

**LEGAL SERVICES TRUST FUND COMMISSION**

**RULES COMMITTEE MEETING**

**Notes and Action Summary**

Friday, January 17, 2020, 10:00 a.m. – 2:00 p.m.

State Bar of California in Los Angeles and San Francisco

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**Roll Call**

**Committee Members**

Chair Amin Al-Sarraf (LA)  
Banafsheh Akhlaghi (SF)  
Corey N. Friedman (SF)  
Kim Savage (SF)  
Erin Lewellen (Phone)  
Zahirah Mann (LA)

**Liaisons**

Debbie Manning (Phone)  
Salena Copeland (SF)  
Lorin Kline (SF)

**State Bar Staff**

Hellen Hong (LA)  
Doan Nguyen (SF)  
Brady Dewar (SF)  
Christine Holmes (SF)  
Christal Bundang (SF)  
Greg Shin (LA)

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**OPEN SESSION**

The meeting was called to order at 10:12 a.m.

**I. ROLL CALL**

Roll call was taken, and quorum was established.

**II. CALL FOR PUBLIC COMMENT**

No comments were offered by members of the public.

**III. CONSENT**

**A. Approval of Meeting Summary and Actions Items from November 22, 2019 Meeting**

The Rules Committee (Committee) made a motion to approve the action summary. Amin Al-Sarraf moved and Corey Friedman seconded. The motion was approved by unanimous roll call vote.

**IV. DISCUSSION AND ACTION ITEMS**

**A. Discuss Timeline and Process to Codify Grant Administration Practices**

Program Supervisor Doan Nguyen reported that State Bar staff met with Amin Al-Sarraf and Corey Friedman to reexamine the work plan and timeline deliverables. Since the process is more expansive than originally projected, they determined that the timeline needs to be extended. This change would allow the Committee and community additional time to review and provide feedback to the codification recommendations.

The strategy of the original work plan was to first address discrete codification issues before discussing more complex issues. However, this approach posed difficulties, as the discrete issues raised larger questions related to complex issues planned for a later discussion. Instead, grouping all related issues in the work plan would allow for a more cohesive review and comprehensive recommendations. The goal is to have the process completed by the 2022 IOLTA/EAF application for 2023 funding.

Staff presented the revised codification process:

(1) Preview subject matter and issues at Committee meeting to gather initial reactions; (2) Staff and working group draft memo with recommendations; (3) Memo is shared with Legal Aid Association of California (LAAC) for community feedback; (4) In-depth discussion and approve recommendations at Committee meeting; (5) Legal Services Trust Fund Commission approve Committee's recommendations; (6) Approved recommendations sent to State Bar Board of Trustees (BOT) for consideration; (7) BOT circulates for 45 day formal public comment period; and (8) BOT votes to approve changes.

In response to the Committee's procedural questions from the November 22, 2019 meeting, Assistant General Counsel Brady Dewar presented the "Procedural Rules Applicable to Rulemaking Regarding the Legal Services Trust Fund Program" memo included in the meeting materials. He confirmed the Administrative Procedure Act rules do not apply to the Legal Services Trust Fund rulemaking process. The Rules of the State Bar do not specify what must be codified in a Rule of the State Bar and what may be addressed through guidelines, policies, or other governing documents. While formal public comment period is not required for guidelines, policies, or other governing documents that are not formal Rules of the State Bar, these documents may be posted for comment should the Committee chose to do so.

Staff briefly described each issue included in the work plan, the timeline, and identified proposed working group members. Staff will share the work plan with the full Commission and LAAC.

The Committee discussed whether to solicit input from others about issues not currently included in the work plan. Salena Copeland of LAAC noted advance notice of the issues through the work plan and timeline allows LAAC to conduct meetings with many interested parties. Copeland also noted that carving out time for public comment at the Commission level will inform what the process will look like at the Board of Trustee level. Staff will add codification process updates to emails sent to executive directors of IOLTA/EAF grantees regarding grant administration issues. Staff will also look into providing updates to the grantee's Board of

Directors as many codification issues involve board oversight. The Committee asked if other people could opt in to the update emails. Staff will look into this possibility.

#### **B. Discuss and Approve Recommended Changes to the Audit or Review of Financial Statements Requirement**

Senior Program Analyst Christine Holmes summarized the audit issues and recommendations as represented in the “Codification of Grant Administration Practices: Audit or Review of Financial Statements Requirement” memo dated November 15, 2019. The Committee agreed with the four recommendations in the memo at the previous Committee meeting, but asked staff to make revisions. A definition was added for independent certified public accountant to the proposed amendment of State Bar Rule 3.680 (E)(1). The first sentence of Section 2.7 of the Eligibility Guidelines for Qualified Legal Services Projects was revised for clarity.

The Committee discussed whether the definition of a certified public accountant should be included within the section of the rule or in a separate section for definitions. The Committee also discussed whether to reference what constitutes a sufficient audit, though there is no current authority to reference. This issue will be discussed with the fiscal issues to codify. The Committee inquired whether the revisions regarding the audit requirement should be packaged with the fiscal recommendations. To be responsive to LAAC and the community the audit requirement issue was scheduled first in the codification process. Any mechanical changes to the amended Rule, like citations, need to be approved by the LSFTC.

The Committee decided to make a placeholder motion that approves the recommendations in concept but does not approve the final language. The final amendment to the Rule will be sent to the Board of Trustees. Applications for programs that only meet the \$500,000 threshold when including in-kind donated services will be elevated to the Eligibility and Budget Review Committee where the placeholder motion will be taken into consideration.

The Committee made a motion to accept staff’s recommendations for the definition of independent certified public accountant and to exclude in-kind donated services and to keep the threshold for a financial auditor statement of \$500,000 with the final written amendments to the language to be approved at a later date. Corey Friedman moved and Kim Savage seconded. Motion was approved by roll call.

#### **C. Discuss and Approve Recommended Changes to the Deeming Requirement for Support Centers**

Final recommendations regarding the deeming requirement will be discussed in-depth with other Support Center issues later in the codification process. Senior Program Analyst Christal

Bundang presented the governing authorities of the deeming requirement, an overview of the current deeming process, and the results of a 1992-1993 review of the process.

The preliminary recommendation is to revise the deeming process to allow Qualified Legal Services Projects to provide more input as reflected in the draft “Codification of Grant Administration Practices: Deeming” memo attached to the meeting materials. The Committee discussed the merits of adding quantitative versus qualitative questions to a new deeming survey. The main question being whether imposing more requirements would result in added value.

The Committee discussed quality controls issues with support centers but were reminded that only nine of the 22 Support Centers need to be deemed. Quality control issues would be addressed in the larger discussion about Support Centers. The question was posed that if the current Support Centers were deemed as eligible without having to be redeemed, what would the deeming process be moving forward. Staff, with the working group, will develop recommendations for the deeming process to include with the Support Centers recommendations.

#### **D. Discuss and Approve Recommended Changes to the Review Process for Request for Proposals for Discretionary Grants**

Final recommendations regarding the review process for Request for Proposals (RFPs) for discretionary grants will be discussed in-depth later in the codification process. Senior Program Analyst Greg Shin presented research on past practices of State Bar discretionary grants and those of other discretionary grants outside the State Bar. The State Bar’s process doesn’t differ materially from similar organizations. The State Bar creates an RFP document outlining the grant opportunity and uses an evaluation team to review the applications. Unlike the Partnership and Bank Grants, the teams that reviewed the 2020 Equal Access Fund for Homelessness Prevention RFPs used a scoring rubric.

The preliminary recommendation for the review process of RFPs for discretionary grants is to use a formal scoring rubric to provide clarity and promote a more transparent process. The Committee discussed other organizations processes including conducting information sessions and developing FAQs about the RFP and using field experts as outside reviewers. The Committee also discussed possible unintended consequences of creating public scoring records including negative perceptions of programs based on the results. The Committee inquired whether it would be bound by the rubric and what the impact might be on programs appealing award decisions. State Bar discretionary grants do not have an appeals process. The Committee advised staff to find examples how other organization use rubrics as a framework for how to do an initial threshold for review.

There being no other business, the meeting was adjourned at 1:42 p.m.