

# **AGENDA ITEM**

**OCTOBER 2018**

**DATE:** October 19, 2018

**TO:** Members, Board of Trustees

**FROM:** Andrew Tuft, Acting Program Director II, Office of Access & Inclusion

**SUBJECT:** Revision to State Bar Rules to Reflect Revised Grant Timelines – Return from Public Comment and Request for Additional Public Comment

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## **EXECUTIVE SUMMARY**

Currently, the State Bar Rules require Legal Services Trust Fund Program grantees to submit an audit or independently reviewed financial statement as part of the 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.

At the Board of Trustees (“Board”) July meeting, the Programs Committee authorized a 30-day public comment period on proposed amendments to State Bar Rule 3.680(E)(1), and Appendix A, the Schedule of Charges and Deadlines to conform these rules and schedules to the new grants administration calendar. This agenda item requests that the Board authorize an additional 30-day public comment period following further modification to the Schedule of Charges and Deadlines in response to the public comments received. The changes to the rule engendered no public comment, and thus no additional changes to the rule itself are proposed.

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## **BACKGROUND**

Attachment A to this memo is the July 19, 2018 Programs Committee agenda item which provides the relevant background for this request, including a description of changes made within the past ten years to the application process for IOLTA grants through the Legal Services Trust Fund Program. These changes to the grant administration calendar impact State Bar Rules 3.680 and 3.681, and Appendix A to the rules, the Schedule of Charges and Deadlines, as it relates to these rules.

These changes include updating the deadline for submission of audits or reviewed financial statements to a period within ninety (90) days of the close of the organization’s fiscal year, a similar deadline for other grantee requirements. The proposal also eliminated the authority for audits to be submitted after the application deadline for following grant year.

At its July 19, 2018 meeting, the Programs Committee approved proposed amended State Bar Rule 3.680(E)(1), and amendments to the Schedule of Charges and Deadlines as it relates to

State Bar Rules 3.680(E)(1) and Rule 3.681, for a 30-day public comment. These revisions were designed to update the rules and schedule to conform to the current practices of the Trust Fund Program.

Following consideration of public comments received, State Bar staff revised the Schedule of Charges and Deadlines and received input from the Legal Services Trust Fund Commission ("LSTFC") concerning the revisions. This agenda item presents a request that the Board authorize for an additional 30-day public comment period the Schedule of Charges and Deadlines, as revised, in order to adopt these rules on an expedited basis. The need to adopt the revisions on an expedited basis is predicated on providing IOLTA programs with enough notice to obtain their financial audit or review in time for the grant application deadline in 2019.

## **DISCUSSION**

### **I. Public Comment**

The 30-day public comment period ended on August 27, 2018. A total of eight (8) public comments were received.<sup>1</sup> Points raised by those who commented include the following:

1. 90 days is not enough time for programs to obtain a financial audit. Several commenters requested a deadline of 120 days for submitting audits, while one commenter requested 150 days.
2. "Extraordinary circumstances" and "under no circumstances" are standards that fail to provide appropriate flexibility, and a "reasonableness" standard should be used instead.
3. Upon a reasonable request, staff should be given discretion to determine when an extension is warranted.
4. Programs should be permitted to request a 30-day extension, and request additional extensions in extraordinary circumstances.

### **II. Summary of Proposed Revisions to the Schedule of Charges and Deadlines as Modified after Consideration of Public Comments<sup>2</sup>**

Staff's revisions to the public comment version of the Schedule of Charges and Deadlines are set forth below. A clean version of the amendments is provided as Attachment C.

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<sup>1</sup> The public comments are provided as Attachment B.

<sup>2</sup> Staff has not made any modifications to the initial revisions to State Bar Rule 3.680(E)(1), or to the request that the entry in the Schedule of Charges and Deadlines that references Rule 3.681 be deleted. None of the public comments addressed these revisions.

<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 <u>that concluded during the prior</u> <del>ending in the last</del> calendar year.</p>	\$500,000	<p>Not Applicable</p> <p>Promptly when available, <u>and no later than May 1. Upon written request, an extension up to the application deadline may be granted by State Bar staff. Such requests shall include an explanation of the need for an extension. Upon a showing of extraordinary circumstances, State Bar staff may grant an extension beyond the application deadline. Under no circumstances shall such extension be granted beyond the date upon which grant allocations are determined.</u> <del>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.</del></p>

1. In the "Description" column, staff is recommending the language be modified to mirror the language used in revised State Bar Rule 3.680(E)(1) itself, for consistency.
2. In the "Deadline" column, several commenters requested more than 90 days to submit an audit as they were concerned this would not be enough time for some programs to complete an audit. The concern seemed to focus around those programs that have a fiscal year tied to the calendar year, and that a March 31 due date would not be realistic. Some commented about the fact that their auditor was occupied with taxes during this period and could not complete an audit by this deadline. After consideration of these comments, staff is recommending setting the deadline on a fixed date, May 1st. As these audits are an essential part of determining whether a program is eligible for funding in the next grant year, staff believes it is necessary that audits be received at least somewhat prior to the applications for the coming grant year. In the past, there have been times where a program believed it had submitted a proper audit when, in fact, they did not. When staff is able to review the audit in advance of the application deadline, they can communicate with the program to help them submit the appropriate paperwork, when necessary. The application deadline typically falls in early June, so a May 1st deadline will help staff with the processing of the applications.
3. In response to the concern about an extraordinary standard being inflexible and undefined to justify a submission prior to the application deadline, the proposed revision allows for staff to accept an audit submitted after the May 1st deadline,

but before the application deadline, where the program has provided a written request explaining the need for the extension. This allows for some flexibility while also requiring a program to explain and justify the need for an extension.

4. Finally, in response to commenters who desired the ability to seek an additional extension, the amended rule allows for a program to request an extension beyond the application deadline, but only upon a showing of extraordinary circumstances. However, the rule expressly prohibits an extension be granted beyond the date on which grant allocations are made.

### III. Request for Public Comment Authorization

If the Board agrees, the Schedule of Charges and Deadlines, as revised, would be circulated for an additional 30-day public comment period. This additional public comment is needed to conform to the Board's policy requiring such public comment when substantive changes have been made to a proposal following an initial public comment period.

After the 30-day public comment period, should there be no public comments necessitating further revision to the rule or schedule, it is anticipated that Board consideration of a request to adopt amended Rule 3.680(E)(1) and the Appendix Schedule of Charges and Deadlines would occur at the Board's next meeting following the public comment deadline.

#### **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 IMPACT**

None

#### **BOARD GOALS & OBJECTIVES**

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

Objective: None

## **PROPOSED BOARD RESOLUTION**

**RESOLVED**, that the Board of Trustees authorize the release of proposed revisions to the Schedule of Charges and Deadlines to State Bar Rule 3.680(E)(1), attached hereto as Attachment C, for public comment for a period of 30 days; and it is

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

## **ATTACHMENT(S) LIST**

- A.** July 19, 2018 Programs Committee Agenda Item Requesting Public Comment Authorization on Revision to State Bar Rules to Reflect Revised Grant Timelines
- B.** Full Text of Public Comments Received
- C.** Clean Version of Schedule of Charges and Deadlines (Excerpt Relating to Rule 3.680(E)(1))

## **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

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#### **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.

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#### **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

## **Attachment A: July 19, 2018 Programs Committee Agenda Item Requesting Public Comment Authorization**

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 §6222<sup>1</sup>, 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

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<sup>1</sup> All further statutory references are to this Code unless otherwise stated.

## Attachment A: July 19, 2018 Programs Committee Agenda Item Requesting Public Comment Authorization

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.



## **Attachment A: July 19, 2018 Programs Committee Agenda Item Requesting Public Comment Authorization**

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

**Attachment A: July 19, 2018 Programs Committee Agenda Item Requesting Public Comment Authorization**  
**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;

## Attachment A: July 19, 2018 Programs Committee Agenda Item Requesting Public Comment Authorization

(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;

[ .... ]

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;

## Attachment A: July 19, 2018 Programs Committee Agenda Item Requesting Public Comment Authorization

(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 <b>fiscal year ending in the last calendar year. most recent period if the statement is not available at the time the application is due.</b>	\$500,000	Not Applicable  Promptly when available, no more than <b><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></b>

Attachment A: July 19, 2018 Programs Committee Agenda Item Requesting Public Comment Authorization

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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## **Received Public Comments on Rule 3.680**

Attachment 1: AIDS Legal Referral Panel-Bill Hirsh

Attachment 2: Disability Rights California-Catherine Blakemore

Attachment 3: Family Violence Appellate Project-Erin Smith

Attachment 4: Legal Aid Association of California-Salena Copeland

Attachment 5: Legal Services of Northern California-Gary Smith

Attachment 6: National Housing Law Project-Susan Stern

Attachment 7: Neighborhood Legal Services of Los Angeles County-Neal Dudovitz

Attachment 8: Western Center on Law and Poverty-Paul Tepper



**Public Comment Rule 3.680**

**Attachment 1: AIDS Legal Referral Panel - Bill Hirsh**

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**From:** Bill Hirsh <bill@alrp.org>  
**Sent:** Thursday, August 16, 2018 4:05 PM  
**To:** Shin, Greg  
**Cc:** scopeland@laaonline.org  
**Subject:** Reference: 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

Dear Mr. Shin:

The AIDS Legal Referral Panel (ALRP) has been a recipient of IOLTA funds for many years. We regularly run into a problem with submitting our IOLTA application because of the requirement of the submission of our agency audit with the application. Our fiscal year is the calendar year. We usually get the audit started in March and it does not usually go to the ALRP Board of Directors until its May or even June meeting. We regularly, not under extraordinary circumstances, but regularly, require an extension. Please allow for the reasonable constraints of small, understaffed, overworked, underpaid, and overly administratively burdened legal services agencies, and allow for some additional time to submit our audits.

Thanks for your consideration of this issue.

Sincerely,

Bill Hirsh  
Executive Director  
AIDS Legal Referral Panel  
1663 Mission St., Suite 500  
San Francisco, CA 94103  
415-701-1200 ext. 308  
[bill@alrp.org](mailto:bill@alrp.org)  
[www.alrp.org](http://www.alrp.org)



**ADMINISTRATION**

1831 K Street  
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TTY: (800) 719-5798  
Intake Line: (800) 776-5746  
Fax: (916) 504-5802  
[www.disabilityrightsca.org](http://www.disabilityrightsca.org)

August 22, 2018

Greg S. Shin  
Programs Division  
State Bar of California  
845 South Figueroa St.  
Los Angeles, CA 90017  
[greg.shin@calbar.ca.gov](mailto:greg.shin@calbar.ca.gov)

**Re: Proposed Amendment to Rule 3.680(E)(1) of Title 3, Division 5,  
Chapter 2 Legal Services Trust Fund**

Dear Mr. Shin:

Disability Rights California is one of 95 legal services programs eligible for IOLTA funding. We support the State Bar's need to receive timely audited or reviewed financial statements. We have reviewed the proposed changes to Rule 3.680(E)(1) and offer the following comments because of our concern that any extension may only be granted in extraordinary circumstances.

The proposed changes add the following language to the deadline for submitting financial statements. "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."

While we support the Bar's goal of ensuring that it have all required materials at the time applications are due, we are concerned that the requirement that audited or reviewed financial statements be submitted within 90 days of the end of the organization's fiscal year except in extraordinary circumstances



is not sufficiently flexible. It can be challenging to submit audited financial statements within 90 days of the end of the fiscal year. For DRC, this requires us to close our September 30 fiscal year end books and submit an audit by December 30. This timeline requires that we close our fiscal year end books, a process that can take approximately 30-45 days; complete a comprehensive audit, that meets both federal and audit standards, and will take a minimum of 30 days; and, obtain review and approval by our Board of Directors, requiring another 20-30 days. Because three of our Board members are blind, we also must make the audit material accessible to screen readers. Following Board approval, auditors must finalize the audit and prepare copies for all state and federal funding sources. While DRC has met the 90-day standard, the timeline is so tight that we have often submitted the audit with only days to spare.

We are concerned that if any one of the processes we follow to meet the 90 timeline is delayed, that a late submission will not be allowed except in extraordinary circumstances. That term is not defined and, for example, it is unclear if a delay in a board of directors reviewing and approving the audit that would be viewed as an extraordinary circumstance. We suggest the following changes:

Promptly when available, within 120 days of the end of the fiscal year except that a program may request a 30-day extension and request additional extensions in extraordinary circumstances.

We believe these changes accomplish two things: 1) provide a more reasonable timeline for submission of the financial statements thereby minimizing the number of requests for extension, and 2) gives staff the ability to make reasonable decisions about when it is appropriate to grant an extension.

Thank you for consideration of our comments. I would be pleased to speak with you, if that would be helpful.

Sincerely,



Catherine Blakemore  
Executive Director

**Public Comment Rule 3.680**

**Attachment 3: Family Violence Appellate Project - Erin Smith**



August 24, 2018

By Email

Greg S. Shin  
State Bar of California  
Programs Division  
845 South Figueroa St.  
Los Angeles, CA 90017  
[greg.shin@calbar.ca.gov](mailto:greg.shin@calbar.ca.gov)

Re: Comments re Amendment to Rule 3.680

Dear Mr. Shin:

Family Violence Appellate Project (FVAP) respectfully submits this public comment on Rule 3.680(E)(1) of Title 3, Division 5, Chapter 2 LEGAL SERVICES TRUST FUND. We suggest that the timeline for legal aid agencies to submit an audit to the State Bar Trust Fund Commission to be considered for IOLTA and other funding be extended from 90 days after the end of the organization's fiscal year to 150 days.

FVAP, like many nonprofit organizations, uses a January-December fiscal year. Accordingly, under the current rule, our audit is due to the State Bar by March 30 for the previous year. This is six weeks before tax returns are due to the IRS (May 15), and *six months* before our other government funders, including the California Governor's Office of Emergency Services and the U.S. Department of Justice, require our audit. Most other government funders, in our experience, require the audit to be provided nine months after the end of the organization's fiscal year. This timeline much better reflects the realities of operating a nonprofit, as in our experience it takes longer than 90 days to complete an audit.

Ninety days is, frankly, not enough time. It puts organizations and auditors in the undesirable position of needing to rush through important year-end accounting and financial functions. Rushing to try to meet this deadline unnecessarily increases the risk of mistakes, puts immense pressure on scarce staff resources, and even after best efforts, still does not always result in the audit being completed within 90 days. My organization has diligently attempted to meet the 90-day deadline the past several years, even negotiating the expedited timeline into our contract with the auditor, but we have nonetheless been forced to request extensions from the State Bar twice because the audit simply could not be completed within 90 days. It is my

Greg S. Shin  
August 24, 2018  
Page 2

understanding we are not alone in needing extensions, and that it is common for other legal aid organizations to routinely request extensions as well.

These comments from FVAP's auditor and tax preparer, Regalia & Associates, which specializes in nonprofit accounting, help explain why:

"In order to have the audit completed by March 30, we would need to have everything from you by January 31.

We need at least two full months from start to finish.

This places a tremendous burden on organizations to fully review and close their books within 30 days after the end of the fiscal year.

Our experience is that our clients usually need at least 8 weeks to get their books ready for the external auditors.

This would result in having documents to us by end of February.

Then...when you add two months for the audit process....the delivery date of the financial statements would be April 30.

We do not advocate closing the books prematurely....which is essentially what would happen if you set your internal deadline as January 31.

We are a proponent of having our clients take the extra time and care to ensure that the books are fully reconciled and in agreement with all subsidiary schedules **before** the audit starts.

If not, this will delay the progress of the audit....because our two-month audit process only works if the books are clean and free from significant errors."

As alluded to in these comments, at the advice of our accountants, FVAP does not close our books for the year during January, but rather waits until February when we are also closing January's books, the first month of the fiscal year. This ensures that income and expense items incurred in December and January can be attributed to the correct fiscal year. Through this process, our year-end books are not completed until the end of February, leaving only 30 days for the entire audit process under the State Bar's current timeline. Per our auditor's comment above, 30 days is not enough time for them to complete an audit, especially considering it is the busy tax season for auditors and tax preparers, and nonprofit staff also needs adequate time to review draft reports before they can be finalized.

A 150-day audit deadline would mean audits for calendar-year organizations like FVAP would be due approximately May 30. This timeline would still provide the State Bar with the financial information it needs before IOTLA and EAF applications are due in early June, would

Greg S. Shin  
August 24, 2018  
Page 3

align with the IRS tax return deadline of May 15, and would provide nonprofits with the time needed to ensure error-free audits and strong financial practices. Thank you for your consideration of this comment.

Sincerely,

FAMILY VIOLENCE APPELLATE PROJECT



Erin C. Smith, Esq.  
Executive Director



**Public Comment Rule 3.680**

**Attachment 4: Legal Aid Association of California - Salena Copeland**

---

**From:** Salena Copeland <scopeland@laaonline.org>  
**Sent:** Friday, August 24, 2018 1:11 PM  
**To:** Shin, Greg  
**Subject:** Public Comment - Rule 3.680 (Legal Services Audit Timeline)

submitted via email to: [greg.shin@calbar.ca.gov](mailto:greg.shin@calbar.ca.gov)

Dear Mr. Shin,

The Legal Aid Association of California (LAAC) submits these public comments with suggested changes to the proposed language.

We work frequently with State Bar staff in the Office of Access and Inclusion and know well that they have internal deadlines that must be respected. We also attend open meetings of the Legal Services Trust Fund Commission and know how seriously they discuss the issue of programs' qualified expenditures, a number that they must get from audited financials. Any extraordinary delay beyond a planned deadline requires significant additional work.

That said, the current proposed deadline of 90 days after the close of a program's fiscal year, absent \*extraordinary circumstances\* is unworkable for many programs.

We are aware that longer comments have already been submitted by many of the nonprofit programs in our community, including the Family Violence Appellate Project, Legal Services of Northern California, Disability Rights California, and Western Center on Law and Poverty. We agree with the common theme throughout - no matter the size of the program, 90 days is simply not enough time.

In our own small program (our budget is approximately \$500,000), we have not yet closed our fiscal year at 55 days after the June 30 close. It is typical, and expected, that eight weeks is a reasonable time to close the prior year. In a program of our size, the accountants and I ensure that all income received and expenses incurred in the first four to six weeks of the new year are properly allocated to the prior year, if appropriate. Closing the fiscal year early, in order to meet at 90 day deadline, would result in many inaccuracies.

In the past several weeks, we have spoken to many executive directors of both large and small programs, all explaining why 90 days is not enough. For all programs ending with a December 31 fiscal year, they compete with the traditional tax season to try to close financials with a final audit by April 1. The same is the case for those closing March 31. For programs closing September 30, they struggle to meet the deadline because of financial auditor's office holiday closures.

We suggest the following language, which we believe will meet the necessary internal staff deadlines and meet the needs of most programs, but will still allow staff flexibility to grant an extension in the most extraordinary circumstances for a limited number of programs, within reason. Staff can determine, for example, based on the date of Trust Fund Commission meetings and staff calendars, if a program can be granted an extension of 15-30 days. Staff can also determine, given their own internal processes, if a 30 day extension would make it more difficult for the Trust Fund Commission to approve allocations to programs for the following year.

**The Deadline for Rule 3.680(E)(1) :**

**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 120 days of the end of the fiscal year except in extraordinary circumstances, as determined by staff discretion.”**

What is more important is that programs are able to submit trustworthy audited financials from qualified auditing firms - not that they rush to submit financials in a unnecessarily short timeline, well before Office of Access and Inclusion staff must review submitted financials.

Thank you for the opportunity to comment on this proposed change -  
Salena Copeland

---

Salena Copeland (pronouns she/her)  
Executive Director  
Legal Aid Association of California  
The Unified Voice of Legal Services  
510-893-3000 x 106  
[www.LAAOnline.org](http://www.LAAOnline.org)  
[www.LawHelpCA.org](http://www.LawHelpCA.org)

Like what we're up to? Help support our advocacy with your [donation](#)!

*Why include pronouns? I include pronouns in an effort to share my personal and professional commitment to transgender inclusivity and visibility. Through sharing my pronouns, I hope to support a safer and braver space for transgender professionals to share their pronouns.*





**Public Comment Rule 3.680**

**Attachment 5: Legal Services of Northern California - Gary Smith**

August 22, 2018

Via email: [greg.shin@calbar.ca.gov](mailto:greg.shin@calbar.ca.gov)

Greg S. Shin  
State Bar of California  
Programs Division  
845 South Figueroa Street  
Los Angeles, CA 90017

Re: Proposed Revisions to Legal Services Trust Fund Grant Timelines

Dear Mr. Shin:

I am Executive Director of Legal Services of Northern California, Inc. (LSNC) and the Voluntary Legal Services Program (VLSP), both of which are non-profit organizations receiving funding from the Legal Services Trust Fund Program (LSTFP). I write in response to the revisions to certain timelines in the LSTFP application process which were proposed on July 19, 2018.

Background

LSNC was incorporated as the Legal Aid Society of Sacramento County in 1956, and currently provides free civil legal services to poor and other disadvantaged persons in 23 northern California counties, most of which are extremely rural in character, and very few of which are served by any other legal services providers, let alone other Trust Fund grantees. VLSP is a pro bono organization created as a partnership in 1986 between LSNC and the Sacramento County Bar Association, and which receives Trust Fund grants to provide pro bono legal services from private attorneys to indigent client in 5 counties adjacent to Sacramento.

a. Proposed revision

The proposed amendment to Rule 3.680 (e)(1) of Title 3, Division 5, Chapter 2 (LSTF) would require applicants for funding to submit audited financial statements (“audits”) within “ninety (90) days of the close of the fiscal year except in extraordinary circumstances and under no circumstances later than the time that applications are due.” Currently, the “deadlines” appendix to the rules provides that applicants must submit their audits “promptly when available, no more than sixty days after the application deadline, and prior to the receipt of any allocation.”

Notably, the proposed revision does not suggest any compelling reasons why the current process for the submission of audits, as well as the practice developed over many years to accommodate reasonable delays in the availability of such audits, must be changed. Nor does the

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proposal define the term “extraordinary circumstances.” Nor does the proposal specify the consequences for submitting an audit (1) after the ninety day period, when staff determines the delay is not justified by “extraordinary circumstances,” or (2) after the application deadline. Applicants and grantees must assume, however, that non-compliance with either deadline could result in the denial of their application for funding.

b. Current Practice

For a number of years, LSNC and VLSP have engaged in the following practice with respect to the submission of their audits, which to our knowledge has never caused the Trust Fund any significant inconvenience in the processing of our applications. First, for the reasons set forth below, it is simply not possible, and not within the control of LSNC or VLSP, to complete our audits within ninety days of the end of the calendar year. Accordingly, we have engaged in informal communications with staff and generally have been able to provide a draft audit, from our auditors, to the Trust Fund by the end of March. Because neither the LSNC nor VLSP board of directors meet in March, we work closely with our auditors to complete their work on the audits by mid-April, and the directors then review and approve the audits at their April board meetings. The final audits are then submitted to the Trust Fund in late April.

This practice has been followed by LSNC and VLSP for many years, without objection from the Trust Fund. And while this timetable would comply with the proposed requirement of submission prior to the application deadline, which currently is in early June, we have no way of determining whether the Trust Fund staff (or different Trust Fund staff in future years) might decide that our inability to submit the final audits by March 31st was not justified by “extraordinary circumstances,” presumably requiring the denial of our applications. In addition, in the event, for reasons not now foreseeable, the Trust Fund moved the application deadlines to an earlier date—for example, March 31st, or even April 15th—our submissions in late April would then violate the (apparently) “absolute” deadline, i.e., “under no circumstances later than the time that applications are due.”

c. The ninety day period for audit submission is not only unreasonable, but is simply not possible for many non-profit organizations

LSNC and VLSP have had vast experience, accumulated over many decades, with the economic realities of the audit requirements of non-profit organizations in California, especially those which, like ours, operate on a calendar fiscal year. We have had a number of different auditors over the years, and have entertained proposals from many others, and all of them have advised us that it is virtually impossible to complete the audit process, especially for organizations of LSNC’s size (with a \$12 million budget), within ninety days of the close of the calendar year in question. It can take more than a month for the organization itself, acting with the utmost diligence, to finalize and process all the financial data from the end of the year, and then of course the auditors themselves must review, analyze, test, and then compile all of that data. While large for-profit companies might, if necessary, be able to fund the vast internal and external accounting resources necessary to accomplish these tasks in less time, the non-profit grantees of the Trust Fund simply cannot do so.



- d. The proposed requirement of “extraordinary circumstances” necessary to justify any late submission is punitive and unnecessary.

As noted, the term “extraordinary circumstances” is not even defined, and therefore is subject to inconsistent, subjective, and discretionary interpretations which would violate basic principles of fairness and due process. Moreover, no justification has been offered for such a harsh and punitive requirement. At a minimum, it should be replaced by a standard of reasonableness.

- e. The (apparent) proposed consequence for failure to comply with the new timelines is punitive and unnecessary.

Absent a showing of some extraordinary prejudice or impediment which the late submission of an audit report causes or could cause to the processing of a grant application, the (apparent) sanction of the application’s denial for violation of either of the proposed timelines is grossly disproportionate and punitive, and certainly does not comport with basic principles of fairness and due process.

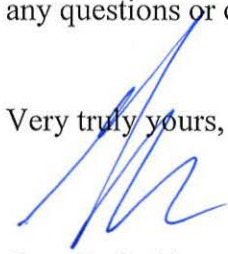
#### Conclusion

On behalf of LSNC and VLSP, I join with two suggestions offered by one of my colleagues in comments already submitted on this proposal:

1. Prior to the adoption of this rule, State Bar staff should consult with major non-profit organization auditing firms to better understand what a reasonable timeline is for the preparation and approval of (calendar year) audits.
2. Revise the proposed rule to read that audits shall be “ordinarily submitted within [not earlier than 120 days] of the close of the fiscal year, and no later than the time that applications are due, which shall be no earlier than June \_\_\_\_\_. Upon reasonable request, State Bar staff shall grant extensions to these deadlines.”

Thank you for your consideration of these comments. Please feel free to contact me with any questions or comments.

Very truly yours,



Gary F. Smith  
Executive Director  
Legal Services of Northern California  
Voluntary Legal Services Program  
(916) 551-2111

**Public Comment Rule 3.680**  
**Attachment 6: National Housing Law**  
**Project - Susan Stern**



August 27, 2018

Dear Members of the State Bar,

Re: State Bar Rules 3.680(E)(1), 3.681 and the Appendix Schedule of Charges and Deadlines

The National Housing Law Project (NHLP), an IOLTA support center and an EAF grantee, respectfully offers the following commentary in relation to rule changes under consideration by the State Bar of California for the altering the due date for submission of annual audits. The proposed rules would require programs to submit an audit or review “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.”

We have conferred with our outside accounting services, provided by Briones International, to affirm our concerns related to the proposed rule changes. These concerns are based on our actual experience over decades and are related to the time needed, in subsequent stages, by the various participants who have roles in creating a final audit. We are also concerned about the potential for inadvertent errors arising out of acceleration of the audit timeline.

**Stage One - NHLP’s role:** NHLP operates on a July 1 through June 30 fiscal year. Roughly five-seven working days after each monthly close, timesheets are transmitted to our contracted accounting services. These serve as the basis of the admin and shared cost loads that are charged to individual grants and programs, as well as to NHLP’s general fund programs. Our bank and credit card statements are billed on mid-month cycles and typically arrive well past the end of each month. These statements must be reviewed and notated by NHLP management to direct bookkeeping on the posting for each individual charge. Thus, throughout the fiscal year, complete information needed for each month’s financial statements is presented to accounting roughly three weeks after the month’s end.

**Stage Two - The Accounting Services Role:** At this point, the accounting staff’s role begins. They post non-cash transactions to the program accounts; calculate allocation of overhead and indirect costs back to the grants, contracts, and general fund programs; and prepare bank and investment reconciliation statements to support reporting of these assets on the balance sheet. They also reconcile accrued vacation and other balance sheet items.

At the end of the fiscal year, special attention is given to identifying prepaid expenses, accounts receivable, unearned revenue, valuation of in-kind support received during the fiscal year, current and long term liabilities, and outstanding payables. Typically, the final close for our fiscal year ended June 30 happens in late August.

**Stage Three - The Auditor’s Role to Completion:** Roughly seven weeks following the end of the fiscal year, the auditor is presented with the materials needed to examine our records and review our management and financial practices. Funders and donors are contacted to verify

booked income, and those confirmations are signed and returned to the auditor. The auditor will also typically spend one or two full days conducting field tests in our office.

Once the auditor has examined our books and conducted field tests, he/she typically makes recommendations for any year end journal entries. Upon resolution of those, the auditor prepares the audit report for review by management and subsequently, for approval by the Board of Directors. If two weeks are allowed for review of the audit by management, making any agreed-upon changes or corrections, and securing the Board's approval, this allows the auditor and NHLP only one month to complete all the responsibilities at this stage. This one-month window also carries an assumption that the auditor's availability and his other clients' demands will not conflict with the organization's needs.

NHLP has concerns that the shortened timeline leaves no margin for outside services whose schedules may not be compatible. The proposed changes would result in only a 30-day window from initiating the audit to approval by the Board. Our accountant, the majority of whose client base is nonprofit organizations, tells us that the proposed window for completion of NHLP's audit is already a very busy season for accountants and auditors. Further, it is the opinion of our outside contractors that while smaller nonprofits might not struggle under the new rules to meet the 90-day deadline, organizations with multiple funding sources and larger budgets would have a difficult time. We are also concerned that attempts to accelerate the year-end close may result in mistakes or inadvertent omissions.

Thank you for the opportunity to share our comments with you. We hope our feedback is helpful in your decision making.

Regards,

A handwritten signature in black ink that reads "Susan Stern". The signature is fluid and cursive, with the first name "Susan" and last name "Stern" clearly distinguishable.

Susan Stern  
Deputy Director



Neighborhood Legal Services  
of Los Angeles County

*50 years of changing lives and transforming communities*

August 27, 2018

Greg Shin, Director, Operations & Management  
The State Bar of California  
180 Howard Street  
San Francisco, CA 94105

Submitted via e-mail: [greg.shin@calbar.ca.gov](mailto:greg.shin@calbar.ca.gov)

Neal S. Dudovitz  
Executive Director  
[ndudovitz@nlsla.org](mailto:ndudovitz@nlsla.org)  
(818) 834-7590

***Re: 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***

Dear Greg Shin:

Neighborhood Legal Services of Los Angeles County (NLSLA), a long-time Legal Services Trust Fund recipient and Legal Services Corporation (LSC) funded program, provides this letter as public comment regarding the proposed new rules for audited (or reviewed) financial statement submission due date per 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.

NLSLA operates on a calendar year and requests that the new rules allow programs to submit their audited financials statements within 120 days of the fiscal year-end to coincide with the due date to LSC, by April 30<sup>th</sup>. NLSLA recommends 120 days as the standard time period to complete and provide the statements without having to request specific extensions or claim extraordinary circumstances. 120 days is the standard time period for LSC funded programs to complete the year-end closing, auditing and reporting process.

In addition, December 31<sup>st</sup> year-end non-profit organizations and for-profit companies are all competing at the same time for timely, effective and affordable audit services. The 3-month or 90 day period is limiting and challenging for LSC funded programs and puts extra burden on the Trust Fund program staff having to regularly field 30-day extension requests, several months prior to the Trust Fund application due date.

Lastly, NLSLA does agree and recommends the State Bar continue to allow programs to obtain a longer extension in extraordinary circumstances, yet no later than the Trust Fund application due date.

## Attachment B: Full Text of Public Comments Received

The State Bar of California  
Re: State Bar Rules 3.680(E)(1), 3.681, and  
Appendix Schedule of Charges and Deadlines  
August 27, 2018  
Page 2 of 2

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Thank you in advance for your continuing consideration, courtesy, and support.

Sincerely,

Neal S. Dudovitz

[Neal S. Dudovitz \(8.27.2018\)](#)

Lynne Hiortdahl

[Lynne Hiortdahl \(8.27.2018\)](#)

Neal S. Dudovitz, Executive Director

Lynne Hiortdahl, CFO/COO

cc: Yvonne Maria Jimenez, NLSLA Deputy Director  
Tonetta Conner, Managing Partner, Harrington Group CPAs, LLP  
Doan Nguyen, Program Supervisor, The California State Bar

**Public Comment Rule 3.680**

**Attachment 8: Western Center on Law and Poverty-Paul Tepper**

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**From:** Paul Tepper <ptepper@wclp.org>  
**Sent:** Thursday, August 16, 2018 4:41 PM  
**To:** Shin, Greg  
**Subject:** Comments re amendment to Rule 3.680

Mr. Shin,

I am writing to offer comments on the proposed amendment to Rule 3.680(E)(1) of Title 3, Division 5, Chapter 2 LEGAL SERVICES TRUST FUND, which would require programs to submit audited financial statements within “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.”

The draft rule ignores the realities of the auditing process. More importantly, it threatens the delivery of legal services for vast numbers of low income Californians because it fails to provide appropriate and reasonable flexibility for State Bar staff, substituting an absolutist rule that may lead to unexpected negative consequences.

**Audit Realities**

The expectation that organizations will have a completed audit within three months of the close of their fiscal year is unreasonable. It is particularly unfeasible for organizations with a calendar fiscal year, who compete with tens of thousands of other non-profit and for-profit organizations, who are also seeking to schedule audits with a relatively small number of qualified auditing firms, each of whom serve hundreds or in some cases, thousands, of organizations.

Beyond the time needed to schedule and conduct an audit, draft audits must be circulated and reviewed by each organization’s board of directors, who must meet to approve the document. For organizations with revenues of \$2 million or more, an audit committee also participates in the review process, prior to full board review and approval. Subsequent to board approval, the auditing firm must finalize and issue the audit documents, which takes additional time.

**Unintended Consequences and Lack of Flexibility**

Should an organization fail to meet the current deadlines, it appears that it would be ineligible for funding. The direct result would be a loss of legal services in that organization’s jurisdiction. Forcing thousands of Californians facing eviction, domestic violence, loss of public benefits and other crises to go without legal help because a document is submitted late is an inappropriately disproportionate and grossly unreasonable consequence.

The State Bar has successfully worked with virtually all of the legal services organizations for decades. Staff regularly visits, monitors, collects and reviews performance reports, and assesses its grantees. The staff know the organizations well. There are mechanisms in place to address organizational shortcomings, including tardiness in the submission of documents. Staff should be given the flexibility to, in the short term, provide waivers for both deadlines with reasonable justifications, and in the long term, work with individual agencies to address a failure to provide an audit in a timely fashion.

While State Bar staff utilize the audit to determine prior year qualified expenditures and make a preliminary allocation among legal services organizations, the final grant allocations are not made until the precise amount of available funds is determined. For example, this year, applications were due on June 8<sup>th</sup>, final allocations will be announced on August 24<sup>th</sup> and applicants will submit their budgets by September 24<sup>th</sup>. While not ideal, prior year expenditures or draft audit figures could be used to help make the preliminary allocation, which could be amended once the final allocation is known.

The standard for exceptions should not be “extraordinary” and “under no circumstances”. It should be reasonableness.



### Application Date Issue

The rule requires organizations to meet an unspecified application deadline. A shift in this deadline, for reasons that may be unrelated to the audit, could inadvertently create an unexpected challenge with regard to audit submissions.

I respectfully offer the following suggestions

1. Prior to the adoption of this rule, State Bar staff should consult with the major auditing firms to better understand what a reasonable timeline is for the preparation and approval of audits.
2. After consultation with auditing firms and legal services providers and the subsequent identification of a reasonable deadline, change the language to read that audited financials shall be “ordinarily submitted within \_\_\_\_ days of the close of its fiscal year and no later than the time that applications are due, which shall be no earlier than June \_\_\_\_\_. Upon reasonable request, the State Bar staff shall grant extensions to these deadlines.”

As a former member and chair of the Legal Services Trust Fund Commission, a former Executive Director at a small field program, and now as Executive Director at Western Center on Law & Poverty, I have worked closely and collegially with the State Bar over a number of decades. I very much appreciate the Bar and the Bar’s staffs’ deep dedication to the delivery of legal services to low-income Californians. I am confident that this rule can be appropriately amended to meet the needs of all members of the legal services community.

Thank you for your consideration of my comments. I’d be pleased to speak with you, members of the State Bar staff, or members of the Board of Trustees, if it would be helpful.

Paul



Paul Tepper  
Executive Director

**WESTERN CENTER ON LAW & POVERTY**

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**Attachment C: Clean Version of Schedule of Charges and Deadlines  
(Excerpt Relating to Rule 3.680(E)(1))**

**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*

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 that concluded during the prior calendar year.</p>	\$500,000	<p>Not Applicable</p> <p>Promptly when available, and no later than May 1. Upon written request, an extension up to the application deadline may be granted by State Bar staff. Upon a showing of extraordinary circumstances, State Bar staff may grant an extension beyond the application deadline. Under no circumstances shall such extension be granted beyond the date upon which grant allocations are determined.</p>
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