

RULES REGULATING INTEREST-BEARING TRUST FUND ACCOUNTS FOR THE PROVISION OF LEGAL SERVICES TO INDIGENT PERSONS

(Adopted by the State Bar Board of Governors September 10, 1982, Amended April 20, 1985, Amended July 11, 1989, Amended December 10, 1994, Amended January 27, 1996, Amended March 15, 2002)

Rule 1. All funds received or held for the benefit of clients or otherwise in a fiduciary capacity in the course of the practice of law by a member of the State Bar or law firm of which (s)he is a member and determined by that attorney or firm to be nominal in amount or to be held by the attorney or firm for a short period of time, must be deposited in one or more interest-bearing demand trust accounts, as required by California Business and Professions Code Section 6211(a).

In these rules, "client" includes a group of persons which has engaged the attorney or firm for a common purpose. Establishing such an account constitutes consent by the attorney for the depository institution to furnish copies of periodic account statements to the State Bar.

Rule 1.1 All interest or dividends earned by funds held in trust accounts required by Business and Professions Code Section 6211(a) shall be paid by the bank or branch of a bank where the funds are deposited directly to the State Bar of California and used for the purposes set forth in Article 14 of Chapter 4, Division 3, of the Business and Professions Code. The interest or dividend payments to the State Bar shall be paid quarterly or at more frequent intervals. Interest or dividends for all trust accounts held by the bank or branch of a bank during such quarter or other interval may be remitted in one payment.

Nothing in these rules shall create an obligation or pledge of the credit of the State of California or of the State Bar of California. Claims arising by reason of acts done pursuant to these rules shall be limited to the monies generated pursuant to Article 14 of Chapter 4, Division 3, of the Business and Professions Code. The Board of Governors may adopt such guidelines as may be appropriate to implement administration of these rules.

Rule 1.2 The term "bank" wherever appearing in Article 14 of Chapter 4, Division 3, of the Business and Professions Code and in these rules and regulations shall include commercial banks and such other institutions as may be permitted by the California Supreme Court.

Rule 1.3 "Interest-Bearing Trust Account" or "Interest-Bearing Demand Trust Account" wherever used in Article 14 of Chapter 4, Division 3, of the Business and Professions Code and in these rules and regulations shall have the same meaning. An interest-bearing trust account shall be one in which the funds are subject to prompt withdrawal, except that such accounts may be subject to notification requirements applicable to all other accounts of the same class at the bank or branch of a bank so long as such notification requirement does not exceed thirty (30) days.

Rule 1.4 Nothing in these rules shall be construed as affecting or impairing the duties and obligations of attorneys or law firms pursuant to the statutes and rules governing the conduct of

members of the State Bar including, but not limited to, provisions of Rule 4-100 of the Rules of Professional Conduct requiring a member to promptly notify a client of the receipt of the client's funds and to promptly pay or deliver to the client, as requested by the client, the funds in the possession of the member which the client is entitled to receive.

Trust funds are nominal in amount or are held for a short period of time and must be placed in an interest-bearing trust account as required by Section 6211(a) of the Business and Professions Code, if it is not practical to segregate them to earn income for the benefit of the client in light of the income the funds could earn or the costs involved in earning or accounting for any such income.

If the attorney determines that the trust funds should be segregated to earn income for the benefit of the client, the funds shall be deposited in a trust account in accordance with the provisions of Section 6211(b) of the Business and Professions Code and Rule 4-100 of the Rules of Professional Conduct or as the client directs in writing.

Rule 1.5 Each member of the State Bar and firm of attorneys shall determine whether trust funds are nominal in amount or are to be held for a short period of time in accordance with Rule 1.4. No disciplinary matter shall be pursued by the State Bar against an attorney solely by reason of the attorney's making such determination in good faith.

Rule 2. All qualified legal services projects must be California nonprofit corporations operating exclusively in California. A project may be considered as operating exclusively within California if it is a part of an organization that operates other projects in or outside of the State of California as long as all funds granted are expended in California and the project or organization is a California nonprofit corporation. A qualified legal services project shall be presumed to meet the requirement of Business and Professions Code Section 6213(a) that it provide free legal services to indigents as its "primary purpose and function" if more than 75% of that nonprofit corporation's budget for the fiscal year for which it is seeking funds pursuant to Business and Professions Code Section 6216(b) is designated, and 75% of its expenditure for the most recent reporting year were incurred, for the provision of free legal services to indigents. "Legal services" include all professional services provided by a member of the State Bar, and similar or complementary services of a law student or paralegal under the supervision and control of a member of the State Bar in accordance with law. Amounts budgeted or expended for administration and overhead related to the provision of legal services as defined herein shall be considered as amounts budgeted or expended for legal services. Projects meeting the requirements of Business and Professions Code Section 6213(a) which are funded either in whole or in part by the Legal Services Corporation or with Older Americans Act funds shall be presumed qualified legal services projects.

Notwithstanding the above provisions, an applicant which is a California nonprofit corporation and which provided as its primary purpose and function legal services without charge to indigent persons but which operated in previous years as a project within an organization providing substantial services other than legal services to indigent persons or as an entity other than a

corporation may establish its status as a qualified legal services project and its proportionate entitlement to funds based upon financial statements which strictly segregate that portion of the organization's expenditures in prior years which were devoted to legal services for indigents. A project not qualifying for the above presumption due to its inability to meet the 75% test may nevertheless apply for an allocation hereunder, demonstrating its purpose and function by other means.

Rule 2.1. Qualified legal services projects which meet the standards of Business and Professions Code Section 6214(b)(1)(2) and (3)(A) shall be eligible for an allocation from available funds distributed pursuant to Business and Professions Code Section 6216(b), under both subparagraphs (b)(1)(A) and (b)(1)(B). Subject to Business and Professions Code Section 6216(b)(1)(B), other qualified legal services projects shall only be eligible for an allocation from available funds distributed pursuant to Business and Professions Code Section 6216(b).

Rule 2.2. All qualified support centers must be nonprofit corporations. A support center shall be presumed to meet the requirement of Business and Professions Code Section 6213(b) that it have as its "primary purpose and function" the provision of legal training, legal technical assistance, or advocacy support if more than 75% of that nonprofit corporation's budget for the fiscal year for which it is seeking funds pursuant to Business and Professions Code Section 6216(c) shall be designated for the provision of such training, assistance and support. "Legal training, legal technical assistance, or advocacy support" include, but are not limited to, the direct provision to an indigent client of legal services, as defined in Rule 2, either (a) as co-counsel with an attorney employed or recruited by a qualified legal services project, or (b) at the request of an attorney employed or recruited by a qualified legal services project which is unable to assist the client.

Rule 3. No provision of these rules or of Article 14 of Chapter 4, Division 3, of the Business and Professions Code shall limit or impair in any way the professional responsibility of any attorney to his or her client to provide such client with legal services appropriate to the client's needs.

Rule 3.1. All funds distributed pursuant to Article 14 of Chapter 4, Division 3, of the Business and Professions Code are restricted funds and the recipient must maintain complete records and accounts including, but not limited to, budgets which reflect all receipts and expenditures of such funds. Nothing in these rules or in Article 14 of Chapter 4, Division 3, of the Business and Professions Code shall prohibit a recipient from engaging in activity or providing services not described in Article 14 of Chapter 4, Division 3, of the Business and Professions Code. However, if the recipient does so, the recipient must maintain records and accounts which reflect that funds distributed to it under Business and Professions Code Section 6216 are used only to support activities described in Article 14 of Chapter 4, Division 3, of the Business and Professions Code.

Rule 3.2. No recipient may use an allocation made under Business and Professions Code Section 6216 to provide services in a fee-generating case, as described in Business and Professions Code Section 6213(e). If a case is determined by a recipient not to be a fee-generating case because it

fits within the exceptions contained in Business and Professions Code Section 6213(e)(1), the recipient shall maintain records reflecting the facts that led the recipient to reach that conclusion and any actions the recipient took to confirm that conclusion. Payments by clients for costs and expenses or a processing fee in a nominal amount to be established by the Legal Services Trust Fund Commission shall not be considered fees. The Legal Services Trust Fund Commission may adopt such guidelines as may be appropriate to assure that processing fees do not serve as a barrier to clients receiving legal assistance.

If attorney fees are generated in cases funded pursuant to Article 14 of Chapter 4, Division 3, of the Business and Professions Code, the fees generated shall be used by the recipient only for purposes permitted by Article 14. Recipients shall maintain complete records of all such fees generated and received and render appropriate accountings to the State Bar regarding their use.

Rule 4. The State Bar establishes a Legal Services Trust Fund Commission (hereinafter referred to as the "Commission") to administer these rules and all provisions of law regarding interest on trust funds. The Board of Governors of the State Bar shall determine the composition of the Commission provided that the Commission shall consist of attorney members and public members with the ratio of public members to attorney members determined, to the extent practical, by the ratios established in Sections 6013, 6013.4 and 6013.5 of the Business and Professions Code, inclusive. The terms of office of those persons appointed by the Board of Governors shall be terms as prescribed by the Board, but such persons shall serve at the pleasure of the Board. The Commission shall have assigned to it administrative and clerical personnel necessary to carry out its duties.

Rule 4.1. All applications for allocations pursuant to Business and Professions Code Section 6216 shall be made to the Commission. The Commission shall apply the criteria stated in Article 14 of Chapter 4, Division 3, of the Business and Professions Code and in these rules and shall thereby determine the eligibility of the applicant. Applications shall be made in a format developed by the Commission. Applications should not require information other than that reasonably needed to determine eligibility and the amount of funds to be allocated. Any nonprofit corporation which meets the standards of both Business and Professions Code Section 6213(a), as a qualified legal services project, and Business and Professions Code Section 6213(b), as a qualified support center, must elect in its application to be considered first either as a legal services project or as a support center. If the Commission finds it to be qualified in the category of preference, it will not be considered for an allocation in the other category; otherwise, it will be considered in the other category. No corporation may receive grants both as a legal services project and as a support center.

Rule 4.2. Applications shall contain a financial statement for the calendar or fiscal year ended most recently before the application deadline set by the Commission. The financial statement shall be audited or reviewed by an independent certified public accountant. If the audited or reviewed statement for the most recent period is not available at the time of the application deadline, the applicant shall include an approximated financial statement for the calendar or

fiscal year with the application and shall file the audited or reviewed statement promptly when available, and in no event more than sixty (60) days after the application deadline, and prior to receipt of any allocation. Any applicant whose gross expenditures exceeded \$500,000 during the calendar or fiscal year ended most recently before the application deadline shall be required to submit an audited statement. If the financial statement is for a period which ends more than three (3) months prior to the date of the application deadline, the applicant shall also submit an income and expense statement covering the period from the ending date of its last financial statement to a date within three (3) months prior to the application deadline.

Rule 4.3. Applications shall contain objective information demonstrating that the applicant's primary purpose and function is the provision of legal services without charge to indigent persons. The applicant shall agree to use all funds allocated from the Trust Fund Program for the purposes set forth in Article 14 of Chapter 4, Division 3, of the Business and Professions Code. In addition, applicant support centers shall agree to use all funds allocated from the Trust Fund Program in support of qualified legal services projects providing free legal services in California and to restrict their use of funds allocated from the Trust Fund Program to matters directly related to the needs of legal services clients. The board of directors of a support center shall establish priorities for the provision of services after consultation with legal services attorneys, members of the private bar and eligible clients. A support center shall offer a range of services consisting at the minimum of more than one of the following consultation, representation, information services, and training.

The application shall also contain a certification by the applicant as to the following: (a) the applicant at all times will honor the attorney-client privilege and will uphold the integrity of the adversary process; (b) the applicant will not impose restrictions unrelated to statutes and rules of professional conduct on attorneys who provide representation to indigent clients with funds provided in whole or in part by Article 14; and (c) the applicant does not discriminate on the basis of race, color, national origin, religion, sex, handicap or age.

Rule 4.4. Applications shall describe the applicant's quality control procedures and standards. Procedures and standards shall include, but are not limited to, the minimum experience and education requirements for attorney and paralegal employees; the current salaries and job descriptions for all filled and unfilled management and professional positions, including paralegal personnel; the minimum experience and educational requirement for attorney supervisors; the supervisory structure, procedures, and responsibilities; the internal quality control and review procedures and standards; and the fiscal management and control standards and procedures.

Rule 4.5. A support center applicant not eligible for the presumption specified in Business and Professions Code Section 6215(a) shall include in its application objective written material demonstrating that it is deemed to be of special need by a majority of recipients which are qualified legal services projects. Upon request, the Commission shall make available to such applicant a list of the names and addresses of such recipients.

Rule 5. The Commission shall notify each applicant of the approval or disapproval of its application and the amount of its proposed disbursement.

Rule 5.1. Applicants shall submit to the Commission within thirty (30) days after notification of proposed allocation of funds, a budget and budget narrative for the expenditure of the allocation. The budget and budget narrative shall include, but not be limited to, an explanation of how funds shall be utilized to provide civil legal services to indigent persons, especially undeserved client groups such as, but not limited to, the elderly, the disabled, juveniles, and non-English-speaking persons within their service area.

Rule 5.2. Upon receipt of the budget and budget narrative, the Commission shall review the same for compliance with Article 14 of Chapter 4, Division 3, of the Business and Professions Code. If a proposed budget and budget narrative do not comply with Article 14 of Chapter 4, Division 3, of the Business and Professions Code, the application shall not be funded. If it does comply, the Commission shall cause funds to be disbursed in accordance with Business and Professions Code Section 6216.

Rule 5.3. The Commission shall monitor and evaluate and provide for independent evaluation of programs supported in whole or in part under Article 14 of Chapter 4, Division 3, of the Business and Professions Code to ensure that said provisions of Article 14 and applicable rules, regulations and guidelines promulgated pursuant thereto are carried out.

The Standards for Providers of Civil Legal Services to the Poor approved by the American Bar Association House of Delegates in August 1986, as limited by the general introduction to those Standards, are the guidelines to be used by the State Bar in reviewing and approving the quality control procedures and evaluating the practices of applicant and recipient programs.

Subject to common law, statutory and constitutional privileges, and subject to professional responsibilities of members of the State Bar of California contained in the State Bar Act and the Rules of Professional Conduct, the applicant or recipient may be required by the Commission to permit reasonable site visits or to present such additional information as the Commission deems reasonably necessary to determine compliance with the foregoing rules.

The Commission in its sole discretion may accept an evaluation report from the Legal Services Corporation or other monitoring agency in lieu of all or any part of the foregoing information.

Each recipient shall maintain records reflecting the eligibility of each client served for five years after the completion of services to the client and such records shall be available to the Commission for inspection.

Rule 6. The State Bar shall have the power to determine that an applicant for funding is not qualified to receive funding, to deny future funding, or to terminate existing funding because the

recipient is not operating in compliance with the requirements or restrictions of the statute and regulating rules.

Rule 6.1. The Legal Services Trust Fund Commission shall adopt procedures pursuant to these rules for the review of applicant qualification for funding, denial of funding, or termination of existing funding.

Rule 6.2. Any legal services provider or any other person or entity may file a complaint regarding the grant of funds or continuation of funding of a recipient. Complaints shall be signed, in writing, and shall be filed with the State Bar Office of Legal Services, Legal Services Trust Fund Program.

Rule 6.3. Signed written complaints filed against any recipient shall be investigated by a member of the State Bar staff, who shall prepare a report of the investigation. Staff shall make every effort possible to resolve complaints during the investigation and shall fully document all such efforts in the report. If the complaint is not resolved, the staff report shall recommend whether the Commission should hold a review of the complaint. A copy of the report shall be provided to the complaining party and the recipient, and each party shall have 20 days from receipt of the report to submit comments and additional pertinent evidence. The report, along with any comments and evidence submitted by the parties, shall be forwarded to the Commission for Commission action or for approval of the staff's resolution of the complaint, whichever is appropriate.

Rule 6.4. The Commission or a committee designated by the Commission shall have authority to affirm or deny the investigator's recommendation for a review of the complaint.

Rule 6.5. If the Commission or a committee designated by the Commission determines that review should not be held, it may dismiss the matter. The complaining party or recipient may request that the Commission's decision be reviewed by the State Bar Board of Governors (hereinafter referred to as the "Board"). A review by the Board shall consist of review of the Commission record. The decision of the Board shall be final.

Rule 6.6. In the event the Commission or a committee designated by the Commission determines that a review of the complaint should be held, the complaining party and the recipient shall both be notified of the date, time and place of the review by the Commission or a committee designated by the Commission. The complaining party and the recipient shall have the opportunity to present evidence pertaining to the proceeding. The State Bar staff investigator shall also be available to present the results of staff investigation to the Commission.

If, after a review conducted according to Rule 6.5, the Commission determines that sufficient evidence exists to terminate funding to the recipient, the Commission shall have authority to terminate such funding.

If, after a review conducted according to Rule 6.5, the Commission determines that sufficient evidence does not exist to terminate funding to the recipient, the Commission shall have authority to dismiss the matter.

The complaining party or recipient may request that the Commission's decision be reviewed by the Board. A review by the Board shall consist of a review of the Commission record. The Board shall have authority to terminate a recipient's funding. The decision of the Board shall be final.

Rule 6.7. A recipient whose funding has been terminated shall be entitled to a hearing before the State Bar Court as provided in Rules 7 and 7.1.

Rule 7. Any applicant whose initial application for an allocation has been denied, whose existing funding has been terminated during an allocation year, or whose application for renewal of an annual allocation has been denied or not renewed, because the applicant or recipient is not qualified to receive funding or is not operating in compliance with the requirements or restrictions of Article 14 of Chapter 4, Division 3, of the Business and Professions Code, shall be entitled to a hearing before the State Bar Court as provided in Rule 7.1. The applicant or recipient shall have 30 days from the receipt of notice of denial or termination to file a written request for hearing before the State Bar Court. Pending a final decision by the State Bar Court, a current recipient whose funding has been terminated shall continue to receive its allocation in accordance with Section 6224 of the Business and Professions Code. If the recipient does not request a hearing before the State Bar Court within the time limitations specified, the decision to deny or terminate funding shall become final.

Rule 7.1. All hearing functions required by Business and Professions Code Section 6224 and these regulations shall be conducted by the State Bar Court in the manner provided for under Division IV, Chapter 14, commencing with Rule 775, Rules of Procedure of the State Bar.

**SUPREME COURT ORDER
PURSUANT TO
STATUTES 1981, CHAPTER 789**

The court having considered in bank the draft order proposed by the Board of Governors of the State Bar of California, it is hereby ordered pursuant to Business and Professions Code section 6212, subdivision (a)(Stats. 1981, ch.789) that members of the State Bar, law firms or law corporations of which they are members are authorized to establish interest-bearing trust accounts with a bank, savings and loan, or other financial institution regulated by a federal or state agency, which can accept such deposits, pay interest thereon, and insure such deposits by an agency of the federal government, and if such depository should have a notice of withdrawal requirement, the required notice does not exceed 30 days.