



# The State Bar of California

## OFFICE OF ACCESS & INCLUSION

Dan Passamaneck, Senior Program Analyst

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March 27, 2019

Donald Specter  
Executive Director  
Prison Law Office  
1917 Fifth Street  
Berkeley, CA 94710

Dear Don:

Thank you for meeting with Rocio Avalos and me during our June 4, 2018 site visit to Prison Law Office (PLO), and for accommodating Frank Bittner during his fiscal review on September 12.

We note that since our last monitoring visit, PLO has made some organizational steps forward, including improved employee compensation and a new case management system.

Despite that progress, however, our interviews and document review revealed significant areas of concern regarding PLO's compliance with the fiscal and programmatic requirements of the Trust Fund statute, State Bar rules, grant provisions, the 2006 *American Bar Association Standards for the Provision of Civil Legal Aid* (Standards)<sup>1</sup>, and your grant agreements with the State Bar.

### Governance:

Section 1 of the Standards and the commentary describe the primary responsibilities of a governing board, including "oversight of compliance with legal and contractual responsibilities and with board policies, fiscal oversight, hiring and supervising the chief executive, serving as a resource for the provider and fundraising." Please refer to Standard Section 1.1: On Overall Functions and Responsibilities of the Governing Body, Commentary. Our visit and document review indicates the opportunity for PLO's Board to improve performance in almost all of these core functions. We found no evidence that the board takes any formal action to evaluate the Executive Director or provide him with feedback; board minutes did not reflect approval of an organizational budget or executive compensation levels; and the board representative was unable to provide insight into the organization's strategic plan or planning process. These

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<sup>1</sup> The Standards are the State Bar's quality control guidelines per State Bar Rule 3.661(C).

obligations are specifically identified in the Standards as primary duties of the governing body. Please refer to Standard 1.1-4 for evaluation of the Chief Executive; Standard 1.1-3 for approval of budgets and audits; and Standard 1.1 regarding the board's responsibility to conduct strategic planning.

Of particular concern, we find no evidence of board review of PLO's audit, which contained a \$2 million auditing error that required the recalculation of PLO's allocation (which affects other grantee allocations). As you know, many hours of both State Bar and PLO staff time were required to resolve that error. Please refer to Standards 1.1-3: On Fiscal Matters, for further detail as to the importance of fiscal oversight as a component of the board's duties.

Additionally, PLO's bylaws appear to have been last reviewed in 2005. Organizations evolve over time as a result of changes in law, available resources, and client needs; these changes necessitate the regular review of bylaws to ensure that they remain responsive to organizational needs. Please refer to Standard 1.1-1: On Governing Body Oversight of the Provider.

#### Internal Systems and Controls:

PLO's documentation for key program operations is overdue for updates; in many instances staff did not know whether a manual existed for case-related tasks they regularly perform. Staff reported the lack of a regular employee review process, and that they have been without a direct supervisor sometimes for months at a time. It was further reported that the Managing Attorney carries a full caseload and is unable to dedicate sufficient time to management functions. In these respects PLO is at risk of falling below the State Bar's quality control criteria. Please refer to Standard 6.2: On Assignment and Management of Cases and Workload; Standard 6.4: On Review of Representation; Standard 6.5: On Training.

We strongly recommend that PLO establish formal supervisory positions and that all staff be provided with orientation, clear expectations, and ongoing training; that these supervisory positions have responsibilities that include ensuring that all staff receive regular (if not annual) performance evaluations and professional development plans; and that training and operations or procedures manuals be developed for each staff classification.

Program Resources:

Much of PLO's work involves sending staff to prisons and detention facilities to interview incarcerated people about violations of their civil rights. Staff report that they return from these visits physically exhausted and emotionally drained. During our interviews, staff expressed interest in resources to help them manage the secondary trauma of the in-custody interview process. Support for staff facing secondary stress could help PLO with its recruitment and staff retention goals; provision of training to address issues of secondary trauma is a management responsibility under the Standard 6.5. We recommend that PLO take affirmative steps to provide staff support and training on secondary trauma and stress.

Similarly, after having completed several days' worth of interviews, staff report spending several more days typing out their notes (handwritten due to prohibitions against use of electronics in the facilities). This time-consuming and sometimes re-traumatizing process could be substantially facilitated with appropriate technology, such as dictation software. Please refer to Standard 2.10: On Effective Use of Technology. We recommend that PLO invest in providing staff with improved technological and other supports to help them complete their work more efficiently and effectively.

Fiscal:

As for your fiscal systems, the enclosed Memorandum of Advisory Comment (MAC) includes six (6) findings that call for your further attention.

Action Required:

Due to these concerns, please provide a written response describing how the PLO staff and board will address the issues raised in this letter and attached MAC. Your response to the fiscal, programmatic, and governance-related findings and recommendations is required within 60 days (no later than May 28, 2019).

Given the seriousness and persistence of many of these findings, the upcoming eligibility application review process will be taken as an opportunity to ensure that the Prison Law Office is operating under quality control procedures that meet with the approval of the State Bar, as required by Business and Professions Code section 6213(a)(1). Additionally, based on Business and Professions Code Section 6224 and State Bar Rule 3.691, these findings have been elevated to the Legal Services Trust Fund Commission and its Eligibility and Budget Committee for their review.

Very truly yours,

A handwritten signature in black ink, appearing to read "Dan Passamaneck", with a stylized, cursive script.

Dan Passamaneck

Attachment (1)

cc: Bonnie Hough, Managing Attorney, Judicial Council  
Harlan Grossman, Board Representative (retired)  
Seth Morris, Board Representative (Partner, Cooper Law Offices)  
Legal Services Trust Fund Commission Executive Committee  
Legal Services Trust Fund Commission Budget and Eligibility Committee