



The State Bar of California

Date: June 25, 2019

To: Legal Services Trust Fund Commission
2019 IOLTA and EAF Grantees

From: Hellen Hong, Director, Office of Access & Inclusion

Subject: Process to Codify Grant Administration Practices

Following the recommendation of the Legal Services Trust Fund Stakeholder Working Group, adopted by the State Bar Board of Trustees, the State Bar, through the Legal Services Trust Fund Commission (LSTFC), will be undertaking a process to gather and codify all of the decision points and considerations that are used as part of the grant determination processes and procedures. This effort will provide greater transparency into the grant making process and ensure consistency in the thoughtful decisions made by the LSTFC and State Bar staff in the day-to-day administration of IOLTA/EAF and other grants.

Currently, there are seven governing documents that guide the LSTFC and State Bar staff in making decisions about eligibility, budgeting, allocation amounts, and other factors governing the award of grants under IOLTA and EAF. They are listed as follows:

1. IOLTA statute – Business and Professions Code sections 6210-6228
2. State Bar Rules - Title 3 Division 5, Chapter 2
3. Eligibility Guidelines for Qualified Legal Services Projects
4. Eligibility Guidelines for Qualified Support Centers
5. General Grant Provisions
6. Standards for Financial Management Systems and Audits
7. Grant Agreements
8. ABA Standards For the Provision of Civil Legal Aid

The State Bar recognizes that many issues are complex; some may not lend themselves to being incorporated into a rule and certain questions require flexibility and interpretation based on specific fact patterns. There are many decision points in the IOLTA funding process including: assessing qualified expenditures, addressing pass through funds, etc, that should

be memorialized in a State Bar rule to provide programs clear information as to how these issues will be treated and to ensure consistent application by staff or the LSTFC.

As discussed with the LSTFC at its May 10, 2019 meeting, the process to develop recommendations for revisions to the rules and guidelines to address the above will use staff led working groups consisting of staff, up to two LSTFC members (based on expertise, availability, and complexity) and LAAC staff. It is anticipated that LAAC will be representing the input of the legal services community. The working groups would present their recommendations to a Subcommittee on Process to Codify Grant Administration Practices of the LSTFC that will meet quarterly. This will provide a venue for public feedback, comments and input on the recommendations.

The State Bar suggests bundling the topics to be handled in the manner set forth in the chart, below. Specific questions that would need clarity are:

1. What is the current practice or issue?
2. Is there a current document that would need to be revised?
3. Is the recommendation for a proposed new rule or guideline?

The chart below discusses the work groups and common questions that would need consideration under each area. The State Bar expects the timeline to take approximately a year, assuming the work groups can address multiple issues at a time and present to the subcommittee. Until the process is complete, the current practices would continue as to not adversely impact programs.

	SUBJECT MATTER	ITEMS TO COVER/EXAMPLES/INCONSISTENCIES	EXISTING STATUTE, RULE, OR GUIDELINE? (INITIAL SWEEP AND NOT INCLUSIVE)
1	Quality Control	<ul style="list-style-type: none"> - What should be the standards for governance, leadership and administration of an organization? - What should be the consequences of findings from monitoring visits or other events that raise questions of quality control? - Should the standards be updated to refer to best practices for nonprofit organizations? - Are there ways to streamline some of the processes with other County/State/Federal audits? 	<ul style="list-style-type: none"> - Rule 3.661C cite the Standards for Provision of Legal Aid adopted by the ABA in Aug 2006 - Standards for Financial Management Systems and Audits (from May 2006) is listed in the General Grant Provisions (from Jan 2004) under Appendix A, Assurances - QLSPs Guidelines 2.4 Commentary cite B&P §6123(a) and 6217 (a) which don't exist anymore
2	RFP Review Process for Discretionary Grants	<ul style="list-style-type: none"> - Process for reviewing applications, especially discretionary grants not connected to formula distributions like partnership and bank grants. - Inclusion of a scoring rubric in RFP, understanding there are subjective factors. - Assessment of funding request - Assessment of past performance 	<ul style="list-style-type: none"> - May not need to be in a rule but in guidelines of an RFP. - See issues like 5-Year Rule Policy for Partnership Grants
3	Administration	<ul style="list-style-type: none"> - Process for accountability on late submissions or failure to submit documents, noncompliance with reporting requirements and repeated failure to abide by deadlines - Unapproved budget variances and/or unused grant funds 	<ul style="list-style-type: none"> - Could include SB Rule 3.681 which dictate fines and penalties

4	Law School Clinics	<ul style="list-style-type: none"> - What is the definition of an “identifiable law school unit” from Statute? - Standards of a financial audit which is normally from the entire institution which is not aligned with the statutory requirement - Clarity on application of indirect costs 	<ul style="list-style-type: none"> - “Identifiable Law school unit” § 6213(a) - General definition of law school as a law school accredited by SB under Rule 3.670(A) and 3.80(A) - QSLP 2.6.1 Commentary for law schools - QSLP 2.3.5 Commentary for law schools - No language on indirect costs in rules or guidelines except for indirect cost allocation under Standards 100.32 - Audit requirement under QSLP 2.71 with no exception for law schools
5	Fiscal	<p><u>Out of County Determination</u></p> <ul style="list-style-type: none"> - Process or analysis to determine counting work and allocation for multiple counties (currently inconsistent) <p><u>Pass through Funds</u></p> <ul style="list-style-type: none"> - Defining what is qualified expenditures (QE) and impact on primary purpose analysis. (ex. DOJ funding) - Process for analyzing pass through funds and impact on primary purpose of legal services. <p><u>Exchange Funds</u></p> <ul style="list-style-type: none"> - When one grantee subgrants to other IOLTA grantee, who counts the QE? And which eligibility standards apply (QLSP vs. Pro Bono)? - Inconsistent reporting requirements of who counts the QE. 	<ul style="list-style-type: none"> - B&P Code §6216(b) - QLSP Guidelines 2.8 Commentary - General Grant Provisions 3.03 - QSLP Guidelines 2.7.2 + Commentary on QEs - QSLP Guidelines 2.8 + Commentary on application of out of county work as applied to statewide/impact cases - General Grant Provisions 3.05 Subcontracting

		<p><u>Audit</u></p> <ul style="list-style-type: none"> - Standards for requirement of a financial audit for expense over \$500,000 when that includes in kind value of pro bono services <p><u>Carry over, budget, and cost reporting</u></p> <ul style="list-style-type: none"> - What should be the standards for financial management? Should IRS standards be used? And review of 990s included? - Should financial & program performance be integrated? - Review of current reports. Why quarterly reports? Why have detailed budgets? Why have 25% non-personnel and Administrative cost limits? - Process and clarity of who approves at what point of time. With current funding distributions does budget variances of 10% or does \$1,000/\$10,000 still make sense? - Inconsistent application of 25% director approval. - Carry Over Processes - There is no rule or guideline on how indirect costs are considered for QE. 	<ul style="list-style-type: none"> - QSLP Guidelines 2.7 state “gross expenditures in excess of \$500K” must submit an audited financial statement - General Grant Provisions 4.04/4.05 - QSLP Guidelines 2.7.1 - General Grant provisions 7.01 - General Grant provisions 7.01 - General Grant provisions 7.01 - General Grant provisions 7.01 - General Grant provisions 4.02 (B) speaks to administrative methodology
6	Support Centers	<ul style="list-style-type: none"> - How to measure income screening for support centers? - Defining “significant support service?” 	<ul style="list-style-type: none"> - SC guidelines 2.2.1 commentary

		<ul style="list-style-type: none"> - Can SCs charge the QLSPs that attend trainings (for food, or rental, no minimum or %)? 	<ul style="list-style-type: none"> - SC guidelines 2.2.4 commentary
7	Primary Purpose	<ul style="list-style-type: none"> - Currently staff reviews previous year budget to determine if the qualified expenditures are at 75% to qualify as primary purpose not the future budget 	<ul style="list-style-type: none"> - Inconsistent with 3.671a, which directs review of future budget - QSLP Guidelines 2.3.5 commentary - SC Guidelines 2.3 Commentary
8	Pro bono allocation	<ul style="list-style-type: none"> - Defining if applicant's principal means of delivery of legal services is through recruitment of attorneys in private practice - Is there urban bias built in to threshold pro bono test? - Simplification of pro bono test 	<ul style="list-style-type: none"> - B&P Code §6216(b)(1)(B) - LSPs Guidelines 2.9.2 Commentary
9	Deeming	<ul style="list-style-type: none"> - What are the rules on deeming every 3 years? - Commission has authority to deem support center even if they were not deemed to be of special need by the majority of the QLSPs - Should entire deeming process be reviewed? - Lack of clarity on if/when the Commission can "deem" a SC as special need if not voted by a majority of QSLP. 	<ul style="list-style-type: none"> - SC Guidelines 2.91 Commentary
10	Impact and Litigation/Advocacy - Defining civil legal services and indigency	<ul style="list-style-type: none"> - Defining civil legal services – including advocacy, counseling, mediation, policy work, social work and related services. - Defining indigency and standards to demonstrate indigency (e.g, no specific age for AAA funding based on Statute) and indigency standards for impact litigation and advocacy. - Application of definition under B&P6213(d) 	<ul style="list-style-type: none"> - Need to update Rule 3.671 on definition of civil legal services - Rule defining B&P 6213 (d) - SC Guidelines 2.2.1 Commentary - For example, we currently require deduction for mediation services for QE but allow mediation as a type of legal services for Partnership Grants.

		<p>re: receipt SSI or receipt of free services under OAA</p> <ul style="list-style-type: none"> - What activities are so negligible as not needed to report (such as just signing on letters of support) ? 	
11	Other Issues	<ul style="list-style-type: none"> - What are the rebuttal factors for AAA and LSC for 6214(a) on the presumption for qualifications? - What does having a presumption and what factors could rebut or should be conclusive presumption? Currently, we aren't applying the presumption. 	<ul style="list-style-type: none"> - Statute Section 6414(a)