



# The State Bar *of California*

Date: September 16, 2019

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

CC: Legal Aid Association of California

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

Subject: Process to Codify Grant Administration Practices

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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 six governing authorities 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 (LSP)
4. Eligibility Guidelines for Support Centers (SC)
5. General Grant Provisions
6. Standards for Financial Management Systems and Audits

In addition, grant agreements between the State Bar and grantees list the contractual obligations of the grantee as stated in the Act, Rules, the Eligibility Guidelines, General Grant Provisions and application materials provided by the recipient.

Lastly, the American Bar Association Standards For the Provision of Civil Legal Aid provides guidance for legal service providers as organizations and for their staff who represent low income clients.

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 grantees 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 Committee on Process to Codify Grant Administration Practices of the LSTFC (“Rules Committee”) 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 addressed 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 work groups do not have to address the issues in the order presented below. The State Bar expects the timeline to take approximately a year, assuming the work groups can address multiple issues at a time and present its findings and recommendations to the subcommittee. Until the process is complete, the current practices would continue as to not adversely impact grantees.

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Each of the work groups will be led by a OAI staff member who will draft a recommended process, rule or guideline change. This draft will be submitted to LAAC for input (which is intended to reflect input of the community). LAAC and their stakeholders will then review

and provide suggested amendments, additions, or deletions to the proposal in writing back to OAI. We anticipate that LAAC will represent the interest of the legal aid community but with nearly 100 diverse organizations, there may not always be consensus. Based on the feedback from LAAC and their stakeholders, we can amend the recommendations as a joint proposal or provide recommendations and include the issues raised by LAAC to the publicly noticed bi-monthly Rules Committee. This provides multiple avenues for organizations and grantees to provide input - through LAAC, in the publically noticed Rules Committee meetings, the full LSTFC Commission meeting, the Board of Trustees meeting, and finally during the public comment period for any State Bar rule changes.<sup>1</sup>

I anticipate at each meeting the Committee will address at least two issues but not certain what may change based on complexity and feedback from LAAC and community stakeholders. The State Bar will calendar these meetings beginning in November for a total of seven meetings until December 2020.

After the Rules Committee votes on recommendations, they will be brought to the full LSTFC for a vote. Unless it is determined that moving some of the rule proposals forward earlier makes sense, in November 2020, all the recommendations will be brought to the Board of Trustees, or a committee thereof, for approval to circulate for a formal public comment period.

Rule Committee Meeting	Issue Topic
November	Audit and RFP
January	Law School Clinics Deeming
March	Primary Purpose Impact and Legal Advocacy Pro Bono Allocation
May	Fiscal Administration + Quality Control
July	Any follow up items
September	Support Centers (any follow up items)
November	Other Issues (if necessary)

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<sup>1</sup> Anyone can sign up to receive the agendas and respective materials for the Legal Services Trust Fund Meetings at <http://board.calbar.ca.gov/Committees.aspx>

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

4	Law School Clinics	<ul style="list-style-type: none"> <li>- What is the definition of an “identifiable law school unit” from Statute?</li> <li>- Standards of a financial audit which is normally from the entire institution which is not aligned with the statutory requirement</li> <li>- Clarity on application of indirect costs</li> </ul>	<ul style="list-style-type: none"> <li>- “Identifiable Law school unit” § 6213(a)</li> <li>- General definition of law school as a law school accredited by SB under Rule 3.670(A) and 3.80(A)</li> <li>- LSP 2.6.1 Commentary for law schools</li> <li>- LSP 2.3.5 Commentary for law schools</li> <li>- No language on indirect costs in rules or guidelines except for indirect cost allocation under Standards 100.32</li> <li>- Audit requirement under LSP 2.71 with no exception for law schools</li> </ul>	Dan Passamaneck
5	Fiscal	<p><u>Out of County Determination</u></p> <ul style="list-style-type: none"> <li>- Process or analysis to determine counting work and allocation for multiple counties (currently inconsistent)</li> </ul> <p><u>Pass through Funds</u></p> <ul style="list-style-type: none"> <li>- Defining what is qualified expenditures (QE) and impact on primary purpose analysis. (ex. DOJ funding)</li> <li>- Process for analyzing pass through funds and impact on primary purpose of legal services.</li> </ul> <p><u>Exchange Funds</u></p> <ul style="list-style-type: none"> <li>- When one grantee subgrants to other IOLTA grantee, who counts the QE? And which eligibility standards apply (LSP vs. Pro Bono)?</li> <li>- Inconsistent reporting requirements of who counts the QE.</li> </ul> <p><u>Audit</u></p> <ul style="list-style-type: none"> <li>- Standards for requirement of a financial audit for expense over \$500,000 when</li> </ul>	<ul style="list-style-type: none"> <li>- B&amp;P Code §6216(b)</li> <li>- LSP Guidelines 2.8 Commentary</li> <li>- General Grant Provisions 3.03</li> </ul> <ul style="list-style-type: none"> <li>- LSP Guidelines 2.7.2 + Commentary on QEs</li> <li>- LSP Guidelines 2.8 + Commentary on application of out of county work as applied to statewide/impact cases</li> </ul> <ul style="list-style-type: none"> <li>- General Grant Provisions 3.05 Subcontracting</li> </ul> <ul style="list-style-type: none"> <li>- LSP Guidelines 2.7 state “gross expenditures in excess of \$500K” must submit an audited financial statement</li> </ul>	Frank Bittner and Doan Nguyen

		<p>that includes in-kind value of pro bono services</p> <p><u>Carry over, budget, and cost reporting</u></p> <ul style="list-style-type: none"> <li>- What should be the standards for financial management? Should IRS standards be used? And review of 990s included?</li> <li>- Should financial &amp; program performance be integrated?</li> <li>- Review of current reports. Why quarterly reports? Why have detailed budgets? Why have 25% non-personnel and Administrative cost limits?</li> <li>- 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?</li> <li>- Inconsistent application of 25% director approval.</li> <li>- Carry Over Processes</li> <li>- There is no rule or guideline on how indirect costs are considered for QE.</li> </ul>	<ul style="list-style-type: none"> <li>- General Grant Provisions 4.04/4.05</li> <li>- LSP Guidelines 2.7.1</li> <li>- General Grant provisions 7.01</li> <li>- General Grant provisions 7.01</li> <li>- General Grant provisions 7.01</li> <li>- General Grant provisions 7.01</li> <li>- General Grant provisions 4.02 (B) speaks to administrative methodology</li> </ul>	
6	Support Centers	<ul style="list-style-type: none"> <li>- How to measure income screening for support centers?</li> <li>- Defining “significant support service?”</li> <li>- Can SCs charge the LSPs that attend trainings (for food, or rental, no minimum or %)?</li> <li>-</li> </ul>	<ul style="list-style-type: none"> <li>- SC guidelines 2.2.1 commentary</li> <li>- SC guidelines 2.2.4 commentary</li> </ul>	Rocio Avalos

7	Primary Purpose	<ul style="list-style-type: none"> <li>- Currently staff reviews previous year budget to determine if the qualified expenditures are at 75% to qualify as primary purpose not the future budget</li> </ul>	<ul style="list-style-type: none"> <li>- Inconsistent with 3.671a, which directs review of future budget</li> <li>- LSP Guidelines 2.3.5 commentary</li> <li>- SC Guidelines 2.3 Commentary</li> </ul>	Doan Nguyen
8	Pro bono allocation	<ul style="list-style-type: none"> <li>- Defining if applicant's principal means of delivery of legal services is through recruitment of attorneys in private practice</li> <li>- Is there urban bias built in to threshold pro bono test?</li> <li>- Simplification of pro bono test</li> </ul>	<ul style="list-style-type: none"> <li>- B&amp;P Code §6216(b)(1)(B)</li> <li>- LSPs Guidelines 2.9.2 Commentary</li> </ul>	Christine Holmes
9	Deeming	<ul style="list-style-type: none"> <li>- What are the rules on deeming every 3 years?</li> <li>- Commission has authority to deem support center even if they were not deemed to be of special need by the majority of the LSPs</li> <li>- Should entire deeming process be reviewed?</li> <li>- Lack of clarity on if/when the Commission can "deem" a SC as special need if not voted by a majority of LSP.</li> </ul>	<ul style="list-style-type: none"> <li>- SC Guidelines 2.91 Commentary</li> </ul>	Christal Bundang
10	Impact and Litigation/Advocacy - Defining civil legal services and indigency	<ul style="list-style-type: none"> <li>- Defining civil legal services – including advocacy, counseling, mediation, policy work, social work and related services.</li> <li>- 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.</li> <li>- Application of definition under B&amp;P6213(d) re: receipt SSI or receipt of free services under OAA</li> <li>- What activities are so negligible as not needed to report (such as just signing on letters of support) ?</li> </ul>	<ul style="list-style-type: none"> <li>- Need to update Rule 3.671 on definition of civil legal services</li> <li>- Rule defining B&amp;P 6213 (d)</li> <li>- SC Guidelines 2.2.1 Commentary</li> <li>- For example, we currently require deduction for mediation services for QE but allow mediation as a type of legal services for Partnership Grants.</li> </ul>	Elizabeth Hom

11	Other Issues	<ul style="list-style-type: none"> <li>- What are the rebuttal factors for AAA and LSC for 6214(a) on the presumption for qualifications?</li> <li>- What does having a presumption and what factors could rebut or should be conclusive presumption? Currently, we aren't applying the presumption.</li> </ul>	- Statute Section 6414(a)	Doan Nguyen
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