

Trust Fund Authorities on Audits and Reviews

Business and Professions Code, Section 6222: A recipient of funds allocated pursuant to this article annually shall submit a financial statement to the State Bar, including an audit of the funds by a certified public accountant or a fiscal review approved by the State Bar, a report demonstrating the programs on which they were expended, a report on the recipient's compliance with the requirements of Section 6217, and progress in meeting the service expansion requirements of Section 6221.

State Bar Rules, Title 3, Division 5, Chapter 2, Article 3, Rule 3.680(E)(1): An application must 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;

State Bar Rules, Appendix A, Title 3, Division 5, Chapter 2:

<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.

Eligibility Guideline for Legal Services Project, Rule 2.7: The application must include a financial statement that includes the total expenditures of the applicant. The financial statement must meet the requirements of Guideline 2.7.1 below.

2.7.1. The statement must show expenditures for the completed fiscal year ended most recently before the application deadline, and must be audited or reviewed by an independent certified public accountant. 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. Applicants must submit a financial statement no later than 90 days after the end of their fiscal year. The required financial statement must be received prior to the disbursement of any funds from the Legal Services Trust Fund Program.

Commentary:

Independent CPA-audited or reviewed statements are required of organizations with gross expenditures of less than \$500,000. Organizations with gross expenditures in excess of \$500,000 must submit audited statements. If such a statement is unavailable at the time of the application, you may substitute an approximated financial statement, but you must submit an audited or reviewed statement no more than 90 days after the end of their fiscal year. [B&P Code §6222; Rule 3.680(E)(1); Schedule of Charges and Deadlines]

2.7.2. The financial statement need not distinguish between legal services without charge to persons who are indigent (within the definition of Guideline 2.3.4 above) and other services performed by the project. However, if an applicant does provide other services, the application must include the approximated information requested on the expenditure form(s) identifying expenses incurred providing any of the following services: legal services/other activities, civil/criminal, free/charged, indigent/non-indigent clients, in-state/out-of-state expenditures.

Commentary:

The amount of your grant will be based in part on the amount of your expenditures in your previous fiscal year for civil legal services without charge to indigent persons. See Guidelines 2.3.1 through 2.3.4 for the definitions the Commission will use to determine the portion of your expenditures that are qualified to be counted in determining your grant allocation. [B&P Code §6216(b)]

Records that may be used to demonstrate the portion of the organization's expenses that qualify to be counted in determining the grant allocation include the following: records of the numbers of clients served during the previous year; records reflecting time spent on different kinds of services or on services to indigent/non-indigent clients in the previous year; accounting records reflecting expenses incurred providing different kinds of services or on services to indigent/non-indigent clients during the previous year.

If you rely on estimates to establish the amount of your qualified expenditures, you must make the estimates by a method that is reasonably related to the actual expenditure of funds and explain the basis of the estimates.

Eligibility Guideline for Legal Services Project, Rule 2.3: The application must demonstrate through objective information that the organization:

Commentary:

Objective information must be provided to assure that you meet the definitional provisions of Guideline 2.3. Such information must describe the organization specifically and factually, using quantitative information where needed, to demonstrate that it meets each of the requirements of Guidelines 2.3.1-2.3.5. [B&P Code §6213(a); Rules 3.670(A), 3.671(A), 3.680(E)(2)]

Quantitative information that may demonstrate how that organization's services meet the requirements includes the following: numbers of clients who were served during the previous year; hours of time spent on different kinds of services, or on services to different clients in the previous year; accounting records for expenses incurred in providing different kinds of services or services to different clients during the previous year.

If you rely on estimates to demonstrate that you have met these requirements, you must demonstrate that the estimates were derived by a method that is reasonably related to the actual expenditure of funds, and explain the basis of the estimates.

2.3.1. provides civil legal services

Commentary:

You must provide legal services within the definition of Rule 3.672(A). That rule provides that "legal services include all professional services provided by a member of the State Bar, and similar or complementary services of a law student or a paralegal under the supervision and control of a member of the State Bar in accordance with law." If your organization provides services in addition to legal services, your application must describe those other activities, identify the percentage of the overall services provided that are not legal services, and state the basis by which you computed that percentage. [Rule 3.671(A)]

2.3.2. without charge

Commentary:

Payments by clients for costs and expenses or a processing fee of \$20 or less shall not be considered a "charge" for legal services, so long as the processing fee is administered so that it does not prevent indigent persons from receiving services.

If you charge a processing fee, you must establish procedures for

waiving the fee for all clients who cannot afford it. You must inform prospective clients of the availability of a waiver at the same time and in the same manner that they are informed of the fee, and in a language the client can understand.

If you charge a processing fee, your application must include information about established procedures for waiving the fee for clients who cannot afford it. The maximum of \$10 per processing fee will be regarded as a qualified expenditure.

If you charge some clients amounts in excess of costs, your application must state the percentage of your work in which such charges are made, and the basis for computing that percentage.

If attorneys' fees are generated through court awards, such fees must be used to provide further civil legal services without charge to indigent persons. [Rule 3.673(B)]

"Costs and expenses" include any out-of-pocket expenses incurred by the organization (or by pro bono attorneys recruited by the organization), including recoverable costs of litigation, copying charges, telephone charges, postage charges, and other out-of-pocket expenses normally charged to clients by attorneys in private practice. An applicant may be considered as providing legal services without charge within the meaning of Guideline 2.3.2 in spite of charges to clients for such items. [Rule 3.673(B)]

2.3.3. to persons

Commentary:

You may consider legal services provided to an organization (e.g., an unincorporated association, partnership, or corporation) as services to indigent persons if the organization provides benefits primarily to persons who are indigent as described below in the Commentary on Guideline 2.3.4. In determining whether an organization so qualifies, the Commission will consider at least the following factors: (a) whether the organization is tax exempt under I.R.C. §501(c)(3); (b) the organization's primary purpose as stated in its bylaws or articles; (c) the number and percentage of indigent persons on the board of directors or principal advisory body of the organization; and (d) the percentage of its members who are indigent persons.

If you provide more than ten percent of your services to organizations (whether qualifying or non-qualifying), your application must identify the five organizations that received the most legal services during the prior calendar year and, for each such organization, supply the information identified above. You need not disclose information protected by the attorney-client privilege. If you provide some portion of your legal services to organizations that do not so qualify, identify the percentage of overall services provided to such non-qualifying organizations, and explain the basis of your computation.

2.3.4. who are indigent

Commentary:

An indigent person is defined by the Business and Professions Code §§6213(d), 6213(g), 6213(h), and 6213(i) as follows:

“Indigent person means a person whose income is (1) 125 percent or less of the current poverty threshold established by the United States Office of Management and Budget, or (2) who is eligible for Supplemental Security Income or free services under the Older Americans Act or Developmentally Disabled Assistance Act. With regard to a project which provides free services of attorneys in private practice without compensation, indigent person also means a person whose income is 75 percent or less of the maximum levels of income for lower income households as defined in §50079.5 of the Health and Safety Code. For the purpose of this subdivision, the income of a person who is disabled shall be determined after deducting the costs of medical and other disability-related special expenses.”

Your application must state the percentage of your organization’s services that were provided during the previous calendar year to clients who did not fall within this definition. You must adopt written financial eligibility guidelines. If your eligibility criteria includes persons who are not indigent within the definition of §6213(d) above, explain how you determined the percentage of clients served that falls outside the definition.

If you did not have written financial eligibility guidelines in the prior year, your application must explain the basis of your computation of percentage and supply objective support for the computation. [B&P Code §§6213(d) and 6218]

If you provide legal services for the benefit of a group or class of persons beyond the specific individuals or organizations who are your clients, you may consider the services as “legal services provided to indigent persons” only if the legal matter is primarily for the benefit of indigent persons.

In determining whether a legal matter is primarily for the benefit of indigent persons, the Commission may consider the following factors and any others that aid in making that determination: (1) the forum in which the matter is being pursued, e.g., courts, administrative agency, legislature, etc.; (2) whether named clients are indigent persons or qualifying organizations (under Commentary 2.3.3 above); (3) in the case of a class action, the definition of the class contained in the complaint and proposed or actual class certification orders; (4) a description of the group of individuals that would benefit from a favorable resolution of the legal matter; (5) whether a majority of those who would benefit are indigent persons; (6) the relation of the legal issues raised by the matter to the needs of indigent persons; and (7) whether indigent persons are disproportionately impacted by the legal issues raised by the matter.

If legal services for the benefit of a group or class of persons beyond the specific individuals or organizations who are your clients constitute more than ten percent of your legal services, your application must identify the ten such legal matters on which you expended the largest amount of funds in the prior calendar year. For each of the matters so identified in your application, describe who would benefit from the services, state whether the matter is primarily for the benefit of indigent persons and, if so, explain the reasons you reached that conclusion. For any such matter that is primarily for the benefit of indigent persons, your description should include the information listed as items (1) through (7) in the preceding paragraph; you must quantify the percentage of your clients who are indigent persons (or organizations qualifying under Commentary 2.3.3 above) and the percentage of the persons who would benefit from the services who are indigent persons. Explain the basis of this information. You need not disclose information protected by the attorney-client privilege.

If some portion of your legal services are for the benefit of a group or class of persons beyond your specific clients and are not primarily for the benefit of indigent persons, identify the percentage of overall services provided in such matters and explain the basis of your computation.

2.3.5. as the primary purpose and function of the corporation.

Commentary:

Your application must state the net percentage of the corporation's overall expenses that were incurred in the previous calendar year to provide civil legal services without charge to persons who are indigent. You are required to demonstrate the corporation's primary purpose, and not simply the primary purpose of a part of the corporation. (If your project is operated by a law school, see the last section of this Commentary on Guideline 2.3.5.)

If more than 75 percent of the corporation's expenditure budget for the fiscal year for which it is seeking an allocation is designated for the provision of civil legal services without charge to persons who are indigent, and if 75 percent of its expenditures for the most recent reporting year were incurred for such legal services, the corporation will be presumed to meet the primary purpose and function test. In demonstrating your compliance with this 75 percent test, you cannot include the value of donated services. [Rule 3.671(A)]

An applicant not qualifying for the 75 percent presumption may nevertheless apply for an allocation, demonstrating its purpose and function by other means. An applicant not qualifying for the presumption shall state separately each purpose and function of the corporation, and state what percentage of the expenditures in the most recent calendar year, and what percentage of the budget in the upcoming year, are allocated to each of

these separate purposes and functions. The application shall further state the basis for these allocations. [Rule 3.671(C)]

In addition to this submission of expenditure and of budget information, primary purpose and function can be additionally supported by historic expenditure information, by the organization's stated purpose in articles, bylaws or policy statements or case priority guidelines, or by the demonstrated track record of the applicant in providing legal services without charge to indigent persons.

An applicant that 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, but which has since become a separate California nonprofit corporation whose primary purpose and function is the provision of legal services without charge to indigent persons, 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 civil legal services for indigents. Thus, if you are recently incorporated and previously operated as a part of an umbrella organization, you may utilize the expenditures of your predecessor organization so long as financial statements strictly segregate the expenditures for such legal services.

If your legal services program is operated by an accredited nonprofit law school, you are required only to demonstrate the program's primary purpose, and not the corporation's primary purpose. Your program must be operated exclusively in California and the law school must be accredited by the State Bar of California. The program must have operated for at least two years at a cost of at least \$20,000 per year, as an identifiable law school unit with the primary purpose and function of providing civil legal services without charge to indigent persons. The program may meet the primary purpose test according to the 75 percent test described above or by demonstrating its purpose and function through other means described above. [B&P Code §6213(a)(2)]

Accounting Standards Separate from Trust Fund Authorities

FASB Accounting Standards Codification

Presentation of Financial Statements of Not-for-Profit Entities

958-205-05-5: General-purpose external financial statements provided by an NFP include a statement of financial position, a statement of activities, and a statement of cash flows.

Reporting of Expenses by Nature and Function

958-205-45-6: Reporting expenses by nature and function is useful in associating expenses with service efforts and accomplishments of NFPs. All NFPs shall report information about all expenses in one location—on the face of the statement of activities, as a schedule in the notes to financial statements, or in a separate financial statement—as required by paragraph 958-720-45-15. The relationship between functional classification and natural classification for all expenses shall be presented in an analysis that disaggregates functional expense classifications, such as major classes of program services and supporting activities, their natural expense classifications, such as salaries, rent, electricity, supplies, interest expense, depreciation, awards and grants to others, and professional fees. To the extent that expenses are reported by other than their natural classification (such as salaries included in cost of goods sold or facility rental costs of special events reported as direct benefits to donors), they shall be reported by their natural classification in the functional expense analysis.