



The State Bar *of California*

Date: January 14, 2020

To: The Legal Aid Association of California

From: Christal Bundang, Sr. Program Analyst, Office of Access & Inclusion

Subject: Codification of Grant Administration Practices: Deeming

EXECUTIVE SUMMARY

The Legal Services Trust Fund Commission (LSTFC) Rules Committee is working to gather, codify, and revise, as necessary and appropriate, all of the decision points and considerations that are used as part of the grant administration and determination processes and procedures. The purpose of the codification process is to devise and revise practices, procedures, and protocols that ensure transparency, consistency, and accountability in grant administration. The LSTFC's effort follows the recommendation of the Legal Services Trust Fund Stakeholder Working Group, which was adopted by the State Bar Board of Trustees in January 2019, to provide greater equity, transparency, and accountability into the day-to-day administration of funding through the Office of Access & Inclusion.

As part of IOLTA and EAF funding eligibility, Support Centers that were not in operation prior to December 31, 1980, must be deemed of special need by a majority of qualified legal services projects. This memo seeks to examine the governing authorities regarding deeming, identify potential issues and recommend changes to the current process. This memo will be limited to the narrow issue of deeming, as broader Support Center processes and codification issues will be examined at a later time.

BACKGROUND

Qualified Support Centers are incorporated nonprofit legal services centers that have as their primary purpose and function as the provision of legal training, legal technical assistance, or advocacy support without charge to qualified legal services projects (QLSPs) in California on a statewide basis.¹ In addition, according to Business and Professions Code section 6215, State Bar Rule 3.680(b), and Eligibility Guidelines for Support Centers 2.8 and 2.9.1, Support Centers

¹ According to State Bar Rule 3.671(B), "a qualified support center . . . is presumed to have such a primary purpose and function if 75% or more of its budget for the fiscal year for which it is seeking funds is designated to provide such support services." Additional Support Center-related issues, including primary purpose, will be discussed by the Rules Committee in September 2020.

in operation after December 31, 1980, must demonstrate that they are deemed to be of special need by a majority of qualified legal services projects in accordance with State Bar procedures. Support Centers established prior to December 31, 1980, are presumed to meet the special need requirement and do not require deeming.

For the 2020 IOLTA and EAF grant year, there are 22 Support Centers, nine of which are subject to the deeming requirement. Following the process set forth in Guideline 2.9, those nine Support Centers are subject to deeming on a rolling three-year basis.

The deeming process is primarily administrative. Every year, staff provides all eligible QLSPs a one-page description of the Support Center and a one-question ballot via Survey Monkey to complete. A Support Center is considered deemed and eligible for State Bar funding if it receives affirmative votes from more than one-half of all QLSPs. While the votes are anonymous, the Support Center is provided information on the number of votes received and may contact QLSPs if additional votes are needed. Deeming results are then reported to the LSTFC.

Since its implementation in 1981, there have been a few changes to the deeming process. From August 1992 to March 1993, the LSTFC and Eligibility & Budget Review Committee studied the deeming process, and solicited comments from all State Bar grant recipients and recommendations from the Legal Aid Association of California (LAAC).

Public comments included:

“From our perspective the process has run amuck [sic] over the last several years. ...Rather than providing legal training and technical assistance and support to Qualified Legal Services Trust Fund Programs many of these organizations seem more focused on their own organizational missions and goals and seem to be using the Support Center concept to carry out their objectives rather than responding to our needs for assistance. ...The process at this point seems to be driven more by the various centers wanting to be deemed than by the Trust Fund Programs themselves identifying a need for particular assistance in certain areas.”

“Deeming and re-deeming do not measure accountability, just the ability to get the required number of votes.”

“Program by program balloting results should be public record. If, for example some programs do not consider our services to be “of special need,” knowing which program they are provides an opportunity for meaningful discussion as to why and what we might be able to do to help them.”

While LAAC ultimately recommended that the deeming process remain the same, with the exception of the deeming cycle, in a March 18, 1993 letter to the LSTFC, it highlighted several themes from the comments provided by QLSPs:

In general, responses suggest that substantial work needs to be done to improve coordination between Support Centers and the field. It is not simply that the field wants more information on what Support Centers are doing, but they want some ability to impact how centers set their priorities.

Most respondents felt the current process more akin to a popularity contest or political campaign rather than a true assessment of field program need.

On April 12, 1993, the LSTFC adopted the recommendation to change the deeming cycle from every two years to three years, with no other changes to the process. This was in response to a consensus that the two year process was burdensome and counter-productive to both QLSPs and Support Centers.

On November 4, 1994, the LSFTC approved the following definition of special need: "In deciding whether they deem a support center to be 'of special need,' projects will be instructed to consider what support the legal services projects in California need in delivering legal services to indigent persons, and to evaluate how the center's services meet that need, including such issues as the quality and/or quantity of the center's work. Project directors will be encouraged to consult with service providers or others associated with the project in making their decision." This definition has since been integrated in the commentary of Guideline 2.9.1.

DISCUSSION

A longstanding issue is that the current deeming process does not truly assess whether a support center is of special need. The one-question deeming ballot does not garner valuable information for QLSPs, the LSFTC, or State Bar staff to evaluate whether or not a Support Center meets the need of supporting QLSPs in delivering legal services to indigent persons in California. The ballot asks QLSPs, "Do you deem the following program to be of special need and therefore qualified to receive funding from the Legal Services Trust Fund Program as a qualified Support Center?" and has three answer options – "Yes," "No" or "Abstain."

This lack of information also brings to light whether or not Support Centers and QLSPs benefit from the re-deeming process every three years.

A review of legislative history of the statutory scheme that grandfathered in Support Centers that existed prior to December 31, 1980, and that required deeming of those that came into existence after that date, did not shed any light on the process or how it might be improved.

There was no discussion of whether the deeming process was intended to happen once, or cyclically. There was no direction on how best to satisfy the requirement that the Support Centers be deemed of special need.

CODIFICATION RECOMMENDATIONS

Staff recommends that the deeming process be revised to create a true mechanism to determine if a Support Center meets and continues to meet the special need requirement. The proposed changes would not affect Support Centers operating prior to December 31, 1980, as they are presumed to meet the special need requirement, and are not subject to deeming.

To create a more meaningful process, and in response to prior QLSP feedback about the deeming process, a comprehensive ballot would be a better mechanism for QLSPs to evaluate whether a Support Center meets the special need requirement, and to provide substantive feedback. Staff recommends modifying the deeming ballot to include questions specific to the definition of special need and including an optional text box for additional feedback or comments. Attachment B proposes potential deeming ballot questions.

Additionally, in order to determine whether a majority of QLSPs deem the Support Center to be of special need, staff recommends that the LSTFC adopt a two-part rubric to determine what would constitute an affirmative vote from a QLSP. The first part would be an objective analysis of the ballot scores. For example, each scaled answer choice could correlate to 0-5 points, with 5 being the most favorable opinion. An overall score average of 3 could indicate a sufficient level of quality and services. The second part of the rubric would be regarding the optional feedback and comments. Staff would first determine the validity of a comment, and whether or not the issue(s) are substantively related to the special needs requirement.

Ballots with an average score of 3 or more and no negative substantive comments would be considered an affirmative vote. However, if staff determines that there are substantive issues, the Support Center would be elevated to the Eligibility & Budget Review Committee, regardless of its ballot's score. As prescribed by State Bar Rule 3.661(B), the LSTFC would then make the final determination on eligibility.

Staff also recommends that the deeming process be more transparent to the Support Centers. Staff recommends that the individual votes remain anonymous but that anonymized comments be shared with the Support Centers. The information would be valuable for Support Centers to review feedback and make necessary changes to ensure that they continue to meet QLSP needs.

Staff does not recommend any changes to the requirement that a majority of all QLSPs deem a Support Center. Since Support Centers are required to provide services statewide, this

requirement provides an opportunity for Support Centers to engage in meaningful outreach with all QLSPs prior to their re-deeming period and to ensure that the support offered by the Support Centers has a broad statewide reach.

Staff also does not recommend changes to the current timing of re-deeming process. Given the additional information and feedback requested, the updated deeming process would be more impactful for both QLSPs and Support Centers. Similar to monitoring visits, the three year re-deeming period would allow sufficient time for Support Centers to implement any changes based on QLSP feedback. Staff plans to track the deeming information to ensure that Support Centers are responsive to the feedback. If no changes are made or if the Support Center receives the same negative feedback for two consecutive deeming cycles, it would be flagged and elevated to the LSTFC.

Finally, staff recognizes the need to better define quality control measures under State Bar Rule 3.661(B) for all Support Centers and recommends that this issue be examined and evaluated at a later time during the codification process.

ATTACHMENT LIST

- A. Proposed Amended Eligibility Guidelines for Support Centers - 2.9.1 and Commentary
- B. Proposed Deeming Questions

2.9.1. The organization must be deemed to be of special need by a majority of the qualified legal services projects. If an applicant was affirmatively deemed of special need for one grant period, the Commission will assume (without need for further information) that it continues to be so deemed for the immediately following two grant periods.

Commentary:

If ~~you~~ an organization does not meet the presumption established by Guideline 2.8, ~~the organization statute requires that it be deemed~~ must be deemed of special need by a majority of qualified legal services projects that receive allocations from the Legal Services Trust Fund Program. The statute requires that the organization presently be so deemed.

Evidence of such deeming in prior years, while it may be considered by the Commission as relevant evidence, is not determinative of the issue before the Commission except in the two funding periods after the grant period for which ~~you were~~ the organization was so deemed. The Commission itself intends to solicit the views of qualified legal services projects as to whether the organization is presently deemed of special need in every third year, starting with ~~their~~ its application for the first funding period. Therefore, ~~you~~ an organization must (for ~~your~~ its first, fourth, seventh, etc., funding periods) supply the Commission with a one-page description of the organization.

The Commission will solicit advice from qualified legal services projects whether they presently deem the organization to be of special need. More than one-half of those whose advice is solicited must respond affirmatively in order for the organization to be eligible. Upon request, the Commission will make available to you a list of the names and addresses of the qualified legal services projects from which the Commission will solicit ~~views~~ advice.

In deciding whether they deem a support center to be of special need, projects will be instructed to consider what support the qualified legal services projects in California need in delivering legal services to indigent persons, and to evaluate how the organization's services meet that need, including such issues as the quality and/or quantity of the organization's work. Project directors will be encouraged to consult with service providers or others associated with the project in making their decision. [B&P Code §6215(b)(2); Rule 3.680(C)]

Proposed Deeming Questions

1. In the last three years, how often has your organization received free legal training from this Support Center?
 - Very Frequently (5 or more times a year)
 - Frequently (4 times a year)
 - Occasionally (3 times a year)
 - Rarely (2 times a year)
 - Very Rarely (1 time a year)
 - Never(Optional Comment Box)

2. In the last three years, how often has your organization received legal technical assistance from this Support Center?
 - Very Frequently (5 or more times a year)
 - Frequently (4 times a year)
 - Occasionally (3 times a year)
 - Rarely (2 times a year)
 - Very Rarely (1 time a year)
 - Never(Optional Comment Box)

3. In the last three years, how often has your organization received advocacy support from this Support Center?
 - Very Frequently (5 or more times a year)
 - Frequently (4 times a year)
 - Occasionally (3 times a year)
 - Rarely (2 times a year)
 - Very Rarely (1 time a year)
 - Never(Optional Comment Box)

4. How would you rate the quality of support provided by this Support Center?
 - Very High
 - Somewhat High
 - Average
 - Low
 - Very Low
 - Not applicable(Optional Comment Box)

5. This Support Center's training content and technical assistance is directed towards meeting the legal needs of indigent persons or the functioning of a legal services project:
- Strongly Agree
 - Agree
 - Neutral
 - Disagree
 - Strongly Disagree
 - Not Applicable/Unknown
(Optional Comment Box)
6. This Support Center regularly engages with QLSPs to ensure that its priorities meet community need.
- Strongly Agree
 - Agree
 - Neutral
 - Disagree
 - Strongly Disagree
 - Not Applicable/Unknown
(Optional Comment Box)
7. How would you rate your overall level of satisfaction from this Support Center and its services?
- Very High
 - Somewhat High
 - Average/Neutral
 - Low
 - Very Low
 - Not Applicable/Unknown
(Optional Comment Box)