low income persons in civil cases or educational and other specific law-related programs that are designed to improve the administration of justice in Iowa.

ICASA’s current grant application remedies this by primarily seeking funding for the salary and benefits for two law clerks, both of whom will be in their third year of law school. The Commission noted that in prior years ICASA received IOTLA grant funding to help its attorneys provide direct legal representation to

⁴ The Commission was also troubled by the reference to a non-lawyer as a “legal advocate” and raised concerns that the services being provided might be outside of the allowable scope as set forth in Iowa Rule of Court 37.4 and thus constitute the unauthorized practice of law.

its clients. Arguably, funding law clerks would assist in this mission and would be on par with other grant recipients using paralegals to assist with rendering of legal services. Accordingly, despite the overall decrease in IOLTA remittances the Commission felt the program sufficiently helped fill a need for legal services and recommends the ICASA be awarded grant funding.

Determining Individual Grant Awards

The Commission has historically used two different techniques in its determination as to the amount of individual grant funding it recommends to be awarded. The most common method has been an “across the board” pro rata increase or decrease based upon the prior year’s funding. This allows for funding consistency from year-to-year, and avoids the difficult issue of termination of grant funding.

The second method is to review the “return on investment” received by the grant funding, and make a determination as to whether or not all or some of the funds could be better used by awarding them to another grant recipient. The Commission has been hesitant to recommend this in the past but has done so on a few occasions. In such circumstances, however, the Commission—and the Court—have provided the grant recipient advance notice of the possible funding termination and the opportunity to either remedy the deficiency or address the Commission on why funding should be continued.

Despite the decrease in IOLTA remittances over the past fiscal year, the Commission recommends the Court continue with the historic pro-rata funding approach for this grant process. As shown on Exhibit C to this report, staff proposed two alternatives to the Commission for funding of grants for the 2021-2022 grant year. After consideration, the Commission is recommending option #2, which does provide some funding for ICASA.

Option 1 apportions the recommended total funding amount across the existing grantees by applying a common percentage of 46% percent to the current year grants. Option 1 is based on the precedent in past years of apportioning reductions and increases across the board. No funds would be allocated to the Iowa Coalition Against Sexual Assault under this option.

The recommended Option 2 provides funding for ICASA in the amount of \$1,954 and then apportions the recommended total funding amount across the existing grantees by applying a common percentage of 45% percent to the current year grants. The \$1,954 amount was derived from an analysis of the past funding received by ICASA.

The Commission recommends the Court award funding to the identified entities in the identified amount. Given that there is still three more months of remittances and the possibility that the economy will continue to grow stronger as more of the population gets vaccinated and resumes their need for legal

services (thus increasing the likelihood of additional IOLTA remittances), the Commission respectfully requests the opportunity to make a supplemental grant award recommendation after the close of the fiscal year if it believes such a supplemental grant is warranted.

The Commission also wishes to note that it appreciates the timely information provided by all of the grant applicants during this process. And finally, the Commission thanks the Court for its giving consideration to its recommendation as to how Iowa's IOLTA funds should be distributed across the state to help Iowans in need of legal services.

Dated this 22 day of April, 2021.

Respectfully submitted,



Nicholas ("Tre") Critelli, III, Director

Office of Professional Regulation

Exhibits:

- A Audit Report
- B Grant Applicant Summaries
- C Funding Options