

OPEN SESSION AGENDA ITEM

JULY 2018 PROGRAMS COMMITTEE ITEM III.D.

DATE: July 19, 2018

TO: **Members, Programs Committee**

FROM: Stephanie Choy, Interim Program Director II, Office of Legal Services

SUBJECT: Revision to State Bar Rules to Reflect Revised Grant Timelines – Request to Circulate for Public Comment

EXECUTIVE SUMMARY

State Bar Rules currently require Legal Services Trust Fund Program grantees to submit an audit or independently reviewed financial statement as part of their annual grant application process. In 2015, as part of a larger streamlining of grants processes, the Trust Fund Program changed its grant calendar, moving the date on which applications are due and shifting to reliance on audited/reviewed fiscal year data, rather than relying on a manually calculated conversion of expenditures between a fiscal and calendar year.

The Trust Fund Program seeks Programs Committee approval to circulate for public comment a proposed amendment to State Bar Rules 3.680(E)(1), 3.681 and the Appendix Schedule of Charges and Deadlines to conform to the new grants administration schedule.

BACKGROUND

A. A 2009 Rules Revision Requires a Supplemental Expenditures Schedule and Sets Deadlines For Audit Submission

At its March 2009 meeting, the Board of Trustees (BOT) approved revisions to Title 3 of the Rules of the State Bar, governing operation of the Legal Services Trust Fund Program (LSTFP). Among the matters set forth in these amended rules, is the annual process for applying for IOLTA grants. Rule 3.680(E)(1), currently requires that applications include,

“an audited financial statement by an independent certified public accountant for the latest completed fiscal year; if the fiscal year is not a calendar year, the application must also include an income and expense

statement for the time between the closing date of the statement and December 31. A financial review in lieu of an audited financial statement may be submitted by an applicant whose gross corporate expenditures were less than the amount specified in the Schedule of Charges and Deadlines”.

The audit (or review) is specifically required by Business and Professions Code §6222¹, and is a critical piece of the application because it is used to verify reported expenditures. These, in turn, are used to calculate grant amounts under the IOLTA formula set forth in §6216.

Prior to that amendment, Trust Fund Program staff were required to convert information from audits and fiscal reviews from their various fiscal year periods to a calendar-year time frame, for review of prior year expenditures.

The Schedule of Charges and Deadlines attached as Appendix A to the State Bar Rules was revised in July of 2009, to set deadlines and threshold levels for Rule 3.680's audit requirements: organizations with corporate expenditures of less than \$500,000 were permitted to submit a financial review in lieu of an audit; and the deadline for submission of the audit or review was set as “Promptly when available, and no more than sixty (60) days after the application deadline, and prior to receipt of any allocation.”

An additional deadline was added at the same time for Rule 3.681, setting a deadline for submission of audits by grant recipients of 90 days from the close of its fiscal year. However, Rule 3.681 itself does not speak to the submission of fiscal audits or reviews by organizations seeking Trust Fund Program grants.

B. In 2015 The Trust Fund Program changed its Application Schedule and Review Process, Rendering some of the 2009 Rules and Deadlines Superfluous

At the time of these 2009 revisions, the Trust Fund Program operated on a schedule in which applications were due in February and the IOLTA grant year began on July 1. With many programs on a fiscal year ending December 31, it was typical for grantees still to be working on their audit when the Trust Fund application came due in February. The combination of deadlines enacted in July 2009 was intended to ensure that all programs, whether existing grantees or new applicants, submitted audits in time for them to be used during application review and the allocation calculation process.

In 2015 the Trust Fund Program converted its grant cycle to a calendar year, implementing a synchronized grant schedule for all Trust Fund grant programs – a significantly improved process for staff, Trust Fund Commission members, and grantees alike. This change in the grant year necessitated changes in the application schedule, and so the application due date was changed from early February to early June. One benefit of this change was to alleviate the pressure many applicants previously faced to complete and submit an audit by early February. With a June due date, all programs should have ample time to complete their audits before the application is due.

Also in 2015, the Trust Fund Program terminated reliance on unaudited “supplemental” financial statements to convert fiscal year expenditure figures into

¹ All further statutory references are to this Code unless otherwise stated.

calendar year expenditure figures. Instead, the Trust Fund Commission approved a new approach in which all applications would be assessed, and all grants calculated, based on expenditures incurred during the fiscal year completed in the prior calendar year.

DISCUSSION

The changes to the Trust Fund Program's grants administration impact Rule 3.680 and its associated deadlines in the following ways:

- The income and expense statement for the period from the end of the fiscal year to the end of the calendar year, specified in the rule, is no longer needed.
- The deadline for submission of an audit or review should no longer extend beyond the application deadline.

The appropriate deadline for submission of audits or reviews under the revised procedures is the same deadline as that currently listed in the Schedule of Charges and Deadlines as the deadline for Rule 3.681: Within ninety (90) days of the close of the organization's fiscal year. On the other hand, because Rule 3.681 refers to other grantee requirements but does NOT reference audits, the Schedule of Charges and Deadlines should refer back to Rule 3.680(E)(1) instead of to Rule 3.681 with respect to submission of audits to the Trust Fund Program.

It is therefore requested that the following revisions to the Rules and the Schedule of Charges and Deadlines, be sent out for public comment so that they can be revised to conform to current practices of the Trust Fund Program:

The text of 3.680(E)(1) should be revised to read:

An application must include an audited financial statement by an independent certified public accountant for the ~~latest completed~~ fiscal year that concluded during the prior calendar year. ~~if the fiscal year is not a calendar year, the application must also include an income an expense statement for the time between the closing date of the statement and December 31.~~ A financial review in lieu of an audited financial statement may be submitted by an applicant whose gross corporate expenditures were less than the amount specified in the Schedule of Charges and Deadlines.

- The Deadline for Rule 3.680(E)(1) should be revised to read:

["description" column] "Deadline for applicant to submit an audited or reviewed financial statement for the most fiscal year ending in the last calendar year period if the statement is not available at the time the application is due", and ["deadline" column] "Promptly when available, within 90 days of the end of the fiscal year except in extraordinary circumstances, and under no circumstances later than the time that applications are due and no more than sixty (60) days after the application deadline, and prior to receipt of any allocation."

- The Entry in the Schedule of Charges and Deadlines that references Rule 3.681 should be eliminated.

With the committee's approval, the proposed rule changes would be posted for public comment for 30 days, and following public comment, considered by the Committee and the Board at its next scheduled meeting.

FISCAL/PERSONNEL IMPACT

None

RULE AMENDMENTS

Title 3, Division 5, Chapter 2: Legal Services Trust Fund Program; Rules of the State Bar, Appendix A, Schedule of Charges and Deadlines

BOARD BOOK AMENDMENTS

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: 4. Support access to justice for all California residents and improvements to the state's justice system.

Objective: None

RECOMMENDATION

It is recommended that the Programs Committee approve the following resolution:

RESOLVED, that staff are authorized to make available for public comment for a period of 30 days, proposed revisions to State Bar Rule 3.680(E)(1) so that it reads as follows: **An application must include an audited financial statement by an independent certified public accountant for the fiscal year that concluded during the prior calendar year. A financial review in lieu of an audited financial statement may be submitted by an applicant whose gross corporate expenditures were less than the amount specified in the Schedule of Charges and Deadlines;** and it is

FURTHER RESOLVED, that staff are authorized to make available for public comment for a period of 30 days, proposed revisions to the Schedule of Charges and Deadlines to the State Bar Rules so that the deadline for Rule 3.680(E)(1) is described as **"Deadline for applicant to submit an audited or reviewed financial statement for the fiscal year ending in the last calendar year";** and [in the "deadline" column] **"Promptly when available, within 90 days of the end of the fiscal year except in extraordinary circumstances, and under no circumstances later than the time that applications are due.";** and it is

FURTHER RESOLVED, that staff are authorized to make available for public comment for a period of 30 days, the proposed deletion of reference to Rule 3.681 in the Schedule of Charges and Deadlines to the State Bar Rules; and it is

FURTHER RESOLVED, that this authorization for release for public comment is not, and shall not be construed as, a statement or recommendation of approval of the proposed changes.

ATTACHMENT(S) LIST

Attachment A: Text of State Bar Rule 3.680(E)(1) and relevant sections of Schedule of Charges and Deadlines (Current version)

Attachment B: Text of State Bar Rule 3.680(E)(1) and relevant sections of Schedule of Charges and Deadlines (Redlined Version)

**ATTACHMENT A:
CURRENT TEXT OF RULES 3.680, 3.681, AND ASSOCIATED SCHEDULES
OF CHARGES AND DEADLINES**

**TITLE 3. PROGRAMS AND SERVICES
DIVISION 5. PROVIDERS OF PROGRAMS AND SERVICES**

Chapter 2. Legal Services Trust Fund Program

[....]

Article 3. Applications and distributions

Rule 3.680 Application for Trust Fund Program grants

[....]

(E) An application must include

(1) an audited financial statement by an independent certified public accountant for the latest completed fiscal year; if the fiscal year is not a calendar year, the application must also include an income and expense statement for the time between the closing date of the statement and December 31. A financial review in lieu of an audited financial statement may be submitted by an applicant whose gross corporate expenditures were less than the amount specified in the Schedule of Charges and Deadlines;

[....]

Rule 3.680 adopted effective March 6, 2009.

Rule 3.681 Duties of Trust Fund Program grant recipient

The recipient of a Trust Fund Program grant must

(A) use the grant in accordance with the terms of the grant agreement and Trust Fund Requirements;

(B) maintain complete financial records, including budgets, to account for the receipt and expenditure of all grant funds and all income earned by a grant recipient from grant-supported activities, such as income from fees for services (including attorney fee awards and reimbursed costs), training, sales and rentals of real or personal property, and interest earned on grant amounts;

(C) maintain records for five years after completion of services to a client regarding the eligibility of the client and promptly provide such records to the Commission for inspection upon demand;

(D) annually submit information that describes, in the manner required by the Commission, the grant recipient's maintenance of quality service and professional standards and compliance with program requirements and, as requested by the Commission,

- (1) information for evaluative purposes about program activities in the prior grant year; and
- (2) information to enhance the delivery system of legal services;

(E) cooperate regarding any reasonable site visit;

(F) submit timely quarterly financial reports and any other information reasonably required by the Commission; and

(G) pay any noncompliance fees set forth in the Schedule of Charges and Deadlines for processing documents that are substantially noncompliant with Trust Fund Requirements or that are late without permission.

Rule 3.681 adopted effective March 6, 2009.

**RULES OF THE STATE BAR OF CALIFORNIA
APPENDIX A: SCHEDULE OF CHARGES AND DEADLINES FOR 2018
ANNUAL FEES**

Adopted July 2007

Revised December 1, 2017

[....]

TITLE 3, DIVISION 5, CHAPTER 2
LEGAL SERVICES TRUST FUND

*Fees previously adopted by the Board of Trustees or mandated by statute.
Amended effective March 2, 2012*

<i>Rule</i>	<i>Description</i>	<i>Amount</i>	<i>Deadline</i>
3.680(E)(1)	Threshold amount of gross corporate expenditures requiring submission of an audited financial statement. Deadline for applicant to submit an audited or reviewed financial statement for the most recent period if the statement is not available at the time the application is due.	\$500,000	Not Applicable Promptly when available, and no more than sixty (60) days after the application deadline, and prior to receipt of any allocation.
3.681	Deadline for grant recipient to submit an audited or reviewed financial statement for the fiscal year ended most recently.		Within ninety (90) days of the close of its fiscal year.

**ATTACHMENT B:
RECOMMENDED CHANGES TO CURRENT TEXT
OF RULES 3.680, 3.681, AND ASSOCIATED SCHEDULES OF CHARGES AND DEADLINES**

TITLE 3. PROGRAMS AND SERVICES

DIVISION 5. PROVIDERS OF PROGRAMS AND SERVICES

Chapter 2. Legal Services Trust Fund Program

[...]

Article 3. Applications and distributions

Rule 3.680 Application for Trust Fund Program grants

[...]

(E) An application must include

(1) an audited financial statement by an independent certified public accountant for the fiscal year that concluded during the prior calendar year. latest-completed fiscal year; if the fiscal year is not a calendar year, the application must also include an income and expense statement for the time between the closing date of the statement and December 31. A financial review in lieu of an audited financial statement may be submitted by an applicant whose gross corporate expenditures were less than the amount specified in the Schedule of Charges and Deadlines;

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(C) maintain records for five years after completion of services to a client regarding the eligibility of the client and promptly provide such records to the Commission for inspection upon demand;

(D) annually submit information that describes, in the manner required by the Commission, the grant recipient's maintenance of quality service and professional standards and compliance with program requirements and, as requested by the Commission,

- (1) information for evaluative purposes about program activities in the prior grant year; and
- (2) information to enhance the delivery system of legal services;

(E) cooperate regarding any reasonable site visit;

(F) submit timely quarterly financial reports and any other information reasonably required by the Commission; and

(G) pay any noncompliance fees set forth in the Schedule of Charges and Deadlines for processing documents that are substantially noncompliant with Trust Fund Requirements or that are late without permission.

Rule 3.681 adopted effective March 6, 2009.

RULES OF THE STATE BAR OF CALIFORNIA

APPENDIX A: SCHEDULE OF CHARGES AND DEADLINES FOR 2018 ANNUAL FEES

Adopted July 2007

Revised December 1, 2017

[...]

TITLE 3, DIVISION 5, CHAPTER 2

LEGAL SERVICES TRUST FUND

Fees previously adopted by the Board of Trustees or mandated by statute.

Amended effective March 2, 2012

<i>Rule</i>	<i>Description</i>	<i>Amount</i>	<i>Deadline</i>
3.680(E)(1)	<p>Threshold amount of gross corporate expenditures requiring submission of an audited financial statement.</p> <p>Deadline for applicant to submit an audited or reviewed financial statement for the fiscal year ending in the last calendar year. most recent period if the statement is not available at the time the application is due.</p>	\$500,000	<p>Not Applicable</p> <p>Promptly when available, no more than <u>ninety (90) days of the close of its fiscal year except in extraordinary circumstances, and under no circumstances later than the time that applications are due (60) days after the application deadline, and prior to receipt of any allocation.</u></p>

3.681	Deadline for grant recipient to submit an audited or reviewed financial statement for the fiscal year ended most recently.		Within ninety (90) days of the close of its fiscal year.
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