



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)¹, 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

¹ 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



PRISON LAW OFFICE

MEMORANDUM OF ADVISORY COMMENT

VISIT DATE: NOVEMBER 7, 2018

The grant accounting records and the related internal control systems of the Prison Law Office (PLO) were reviewed to determine whether the program is in compliance with the terms and conditions of its grant agreements with the State Bar.

The review was conducted in accordance with requirements of the State Bar's *General Grant Provisions* (the Provisions) and *Standards for Financial Management Systems and Audits* (the Standards), which pertain to financial and compliance audits. The review consisted principally of inquiries of management, evaluation of internal control structures, analytical procedures applied to financial data, and such other procedures as considered necessary to the circumstances.

Based on information gathered from our interviews, document review and tests of PLO's accounting records and related internal control systems, we became aware of matters that are summarized below. **The first two issues below had also been identified during the previous program visit in 2015 and there are significant concerns regarding fiscal oversight by PLO's board.** These comments are intended to lead to meaningful actions that will strengthen the effectiveness of the program's internal control systems and ensure compliance with State Bar requirements.

1. Finding – Organizational Budget: PLO does not prepare an organizational budget.

Recommendation: Based upon best practices and Financial Accounting Standards Board Original Pronouncement (Statement of Financial Accounting Concepts no. 4) and American Bar Association Standards 1.1-3 on Fiscal Matters, we recommend that program staff and board members work to develop an annual organizational budget. This budget should be revised before the start of every fiscal year and compare budgeted income and expense amounts to actual prior year amounts. Actual income and expense amounts should be compared against the budget throughout the year so that unusual amounts can be easily identified, investigated and corrected if necessary.

2. Finding – Bank Reconciliation: The December 2017 bank reconciliation report includes five outstanding checks that are dated July 7, 2016 or earlier; and four outstanding bill payments dated between February 3 and June 8, 2017.

Recommendation: All items outstanding for 6 months (180 days) or more should be investigated on a monthly basis. Checks should be voided and either replaced (if lost) or cancelled along with the invoice (if duplicate or erroneous payment).

3. Finding – Check Signing: The State Bar recently received a refund check from PLO, in excess of \$100,000 for grant overpayments based on an error in PLO's audited financial statements. This check included only Donald Specter's signature even though PLO policy requires a second signature on any checks in excess of \$35,000.

Recommendation: Organization should follow its policy requiring a second signature from a Board member for all checks in excess of \$35,000.

4. Finding – Payroll Discrepancies: A review of personnel files revealed that two out of four payroll files examined did not contain pay rate documentation as required by Section 100.64 of the Standards ("documentation must be maintained to support individual gross earnings.") The two files with documentation did not include an authorizing signature on the Salary Authorization forms from the Executive Director. In addition, the salary paid to one employee was not consistent with the documented authorization.

Recommendation: All personnel files, including those for the Executive Director and temporary employees, should be reviewed to ensure they contain the proper authorization for accurate wage and salary rates. The Executive Director's file should include authorization from the Board of Directors. All other employee compensation changes should be authorized, in writing, by the Executive Director. Employees should receive timely notification of wage rate changes. Procedures should also be developed to uniformly account for all payroll actions in addition to pay rate changes.

5. Finding – Payroll Time Documentation & Employee Reimbursement: One temporary employee timecard was not signed by the employee and showed seven hours worked, but was paid for eight hours. That same temporary employee timecard and paid wages included 24 hours for three days of vacation. However, according to PLO's employee handbook, PLO has a 35 hour work week or seven hour work day. In addition, according to PLO's employee handbook: "Temporary employees are not eligible for employee benefits except those mandated by applicable law." However, a reimbursement of \$254 was paid for that same temporary employee for healthcare related costs and without supporting documentation. There was no supporting documentation but a notation listing "dentist."

Recommendation: PLO should establish an adequate time-reporting system. Section 100.64 of the Standards states that the system must be able to identify employee hours to demonstrate accountability for time to the public. PLO should also obtain supporting documentation for reimbursements. Section 100.63 of the Standards includes: “Each check must be supported by appropriate documentation evidencing the nature and propriety of the expense.” Finally, PLO should also comply with the organization’s employee handbook.

6. Finding – Executive Director Reimbursement: The Executive Director’s reimbursement requests do not appear to be approved by Board Chair, board member or any other person. One reimbursement includes \$190 for “Emily health ins” with no supporting documentation. Reimbursement for cafeteria plan expenses is not included in the PLO Employee Handbook. In addition, reimbursing the cost of health insurance paid by a dependent/family member is not an option in the PLO Employee Handbook.

Recommendation: Section 110.33 of the Standards includes: “Vendors’ invoices, contracts, check requests or other supporting documentation that has been approved by an authorized individual must support all disbursements.” Executive Director reimbursements should be approved by the Board Chair or other designated Board member. Supporting documentation should be required for all reimbursements. The organization should follow its Employee Handbook in terms of benefits provided to all staff.



PRISON LAW OFFICE

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May 23, 2019

Daniel Passamaneck
Senior Program Analyst
Office of Access & Inclusion
State Bar of California
180 Howard Street
San Francisco, CA 94105

Dear Dan:

I received your letter of March 27, 2019 and the accompanying fiscal memorandum by Mr. Bittner. I appreciate your comments and those of Mr. Bittner about the operations of the Prison Law Office since they provide an opportunity for improvement. Before responding to the discrete issues, I believe some context will be helpful.

The Prison Law Office remains a very successful organization. In the last six months, among other things, this office has won two appeals in the Ninth Circuit regarding prison conditions in the Arizona Department of Corrections, obtained court approval of two consent decrees regarding conditions at two California county jails and is close to resolving a case against a third county jail, successfully advocated for changes to the way deaf people who use sign language are treated in the California prison system, obtained in part through our advocacy a massive infusion of funds in the Governor's budget to provide treatment for people in prison with opioid and other substance abuse disorders, and negotiated with the prison system to fundamentally change the way cases of staff misconduct are investigated.

Our financial situation is equally impressive. This office has substantial reserves that provide financial security for many years to come. This also permits us to engage in costly and lengthy impact litigation and to be prepared for the inevitable day when the court ordered monitoring fees from the California Department of Corrections and Rehabilitation—which are responsible for the large majority of our income—are no longer available.

Those reserves also have allowed us to increase our staff, thus increasing the number of cases and the incarcerated people that we are able to help. For most of its existence, this office was functioning with a small staff, which was cohesive and relatively easy to administer. But, with the increase in staff have come several organizational challenges. Systems were not in place to share information and, as your letter notes, the supervisory structure was deficient. In addition, there is a need to codify some office procedures.

Board of Directors

Penelope Cooper, President • Michele WalkinHawk, Vice President • Marshall Krause, Treasurer
Harlan Grossman • Christiane Hipps • Margaret Johns • Cesar Lagleva
Laura Magnani • Michael Marcum • Ruth Morgan • Seth Morris

To resolve these and other issues I hired an organizational consultant, Kristen Jacobsen, to work with me, the managing attorney and other office staff. Our discussions with Kristen led to the formation of several significant initiatives. We formed what we called the "Working Group" with participants from all levels of the organization to focus on structural issues such as supervision, training, orientation and an office retreat which was held in January. That group meets regularly and has a partially rotating membership so that all staff are represented. We also formed a Case Coordination Committee that meets monthly to ensure that all cases are sufficiently staffed and to discuss new potential cases. We have regularly scheduled staff meetings with the entire staff to provide information and discuss office-wide issues. We also have instituted strategy lunches to discuss particularly thorny legal and organizational issues.

In addition to working with Kristen, in January I hired a salary consultant to ensure that the salary structure is optimum and the salaries are consistent with the labor market. The consultant's report will be finished in time for the start of our fiscal year, July 1. Finally, in order to ensure that our financial portfolio is managed appropriately by the Board of Directors I recruited two new board members, both of whom graduated from Cal's Haas Business School and have experience working for financial wealth management companies.

Turning to the specific points you and Mr. Bittner raised, I submit the following responses:

Governance:

At the last meeting, the Board of Directors created a subcommittee to evaluate the performance of the Executive Director and it approved the organizational budget.

Strategic planning occurs in two ways. First, strategic financial planning is conducted by the Board's finance committee, including the two new board members noted above. The committee is in the process of developing an investment policy statement. Once that is approved by the Board our investments will be reviewed in light of that statement and modified, if necessary.

Second, strategic planning utilizes the expertise of the staff as well as oversight by the Board. In January 2019 the office held a day long retreat at which strategic planning issues were discussed. At the Case Coordination Meeting, which is held monthly, there is a discussion of whether new potential areas of interest fit within our expertise and resources. At each board meeting a summary of current litigation is discussed as well as any initiatives that are being considered, such as whether to investigate the conditions in immigration detention centers located in California.

You are correct that the bylaws were last reviewed in 2005. The bylaws have been sent to all members of the Board with directions to provide any suggestions or revisions at the next board meeting.

You expressed particular concern about the Board's performance because of the expenditure error in our annual EAF/IOLTA application. As I explained previously, at times we receive payments from government agencies for attorney fees for this office and other law firms. Upon receipt, we distribute to the other firms the amounts owed to them. The bookkeeper did not understand that the payments to the other firms were not expenditures, but were only pass-through payments. Therefore, she did not label the

payments to the other firms correctly and instead included the payments as part of our expenditures. The balance sheets and profit/loss statements which are distributed to the Board at each meeting are based on these mislabeled entries and therefore also contained this error. However, the Board members would have no way of knowing from these documents that some of the funds were mislabeled. I only discovered the error after I investigated why the grants we received from EAF and IOLTA were much greater than the previous year. The error became apparent only after looking at individual bookkeeping entries, something the Board is not required to do. The annual CPA audit, which is distributed to the Board, also did not detect the error, and so there is no reason the Board should have discovered it.

More importantly, once I discovered the error I immediately reported it to the Board President and eventually to the Board. Also, I called you the same day with my sincere apologies for all the time it would eventually take to correct the allocations. I then worked with our bookkeeper to create a separate line item for these pass-through payments so that this would not recur. I do not believe that this issue is cause for concern. There has been no pattern of such errors in all the years we have been applying for grant funds administered by your office. This error was an isolated incident that was a result of a misunderstanding that was discovered internally and immediately corrected.

Internal Systems and Controls

Since the site visit, the supervisory structure has been updated so that all legal assistants, support staff and attorneys have direct supervisors. Attorneys are supervised by both the Managing Attorney and the Executive Director. In addition, legal fellows and junior attorneys have a senior attorney as a supervisor.

Annual performance reviews are completed for legal assistants and junior attorneys. Performance reviews for senior attorneys, many of whom have been here for years or decades, are completed as needed or upon request. Growth development plans will be created for all attorneys and investigators who want one.

The Managing Attorney has reduced her caseload so that she can spend more time supervising and managing the personnel needs of the office.

The Working Group is identifying what documents are needed to orient new employees and to provide guidance so that employees can do their jobs with professionalism and knowledge. Among the documents that have been or are being prepared are: (1) manuals for all major cases, (2) guides to billing and expenses, (3) best practices to promote attorney-client confidentiality, (4) a guide for how to conduct a prison or jail tour and (5) an information sheet that explains the basics of how the prison system works, how the Department of Corrections and Rehabilitation operates and the terminology an employee is likely to encounter. The guides and information sheets will be available on Google Docs so that they can be continually edited and updated as necessary.

Program Resources

The office has provided ample resources to the staff who are at risk of secondary trauma because of their work interviewing clients at correctional facilities. A full-day program was held with a secondary trauma specialist for the entire staff in 2017. In addition, the staff was able to attend a presentation on secondary trauma in 2018, and this year two sessions were held at the office with Mary Walsh for an in-depth workshop on techniques to manage secondary trauma.

It is true that upon completion of interviews, staff are required to type up their notes. This has been the practice for many years. Dictation software would not necessarily save time, and would not avoid the “re-traumatizing process”.

Fiscal Issues

1. *Organizational Budget*

An organizational budget was prepared and approved by the Board at its last meeting in April 2019. Actual income and expenses will be compared to the budget semi-annually.

2. *Bank Reconciliation*

We are and will investigate any checks that are outstanding for 6 months or more. To accomplish this the office manager will review outstanding checks monthly and resolve any that have been outstanding for more than six months. Invoices are paid upon receipt. Any outstanding invoices will be investigated and resolved. The February 3 and June 8, 2017 items have been resolved and no longer appear on the bank reconciliation report.

3. *Check Signing*

At its next meeting the Board President will propose to modify the current check signing policy to require two signatures on amounts of \$100,000 or more. Once approved, that policy will be followed.

4. *Payroll Discrepancies*

All employees are promptly notified of any salary changes. Personnel files now have the required authorizing signatures on the Salary Authorization Forms and will continue to do so in the future. The Board President will sign the salary form for the Executive Director's salary.

5. *Payroll Time Documentation & Employee Reimbursement*

One time card was not signed by an employee. In practice, time cards are regularly signed by employees. This was an inadvertent error.

Employees have a 35 hour work week and one hour paid lunch per day. Thus, vacation pay is 8 hours per day.

Although a check was mistakenly written to a temporary employee, the check was cancelled and subsequently voided.

The office has an adequate time-reporting system. All non-exempt employees are required to fill out daily time sheets. Each exempt employee, all of whom are attorneys, document their time on all cases in 10 minute intervals through Timeslips, a computerized program.

6. *Executive Director Reimbursement*

Supporting documentation is and has been required for reimbursement of expenses. The Board President will review the expenses of the Executive Director semi-annually.

The office has a policy of reimbursing employees for dependent health benefits. There was one instance where my daughter paid her health insurance directly, then I reimbursed her for the expense and the office reimbursed me. Although not explicitly permitted in the Employee Handbook, the intent of the office's policy was carried out. This was a regular monthly payment, so although there was no direct documentation, there was ample justification for this one-time payment.

I hope that all of the above resolves the concerns that you and Mr. Bittner expressed in your March 27, 2019 letter and memorandum. Please feel free to contact me with any questions.

Sincerely,

/s/

Donald Specter

cc: Penny Cooper, President Board of Directors