



# The State Bar of California

## OFFICE OF ACCESS & INCLUSION

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Date: May 1, 2020

To: Members, Legal Services Trust Fund Commission Eligibility & Budget Review Committee

From: Erica Carroll, Senior Program Analyst

Subject: Review of 2019 Impact Litigation and Advocacy Work (ILAW) Reports

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### EXECUTIVE SUMMARY

Business and Professions Code section 6216 prescribes the method for distributing IOLTA funds to qualified legal services organizations based on a formula centered in part on the organization's "qualifying" expenditures (i.e. costs in support of legal services that benefit indigent persons). Equal Access Fund (EAF) grants are also distributed according to the IOLTA formula. The Legal Services Trust Fund Commission Eligibility and Budget Review Committee (E&BR Committee) will meet on May 1, 2020 to review impact litigation and advocacy activities, as reported by both qualified legal services projects (QLSPs) and support centers (SCs) in their Impact Litigation and Advocacy Work (ILAW) reports. These reports detail activities that organizations wish to count as qualifying expenditures in their grant applications.

Potentially non-qualifying impact litigation cases and advocacy activities from 2019 are reviewed prior to the IOLTA and EAF application process to streamline the application review for Commissioners and staff. Activities found to be non-qualifying would need to be deducted in the organizations' 2021 IOLTA and EAF grant applications. A reduction in the amount of qualifying expenditures could result in reducing the allocation of funds to an organization.

Staff conducted an initial review of the ILAW reports to assess the qualifying nature of activities according to the requirements for QLSPs and SCs discussed below. Where the activity initially appeared to be non-qualifying, staff is elevating said activity to the Committee for further review. Of the 415 impact cases and 417 advocacy activities reported, the overwhelming majority were qualified activities. Staff is seeking the Committee's determination on one individual advocacy activity, and three impact litigation cases. (Attachments B and C.) Staff also

seeks determination as to whether six activity categories (comprised of several individual activities) can be assumed to primarily impact indigent persons where data was lacking.

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## BACKGROUND

### A. Governing Authorities

Business and Professions Code section 6216 provides for distribution of IOLTA funds to qualified legal services organizations based on a formula centered in part on the organization's "qualifying" expenditures on legal services that benefit indigent persons. This ties directly to organizations' IOLTA and EAF funding: The more expenditures an organization dedicates to qualified legal activities, the larger their IOLTA and EAF allocation award in comparison to organizations in the same county with fewer qualified expenditures.

QLSPs and SCs have different requirements for what is considered a qualifying activity. According to Business and Professions Code section 6213(a), a QLSP's primary purpose is to provide legal services to indigent persons in California without charge. As such, to be considered qualifying, the activities in a QLSP's ILAW report must be (1) legal services and (2) primarily impact indigent individuals.

State Bar Rule 3.672(A) defines "legal services" (as distinct from legal support services) to "include all professional services provided by a member of the State Bar and similar or complementary services of a law student or paralegal under the supervision and control of a member of the State Bar." Business and Professions Code section 6213(d) defines "indigent person" as someone whose income is 125 percent or less of the federal poverty threshold, a senior, a person with a developmental disability, or a person who is eligible for Supplemental Security Income. QLSPs that receive a pro bono allocation may use higher income thresholds under guidelines issued by the Department of Housing and Urban Development to determine indigency (Bus. & Prof. Code § 6213(d)).

Unlike QLSPs, SCs are not required to provide services that would directly impact indigent persons. According to Business and Professions Code section 6213(b), a SC's primary purpose is the provision of legal training, technical assistance, or advocacy support without charge and which provides a significant level of support services without charge to QLSPs on a statewide basis. State Bar Rules and Support Center Eligibility Guidelines refine this definition, providing that direct representation to clients, including in impact litigation, is not considered a qualifying support service unless the case is:

- co-counseled with a QLSP (State Bar Rule 3.672(b));

- co-counseled at the request of a private attorney representing indigent clients without charge (Support Center Eligibility Guidelines 2.3(c)); or
- undertaken at the request of a QLSP that is unable to assist the client (State Bar Rule 3.672(b)).

The governing authorities do not provide a clear definition of advocacy work for either QLSPs or SCs.

## **B. Staff Review Process**

The ILAW reports required each grantee to submit its top 15 impact litigation cases and top 10 advocacy activities, based on the highest number of staff hours. If its total number of cases and activities exceeded this requirement, the organization was asked to provide a brief description of the nature of those additional activities. Staff reviewed ILAW reports to assess which activities were qualifying or non-qualifying based on governing authorities, and which activities needed to be elevated to the E&BR Committee for further review.

### **1. Qualified Legal Services Projects (QLSPs)**

For QLSPs, staff determined an impact litigation or advocacy activity was qualifying if it primarily impacted indigent persons as defined by Business and Professions Code §6213(d) and Commentary to 2.3.4 of the Legal Services Projects Eligibility Guidelines. Historical practice has been to interpret “primarily” as more than 50 percent of persons who would benefit from the activity. As such, staff considered an impact case qualifying if:

- the named plaintiff was indigent;
- more than 50 percent of the named class was indigent; and/or
- sufficient support was provided to demonstrate that more than 50 percent of those impacted were indigent.

If the named plaintiff in an impact case was not indigent or less than 50 percent of the class was indigent, and there was no data or limited data to demonstrate that the case primarily impacted indigent persons, staff would have included it for the Committee’s review.

An advocacy activity must be both a legal service and primarily impact indigent persons in order to be qualified. While the governing authorities do not explicitly state that advocacy activities are qualifying for QLSPs, historical practice has been to interpret legal services to include legal advocacy activities. Staff has therefore interpreted qualifying advocacy activities to include policy work such as drafting a bill, participating in a legislative campaign, or enforcing a law or regulation where the majority impacted were indigent persons.

If a QLSP did not engage in clearly qualifying legal services advocacy work, or did not provide sufficient support to demonstrate that more than 50 percent of those impacted by the advocacy work was indigent, staff included the advocacy activity in Attachment B for the Committee's review.

## **2. Support Centers (SCs)**

Due to the nature of the work of SCs, the definition of a qualifying activity is different. As long as the impact case is: co-counseled with a QLSP; co-counseled at the request of a private attorney representing indigent clients without charge; or undertaken at the request of a QLSP that is unable to assist the client, the cases are qualifying under the current rules. See State Bar Rules 3.672(b) and 3.682 and Commentary to 2.2.1 of the Support Center Eligibility Guidelines. Staff also looked at the underlying substance of the case to ensure that it would benefit indigent Californians. For SCs that engaged in impact litigation work that did not meet the above criteria, staff included those activities in Attachment C for Committee review.

Staff considered advocacy work qualifying if it generally supported QLSPs or advocates who provided direct civil legal services to indigent persons. Under this analysis, no support center advocacy activities are being elevated for E&BR Committee review.

## **DISCUSSION**

### **A. Census Activities**

A few organizations reported ILAW activities related to census work from 2019. The census is conducted every ten years, and the ILAW report and evaluation process only began within the past three years. Consequently, these activities presented novel questions when analyzing whether they constituted legal services and in evaluating their impact on indigent persons. One example was support for an amicus brief regarding a challenge to the proposed citizenship question, and the disproportionate impact it could have on indigent persons if individuals are discouraged from participating due to the question; this could result in lost benefits or resources to the community due to an undercount.

Staff reviewed each activity on a case-by-case basis and concluded in each individual circumstance that the activity was qualifying; each organization articulated how its advocacy was targeted towards the needs of indigent persons or disproportionately impacted that population. However, given that the census is currently being conducted, the number of these activities may only increase in next year's ILAW reports, which will reflect organizations' 2020 activities. Staff seeks guidance from the E&BR Committee about how to approach such activities moving forward.

## **B. Staff Proposal for Categories Meeting Indigency Requirement**

Staff identified six categories for which organizations were not able to provide conclusive data to demonstrate that the activities primarily impacted indigent persons, although the sheer number of indigent persons who benefitted may have been large and the substantial impact on indigent persons seemed clear. In the absence of existing policy to provide further guidance, staff proposes that the Committee approve impact litigation and advocacy activities this year in six categories as meeting the indigency requirement: (1) affordable housing, (2) low-income immigrants, (3) public benefits, (4) education equity, (5) low-wage workers, and (6) youth in detention. The first four categories were presented to this Committee last year.

### **1. Affordable Housing**

Grantees reported 16 impact and 52 advocacy activities related to affordable housing. Examples of affordable housing activities reported include challenging unlawful rent charges, late fees and retained security deposits for low-income tenants; enforcement of relocation assistance obligations; enforcement of redevelopment law requiring a specific proportion of affordable housing units; advocating for ordinances to protect against Section 8 discrimination; and legislation to enact “just cause” eviction protections and limit rent increases statewide (AB 1482).

The lack of affordable housing disproportionately impacts seniors and low-income individuals and families, and the problem is exacerbated in high-cost areas such as San Francisco and Los Angeles. Staff recommends that affordable housing impact cases and advocacy activities be approved as meeting the indigency requirement.

### **2. Low-Income Immigrants**

QLSPs reported 21 impact cases and 14 advocacy activities related to low-income immigrants in California. Examples of reported activities benefitting low-income immigrants include litigation challenging the multi-year delay in reviewing U-visa petitions (which in turn delays work authorization), failure to provide credible fear interviews to asylum seekers currently denied entry to the United States, and policy advocacy work related capping fees on naturalization applications and achieving a universal right to representation in immigration removal proceedings.

Limited or no data exist that clearly demonstrate that more than 50 percent of those impacted are within the IOLTA definition of indigent. However, the activities reported describe how this constituency is generally low-income and likely indigent per the IOLTA income requirement, particularly when individuals lack work authorization.

Staff recommends that impact cases and advocacy activities that disproportionately impact low-income immigrants be approved as meeting the indigency requirement.

### **3. Public Benefits**

QLSPs reported 13 impact cases and 32 advocacy activities that address public benefits-related issues for low-income Californians. Limited or no data exist that clearly demonstrates that more than 50 percent of those impacted fall within the IOLTA definition of indigent. However, organizations have presented data that serves as a compelling proxy for measuring the number of indigent persons and that this work most likely impacted primarily indigent populations. For example, one organization cited that Medi-Cal eligibility for most adults, many of whom are seniors, is limited to 138 percent of the federal poverty threshold. Given that means-tested public benefits programs are designed to meet the basic needs of low-income families and children, a lack of clear data should not prohibit organizations from claiming this work as qualified.

Staff recommends that impact cases and advocacy work related to means-tested public benefits – including but not limited to CalWORKs, CalFresh, Medi-Cal, and Denti-Cal – be approved as meeting the indigency requirement.

### **4. Education Equity**

QLSPs reported 3 impact litigation and 10 advocacy activities related to education equity for low-income students in California. Examples of reported activities are actions to enforce compliance with Local Control Funding Formula requirements, which typically fund services that benefit indigent students; actions to enforce compliance with Proposition 58 regarding the needs of English learners; and advocacy for legislation that would require charter schools to follow the same rules as school districts in order to provide more transparency and accountability in their operations.

Limited or no data exist that clearly demonstrates that more than 50 percent of those impacted fall within the IOLTA definition of indigent. However, one organization provided data regarding participation in the free and reduced price meals plan (FRPMP) as a proxy for indigency. The threshold for the free meals program is 130 percent of the federal poverty level, and the reduced price meals programs is 185 percent. As one example, that same organization reported that 59 percent of students statewide are eligible for the FRPMP and, of that, 88 percent qualified for free meals (meaning that 88 percent of participants were at or below 130 percent of the federal poverty threshold). For some of the other activities grouped under this heading, one organization used state data that demonstrated that 85 percent of English learner students are also low income to show the disproportionate impact on indigent students.

Last year staff recommended that the activities that used the FRPMP as a proxy for indigency should presumptively qualify. The E&BR Committee did not adopt that recommendation and reviewed the individual activities in this group at a subsequent meeting. However, after reviewing those activities, all were approved as qualifying. Therefore, staff renews its recommendation: If data are provided to demonstrate that the majority of students in the school impacted are eligible for FRPMP, or that the advocacy centered on services for English language learner students, staff recommends that the impact cases and advocacy work related to education equity be approved.

## **5. Low-Wage Workers**

QLSPs reported 19 impact cases and 18 advocacy activities related to the needs of low-wage workers. Examples of impact litigation included enforcement of minimum wage and rest and meal breaks, overtime pay, and provision of required sick leave; compensation for travel and waiting time for farmworkers (including workers with temporary H-2A visas); and challenging discrimination and equal pay violations. Advocacy activities included passage of a bill protecting minimum account balances when creditors levy bank accounts; endorsing changes to the child support formula to increase the “low income deduction”; proposing a local ordinance to combat abusive scheduling practices in the retail industry; and advocating for rights and protections for sidewalk vendors in Los Angeles.

In many instances, it was not possible to calculate the percentage of workers in a particular case who were indigent based on the Business and Professions Code definition. However, minimum wage in California is \$12 per hour, and supporting a household of three or more on that wage would meet the indigency threshold.

Staff recommends approval of activities that disproportionately benefit low-wage workers.

## **6. Youth in Detention**

QLSPs reported 6 impact litigation and 7 advocacy activities that involved youth who were detained. Examples included litigation to enforce settlement terms related to conditions of confinement for youth in immigration detention; to address the Office of Refugee Resettlement’s failure to follow its own policies about placing children in the least restrictive environment; advocating for better oversight of immigration detention facilities licensed by the California Department of Social Services; and policy advocacy to create systemic reform for developmentally appropriate interventions for youth who interact with the justice system.

Most minors have limited to no personal income, and youth who are detained face another barrier to obtaining assistance as many are cut off from accessing their family or community

resources. Thus, the vast majority of detained youth would meet the definition of indigency. However, clear data is not always available to demonstrate this.

Staff recommends that ILAW activities related to youth in detention be approved.

### **C. Individual Activities Elevated for Committee Review**

#### **a. Public Advocates Higher Education Advocacy**

Staff is elevating one QLSP advocacy activity for E&BR Committee review, which was an activity that was found to be non-qualifying last year: Public Advocates' Higher Education advocacy. (See Attachment B.) Public Advocates initially appealed the E&BR Committee's determination. The organization later withdrew that appeal and accepted the activity as non-qualifying for purposes of the 2020 IOLTA and EAF applications. However, Public Advocates indicated that it would resubmit the activity this year with more information as it still believed it should be counted as a qualified expenditure.

After reviewing the ILAW report and supplemental information provided by Public Advocates, including statistics indicating the proportion of indigent students in the California public university system, staff believes there is sufficient support for the activity. Staff recommends approval of Public Advocates' Higher Education advocacy activity.

#### **b. National Immigration Law Center (NILC) Impact Cases**

NILC is a support center that reported 14 impact cases. These cases were filed in various federal district and circuit courts throughout the country, most without a QLSP or California pro bono partner. Of the 14 impact cases reported, three were partnered with QLSPs, and two were reported as non-qualifying by NILC.

Of the nine other impact cases, three are being elevated for Committee review. The remaining cases are not being elevated because they are continuing activities that were approved last year; to require the organization to deduct those hours if they were found to be non-qualifying now, would be inconsistent with the prior decision and would likely present a hardship.

The three cases being elevated entailed (1) challenging decisions by the Department of State to deny diversity visas to individuals from certain countries under the "Muslim Ban" (*PK v Pompeo*); (2) arguing a violation of individuals' Fourth Amendment rights when ICE conducted a raid on a meatpacking plant in Tennessee that also discriminated by only targeting Latino workers (*Zelaya v. Hammer*); and (3) objecting to changes to consular rules that would increase the number of individuals considered a "public charge," thus denying them visas to enter the



United States and/or preventing them from obtaining status as lawful permanent residents (*MRNY v. Pompeo*). (See Attachment C.)

A strict reading of the applicable State Bar Rules and Eligibility Guidelines for Support Centers would likely make these activities non-qualifying, because they fail to partner with any QLSPs, and staff does not believe these activities meet the standard of co-counseling with private attorneys under Guideline 2.3(c) of the Eligibility Guidelines for Support Centers.<sup>1</sup> (See Attachment A.)

Some federal cases have the potential for nationwide impact or injunction, and a number of QLSPs engage in immigration work, which is shaped by federal law; despite the absence of a QLSP partner, there may be benefits to QLSPs or their clients from these cases. However, in these activities, benefit to, or impact on, indigent Californians was unlikely, or at least unclear. Staff sought further explanation as to how these activities would be qualifying under Business and Professions Code section 6213, but did not receive additional information beyond what was listed in the ILAW reports (Question 5.a).

The primary purpose and function portion of the Eligibility Guidelines for Support Centers, Guideline 2.3(d), indicates “provision of similar legal support services in states other than California will be considered in determining the primary purpose of function of the corporation.” Consequently, there may be some confusion within the Guidelines regarding what type of activities qualify, and NILC stated that they are open to guidance from the E&BR Committee on these activities.

Staff recommends that these activities be found non-qualifying as they fail to meet the criteria under the Rules of the State Bar and Eligibility Guidelines for Support Centers. Staff also seeks guidance from the Committee about how to handle impact cases moving forward, where a support center engages in impact work without a QLSP or California pro bono partner but where there may be an argument that the litigation will impact indigent Californians.

### **c. Committee Review Last Year Versus This Year**

In comparison to last year, far fewer individual activities were elevated for Committee review this round. The ILAW reporting process only began in 2019, and staff continues to seek ways to improve and clarify the process for grantees. Many activities reported last year continued into this year, providing an existing framework for whether they would be determined to be

<sup>1</sup> Based on the definition of “qualified legal services project” under Business and Professions Code §6213(a), a QLSP is not simply any legal services non-profit, but a legal services non-profit in California that qualifies for IOLTA funding under the statutory requirements. Guideline 2.3(c) of the Eligibility Guidelines for Support Centers is similarly interpreted as co-counseling with private attorneys providing free services for the benefit of indigent Californians.

qualifying or non-qualifying. Grantees were more likely to readily identify and flag their own non-qualifying activities. This led to greater alignment between grantees and staff in this respect.

Revisions to the requested information in the report, as well as education from staff to grantees, further ensured that most grantees provided sufficient information in their initial reports for staff to make a determination. Rather than a departure from process, staff believes this is the natural progression based on the foundation established last year.

#### **D. Codification Process**

As noted earlier in this memorandum, the governing authorities of the Business and Professions Code and Rules of the State Bar provide limited guidance on ILAW activities. The Eligibility Guidelines for QLSPs and SCs are the only sources that provide more details to legal services organizations on how to determine whether an ILAW activity should count as a qualified expenditure in their IOLTA and EAF applications.

ILAW is implicated in upcoming discussions among the Rules Committee regarding the definition of legal services, how to demonstrate indigency when working on large-scale activities, and the role of support centers more generally. Staff welcomes any feedback from the Committee regarding this year's ILAW review to consider as recommendations are developed in the coming months.

#### **ATTACHMENT LIST**

##### **A. Governing Authorities**

1. Business and Professions Code 6212-6216
2. [State Bar Rules, Legal Services Trust Fund Program](#)
3. Eligibility Guidelines for Qualified Legal Services Projects
4. [Eligibility Guidelines for Support Centers](#)

##### **B. ILAW report and supplemental information regarding Public Advocates' Higher Education advocacy**

##### **C. ILAW reports from National Immigration Law Center**



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## BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 3. PROFESSIONS AND VOCATIONS GENERALLY [5000 - 9998.11] ( Heading of Division 3 added by Stats. 1939, Ch. 30. )

CHAPTER 4. Attorneys [6000 - 6243] ( Chapter 4 added by Stats. 1939, Ch. 34. )

ARTICLE 14. Funds for the Provision of Legal Services to Indigent Persons [6210 - 6228] ( *Article 14 added by Stats. 1981, Ch. 789, Sec. 1.* )

[6210.](#) The Legislature finds that, due to insufficient funding, existing programs providing free legal services in civil matters to indigent persons, especially underserved client groups, such as the elderly, the disabled, juveniles, and non-English-speaking persons, do not adequately meet the needs of these persons. It is the purpose of this article to expand the availability and improve the quality of existing free legal services in civil matters to indigent persons, and to initiate new programs that will provide services to them. The Legislature finds that the use of funds collected by the State Bar pursuant to this article for these purposes is in the public interest, is a proper use of the funds, and is consistent with essential public and governmental purposes in the judicial branch of government. The Legislature further finds that the expansion, improvement, and initiation of legal services to indigent persons will aid in the advancement of the science of jurisprudence and the improvement of the administration of justice.

(*Added by Stats. 1981, Ch. 789, Sec. 1.*)

[6211.](#) (a) An attorney or law firm that, in the course of the practice of law, receives or disburses trust funds shall establish and maintain an IOLTA account in which the attorney or law firm shall deposit or invest all client deposits or funds that are nominal in amount or are on deposit or invested for a short period of time. All such client funds

may be deposited or invested in a single unsegregated account. The interest and dividends earned on all those accounts shall be paid to the State Bar of California to be used for the purposes set forth in this article.

(b) Nothing in this article shall be construed to prohibit an attorney or law firm from establishing one or more interest bearing bank trust deposit accounts or dividend-paying trust investment accounts as may be permitted by the Supreme Court, with the interest or dividends earned on the accounts payable to clients for trust funds not deposited or invested in accordance with subdivision (a).

(c) With the approval of the Supreme Court, the State Bar may formulate and enforce rules of professional conduct pertaining to the use by attorneys or law firms of an IOLTA account for unsegregated client funds pursuant to this article.

(d) Nothing in this article shall be construed as affecting or impairing the disciplinary powers and authority of the Supreme Court or of the State Bar or as modifying the statutes and rules governing the conduct of members of the State Bar.

*(Amended by Stats. 2007, Ch. 422, Sec. 2. Effective January 1, 2008.)*

[6212](#). An attorney who, or a law firm that, establishes an IOLTA account pursuant to subdivision (a) of Section 6211 shall comply with all of the following provisions:

(a) The IOLTA account shall be established and maintained with an eligible institution offering or making available an IOLTA account that meets the requirements of this article. The IOLTA account shall be established and maintained consistent with the attorney's or law firm's duties of professional responsibility. An eligible financial institution shall have no responsibility for selecting the deposit or investment product chosen for the IOLTA account.

(b) Except as provided in subdivision (f), the rate of interest or dividends payable on any IOLTA account shall not be less than the interest rate or dividends generally paid by the eligible institution to nonattorney customers on accounts of the same type meeting the same minimum balance and other eligibility requirements as the IOLTA account. In determining the interest rate or dividend payable on any IOLTA account, an eligible institution may consider, in addition to the balance in the IOLTA account, risk or other factors customarily considered by the eligible institution when setting the interest rate or dividends for its non-IOLTA accounts, provided that the factors do not discriminate between IOLTA customers and non-IOLTA customers and that these factors do not include the fact that the account is an IOLTA account. The eligible institution shall calculate interest and dividends in accordance with its standard practice for non-IOLTA customers. Nothing in this article shall preclude an eligible

institution from paying a higher interest rate or dividend on an IOLTA account or from electing to waive any fees and service charges on an IOLTA account.

(c) Reasonable fees may be deducted from the interest or dividends remitted on an IOLTA account only at the rates and in accordance with the customary practices of the eligible institution for non-IOLTA customers. No other fees or service charges may be deducted from the interest or dividends earned on an IOLTA account. Unless and until the State Bar enacts regulations exempting from compliance with subdivision (a) of Section 6211 those accounts for which maintenance fees exceed the interest or dividends paid, an eligible institution may deduct the fees and service charges in excess of the interest or dividends paid on an IOLTA account from the aggregate interest and dividends remitted to the State Bar. Fees and service charges other than reasonable fees shall be the sole responsibility of, and may only be charged to, the attorney or law firm maintaining the IOLTA account. Fees and charges shall not be assessed against or deducted from the principal of any IOLTA account. It is the intent of the Legislature that the State Bar develop policies so that eligible institutions do not incur uncompensated administrative costs in adapting their systems to comply with the provisions of Chapter 422 of the Statutes of 2007 or in making investment products available to IOLTA members.

(d) The attorney or law firm shall report IOLTA account compliance and all other IOLTA account information required by the State Bar in the manner specified by the State Bar.

(e) The eligible institution shall be directed to do all of the following:

- (1) To remit interest or dividends on the IOLTA account, less reasonable fees, to the State Bar, at least quarterly.
  - (2) To transmit to the State Bar with each remittance a statement showing the name of the attorney or law firm for which the remittance is sent, for each account the rate of interest applied or dividend paid, the amount and type of fees deducted, if any, and the average balance for each account for each month of the period for which the report is made.
  - (3) To transmit to the attorney or law firm customer at the same time a report showing the amount paid to the State Bar for that period, the rate of interest or dividend applied, the amount of fees and service charges deducted, if any, and the average daily account balance for each month of the period for which the report is made.
- (f) An eligible institution has no affirmative duty to offer or make investment products available to IOLTA customers. However, if an eligible institution offers or makes investment products available to non-IOLTA customers, in order to remain an IOLTA-eligible institution, it shall make those products available to IOLTA customers or pay an interest rate on the IOLTA deposit account that is comparable to the rate of return or the dividends generally paid on that investment product for similar customers meeting the same minimum balance and other requirements applicable to the investment product. If the eligible institution elects to pay that higher interest

rate, the eligible institution may subject the IOLTA deposit account to equivalent fees and charges assessable against the investment product.

*(Amended by Stats. 2009, Ch. 129, Sec. 1. Effective January 1, 2010.)*

6213. As used in this article:

(a) "Qualified legal services project" means either of the following:

(1) A nonprofit project incorporated and operated exclusively in California that provides as its primary purpose and function legal services without charge to indigent persons and that has quality control procedures approved by the State Bar of California.

(2) A program operated exclusively in California by a nonprofit law school accredited by the State Bar of California that meets the requirements of subparagraphs (A) and (B).

(A) The program shall have operated for at least two years at a cost of at least twenty thousand dollars (\$20,000) per year as an identifiable law school unit with a primary purpose and function of providing legal services without charge to indigent persons.

(B) The program shall have quality control procedures approved by the State Bar of California.

(b) "Qualified support center" means an incorporated nonprofit legal services center that has as its primary purpose and function the provision of legal training, legal technical assistance, or advocacy support without charge and which actually provides through an office in California a significant level of legal training, legal technical assistance, or advocacy support without charge to qualified legal services projects on a statewide basis in California.

(c) "Recipient" means a qualified legal services project or support center receiving financial assistance under this article.

(d) "Indigent person" means a person whose income is (1) 125 percent or less of the current poverty threshold established by the United States Office of Management and Budget, or (2) who is eligible for Supplemental Security Income or free services under the Older Americans Act or Developmentally Disabled Assistance Act. With regard to a project that provides free services of attorneys in private practice without compensation, "indigent person" also means a person whose income is 75 percent or less of the maximum levels of income for lower income households as defined in Section 50079.5 of the Health and Safety Code. For the purpose of this subdivision, the income of a person who is disabled shall be determined after deducting the costs of medical and other disability-related special expenses.

(e) "Fee generating case" means a case or matter that, if undertaken on behalf of an indigent person by an attorney in private practice, reasonably may be expected to result in payment of a fee for legal services from an award to a client, from public funds, or from the opposing party. A case shall not be considered fee generating if adequate representation is unavailable and any of the following circumstances exist:

(1) The recipient has determined that free referral is not possible because of any of the following reasons:

(A) The case has been rejected by the local lawyer referral service, or if there is no such service, by two attorneys in private practice who have experience in the subject matter of the case.

(B) Neither the referral service nor any attorney will consider the case without payment of a consultation fee.

(C) The case is of the type that attorneys in private practice in the area ordinarily do not accept, or do not accept without prepayment of a fee.

(D) Emergency circumstances compel immediate action before referral can be made, but the client is advised that, if appropriate and consistent with professional responsibility, referral will be attempted at a later time.

(2) Recovery of damages is not the principal object of the case and a request for damages is merely ancillary to an action for equitable or other nonpecuniary relief, or inclusion of a counterclaim requesting damages is necessary for effective defense or because of applicable rules governing joinder of counterclaims.

(3) A court has appointed a recipient or an employee of a recipient pursuant to a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction.

(4) The case involves the rights of a claimant under a publicly supported benefit program for which entitlement to benefit is based on need.

(f) "Legal Services Corporation" means the Legal Services Corporation established under the Legal Services Corporation Act of 1974 (P.L. 93-355; 42 U.S.C. Sec. 2996 et seq.).

(g) "Older Americans Act" means the Older Americans Act of 1965, as amended (P.L. 89-73; 42 U.S.C. Sec. 3001 et seq.).

(h) "Developmentally Disabled Assistance Act" means the Developmentally Disabled Assistance and Bill of Rights Act, as amended (P.L. 94-103; 42 U.S.C. Sec. 6001 et seq.).

(i) "Supplemental security income recipient" means an individual receiving or eligible to receive payments under Title XVI of the federal Social Security Act, or payments under Chapter 3 (commencing with Section 12000) of Part 3 of Division 9 of the Welfare and Institutions Code.

(j) "IOLTA account" means an account or investment product established and maintained pursuant to subdivision (a) of Section 6211 that is any of the following:

- (1) An interest-bearing checking account.
- (2) An investment sweep product that is a daily (overnight) financial institution repurchase agreement or an open-end money market fund.
- (3) An investment product authorized by California Supreme Court rule or order.

A daily financial institution repurchase agreement shall be fully collateralized by United States Government Securities or other comparably conservative debt securities, and may be established only with any eligible institution that is "well-capitalized" or "adequately capitalized" as those terms are defined by applicable federal statutes and regulations. An open-end money market fund shall be invested solely in United States Government Securities or repurchase agreements fully collateralized by United States Government Securities or other comparably conservative debt securities, shall hold itself out as a "money market fund" as that term is defined by federal statutes and regulations under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.), and, at the time of the investment, shall have total assets of at least two hundred fifty million dollars (\$250,000,000).

(k) "Eligible institution" means either of the following:

- (1) A bank, savings and loan, or other financial institution regulated by a federal or state agency that pays interest or dividends in the IOLTA account and carries deposit insurance from an agency of the federal government.
- (2) Any other type of financial institution authorized by the California Supreme Court.

*(Amended by Stats. 2010, Ch. 328, Sec. 14. Effective January 1, 2011.)*

6214. (a) Projects meeting the requirements of subdivision (a) of Section 6213 which are funded either in whole or part by the Legal Services Corporation or with Older American Act funds shall be presumed qualified legal services projects for the purpose of this article.

(b) Projects meeting the requirements of subdivision (a) of Section 6213 but not qualifying under the presumption specified in subdivision (a) shall qualify for funds under this article if they meet all of the following additional criteria:

- (1) They receive cash funds from other sources in the amount of at least twenty thousand dollars (\$20,000) per year to support free legal representation to indigent persons.
- (2) They have demonstrated community support for the operation of a viable ongoing program.



(3) They provide one or both of the following special services:

(A) The coordination of the recruitment of substantial numbers of attorneys in private practice to provide free legal representation to indigent persons or to qualified legal services projects in California.

(B) The provision of legal representation, training, or technical assistance on matters concerning special client groups, including the elderly, the disabled, juveniles, and non-English-speaking groups, or on matters of specialized substantive law important to the special client groups.

*(Added by Stats. 1981, Ch. 789, Sec. 1.)*

**6214.5.** A law school program that meets the definition of a "qualified legal services project" as defined in paragraph (2) of subdivision (a) of Section 6213, and that applied to the State Bar for funding under this article not later than February 17, 1984, shall be deemed eligible for all distributions of funds made under Section 6216.

*(Added by Stats. 1984, Ch. 784, Sec. 2.)*

**6215.** (a) Support centers satisfying the qualifications specified in subdivision (b) of Section 6213 which were operating an office and providing services in California on December 31, 1980, shall be presumed to be qualified support centers for the purposes of this article.

(b) Support centers not qualifying under the presumption specified in subdivision (a) may qualify as a support center by meeting both of the following additional criteria:

(1) Meeting quality control standards established by the State Bar.

(2) Being deemed to be of special need by a majority of the qualified legal services projects.

*(Added by Stats. 1981, Ch. 789, Sec. 1.)*

**6216.** The State Bar shall distribute all moneys received under the program established by this article for the provision of civil legal services to indigent persons. The funds first shall be distributed 18 months from the effective date of this article, or upon such a date, as shall be determined by the State Bar, that adequate funds are available to initiate the program. Thereafter, the funds shall be distributed on an annual basis. All distributions of funds shall be made in the following order and in the following manner:

(a) To pay the actual administrative costs of the program, including any costs incurred after the adoption of this article and a reasonable reserve therefor.

(b) Eighty-five percent of the funds remaining after payment of administrative costs allocated pursuant to this article shall be distributed to qualified legal services projects. Distribution shall be by a pro rata county-by-county formula based upon the number of persons whose income is 125 percent or less of the current poverty threshold per county. For the purposes of this section, the source of data identifying the number of persons per county shall be the latest available figures from the United States Department of Commerce, Bureau of the Census. Projects from more than one county may pool their funds to operate a joint, multicounty legal services project serving each of their respective counties.

(1) (A) In any county which is served by more than one qualified legal services project, the State Bar shall distribute funds for the county to those projects which apply on a pro rata basis, based upon the amount of their total budget expended in the prior year for legal services in that county as compared to the total expended in the prior year for legal services by all qualified legal services projects applying therefor in the county. In determining the amount of funds to be allocated to a qualified legal services project specified in paragraph (2) of subdivision (a) of Section 6213, the State Bar shall recognize only expenditures attributable to the representation of indigent persons as constituting the budget of the program.

(B) The State Bar shall reserve 10 percent of the funds allocated to the county for distribution to programs meeting the standards of subparagraph (A) of paragraph (3) and paragraphs (1) and (2) of subdivision (b) of Section 6214 and which perform the services described in subparagraph (A) of paragraph (3) of Section 6214 as their principal means of delivering legal services. The State Bar shall distribute the funds for that county to those programs which apply on a pro rata basis, based upon the amount of their total budget expended for free legal services in that county as compared to the total expended for free legal services by all programs meeting the standards of subparagraph (A) of paragraph (3) and paragraphs (1) and (2) of subdivision (b) of Section 6214 in that county. The State Bar shall distribute any funds for which no program has qualified pursuant hereto, in accordance with the provisions of subparagraph (A) of paragraph (1) of this subdivision.

(2) In any county in which there is no qualified legal services projects providing services, the State Bar shall reserve for the remainder of the fiscal year for distribution the pro rata share of funds as provided for by this article. Upon application of a qualified legal services project proposing to provide legal services to the indigent of the county, the State Bar shall distribute the funds to the project. Any funds not so distributed shall be added to the funds to be distributed the following year.

(c) Fifteen percent of the funds remaining after payment of administrative costs allocated for the purposes of this article shall be distributed equally by the State Bar to qualified support centers which apply for the funds. The funds provided to support centers shall be used only for the provision of legal services within California. Qualified support centers that receive funds to provide services to qualified legal services projects from sources other than this

article, shall submit and shall have approved by the State Bar a plan assuring that the services funded under this article are in addition to those already funded for qualified legal services projects by other sources.

*(Amended by Stats. 1984, Ch. 784, Sec. 3.)*

6217. With respect to the provision of legal assistance under this article, each recipient shall ensure all of the following:

- (a) The maintenance of quality service and professional standards.
- (b) The expenditure of funds received in accordance with the provisions of this article.
- (c) The preservation of the attorney-client privilege in any case, and the protection of the integrity of the adversary process from any impairment in furnishing legal assistance to indigent persons.
- (d) That no one shall interfere with any attorney funded in whole or in part by this article in carrying out his or her professional responsibility to his or her client as established by the rules of professional responsibility and this chapter.

*(Added by Stats. 1981, Ch. 789, Sec. 1.)*

6218. All legal services projects and support centers receiving funds pursuant to this article shall adopt financial eligibility guidelines for indigent persons.

(a) Qualified legal services programs shall ensure that funds appropriated pursuant to this article shall be used solely to defray the costs of providing legal services to indigent persons or for such other purposes as set forth in this article.

(b) Funds received pursuant to this article by support centers shall only be used to provide services to qualified legal services projects as defined in subdivision (a) of Section 6213 which are used pursuant to a plan as required by subdivision (c) of Section 6216, or as permitted by Section 6219.

*(Added by Stats. 1981, Ch. 789, Sec. 1.)*

6219. Qualified legal services projects and support centers may use funds provided under this article to provide work opportunities with pay, and where feasible, scholarships for disadvantaged law students to help defray their law school expenses.

*(Added by Stats. 1981, Ch. 789, Sec. 1.)*

6220. Attorneys in private practice who are providing legal services without charge to indigent persons shall not be disqualified from receiving the services of the qualified support centers.

*(Added by Stats. 1981, Ch. 789, Sec. 1.)*

6221. Qualified legal services projects shall make significant efforts to utilize 20 percent of the funds allocated under this article for increasing the availability of services to the elderly, the disabled, juveniles, or other indigent persons who are members of disadvantaged and underserved groups within their service area.

*(Added by Stats. 1981, Ch. 789, Sec. 1.)*

6222. A recipient of funds allocated pursuant to this article annually shall submit a financial statement to the State Bar, including an audit of the funds by a certified public accountant or a fiscal review approved by the State Bar, a report demonstrating the programs on which they were expended, a report on the recipient's compliance with the requirements of Section 6217, and progress in meeting the service expansion requirements of Section 6221.

The Board of Trustees of the State Bar shall include a report of receipts of funds under this article, expenditures for administrative costs, and disbursements of the funds, on a county-by-county basis, in the annual report of State Bar receipts and expenditures required pursuant to Section 6145.

*(Amended by Stats. 2011, Ch. 417, Sec. 60. Effective January 1, 2012.)*

6223. No funds allocated by the State Bar pursuant to this article shall be used for any of the following purposes:

- (a) The provision of legal assistance with respect to any fee generating case, except in accordance with guidelines which shall be promulgated by the State Bar.
- (b) The provision of legal assistance with respect to any criminal proceeding.
- (c) The provision of legal assistance, except to indigent persons or except to provide support services to qualified legal services projects as defined by this article.

*(Added by Stats. 1981, Ch. 789, Sec. 1.)*

6224. The State Bar shall have the power to determine that an applicant for funding is not qualified to receive funding, to deny future funding, or to terminate existing funding because the recipient is not operating in compliance with the requirements or restrictions of this article.

A denial of an application for funding or for future funding or an action by the State Bar to terminate an existing grant of funds under this article shall not become final until the applicant or recipient has been afforded reasonable notice and an opportunity for a timely and fair hearing. Pending final determination of any hearing held with reference to termination of funding, financial assistance shall be continued at its existing level on a month-to-month basis. Hearings for denial shall be conducted by an impartial hearing officer whose decision shall be final. The hearing officer shall render a decision no later than 30 days after the conclusion of the hearing. Specific procedures governing the conduct of the hearings of this section shall be determined by the State Bar pursuant to Section 6225.

*(Added by Stats. 1981, Ch. 789, Sec. 1.)*

[6225.](#) The Board of Trustees of the State Bar shall adopt the regulations and procedures necessary to implement this article and to ensure that the funds allocated herein are utilized to provide civil legal services to indigent persons, especially underserved client groups such as but not limited to the elderly, the disabled, juveniles, and non-English-speaking persons.

In adopting the regulations the Board of Trustees shall comply with the following procedures:

- (a) The board shall publish a preliminary draft of the regulations and procedures, which shall be distributed, together with notice of the hearings required by subdivision (b), to commercial banking institutions, to members of the State Bar, and to potential recipients of funds.
- (b) The board shall hold at least two public hearings, one in southern California and one in northern California where affected and interested parties shall be afforded an opportunity to present oral and written testimony regarding the proposed regulations and procedures.

*(Amended by Stats. 2011, Ch. 417, Sec. 61. Effective January 1, 2012.)*

[6226.](#) The program authorized by this article shall become operative only upon the adoption of a resolution by the Board of Trustees of the State Bar stating that regulations have been adopted pursuant to Section 6225 which conform the program to all applicable tax and banking statutes, regulations, and rulings.

*(Amended by Stats. 2011, Ch. 417, Sec. 62. Effective January 1, 2012.)*

[6227.](#) Nothing in this article shall create an obligation or pledge of the credit of the State of California or of the State Bar of California. Claims arising by reason of acts done pursuant to this article shall be limited to the moneys generated hereunder.

*(Added by Stats. 1981, Ch. 789, Sec. 1.)*

[6228.](#) If any provision of this article or the application thereof to any group or circumstances is held invalid, such invalidity shall not affect the other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

*(Added by Stats. 1981, Ch. 789, Sec. 1.)*

TITLE 3. PROGRAMS AND SERVICES

Adopted July 2007

DIVISION 5. PROVIDERS OF PROGRAMS AND SERVICES

Chapter 2. Legal Services Trust Fund Program

Article 1. Administration of the Legal Services Trust Fund Program

Rule 3.660 Legal Services Trust Fund Commission

The Board of Trustees of the State Bar of California has established a Legal Services Trust Fund Commission ("Commission") to administer, in accordance with legal requirements and these rules ("Trust Fund Requirements"), revenue from IOLTA (Interest on Lawyers' Trust Accounts) and other funds remitted to the Legal Services Trust Fund Program of the State Bar.

*Rule 3.660 adopted effective March 6, 2009; amended effective January 1, 2012.*

Rule 3.661 Duties of the Legal Services Trust Fund Commission

- (A) The Commission must determine an applicant's eligibility for grants and notify each grant applicant that its application has been approved or denied. If the Commission tentatively approves an application, it issues a notice of the grant award, including the tentative allocation. If the notice requires submission of additional information, the Commission considers the application incomplete pending receipt of the information.
- (B) The Commission must monitor and evaluate a recipient's compliance with Trust Fund Requirements and grant terms. The evaluation may be based on
  - (1) application information, grant reports, and additional information reasonably necessary to determine compliance with Trust Fund Requirements;
  - (2) reasonable site visits scheduled upon adequate notice;
  - (3) an evaluation of a recipient by an impartial third party designated and funded by the Commission; or
  - (4) information from other sources, such as an evaluation provided by the Legal Services Corporation or other funding entity.
- (C) The Standards for the Provision of Civil Legal Aid adopted by the American Bar Association's House of Delegates on August 7, 2006, as limited by the general introduction to the standards, are the guidelines used by the Commission in

approving the quality control procedures and reviewing and evaluating the maintenance of quality service and professional standards of applicant and recipient programs. With due notice, the Commission may also rely on other standards that are consistent with law and generally accepted access to justice principles in the legal aid community.

- (D) The Commission may terminate a grant for noncompliance or take other action in accordance with Article 4 of this chapter.

*Rule 3.661 adopted effective March 6, 2009.*

#### Rule 3.662 Legal Services Trust Fund Commission membership and terms

The Commission consists of twenty-one voting members and three nonvoting judicial advisors. At least two members must be or have been within five years of appointment indigent persons as defined by statute.<sup>1</sup> No employee or independent contractor acting as a consultant to a potential recipient of Trust Fund grants may be appointed to the Commission.

- (A) The Board of Trustees appoints fourteen voting members, ten of whom must be licensees of the State Bar and four of whom must be public members who have never been admitted to the practice of law in any United States jurisdiction. Each member serves at the pleasure of the Board for a term of three years that begins and ends at the State Bar annual meeting. Upon completion of an initial term, the Board may reappoint a member for a second three-year term. The Board may extend an initial or second term by one or two years to allow a member to serve as chair or vice-chair.
- (B) The chair of the Judicial Council appoints seven voting members, five of whom must be licensees of the State Bar and two of whom must be public members, as well as three nonvoting judges, one of whom must be an appellate justice. Each member serves at the pleasure of the chair of the Judicial Council for a term of three years.
- (C) The Board of Trustees appoints voting members as chair and vice-chair.

*Rule 3.662 adopted effective March 6, 2009; amended effective January 1, 2012; amended effective September 14, 2014; amended effective January 25, 2019.*

#### Article 2. Construction of certain statutory provisions

##### Rule 3.670 Operation in California by qualified entities

- (A) A qualified legal services project is required by statute to be a nonprofit corporation operating exclusively in California or a program operated exclusively

<sup>1</sup> Business & Professions Code § 6213(d).



in California by a nonprofit law school accredited by the State Bar.<sup>2</sup> A qualified legal services project that is a California nonprofit corporation with operations outside California may be considered as meeting the statutory requirement if it otherwise meets Trust Fund Requirements and expends Trust Fund Program grant funds only in California.

- (B) A qualified support center is required by statute to be an incorporated nonprofit legal services center that provides through an office in California a significant level of legal support services to qualified legal services projects on a statewide basis.<sup>3</sup>

*Rule 3.670 adopted effective March 6, 2009.*

#### Rule 3.671 Primary purpose and function

- (A) A qualified legal services project is required by statute to have as its primary purpose and function providing legal services without charge to indigent persons.<sup>4</sup> A qualified legal services project applying for Trust Fund Program funds is presumed to have such a purpose and function if 75% or more of the budget for the fiscal year for which it is seeking funds is designated to provide free legal services to indigents, and 75% or more of its expenditures for the most recent reporting year were incurred for such services. The calculation of 75% of expenditures may include a reasonable share of administrative and overhead expenses.
- (B) A qualified support center is required by statute to have as its primary purpose and function the provision of legal training, legal technical assistance, or advocacy support without charge.<sup>5</sup> A qualified support center applying for funds is presumed to have such a primary purpose and function if 75% or more of its budget for the fiscal year for which it is seeking funds is designated to provide such support services, and 75% or more of its expenditures for the most recent reporting year were incurred for such services.
- (C) A qualified legal services project or qualified support center that does not meet the 75% test may nevertheless apply, provided that the applicant can satisfactorily demonstrate that it meets the primary purpose and function requirement by other means.

*Rule 3.671 adopted effective March 6, 2009.*

<sup>2</sup> Business & Professions Code § 6213(a).

<sup>3</sup> Business & Professions Code § 6213(b).

<sup>4</sup> Business & Professions Code § 6213(a)(1).

<sup>5</sup> Business & Professions Code § 6213(b).

## Rule 3.672 Delivery of legal services

- (A) “Legal services” include all professional services provided by a licensee of the State Bar and similar or complementary services of a law student or paralegal under the supervision and control of a licensee of the State Bar in accordance with law.<sup>6</sup>
- (B) “Legal support services” required by statute to be provided by a qualified support center include but are not limited to
  - (1) professional services to qualified legal services projects; and
  - (2) the direct provision of legal services to an indigent client of a qualified legal services project, provided the services are provided directly to the client
    - (a) as co-counsel with an attorney employed or recruited by a qualified legal services project; or
    - (b) at the request of an attorney employed or recruited by a qualified legal services project that is unable to assist the client.<sup>7</sup>

*Rule 3.672 adopted effective March 6, 2009; amended effective January 25, 2019.*

## Rule 3.673 Permissible uses of funds

- (A) A qualified legal services project or qualified support center must use funds received under Business and Professions Code Section 6216 to provide legal assistance to indigent persons or qualified legal services projects as defined by statute.<sup>8</sup> Reasonable administrative expenditures and overhead required to deliver such services meet the statutory requirement.
- (B) No recipient may use an allocation made under Business and Professions Code Section 6216 to provide services in a fee-generating case, except as described in Business and Professions Code Section 6213(e)(1)-(4). If a recipient determines that a case is not fee generating because it qualifies for a statutory exemption,<sup>9</sup> the recipient must maintain records reflecting the facts that led to that conclusion and any action taken to confirm it. Client reimbursements of nominal costs or expenses are not considered fees. If attorney fees are generated in cases funded by Trust Fund Program grants, the fees must be used only for purposes

<sup>6</sup> Business & Professions Code § 6213(a).

<sup>7</sup> Business & Professions Code § 6213(b).

<sup>8</sup> Business & Professions Code §§ 6216 and 6223.

<sup>9</sup> Business & Professions Code § 6213(e)(1).

permitted by statute.<sup>10</sup> Recipients must maintain complete records of all such fees.

*Rule 3.673 adopted effective March 6, 2009.*

### Article 3. Applications and distributions

#### Rule 3.680 Application for Trust Fund Program grants

To be considered for a Trust Fund Program grant, a qualified legal services project or qualified support center seeking a Trust Fund Program grant must submit a timely and complete application for funding in the manner prescribed by the Commission. The applicant must agree to use any grant in accordance with grant terms and legal requirements.

- (A) A qualified legal services project must meet statutory criteria.
- (B) A qualified support center must agree to offer support services in two or more of the following ways: consultation, representation, information services, and training. The board of directors of the support center must establish priorities for providing such services after consulting with legal services attorneys and other relevant stakeholders.
- (C) A support center not in existence prior to December 31, 1980 must demonstrate that it is deemed to be of special need by a majority of qualified legal services projects in accordance with Trust Fund Program procedures. Upon request, the Commission must make available to the applicant a list of all the names and addresses of qualified legal services projects.
- (D) A nonprofit corporation that believes it meets the criteria for a qualified legal services project and qualified support center may submit two applications, one as a project and one as a support center, indicating in each application whether it is to be considered the primary or secondary application. The Commission will consider the secondary application only if the primary application is not approved. No applicant may receive a grant as a qualified legal services project and as a qualified support center.
- (E) An application must include
  - (1) an audited financial statement by an independent certified public accountant for the fiscal year that concluded during the prior calendar year. A financial review in lieu of an audited financial statement may be submitted by an applicant whose gross corporate expenditures were less than the amount specified in the Schedule of Charges and Deadlines;

<sup>10</sup> Business & Professions Code § 6223.

- (2) information about the maintenance of quality service and professional standards and how the applicant maintains standards, such as internal quality control and review procedures; experience and educational requirements of attorneys and paralegals; supervisory structure, procedures, and responsibilities; job descriptions and current salaries for all filled and unfilled professional and management positions; and fiscal controls and procedures.
- (3) a budget and budget narrative, which must be submitted within thirty days of receipt of a notice of tentative allocation, explaining how funds will be used to provide civil legal services to indigent persons, especially underserved client groups such as, the elderly, the disabled, juveniles, and non-English-speaking persons within the applicant's service area; and
- (4) information about program activities, such as substantive practice areas, extent and complexity of services, a summary of litigation, and populations served.

*Rule 3.680 adopted effective March 6, 2009; amended effective January 25, 2019.*

#### Rule 3.681 Duties of Trust Fund Program grant recipient

The recipient of a Trust Fund Program grant must

- (A) use the grant in accordance with the terms of the grant agreement and Trust Fund Requirements;
- (B) maintain complete financial records, including budgets, to account for the receipt and expenditure of all grant funds and all income earned by a grant recipient from grant-supported activities, such as income from fees for services (including attorney fee awards and reimbursed costs), training, sales and rentals of real or personal property, and interest earned on grant amounts;
- (C) maintain records for five years after completion of services to a client regarding the eligibility of the client and promptly provide such records to the Commission for inspection upon demand;
- (D) annually submit information that describes, in the manner required by the Commission, the grant recipient's maintenance of quality service and professional standards and compliance with program requirements and, as requested by the Commission,
  - (1) information for evaluative purposes about program activities in the prior grant year; and
  - (2) information to enhance the delivery system of legal services;

- (E) cooperate regarding any reasonable site visit;
- (F) submit timely quarterly financial reports and any other information reasonably required by the Commission; and
- (G) pay any noncompliance fees set forth in the Schedule of Charges and Deadlines for processing documents that are substantially noncompliant with Trust Fund Requirements or that are late without permission.

*Rule 3.681 adopted effective March 6, 2009.*

#### Rule 3.682 No abrogation of legal or professional responsibilities

Nothing in these rules may limit or impair in any way the professional responsibility of an attorney to provide a client with legal services appropriate to the client's needs. Trust Fund Program applicants and recipients and their staffs; volunteers; consultants; and clients and prospective clients are entitled to all rights and privileges under the law. Nothing in these rules may be interpreted to require a grant applicant or recipient to violate the law.<sup>11</sup>

*Rule 3.682 adopted effective March 6, 2009.*

#### Article 4. Requests for review and complaint process

##### Rule 3.690 Receipt of document

For purposes of this article, receipt of a document mailed by staff or the Commission is deemed to be the earlier of either five days after the date of mailing or is the actual time of receipt when staff or the Commission delivers a document physically by courier or otherwise.

*Rule 3.690 adopted effective March 6, 2009.*

##### Rule 3.691 Denial or termination of funding

- (A) The Commission has the authority to deny an application for initial funding or for renewal of funding, or to terminate existing funding in accordance with law and these rules.<sup>12</sup> The applicant or grant recipient is entitled to written notice of the denial or termination.
- (B) The applicant or grant recipient may request reconsideration by the Commission.

<sup>11</sup> Business & Professions Code § 6217(d).

<sup>12</sup> Business & Professions Code § 6224.

- (1) The request must be provided to the Commission in writing within thirty days of receipt of the notice of denial or termination of funding. The request may include additional information.
  - (2) The Commission may affirm its decision, modify its decision, or schedule an informal conference to be held within ninety days of receipt of the request. The applicant or recipient is entitled to written notice of the date, time and place of the conference, and must have an opportunity to present information at the conference.
  - (3) Unless all parties agree otherwise, the Commission must mail or otherwise deliver a written decision within sixty days of the conference.
- (C) Within thirty days of receipt of written notice of the Commission decision on the request for reconsideration, the applicant or grant recipient may file a request for review by the State Bar Court. The request must be submitted to the State Bar Court in accordance with the Rules of Procedure of the State Bar on Legal Services Trust Fund Proceedings. Pending a final decision by the State Bar Court, a current grant recipient must continue to receive funding.
- (D) The decision of the Commission on the request for reconsideration is final if the applicant or grant recipient fails to file a timely request for review by the State Bar Court.

*Rule 3.691 adopted effective March 6, 2009.*

#### Rule 3.692 Complaints

- (A) Any person or entity may file a formal written complaint that a grant recipient fails to meet Trust Fund Requirements.
- (B) Staff must provide a copy of a formal written complaint to the grant recipient whom it concerns and attempt to resolve the complaint. If the complaint is not resolved within ninety days after staff receives the complaint, staff must provide the Commission, complainant, and recipient with a written report of its efforts to resolve the complaint and recommendation of what action, if any, is appropriate.
- (C) Within thirty days of receipt of the staff report, the complainant and grant recipient may provide the Commission with a written response that may include additional information and may request review by the Commission.
- (D) Within a reasonable time, the Commission or a committee of its members appointed by the Commission must consider the staff report and any response. The Commission or committee must then dismiss the complaint or schedule an informal conference. The complainant and grant recipient are entitled to written notice of a dismissal or the date, time, and place of the conference.

- (E) At the informal conference, the staff member who conducted the investigation must be present barring extenuating circumstances. The complainant and grant recipient must have an opportunity to present information. The Commission must issue a written notice dismissing the complaint; requiring corrective action; or terminating funds. The complainant and recipient are entitled to written notice of the decision.
- (F) If the Commission or committee decides to dismiss the complaint, the decision is final.
- (G) If the Commission or committee decides to terminate funding, within thirty days of receipt of written notice of the decision the grant recipient may file a request for review by the State Bar Court. The request must be submitted to the State Bar Court in accordance with the Rules of Procedure of the State Bar on Legal Services Trust Fund Proceedings. Pending a final decision by the State Bar Court, a current grant recipient must continue to receive funding.
- (H) The decision of the Commission to terminate funding is final if the grant recipient fails to file a timely request for review by the State Bar Court.

*Rule 3.692 adopted effective March 6, 2009.*

# **Legal Services Trust Fund Program**

## **Eligibility Guidelines**

### **LEGAL SERVICES PROJECTS ONLY**

**The State Bar of California  
180 Howard Street  
San Francisco, CA 94105-1617**



# Legal Services Trust Fund Program Eligibility Guidelines

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## Legal Services Trust Fund Program Eligibility Guidelines

The Legal Services Trust Fund Program Eligibility Guidelines were designed as a brief statement of factors governing eligibility for an allocation under the Legal Services Trust Fund Program. The Guidelines, together with their Commentary, are intended to incorporate provisions found in the statute (Business and Professions Code §6210, et seq.) and at Title 3, Rules 3.660-3.692 of the Rules of the State Bar of California.

Commentary follows each guideline and is designed to further assist you in seeking an allocation under the Legal Services Trust Fund Program. Bracketed references are to the Business and Professions Code (B&P Code) and Rules of the State Bar.

### Requirements for All Applicants

1. **To be considered for a Legal Services Trust Fund Program grant, an applicant must submit a timely and complete application for funding in the manner prescribed by the Legal Services Trust Fund Commission (the Commission). To qualify for an allocation under the Legal Services Trust Fund Program, an applicant must be either:**
  - a. **a qualified legal services project (Legal Services Projects Guidelines 2-2.9); or**
  - b. **a qualified support center (Support Centers Guidelines 2-2.9).**

**A single applicant may not qualify as both a legal services project and a support center. [Rule 3.680(D)]**

***Commentary:***

The main distinction between a legal services project and a support center is found in the primary purpose of the organization. Compare Legal Services Projects Guideline 2.3 with Support Centers Guideline 2.3. You must indicate on your application the status under which you wish to be considered. You may complete the applications for both a legal services project and a support center. If you qualify in the category of first preference, you will not be considered in the second category. If you do not qualify in the category of your first choice, you will be considered for eligibility under the category of your second choice, if your primary purpose and function qualifies you for that category. [Rule 3.671(A)-(C)]

- 1.1. **All applicants must include with their applications an assurance that the applicant will use the funds allocated from the Legal Services Trust Fund Program for the purposes set forth in §§6210-6228 of the Business and Professions Code.**

***Commentary:***

The application includes an Assurances form. Execution of that form will satisfy the requirements of Guidelines 1.1 - 1.3.

- 1.2. Within 30 days after notice of a tentative allocation from the Commission, the applicant must submit a budget and budget narrative for the expenditure of the allocation, including but not limited to:**
- 1.2.1. an explanation of how funds shall be utilized to provide civil legal services to indigent persons; and**
  - 1.2.2. for a qualified legal services project, a description of how the project will make significant efforts to use 20 percent of the funds allocated to increase services to disadvantaged and underserved client groups such as (but not limited to) the elderly, the disabled, juveniles and non-English-speaking persons within the project's service area. [B&P Code §6221; Rule 3.680(E)(3)]**

***Commentary:***

Do not submit a budget with your application. Once the Commission has found your program tentatively eligible and has approved an allocation to your program, you will be notified of a tentative grant allocation. You must then prepare a budget and budget narrative in conformance with Guideline 1.2, explaining your intended use of the funds. This budget and budget narrative will be reviewed by the Commission for conformance with the statute prior to disbursement of funds.

The budget and budget narrative should identify how the proposed allocation will aid in providing civil legal services to indigent persons. The narrative should describe the expected increased benefit to indigent persons as a result of the allocation.

The statute requires that qualified legal services projects make significant efforts to use 20 percent of the allocated funds to increase the availability of service to the elderly, the disabled, juveniles, non-English-speaking persons, or other indigent persons who are members of disadvantaged and underserved groups within your service area. Your narrative should describe specifically how you intend to use 20 percent or more of the proposed allocation to increase services to such disadvantaged and underserved groups.

One method by which a project may demonstrate its use of 20 percent of allocated funds to increase services to disadvantaged and underserved client groups is to enter into subcontracts specifically utilizing 20 percent of the funds for legal services to such client groups.

If you do not demonstrate "significant efforts" through the use of subcontracts, your budget narrative should describe the clients presently served by your project, the additional clients from disadvantaged and underserved client groups that will be served in the future through the use of 20 percent of the funds allocated, and your quantifiable objectives for increased services to such groups.

If your legal services project is part of a corporation that has activities outside California, the proposed budget and budget narrative must explain how the proposed allocation will be used within the state of California, as distinguished

from an increase in the total multi-state budget. The statute prohibits the use of allocated funds outside the state of California.

If your project provides both, legal services and other types of services, your budget and budget narrative must show that the allocation will be used solely for legal services. If your project provides services in both civil and criminal matters, your proposed budget and budget narrative must show that the allocation will be used solely for civil matters. If your project serves some persons who do not fall within the statutory definition of indigent persons (Commentary 2.3.4), your proposed budget and budget narrative must show that the allocation will be used solely for persons who are indigent within that definition. [B&P Code §§6213(d), 6218(a), 6221; Rule 3.680(E)(3)]

If you receive an allocation for more than one county, the budget and budget narrative must show that each allocation will be used to provide services to clients in the county for which it is made.

**1.3. All applications must include an assurance that the applicant:**

***Commentary:***

See Commentary 1.1 above. [B&P Code §§6210, 6217, 6221; Rule 3.682]

- 1.3.1. at all times will honor the attorney-client privilege and will uphold the integrity of the adversary process; and**
- 1.3.2. will not impose restrictions unrelated to statutes and rules of professional conduct on attorneys who provide representation to indigent clients with funds provided in whole or in part from the Legal Services Trust Fund Program; and**
- 1.3.3. does not discriminate on the basis of race, color, national origin, religion, sex, handicap, or age.**

***Commentary:***

The Legal Services Trust Fund Commission recognizes that certain applicants will concentrate on providing legal services to members of specific disadvantaged and underserved groups within their service area, such as elderly, disabled, juveniles, or non-English-speaking persons. The statute is intended to facilitate the provision of free legal services to such disadvantaged and underserved client groups. [B&P Code §§6210 and 6221] The Commission therefore will not regard Guideline 1.3.3 as violated merely by the fact that services are concentrated on (or limited to) specific disadvantaged and underserved client groups within the meaning of Business and Professions Code §§6210 and 6221, so long as the basis for such concentration and limitation is reasonably designed to benefit distinct disadvantaged and underserved groups. The certification required by Guideline 1.3.3 does prohibit any discrimination within the targeted client groups, and prohibits any discrimination on matters other than the selection of eligible clients.

- 1.4. If the Commission or staff requests any further information relating to an applicant's eligibility, or related to the amount of the allocation under the Legal Services Trust Fund Program, the applicant must supply that information. However, the Commission is not required to notify applicants if their initial application fails to include information sufficient to demonstrate eligibility. Failure to provide information necessary to the Commission's decisions on eligibility or eligible expenditures (or failure to supply requested information relevant to those decisions) will be grounds for denial of eligibility, or for refusal to recognize part of the applicant's expenditures within the allocation formula. [Rules 3.680(E) and 3.691(A)]

## **Requirements for Legal Services Projects**

2. To be a qualified legal services project, the applicant must meet (a) each of the requirements of Guidelines 1.1-1.3 above, and (b) each of the following requirements of Guidelines 2.1-2.4, and (c) the requirements of either Guideline 2.5 or 2.6. For the Commission to determine the amount of funds to which each qualified legal services project is entitled from the Legal Services Trust Fund Program, applicants must also submit the information required in Guidelines 2.7 and 2.8 below. Applicants that meet the requirements of Guideline 2.9 below (*pro bono* programs) will be entitled to additional funds from the Legal Services Trust Fund Program.

***Commentary:***

A qualified legal services project must meet: (1) the requirements applicable to all applicants (see Guidelines 1.1-1.3); (2) the mandatory requirements of 2.1-2.4 applicable to all legal services projects; and (3) either the eligibility presumption described by 2.5 or the requirements for annual cash funds, community support, and special services described by 2.6. In addition to this eligibility information, the applicant must submit the information required in 2.7 and 2.8 in order that the Commission may determine the amount of the allocation. If an applicant recruits attorneys in private practice as its principal means of delivering legal services, it may qualify for an additional allocation under 2.9 below.

- 2.1. The applicant must be a California nonprofit corporation.

***Commentary:***

In order to demonstrate your status as a California corporation, copies of the Articles of Incorporation certified by the California Secretary of State and a current Certificate of Status from the California Secretary of State showing that the corporation is in good legal standing must be filed with the Legal Services Trust Fund Program. To demonstrate your nonprofit status, copies of (1) the determination letter from the Internal Revenue Service granting your application for exemption from the appropriate provisions of subchapter (f) of Chapter 1 of the Internal Revenue Code of 1954, as amended and (2) the determination letter from the State Franchise Tax Board granting your application for exemption from the appropriate section of the California Revenue and Taxation Code must be filed with the Legal Services Trust Fund Program. If you have not received such determination letter(s), attach

copy(ies) of your application(s) for exemption, together with an explanation of its/their status. [B&P Code §6213(a)(1); Rules 3.670(A), 3.680(A)]

If you are part of a law school, submit the information described above with respect to the law school. The school must be a nonprofit law school accredited by the State Bar of California, and your program must be an identifiable unit of the school. [B&P Code §§6213(a)(2), 6214.5; Rule 3.670(A)]

**2.2. The organization must operate exclusively in California. An applicant that is part of a corporation that conducts other activities outside California can meet this requirement if all funds granted will be expended in California.**

***Commentary:***

Your legal services project must be operated exclusively in California. If you are part of a corporation that conducts activities outside California, you must assure the Commission that all money granted from the Legal Services Trust Fund Program will be expended exclusively in California. If your corporation conducts activities outside California, explain the nature of those activities and how you propose to segregate funds allocated under the Legal Services Trust Fund Program to assure that they will be expended solely in California.

**2.3. The application must demonstrate through objective information that the organization:**

***Commentary:***

Objective information must be provided to assure that you meet the definitional provisions of Guideline 2.3. Such information must describe the organization specifically and factually, using quantitative information where needed, to demonstrate that it meets each of the requirements of Guidelines 2.3.1-2.3.5. [B&P Code §6213(a); Rules 3.670(A), 3.671(A), 3.680(E)(2)]

Quantitative information that may demonstrate how that organization's services meet the requirements includes the following: numbers of clients who were served during the previous year; hours of time spent on different kinds of services, or on services to different clients in the previous year; accounting records for expenses incurred in providing different kinds of services or services to different clients during the previous year.

If you rely on estimates to demonstrate that you have met these requirements, you must demonstrate that the estimates were derived by a method that is reasonably related to the actual expenditure of funds, and explain the basis of the estimates.

**2.3.1. provides civil legal services**

***Commentary:***

You must provide legal services within the definition of Rule 3.672(A). That rule provides that "legal services include all professional services provided by a member of the State Bar, and similar or complementary services of a law student or a paralegal under the supervision and control of a member of the State Bar in accordance with law." If your organization provides services in

addition to legal services, your application must describe those other activities, identify the percentage of the overall services provided that are not legal services, and state the basis by which you computed that percentage. [Rule 3.671(A)]

### **2.3.2. without charge**

***Commentary:***

Payments by clients for costs and expenses or a processing fee of \$20 or less shall not be considered a “charge” for legal services, so long as the processing fee is administered so that it does not prevent indigent persons from receiving services. If you charge a processing fee, you must establish procedures for waiving the fee for all clients who cannot afford it. You must inform prospective clients of the availability of a waiver at the same time and in the same manner that they are informed of the fee, and in a language the client can understand.

If you charge a processing fee, your application must include information about established procedures for waiving the fee for clients who cannot afford it. The maximum of \$10 per processing fee will be regarded as a qualified expenditure.

If you charge some clients amounts in excess of costs, your application must state the percentage of your work in which such charges are made, and the basis for computing that percentage.

If attorneys’ fees are generated through court awards, such fees must be used to provide further civil legal services without charge to indigent persons. [Rule 3.673(B)]

“Costs and expenses” include any out-of-pocket expenses incurred by the organization (or by *pro bono* attorneys recruited by the organization), including recoverable costs of litigation, copying charges, telephone charges, postage charges, and other out-of-pocket expenses normally charged to clients by attorneys in private practice. An applicant may be considered as providing legal services without charge within the meaning of Guideline 2.3.2 in spite of charges to clients for such items. [Rule 3.673(B)]

### **2.3.3. to persons**

***Commentary:***

You may consider legal services provided to an organization (e.g., an unincorporated association, partnership, or corporation) as services to indigent persons if the organization provides benefits primarily to persons who are indigent as described below in the Commentary on Guideline 2.3.4. In determining whether an organization so qualifies, the Commission will consider at least the following factors: (a) whether the organization is tax exempt under I.R.C. §501(c)(3); (b) the organization’s primary purpose as stated in its bylaws or articles; (c) the number and percentage of indigent persons on the board of directors or principal advisory body of the organization; and (d) the percentage of its members who are indigent persons.

If you provide more than ten percent of your services to organizations (whether qualifying or non-qualifying), your application must identify the five organizations that received the most legal services during the prior calendar year and, for each such organization, supply the information identified above. You need not disclose information protected by the attorney-client privilege. If you provide some portion of your legal services to organizations that do not so qualify, identify the percentage of overall services provided to such non-qualifying organizations, and explain the basis of your computation.

#### **2.3.4. who are indigent**

***Commentary:***

An indigent person is defined by the Business and Professions Code §§6213(d), 6213(g), 6213(h), and 6213(i) as follows:

*“Indigent person means a person whose income is (1) 125 percent or less of the current poverty threshold established by the United States Office of Management and Budget, or (2) who is eligible for Supplemental Security Income or free services under the Older Americans Act or Developmentally Disabled Assistance Act. With regard to a project which provides free services of attorneys in private practice without compensation, indigent person also means a person whose income is 75 percent or less of the maximum levels of income for lower income households as defined in §50079.5 of the Health and Safety Code. For the purpose of this subdivision, the income of a person who is disabled shall be determined after deducting the costs of medical and other disability-related special expenses.”*

Your application must state the percentage of your organization’s services that were provided during the previous calendar year to clients who did not fall within this definition. You must adopt written financial eligibility guidelines. If your eligibility criteria includes persons who are not indigent within the definition of §6213(d) above, explain how you determined the percentage of clients served that falls outside the definition. If you did not have written financial eligibility guidelines in the prior year, your application must explain the basis of your computation of percentage and supply objective support for the computation. [B&P Code §§6213(d) and 6218]

If you provide legal services for the benefit of a group or class of persons beyond the specific individuals or organizations who are your clients, you may consider the services as “legal services provided to indigent persons” only if the legal matter is primarily for the benefit of indigent persons.

In determining whether a legal matter is primarily for the benefit of indigent persons, the Commission may consider the following factors and any others that aid in making that determination: (1) the forum in which the matter is being pursued, e.g., courts, administrative agency, legislature, etc.; (2) whether named clients are indigent persons or qualifying organizations (under Commentary 2.3.3 above); (3) in the case of a class action, the definition of the class contained in the complaint and proposed or actual class certification orders; (4) a description of the group of individuals that would benefit from a favorable resolution of the legal matter; (5) whether a majority of those who



would benefit are indigent persons; (6) the relation of the legal issues raised by the matter to the needs of indigent persons; and (7) whether indigent persons are disproportionately impacted by the legal issues raised by the matter.

If legal services for the benefit of a group or class of persons beyond the specific individuals or organizations who are your clients constitute more than ten percent of your legal services, your application must identify the ten such legal matters on which you expended the largest amount of funds in the prior calendar year. For each of the matters so identified in your application, describe who would benefit from the services, state whether the matter is primarily for the benefit of indigent persons and, if so, explain the reasons you reached that conclusion. For any such matter that is primarily for the benefit of indigent persons, your description should include the information listed as items (1) through (7) in the preceding paragraph; you must quantify the percentage of your clients who are indigent persons (or organizations qualifying under Commentary 2.3.3 above) and the percentage of the persons who would benefit from the services who are indigent persons. Explain the basis of this information. You need not disclose information protected by the attorney-client privilege.

If some portion of your legal services are for the benefit of a group or class of persons beyond your specific clients and are not primarily for the benefit of indigent persons, identify the percentage of overall services provided in such matters and explain the basis of your computation.

### **2.3.5. as the primary purpose and function of the corporation.**

***Commentary:***

Your application must state the net percentage of the corporation's overall expenses that were incurred in the previous calendar year to provide civil legal services without charge to persons who are indigent. You are required to demonstrate the corporation's primary purpose, and not simply the primary purpose of a part of the corporation. (If your project is operated by a law school, see the last section of this Commentary on Guideline 2.3.5.)

If more than 75 percent of the corporation's expenditure budget for the fiscal year for which it is seeking an allocation is designated for the provision of civil legal services without charge to persons who are indigent, and if 75 percent of its expenditures for the most recent reporting year were incurred for such legal services, the corporation will be presumed to meet the primary purpose and function test. In demonstrating your compliance with this 75 percent test, you cannot include the value of donated services. [Rule 3.671(A)]

An applicant not qualifying for the 75 percent presumption may nevertheless apply for an allocation, demonstrating its purpose and function by other means. An applicant not qualifying for the presumption shall state separately each purpose and function of the corporation, and state what percentage of the expenditures in the most recent calendar year, and what percentage of the budget in the upcoming year, are allocated to each of these separate purposes and functions. The application shall further state the basis for these allocations. [Rule 3.671(C)]

In addition to this submission of expenditure and of budget information, primary purpose and function can be additionally supported by historic expenditure information, by the organization's stated purpose in articles, bylaws or policy statements or case priority guidelines, or by the demonstrated track record of the applicant in providing legal services without charge to indigent persons.

An applicant that operated in previous years as a project within an organization providing substantial services other than legal services to indigent persons, or as an entity other than a corporation, but which has since become a separate California nonprofit corporation whose primary purpose and function is the provision of legal services without charge to indigent persons, may establish its status as a qualified legal services project and its proportionate entitlement to funds based upon financial statements which strictly segregate that portion of the organization's expenditures in prior years which were devoted to civil legal services for indigents. Thus, if you are recently incorporated and previously operated as a part of an umbrella organization, you may utilize the expenditures of your predecessor organization so long as financial statements strictly segregate the expenditures for such legal services.

If your legal services program is operated by an accredited nonprofit law school, you are required only to demonstrate the program's primary purpose, and not the corporation's primary purpose. Your program must be operated exclusively in California and the law school must be accredited by the State Bar of California. The program must have operated for at least two years at a cost of at least \$20,000 per year, as an identifiable law school unit with the primary purpose and function of providing civil legal services without charge to indigent persons. The program may meet the primary purpose test according to the 75 percent test described above or by demonstrating its purpose and function through other means described above. [B&P Code §6213(a)(2)]

**2.4. The application must include a description of the organization's quality control procedures and standards, including but not limited to the matters described in Guidelines 2.4.1-2.4.4:**

***Commentary:***

The American Bar Association's *Standards for the Provision of Civil Legal Aid* are the quality control standards for the Legal Services Trust Fund Program, pursuant to Business & Professions Code §6225 and Rule 3.661(C). These standards are the State Bar's guidelines for review and approval of applicant and recipient program practices.

If you are already subject to quality control reviews by the Legal Services Corporation or the California Department of Aging, describe the quality control review procedures to which you are subject.

Describe your quality control standards and how compliance with each of the subjects listed in Guidelines 2.4.1-2.4.4 is ensured. The Commission is particularly interested in your standards and procedures regarding supervisorial structure, procedures, and responsibilities. [B&P Code §§6123(a) and 6217(a); Rule 3.680(E)(2)]

- 2.4.1. the minimum experience and education requirements for attorney and paralegal employees;
  - 2.4.2. the current salaries and job descriptions for all filled and unfilled management and professional positions, including paralegal personnel;
  - 2.4.3. the minimum experience and educational requirements for attorney supervisors; and
  - 2.4.4. the supervisory structure, procedures and responsibilities.
- 2.5. Applicants must meet the requirements of this, Guideline 2.5, or the requirements of Guideline 2.6. To meet the requirements of this, Guideline 2.5, the applicant must receive at least some funding either:
- 2.5.1. from a grant made to the organization by the Legal Services Corporation or by an Area Agency on Aging distributing Older Americans Act funds; or
  - 2.5.2. from an approved contract with another organization that is a grant recipient meeting the terms of Guideline 2.5.1.

***Commentary:***

In order to qualify under Guideline 2.5 (and thereby waiving the requirements of 2.6), you must receive at least some funding either directly from the Legal Services Corporation (or from an Area Agency on Aging) or by contract with an LSC-funded organization (or by a contract with an Area Agency on Aging-funded organization). If your funding is by contract, the contract must have been approved by LSC or by the state or local agency administering the Older Americans Act funds.

*Legal Services Corporation* is defined in the Business and Professions Code §6213(f) as the Legal Services Corporation established under the Legal Services Corporation Act of 1974 (Public Law 93-355; 42 U.S.C. 2996 and following). *Older Americans Act* is defined in the Business and Professions Code §6213(g) as the Older Americans Act of 1965, as amended (Public Law 89-73; 42 U.S.C. 3001, and following). [B&P Code §§6213(f), 6213(g), 6214(a)]

- 2.6. An applicant that does not meet the requirements of Guideline 2.5 must meet each of the requirements of Guidelines 2.6.1-2.6.3 below:
- 2.6.1. The applicant must receive at least \$20,000 annual cash funds from sources other than the Legal Services Trust Fund Program to support the program described in Guideline 2.3 above, and

***Commentary:***

In order to qualify under Guideline 2.6.1, you must demonstrate at least \$20,000 annual cash funds from sources other than the Legal Services Trust Fund Program to support the provision of civil legal services without charge to indigent persons. If you did not receive at least \$20,000 cash funds from such sources in the year immediately preceding the application, you must

demonstrate that your average annual cash funds over some period of years have been at least \$20,000 per year. This computation cannot include the value of any donated services or equipment.

You cannot include money received from fee-generating cases or from court-awarded attorneys' fees. [B&P Code §6214(b)(1)]

If you are applying as a law school program, you must demonstrate the program has operated for at least two years at a cost of at least \$20,000 per year. [B&P Code §6213(2)(A)]

**2.6.2. The applicant must have demonstrated community support for the operation of a viable ongoing program, and**

***Commentary:***

If you have received at least \$20,000 per year annual cash funds from local sources in the community in which you provide your services, such support is sufficient to meet the requirements of Guideline 2.6.2. You may not count contributions from employees of your organization toward the local support requirement of this Guideline 2.6.2, though it can be counted for 2.6.1.

If you cannot show \$20,000 annual local community financial support, you may demonstrate community support through the donation of services or other non-cash contributions, by service of local community leaders on your board of directors, fundraising committees, etc., or by otherwise demonstrating that the community actually supports the operation of a viable ongoing program.

Letters of support from local community leaders are not sufficient to demonstrate the community support required by Guideline 2.6.2. [B&P Code §6214(b)(2)]

**2.6.3. The applicant must provide at least one of the following special services:**

**2.6.3.1. Recruiting substantial numbers of attorneys in private practice who serve without compensation providing the legal services referred to in Guideline 2.3 above, or**

***Commentary:***

In deciding whether you are eligible to apply as a project that recruits substantial numbers of attorneys, the Legal Services Trust Fund Commission will consider several factors. At a minimum you must meet at least one of the following tests:

- a. you recruited at least 30 attorneys who provided services in the previous calendar year; or
- b. you recruited at least five percent of the licensed attorneys in the county you serve who provided services in the previous calendar year; or
- c. the attorneys you recruited donated at least 1,000 hours of legal services for your clients in the previous calendar year.

Provided you meet one of these minimum tests, you may demonstrate your project's recruitment of substantial numbers of attorneys in one or more of the following ways:

- a. the number of attorneys recruited;
- b. the percentage of attorneys in your local service area that donated services through your project;
- c. the verified value of donated civil legal services in comparison to your expenditures and budget;
- d. the number of hours donated by each attorney;
- e. the number of attorneys in your area who have special expertise needed to provide the services your project offers; or
- f. other considerations that may affect the availability of volunteer attorneys in your service area.

Any attorney who is not an employee of the applicant can be considered in private practice, and attorneys may be considered in private practice even though they work for government agencies, corporations, or in non-legal occupations.

Attorneys can be considered to serve without compensation even when they are reimbursed for out-of-pocket expenses, whether by the client, the applicant, or other sources. [B&P Code §6214(b)(3)(A); Guideline 2.3.2 and supporting Commentary]

**2.6.3.2. Providing legal representation, training, or technical assistance on matters concerning special client groups or on matters of specialized substantive law important to special client groups.**

***Commentary:***

*Special client groups* include any underserved or disadvantaged groups, including, without limitation, the elderly, disabled, juveniles, or non-English-speaking persons. [B&P Code §6214 (b)(3)(B)]

**2.7. The application must include a financial statement that includes the total expenditures of the applicant. The financial statement must meet the requirements of Guideline 2.7.1 below.**

**2.7.1. The statement must show expenditures for the completed fiscal year ended most recently before the application deadline, and must be audited or reviewed by an independent certified public accountant. A financial review, in lieu of an audited financial statement, may be submitted by an applicant whose gross corporate expenditures were less than the amount specified in the Schedule of Charges and Deadlines. Applicants must submit a financial statement no later than 90 days after the end of their fiscal year. The required financial statement must be received prior to the disbursement of any funds from the Legal Services Trust Fund Program.**

***Commentary:***

Independent CPA-audited or reviewed statements are required of organizations with gross expenditures of less than \$500,000. Organizations with gross

expenditures in excess of \$500,000 must submit audited statements. If such a statement is unavailable at the time of the application, you may substitute an approximated financial statement, but you must submit an audited or reviewed statement no more than 90 days after the end of their fiscal year. [B&P Code §6222; Rule 3.680(E)(1); Schedule of Charges and Deadlines]

- 2.7.2. The financial statement need not distinguish between legal services without charge to persons who are indigent (within the definition of Guideline 2.3.4 above) and other services performed by the project. However, if an applicant does provide other services, the application must include the approximated information requested on the expenditure form(s) identifying expenses incurred providing any of the following services: legal services/other activities, civil/criminal, free/charged, indigent/non-indigent clients, in-state/out-of-state expenditures.**

***Commentary:***

The amount of your grant will be based in part on the amount of your expenditures in your previous fiscal year for civil legal services without charge to indigent persons. See Guidelines 2.3.1 through 2.3.4 for the definitions the Commission will use to determine the portion of your expenditures that are qualified to be counted in determining your grant allocation. [B&P Code §6216(b)]

Records that may be used to demonstrate the portion of the organization's expenses that qualify to be counted in determining the grant allocation include the following: records of the numbers of clients served during the previous year; records reflecting time spent on different kinds of services or on services to indigent/non-indigent clients in the previous year; accounting records reflecting expenses incurred providing different kinds of services or on services to indigent/non-indigent clients during the previous year.

If you rely on estimates to establish the amount of your qualified expenditures, you must make the estimates by a method that is reasonably related to the actual expenditure of funds and explain the basis of the estimates.

- 2.7.3. The financial statement must disclose and segregate any amounts paid to or received from another program applying for an allocation under the Legal Services Trust Fund Program.**

***Commentary:***

In order to avoid double counting, funds contributed by one program to another program, when both are applicants for an allocation from the Legal Services Trust Fund Program, must be disclosed in the financial statements of both programs. In determining allocations, such funds will be counted only for the program receiving the funds, unless those programs have executed a contrary agreement differently allocating the credit for the contributed funds between the two programs. If an agreement is made, both programs must provide a copy of such agreement to the Commission.

- 2.8. The application must state the counties in which the legal services described in Guideline 2.3 above are provided. An applicant that provides such services in more than one county must state the total expenditures made for services in each county and explain the basis of the by-county allocation. In allocating total expenditures among counties on Legal Services Trust Fund Program applications, an applicant must use a method that is reasonably related to the actual expenditure of funds and explain the basis of the allocation.**

***Commentary:***

You may qualify for allocations only in counties you are presently serving. If you are presently serving more than one county, allocate the expenditures that meet the requirements of Guideline 2.3 by county, explaining the basis for your allocation. The Commission will evaluate whether your allocation is reasonably related to the actual expenditure of funds in light of the particular characteristics of your organization and your services. The allocation information does not need to be audited. [B&P Code §6216(b)]

The following are some of the bases for allocation of expenses among counties served that the Commission has found in past years to be reasonable under appropriate circumstances: numbers of clients served who reside in each county; number of cases handled in each county; actual or estimated hours of service provided in each county, or provided to clients who reside in each county; actual expenses of providing service to clients in each county, including both personnel and non-personnel expenses; statistics that establish the geographic distribution by county of persons who will benefit from the services provided. In certain circumstances, it may be necessary to use a combination of these or other methods to arrive at an allocation method that is reasonably related to the actual expenditure of funds. If you rely on estimates, you must make the estimates by a method that is reasonably related to the expenditure of funds and explain the basis of the estimates.

If you allocate expenses to counties other than those in which your individual or organizational clients reside, or those in which you provided the services, the allocation must be reasonably related to the geographic distribution of the indigent persons who will benefit from the services. In evaluating the reasonableness of such allocations, the Commission may consider the following factors and any others that aid in making that determination: (1) the forum in which the matter is being pursued, e.g., courts, administrative agency, legislature, etc.; (2) whether the matter can be expected to establish a precedent and the anticipated scope or breadth of that precedent; (3) in the case of a class action, the definition of the class contained in the complaint and proposed or actual class certification orders; (4) a description of the group of individuals that would benefit from a favorable resolution of the legal matter; and (5) the legal issues raised by the matter.

For a legal matter or matters for which you allocate expenses based on residence of persons other than your individual clients, your application must identify the legal matters and, for each matter, provide the information listed in items (1) through (5) in the preceding paragraph. You should also identify the geographic and numeric distribution of the persons the matter may benefit and your approximate expenditures for the matter. Explain the basis of this

information. You need not disclose information protected by the attorney-client privilege.

**2.9. An applicant wishing to qualify for the additional allocation reserved for organizations that demonstrate the volunteer services of private lawyers as their principal means of delivering legal services must meet each of the following requirements:**

**2.9.1 the requirements of Guideline 2.6.3.1 above; and**

**2.9.2 the applicant's principal means of delivering legal services is the recruitment of attorneys in private practice.**

***Commentary:***

See Commentary concerning Guideline 2.6.3.1. One method by which you may demonstrate that such recruitment is your project's principal means of legal services delivery is to show by objective evidence that the attorneys recruited actually provided substantial free civil legal services and that the number of hours of services so provided in the previous calendar year by attorneys recruited exceeded the number of hours of services provided by lawyer staff employed by the applicant.

An alternative method by which you may demonstrate that such recruitment is your project's principal means of legal services delivery is to show by objective evidence (1) that the attorneys recruited actually provided substantial free civil legal services; (2) that the combined number of hours of service by volunteers, both attorneys and paralegals, exceeds the combined number of hours of service by staff attorneys and paralegals; and (3) that the number of hours of service by volunteer attorneys is more than half as many as the combined number of hours of service by staff attorneys and paralegals.

If you do not use either of these methods to demonstrate your principal delivery means, you should describe and explain in your application the method used.  
[B&P Code §6216(b)(1)(B)]



# **Legal Services Trust Fund Program**

## **Eligibility Guidelines**

### **SUPPORT CENTERS ONLY**

**The State Bar of California  
180 Howard Street  
San Francisco, CA 94105-1617**

# Legal Services Trust Fund Program Eligibility Guidelines

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## Legal Services Trust Fund Program Eligibility Guidelines

The Legal Services Trust Fund Program Eligibility Guidelines were designed as a brief statement of factors governing eligibility for an allocation under the Legal Services Trust Fund Program. The Guidelines, together with their Commentary, are intended to incorporate provisions found in the statute (Business and Professions Code §6210, et seq.) and at Title 3, Rules 3.660-3.692 of the Rules of the State Bar of California.

Commentary follows each guideline and is designed to further assist you in seeking an allocation under the Legal Services Trust Fund Program. Bracketed references are to the Business and Professions Code (B&P Code) and Rules of the State Bar.

### Requirements for All Applicants

1. **To be considered for a Legal Services Trust Fund Program grant, an applicant must submit a timely and complete application for funding in the manner prescribed by the Legal Services Trust Fund Commission (the Commission). To qualify for an allocation under the Legal Services Trust Fund Program, an applicant must be either:**
  - a. **a qualified legal services project (Legal Services Projects Guidelines 2-2.9); or**
  - b. **a qualified support center (Support Centers Guidelines 2-2.9).**

**A single applicant may not qualify as both a legal services project and a support center. [Rule 3.680(D)]**

***Commentary:***

The main distinction between a legal services project and a support center is found in the primary purpose of the organization. Compare Legal Services Projects Guideline 2.3 with Support Centers Guideline 2.3. You must indicate on your application the status under which you wish to be considered. You may complete the applications for both a legal services project and a support center. If you qualify in the category of first preference, you will not be considered in the second category. If you do not qualify in the category of your first choice, you will be considered for eligibility under the category of your second choice, if your primary purpose and function qualifies you for that category. [Rule 3.671(A)-(C)]

- 1.1. **All applicants must include with their applications an assurance that the applicant will use the funds allocated from the Legal Services Trust Fund Program for the purposes set forth in §§6210-6228 of the Business and Professions Code.**

***Commentary:***

The application includes an Assurances form. Execution of that form will satisfy the requirements of Guidelines 1.1-1.3.

- 1.2. Within 30 days after notice of a tentative allocation from the Commission, the applicant must submit a budget and budget narrative for the expenditure of the allocation.
  - 1.2.1. For support centers, the budget and budget narrative must show that all funds allocated from the Legal Services Trust Fund Program will be used in support of qualified legal services projects providing free legal services in California.
- 1.3. All applications must include an assurance that the applicant:
  - 1.3.1. at all times will honor the attorney-client privilege and will uphold the integrity of the adversary process; and
  - 1.3.2. will not impose restrictions unrelated to statutes and rules of professional conduct on attorneys who provide representation to indigent clients with funds provided in whole or in part from the Legal Services Trust Fund Program; and
  - 1.3.3. does not discriminate on the basis of race, color, national origin, religion, sex, handicap, or age.

***Commentary:***

See Commentary 1.1 above. [B&P Code §§6210, 6217, 6221; Rule 3.682]

- 1.4. If the Commission or staff requests any further information relating to an applicant's eligibility, or related to the amount of the allocation under the Legal Services Trust Fund Program, the applicant must supply that information. However, the Commission is not required to notify applicants if their initial application fails to include information sufficient to demonstrate eligibility. Failure to provide information necessary to the Commission's decisions on eligibility or eligible expenditures (or failure to supply requested information relevant to those decisions) will be grounds for denial of eligibility, or for refusal to recognize part of the applicant's expenditures within the allocation formula. [Rules 3.680(E) and 3.691(A)]

## **Requirements for Support Centers**

2. To be a qualified support center, the applicant must meet (a) each of the requirements of Guidelines 1.1-1.3 above, and (b) each of the following Guidelines 2.1-2.7, and (c) the requirements of either Guideline 2.8 or 2.9.

***Commentary:***

The qualified support center must meet: (1) the requirements applicable to all applicants (see Guidelines 1.1-1.3); (2) the mandatory requirements of Guidelines 2.1-2.7 applicable to all support centers; and (3) either the eligibility presumption established by Guideline 2.8, or the requirements for quality control and "special need" set forth in Guideline 2.9.

The mandatory requirements applicable to all support centers (Guidelines 2.1-2.7) contain two separate requirements. A support center must demonstrate that it provides a significant level of legal support services to qualified legal services projects in California (the “significant level” test). Additionally, a support center must demonstrate that its primary purpose and function is the provision of legal support services (the “primary purpose and function” test). [Rule 3.680(A)]

**2.1. The applicant must be a nonprofit corporation (in California or another state).**

***Commentary:***

In order to demonstrate your status as a California corporation, copies of the Articles of Incorporation certified by the California Secretary of State and a current Certificate of Status from the California Secretary of State showing that the corporation is in good legal standing must be filed with the Legal Services Trust Fund Program. To demonstrate your nonprofit status, copies of (1) the determination letter from the Internal Revenue Service granting your application for exemption from the appropriate provisions of subchapter (f) of Chapter 1 of the Internal Revenue Code of 1954, as amended and (2) the determination letter from the State Franchise Tax Board granting your application for exemption from the appropriate section of the California Revenue and Taxation Code must be filed with the Legal Services Trust Fund Program. If you have not received such determination letter(s), attach copy(ies) of your application(s) for exemption together with an explanation of its/their status. [B&P Code §6213(a)(1); Rules 3.670(A), 3.680(A)]

**2.2. The application must demonstrate through objective information that the organization currently:**

***Commentary:***

The statute requires that applicants must **currently** be providing the services described in Guidelines 2.2.1-2.2.4.

The regulations require that you demonstrate with “objective information” that you provide the required services. Objective information that can be used to demonstrate your services is described in Guidelines 2.2.1-2.2.3. See also Commentary 2.3. [B&P Code §6213(b); Rule 3.670(B), 3.671(B), 3.680(E)(2), 3.680(E)(4)]

**2.2.1. provides a significant level of legal training, legal technical assistance, or advocacy support to qualified legal services projects**

***Commentary:***

You must demonstrate that you are currently providing **a significant level** of legal training, legal technical assistance, or advocacy support to programs that are qualified for Legal Services Trust Fund Program allocations as legal services projects. In order to meet this test, the services provided must be offered on a regular and consistent basis.

Such training, assistance or support include, but are not limited to, the direct provision of civil legal services to an indigent person, either as co-counsel with

an attorney employed or recruited by a qualified legal services project, or at the request of an attorney employed or recruited by a qualified legal services project that is unable to assist the client [see Rule 3.672(B)(2)], provided that:

- a. you keep written records to demonstrate that the direct provision of services was either as co-counsel with an attorney employed or recruited by a qualified legal services project, or at the request of such an attorney [Rules 3.672(B), 3.682]; and
- b. you establish and use policies and procedures that encourage qualified legal services projects to participate in the organization's representation of persons referred by them.

Support services provided to organizations that are not qualified legal services projects, or to attorneys in private practice who were not recruited by a qualified legal services project, will not be taken into consideration for purposes of demonstrating that a support center provides a significant level of services to qualified legal services projects.

In deciding whether you meet the "significant level" test, the Legal Services Trust Fund Commission will consider several factors. At a minimum, you must demonstrate that in the last year you have provided legal training, legal technical assistance, or advocacy support to at least ten qualified legal services projects. For purposes of this test, services provided to more than one office of a multi-office legal services project shall only count as services to one project. In addition, for purposes of this test, you **cannot** count the distribution of newsletters, general mailings, or the provision of other materials of general distribution. You must maintain written records of requests for services to demonstrate the number of projects to which you provided services.

You must provide services to at least ten projects to qualify as a support center. Applicants that fail to meet this test will be found not to have provided a significant level of services to qualified legal services projects.

Provided you meet this minimum test, you must also demonstrate through objective information that the nature and content of the services you provided were significant. In determining whether a support center's services were significant, the Commission may consider the following factors and any others that aid in making that determination:

- a. The provision of legal training, legal technical assistance, and advocacy support to a large number of projects is relevant data for demonstrating a significant level of support. However, numbers alone will not be the sole test.
- b. Services must be substantial in nature, not merely simple or intermittent responses to requests for assistance. For example, responding to ten simple requests for assistance will not itself demonstrate a significant level of support services. One large-scale complex lawsuit that takes a substantial amount of attorney time to complete will demonstrate a more significant level of services than a simple individual action. However,

handling a substantial number of individual actions may also demonstrate a significant level of work. Distribution of newsletters or other educational material will not itself meet the “significant level” test, but development of useful resources for qualified legal services projects is relevant data for demonstrating a significant level of support.

**2.2.2. and such training, assistance, or support is not only actually available statewide**

***Commentary:***

Your services must actually be available statewide. You must hold your services available on request on a statewide basis to all qualified legal services projects irrespective of where they are located within the state and publicize the availability of such services on a statewide basis. This publicity should ordinarily include at least two written communications during each calendar year, directed to every qualified legal services project in California, in which you describe the availability of your services. These written communications may be included in newsletters or other regular publications. You should send a copy of the communications to the Legal Services Trust Fund Program when you send them to the legal services projects.

Second, you must also demonstrate through objective information that your services are actually available and publicized throughout the state. In determining whether this requirement is met, the Commission may consider such factors as your staff's participation in task forces and other training forums, your distribution of newsletters and general mailings, and any other efforts you make to give notice of the availability of services.

**2.2.3. but is also actually provided statewide**

***Commentary:***

You must also demonstrate that you provide services on a statewide basis. Your services must have actually been utilized within the last year in a majority of the nine State Bar Districts that existed prior to July 1, 2010, and in at least two Northern California counties and two Southern California counties. Southern California counties shall include the counties of San Luis Obispo, Kern, San Bernardino and counties further south. At the end of these Guidelines, is a list of the counties assigned to each of the nine State Bar Districts.

In determining whether a support center's services were statewide, the Commission may consider the following factors and any other objective information that aids in making the determination:

- a. The provision of support services to a number of State Bar Districts or counties larger than the minimum stated above would be relevant data for demonstrating a geographic distribution of service. However, numbers alone will not be the sole test.
- b. Statewide services must be substantial in nature, not merely simple or intermittent responses to requests for assistance. For example, providing

most services in one or a few counties but occasionally responding to inquiries from other parts of the state will not itself demonstrate a statewide distribution of services.

For purposes of determining whether your services were actually provided on a statewide basis, the Commission will consider only the provision of legal training, legal technical assistance, and advocacy support. Other services provided, such as general information, the distribution of newsletters, and general mailings, will not be sufficient to demonstrate that an applicant is not local but statewide, or that an applicant has provided services in a majority of the State Bar Districts.

#### **2.2.4. without charge**

***Commentary:***

The “without charge” standard is fully met when services are provided without imposing any fee or requiring any payment. However, training services may still be considered “without charge” when the fee imposed is directly tied to the actual additional expense incurred in training an individual and does not include general expenses that are incurred in providing the training to the community at large. To illustrate:

- a. Direct expenses that can be charged to individuals participating in training events include the actual cost of their own refreshments, lodging, materials distributed (including manuals, workbooks, and binders), per participant webinar fees, and similar costs associated with individual participation.
- b. Training expenses that should not be charged to participants include the costs of facilities rental for the training event; general costs of materials, equipment, and services necessary to conduct trainings (such as visual aids, projectors, IT services, licensing fees, and delivery charges); expenses associated with travel, food, or lodging for staff or outside trainers; costs of developing materials (including staff salaries and consultant fees/expenses); and organizational expenses, including but not limited to insurance, audit costs, library costs, overhead, or telecommunications expenses.

Under Business and Professions Code §6213(b), the “without charge” standard applies to assistance provided to qualified legal services projects. It would be consistent with the spirit of the Legal Services Trust Fund statute, whenever possible, to also extend this consideration to fellow qualified support centers.

#### **2.2.5. through an office in California.**

***Commentary:***

You must actually have a regularly functioning office physically located in California and provide these services through that office. The office must have been in existence and operating prior to your application for a Legal Services Trust Fund Program grant.



**2.3. The provision of legal training, legal technical assistance, or advocacy support without charge must be the primary purpose and function of the corporation.**

***Commentary:***

You must demonstrate that it is the primary purpose and function of the **corporation** viewed as a whole, and not simply that of part of the corporation, to provide free legal training, legal technical assistance, or advocacy support. You may consider the provision of similar services in other states when determining the primary purpose and function of the corporation.

To be considered legal training, legal technical assistance, and advocacy support, the services must meet the following criteria:

- a. Services must be provided (1) to attorneys or lay advocates or others involved in the direction or operation of legal services projects that provide legal services to indigent persons; or (2) to attorneys in private practice who are providing legal services without charge to indigent persons; or (3) directly to indigent persons when requested to do so by a qualified legal services project.
- b. The content of the training and technical assistance must be directed toward meeting the legal needs of indigent persons or the functioning of the legal services project.
- c. The direct provision of legal services to clients is not a “support service” unless it is delivered (1) as co-counsel with a qualified legal services project; or (2) as co-counsel at the request of a private attorney representing indigent clients without charge; or (3) after a referral from a qualified legal services project.
- d. The provision of similar legal support services in states other than California will be considered in determining the primary purpose and function of the corporation.

A support center shall be presumed to meet the “primary purpose and function” test if the services described above constitute more than 75 percent of the corporation’s expenditure budget in the year for which it is seeking an allocation from the Legal Services Trust Fund Program.

If the organization cannot meet the “primary purpose and function” test by complying with this presumption, you may demonstrate the primary purpose and function by other means. You will need to demonstrate that the primary purpose of the organization is to assist legal services advocates who provide direct civil legal services to indigent clients through the provision of legal training, legal technical assistance, and advocacy support. You must show that the primary purpose is not the direct provision of legal services to clients and that the support services consist of training, technical assistance, and advocacy support. [B&P Code §6213(b); Rule 3.671(B), (C)]

- 2.4. If the organization receives funds from sources other than the Legal Services Trust Fund Program, the applicant must submit a plan assuring that the services funded from the Legal Services Trust Fund Program are in addition to those already funded from other sources.**

***Commentary:***

Describe the sources, amounts, and conditions of your funding other than the Legal Services Trust Fund Program and the additional services you intend to provide with the monies allocated by the Legal Services Trust Fund Program. You must also submit a plan to maintain your current level of funding from sources other than the Legal Services Trust Fund Program. [B&P Code §6216(c)]

- 2.5. The application must include an agreement by the organization to use all funds allocated from the Legal Services Trust Fund Program in support of qualified legal services projects providing free legal services in California, and to restrict use of funds allocated from the Legal Services Trust Fund Program to matters directly related to the needs of legal services clients.**

***Commentary:***

You may meet this requirement by signing the Assurances form that is part of the application. [B&P Code §6216(c)]

- 2.6. The application must include a resolution of the board of directors of the corporation establishing the organization's priorities for the provision of legal support services. The adoption of this resolution must have followed consultation with legal services attorneys, members of the private bar, and eligible clients.**

***Commentary:***

You must attach to your application a resolution adopted by your board of directors within the last two years establishing the organization's priorities. In addition, you must describe the manner in which legal services attorneys, members of the private bar, and eligible clients were consulted for purposes of establishing priorities. Those consulted to meet this requirement must include persons who are not members of your board of directors. [Rule 3.680(B)]

- 2.7. The organization must offer a range of services including more than one of the following: consultation, representation, information services, and training.**

***Commentary:***

Describe the manner in which the organization offers services falling under at least two of the headings: consultation, representation, information services, and training. [Rule 3.680(B)]

- 2.8. The organization must meet either the requirements of this Guideline 2.8, or the requirements of Guideline 2.9. To meet the requirements of this Guideline 2.8, the organization must have met the requirements of Guidelines 2.2-2.3 on December 31, 1980.**

***Commentary:***

If the organization has met the general requirements applicable to all applicants, Guidelines 1.1-1.4, and has met the requirements of Guidelines 2.1-2.7, it must also meet either the requirements of this Guideline 2.8, or the requirements of Guideline 2.9.

In order to meet the requirements of Guideline 2.8 (and thus avoid the necessity of complying with Guideline 2.9), the organization must, on December 31, 1980, have been a nonprofit organization which had as its primary purpose and function the provision of legal training, legal technical assistance, or advocacy support without charge, and which was actually providing a significant level of such services to qualified legal services projects, and such training, assistance, or support must have been available statewide without charge through an office in California at that time. [B&P Code §6215(a)]

If the organization has previously been determined by the Commission to meet this requirement, you do not need to reestablish it each grant year.

**2.9. An applicant that does not meet the requirements of Guideline 2.8 must meet the requirements of Guidelines 2.9.1 and 2.9.2 below:**

**2.9.1. The organization must be deemed to be of special need by a majority of the qualified legal services projects. If an applicant was affirmatively deemed of special need for one grant period, the Commission will assume (without need for further information) that it continues to be so deemed for the immediately following two grant periods.**

***Commentary:***

If you do not meet the presumption established by Guideline 2.8, the organization must be deemed of special need by a majority of legal services projects which receive allocations from the Legal Services Trust Fund Program. The statute requires that the organization presently be so deemed.

Evidence of such deeming in prior years, while it may be considered by the Commission as relevant evidence, is not determinative of the issue before the Commission except in the two funding periods after the grant period for which you were so deemed. The Commission itself intends to solicit the views of qualified legal services projects as to whether the organization is presently deemed of special need in every third year, starting with their application for the first funding period. Therefore, you must (for your first, fourth, seventh, etc., funding periods) supply the Commission with a one-page description of the organization.

The Commission will solicit advice from qualified legal services projects whether they presently deem the organization to be of special need. More than one-half of those whose advice is solicited must respond affirmatively in order for the organization to be eligible. Upon request, the Commission will make available to you a list of the names and addresses of the qualified legal services projects from which the Commission will solicit views.

In deciding whether they deem a support center to be of special need, projects will be instructed to consider what support the legal services projects in California need in delivering legal services to indigent persons, and to evaluate how the organization's services meet that need, including such issues as the quality and/or quantity of the organization's work. Project directors will be encouraged to consult with service providers or others associated with the project in making their decision. [B&P Code §6215(b)(2); Rule 3.680(C)]

**2.9.2. The application must include a description of the organization's quality control procedures and standards, including, but not limited to, the matters described below:**

***Commentary:***

The State Bar's Board of Governors adopted the American Bar Association's Standards for the Provision of Civil Legal Aid as the quality control standards for the Legal Services Trust Fund Program, pursuant to Business & Professions Code §6225 and Rule 3.661(C). These standards are the State Bar's guidelines for review and approval of applicant and recipient program practices.

If you are already subject to quality control reviews by any non-Trust Fund Program funding source or entity, describe the quality control review procedures to which you are subject, and attach the most recent comprehensive written quality control review by that entity in lieu of the information requested by Guidelines 2.9.2.1-2.9.2.4. (It is not necessary to explain in detail the review procedures followed.)

If you are not subject to such review procedures, describe your quality control standards and how compliance with each of the subjects listed in Guidelines 2.9.2.1–2.9.2.4 is ensured. The Commission is particularly interested in the standards and procedures regarding supervisory structure, procedures, and responsibilities. [B&P Code §§6123(b) and 6217(a); Rule 3.680(E)(2)]

**2.9.2.1. the minimum experience and education requirements for attorney and paralegal employees;**

**2.9.2.2. the current salaries and job descriptions for all filled and unfilled management and professional positions, including paralegal personnel;**

**2.9.2.3. the minimum experience and educational requirements for attorney supervisors;**

**2.9.2.4. the supervisory structure, procedures, and responsibilities.**

## State Bar of California Districts Prior to July 1, 2010

District 1

Butte  
Colusa  
Del Norte  
Glenn  
Humboldt  
Lake  
Lassen  
Mendocino  
Modoc  
Nevada  
Placer  
Plumas  
Shasta  
Sierra  
Siskiyou  
Sutter  
Tehama  
Trinity  
Yuba

District 2

Napa  
Sacramento  
Solano  
Sonoma  
Yolo

District 3

Alameda  
Contra Costa

District 4

Marin  
San Francisco  
San Mateo

District 5

Alpine  
Amador  
Calaveras  
El Dorado  
Fresno  
Inyo  
Kern  
Kings  
Madera  
Mariposa  
Merced  
Mono  
Monterey  
San Benito  
San Joaquin  
San Luis Obispo  
Santa Cruz  
Stanislaus  
Tulare  
Tuolumne

District 6

Santa Clara

District 7

Los Angeles

District 8

Orange  
Santa Barbara  
Ventura

District 9

Imperial  
Riverside  
San Bernardino  
San Diego

**Revision to Guidelines for Support Centers with respect to determination of whether or not the Support Center is providing services “statewide” in California.**

**Background:** Support Centers must establish that their services are available, and are actually provided, on a “statewide” basis. Since the Program’s inception, the Trust Fund Program has been using State Bar Board of Trustee districts to demonstrate that a Support Center’s breadth of service is “statewide.” For reasons unrelated to Trust Fund Program grants, the Board of Trustees revised its districts in 2012 in a way that did not work for Trust Fund Program purposes. Therefore, the Commission determined to use the old districts (2010 Map attached) pending a resolution adopting a new regional map to define “statewide” for support centers.

At its June 2016 meeting, the Commission defined new regions for viewing “statewide” support, and after vetting the recommendations at LAAC Support Center meetings, and at a State Bar bi-monthly call with Legal Services programs, adopted the resolution at its December meeting. The new map for defining “statewide” better achieves its intended goals than the previous criteria, including assuring services outside the Bay Area and Los Angeles corridors.

Beginning 2017, Support Centers must demonstrate that they provide services in 5 of the 7 attached regions.

**Previous Eligibility Guideline 2.2.3 for Support Centers:**

*Commentary:*

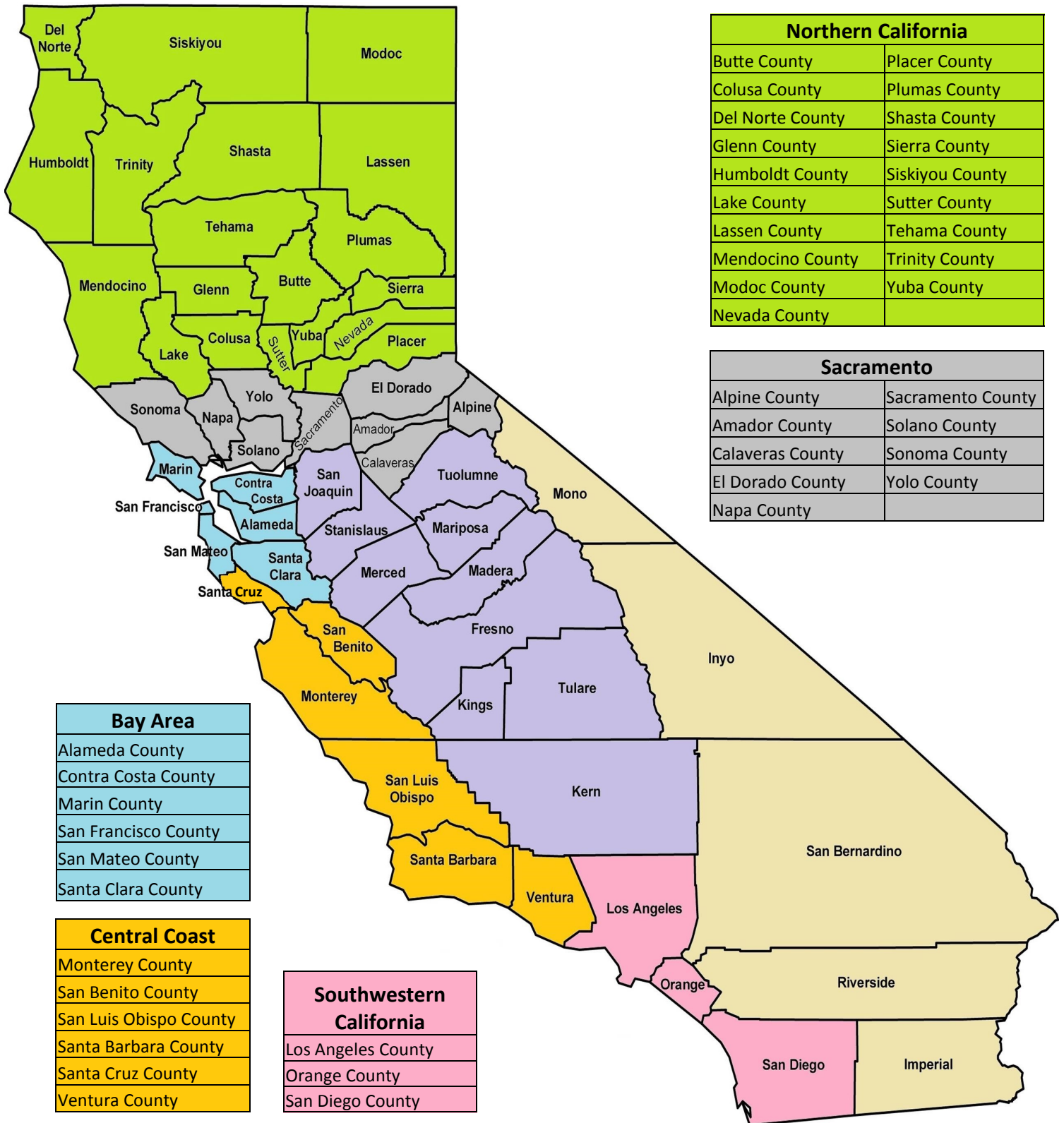
You must also demonstrate that you provide services on a statewide basis. Your services must have actually been utilized within the last year in a majority of the nine State Bar Districts that existed prior to July 1, 2010, and in at least two Northern California counties and two Southern California counties. Southern California counties shall include the counties of San Luis Obispo, Kern, San Bernardino and counties further south. At the end of these Guidelines, is a list of the counties assigned to each of the nine State Bar Districts. . . . .

**Approved Revision to Eligibility Guideline 2.2.3 for Support Centers:**

*Commentary:*

You must also demonstrate that you provide services on a statewide basis. Effective January 2017, your services must be utilized in five of the following seven districts: Northern California, Sacramento Area, Bay Area, Central Coast, Central Valley, Eastern California, and Southwestern California. At the end of these guidelines is a list of the counties assigned to each of the regions. (see, Legal Services Trust Fund Program, Support Center – 2017 Regional map)

Note: For services provided in 2016, Support Centers may apply the new regions, or rely on the prior requirement that the services were utilized within the last year in a majority of the nine State Bar Districts that existed prior to July 1, 2010, and in at least two Northern California counties and two Southern California counties. (see State Bar Districts, 2010 map)

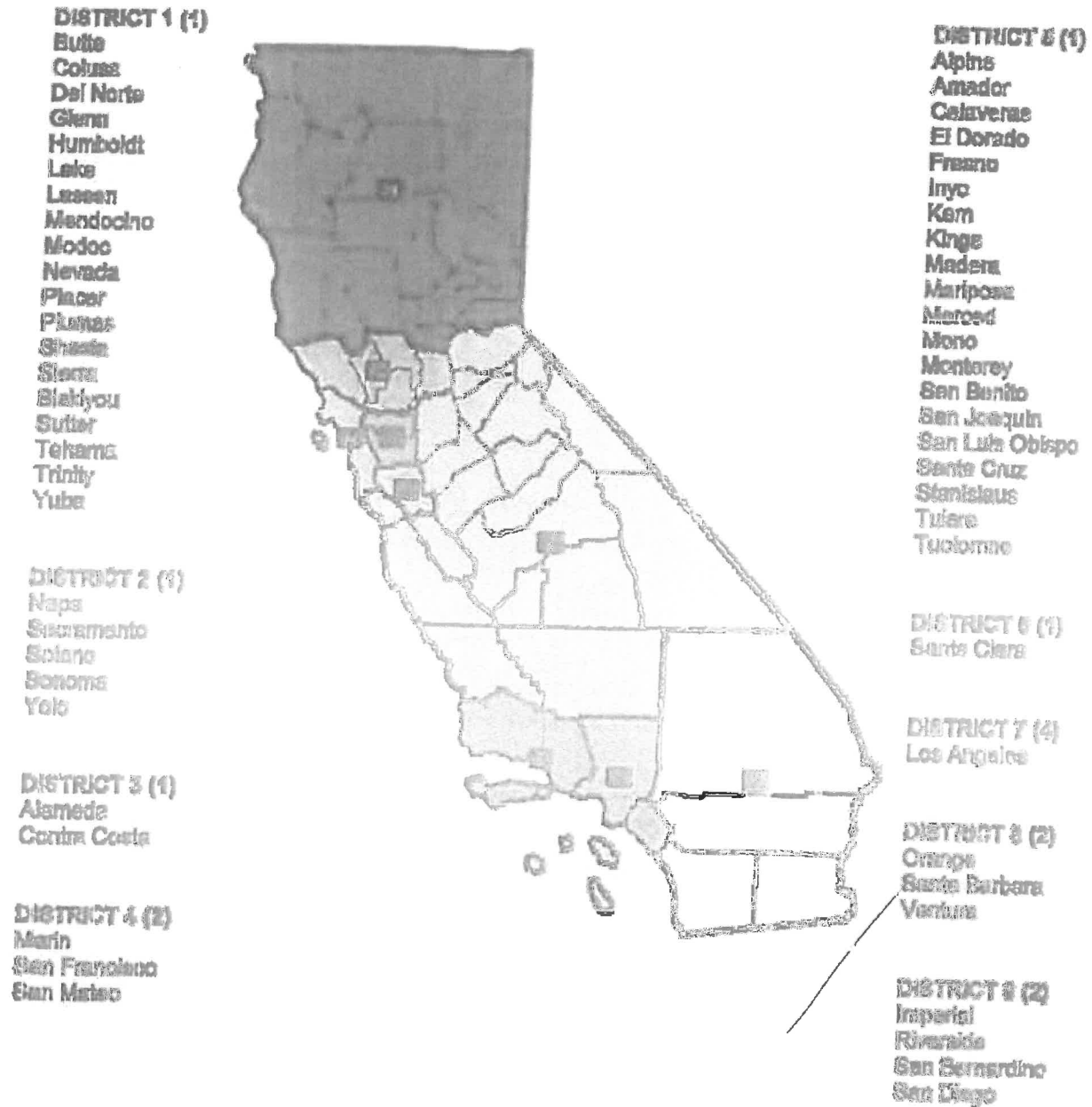


## Legal Services Trust Fund Program

Support Center — 2017 Regional Map

# STATE BAR DISTRICTS

The composition of State Bar Districts and the number of elected seats (in parentheses) on the Board of Governors in each District are as follows:





<b>Organization:</b>	Public Advocates Inc.
<b>1. Advocacy Activity Name:</b>	HIGHER EDUCATION — LOW-INCOME STUDENT ADVOCACY PROJECT
<b>2. Advocacy activity status:</b>	Ongoing
<b>3. Advocacy Type:</b>	Other(explain)
<b>a. Explain Other Advocacy Type:</b>	Administrative and Legislative
<b>4. Advocacy Level:</b>	State

**5. Is this an IOLTA qualifying activity as defined by B&P 6213, State Bar Rule 3.672, and Eligibility Guideline 2.3?**

If you answered no, reminder to deduct expenditures related to this non-qualifying activity in the next IOLTA/EAF grant application cycle.

Yes

**5. Partner Organizations:**

## Partner Organizations

State Bar Grantees

Other Organizations

The Affordability Coalition (convened by The Institute for College Access and Success)  
 Education Trust-West  
 Campaign for College Opportunity  
 California Competes  
 California Edge Coalition  
 The Institute for College Access and Success  
 University of California Students Association  
 California State Students Association  
 Student Senate of the Community Colleges  
 Families in Schools  
 Students Making a Change  
 Next Gen  
 Yo Soy

**7. Counties Impacted**

Check all that apply

\*Statewide

## 8. Substantive Area

Check all that apply

Miscellaneous

## 9. Constituencies Impacted

Check all that apply

Children/Youth, Immigrants

## 10. Who benefitted from this advocacy

Low-income and indigent students, students from immigrant families, and first generation students who attend California's public post-secondary colleges and universities and the low-income and the more than 100,000 indigent high school graduates in California who graduate eligible for admission to the state's public post-secondary institutions.

a. If available, provide the estimated number of total people impacted:

923269

## 11. Explain how those impacted by this advocacy activity are indigent, as defined in B&P §6213(d)

If the majority of persons impacted are not indigent, type n/a.

The population impacted by this advocacy activity are indigent based on income levels below the poverty threshold as defined in B&P §6213(d).

The US Department of Education's National Postsecondary Student Aid Study is a large-scale, nationally representative study that collects comprehensive data on the characteristics of college students and how they pay for college. In 2015–16, 42% of California residents attending California public colleges as undergraduates had incomes below 125% of the federal poverty guidelines. Current undergraduate enrollment at California Community Colleges, California State University, and University of California is 2,198,260. This advocacy impacts 923,269 indigent students.

It is also worth noting that data from the USDE National Postsecondary Student Aid Study show that 65% of Pell Grant recipients (441,164) attending California public colleges had family incomes that fell below 125% of the federal poverty guidelines. While Pell Grant receipt is a commonly used proxy for low-income status, this total does not include students who meet state and federal poverty guidelines but do not apply for a Pell Grant and undocumented students who are ineligible for federal financial aid.

## 12. Describe the impact this advocacy activity will have on indigent persons

If available, include the estimated number of total indigent persons impacted and how this was determined.

Our higher education advocacy seeks to address the obstacles that the million-plus indigent students (see preceding response) face in gaining entrance to and succeeding in the state's public colleges and universities. These range from skyrocketing tuition costs, inadequate financial aid that fails to cover the full cost of attendance, housing and food insecurity, and a lack of academic and social supports, including a lack of supportive developmental education and physical and mental health programs for indigent students. While 81% of California's high school graduates enroll in a college or university, only 77% of socioeconomically disadvantage students (eligible for the FRPM program) do so, and of these many never graduate. At California's community colleges, which have historically provided a pathway to higher education for low-income students, 52% of students fail to graduate or transfer to four-year colleges. These students are often burdened with student loan debt without ever securing the economic advantages of obtaining a college degree.

Our advocacy to improve access and success in public post-secondary education has significant social, health, and economic benefits for indigent students. Students with a community college degree nearly double their earnings within three years. The incidence of poverty among bachelor's degree holders is 2.5 time lower than it is for those with only a high school degree. Bachelor's degree holders are 47% more like to have health insurance and can expect to live seven years longer than their peers with no postsecondary education.

## 13. Briefly describe the advocacy activity and the overall goal(s)

Include specific legislation, regulations, or agencies involved.

The legal, policy, and technical assistance we provided in 2019 advanced legislative and policy solutions for reducing the barriers to college access and success for low-income and indigent students. We shaped and advocated for legislation to create a longitudinal data system that will track the progress of indigent and other California students from pre-K–12 through college and career, identify disparities among student subgroups, and provide essential data for crafting policy solutions and winning investments to address the challenges that indigent and low-income students face. We investigated compliance at community colleges with a newly implemented state law (AB 705) intended to improve transfer pathways and reform remedial programs which have often been a dead-end for indigent students who disproportionately enter community college low-performing in math and English, and we researched potential legal strategies for holding colleges accountable that do not comply with AB 705. We formed partnerships with student organizations, provided technical assistance and training, and joined them in advancing legislation to increase their capacity to advocate on their own behalf in and elevate issues that impact low-income and indigent students. With students, we co-organized a convening of college and high school students with key state policy makers, higher education advocates, and elected officials where students shared their experiences and advocated for their needs. We served on a stakeholders group advising the Governor on higher education policy and the Policy & Analytics Advisory Group for the design and implementation of the new statewide longitudinal data system.

#### 14. List the outcomes achieved or expected to achieve

If ongoing, highlight accomplishments (if any) achieved during the evaluation year.

>We played a leading role advancing legislation for a statewide longitudinal student data system, ensuring that diverse stakeholders, including students, are represented in advisory groups for the system's design.

>We served on the Student Centered Funding Formula (SCFF) advisory committee and successfully advocated for the inclusion of first-generation students, who come from predominantly low-income and indigent families, as a target population in the SCFF supplemental allocation.

>We successfully advocated for AB 1504 to allow the CCC Student Senate to collect a student fee and increase its capacity to represent students' needs, and AB 514, which gives voting rights to second student member of the CSU Board of Trustees.

>We supported ACR 64, which directs the CSU Trustees UC Regents to study the effectiveness of SAT and ACT tests in college admissions. These tests have well-documented biases against low-income students, students of color, English learners, and women.

>We advocated for AB 1314 and SB 291 to reform state financial aid programs to address students' total cost of attendance for indigent students.

>We researched the implementation of AB 705 in the Los Rios Community College District and provided legal and technical assistance to students monitoring the implementation of AB 705 at SF City College.

>We raised concerns that a proposal to add an additional year of high school math to CSU admissions requirements would disproportionately impact low-income students in districts that lack the resources to offer a fourth year of math. Our advocacy convinced the Trustees to delay implementation of the proposal.

**15. Describe any economic benefit achieved or anticipated economic benefit**

If the activity is ongoing, but there is an expected future economic benefit, describe the estimated benefit. Report the information you have available (e.g., estimated range). Do not extrapolate.

As noted above, increasing indigent students' access and completion of post-secondary education has significant economic benefits both for indigent students and for California's economy, which is facing shortage of 1.1 million bachelor's degrees by 2030.

## Public Advocates' Advocacy for Indigent Students in Higher Education

April 6, 2020

### **Public Advocates' higher education advocacy targets the needs of and primarily benefits indigent students**

As a law firm with a mission to eradicate poverty, Public Advocates relies on a strategic analysis to ensure that our legal services primarily benefit indigent residents. We focus on issue areas that are among the most critical in the lives of the poor. We work on a daily basis with organizations whose members and leaders include indigent residents, non-English-speaking immigrants, seniors, and people with disabilities to understand the complex challenges they face in their daily lives, and the barriers they encounter in being heard in the political process.

We therefore identify objectives for our litigation and policy advocacy that are critical for indigent residents. Because it is our mission to serve as lawyers for the most marginalized, our fundamental loyalty is to indigent people. We always lead with their needs and will never compromise those needs for the sake of political expedience or for any other reason. Based on our fundamental commitment to the poor, our strategic analysis, and our long experience winning legal and policy victories that change the lives of large numbers of indigent residents across California, we are confident that the legal services we provide primarily benefit indigent persons and consistently have done so over the five decades since Public Advocates was founded.

The advocacy activities in the area of higher education detailed in our 2019 ILAW report are fully aligned with our mission to serve indigent residents. We know that post-secondary education is crucial to not only prevent poverty but enable those from disadvantaged backgrounds escape poverty. We also know that improved access to educational opportunities and stronger legal protections for those who depend on those services primarily and significantly benefit those with the least ability to fend for themselves: indigent students striving to access and succeed in higher education, a significant portion of whom are first-generation college students from immigrant families.

Public Advocates has a long record of legal and policy advocacy in post-secondary education funded by the State Bar. In 2006, we joined The Institute for College Access and Success in advocacy around loan forgiveness and repayment benefits to low-income students and graduates and to improve the federal student aid application process. In 2011, we extended that work through our "Higher Education — Low-Income Consumer Protection Project," initially focusing on winning robust state oversight to ensure that low-income students who attend for-profit schools receive meaningful credentials and job preparation. In 2018, our longstanding commitment to educational opportunity for indigent K–12 students led us to examine the obstacles these students face when they seek to access and complete public post-secondary education. Over the more than twelve years that we have engaged in the post-secondary space our target population and our overarching goals have remained the same: to ensure that indigent students receive a meaningful post-secondary education that prepares them for career and a full and active civic life.

Despite the longstanding support we have received from the State Bar for our higher education advocacy, in 2019, staff of the Office of Access & Inclusion determined that our higher education advocacy was a non-qualifying expenditure on the basis of the data we submitted to demonstrate that

indigent students were the primary beneficiaries of our advocacy. Because of the limitations of the data available to us at that time and the short timeframe we were given to respond to questions — and given that our pivot to public higher education was largely in a start-up mode in 2018 — we withdrew our appeal of the staff determination at our August 7, 2019 eligibility conference and indicated that we would revisit the determination in 2019 and provide additional data which did in the most recent application and reinforce here.

We subsequently retained an education research consultant (at a cost of \$1,900) for the purpose of further data collection and were able to include clear evidence in our 2019 ILAW report showing that more than 900,000 students in California’s three public education segments or approximately 42% of all students are indigent and that 100% of our target population is indigent. We are happy to provide the following additional background demonstrating that the intent and impact of our higher education legal advocacy is primarily for the benefit of indigent students.

### **Community college remediation reform primarily benefits low-income students**

Inadequate K-12 preparation has led to students getting stuck in remedial coursework for math and English upon entering the California Community Colleges (CCC), California State University (CSU), and University of California (UC) systems. Time spent in non-credit, remedial courses lengthens time to completion, adds to student debt, and reduces students’ chances of successfully completing a degree or transfer to a 4-year institution. According to a 2017 Legislative Analyst’s Report, 23% of incoming UC freshmen were identified as unprepared, at CSU 40%+, and at CCC 75%.<sup>1</sup>

Until quite recently, 80% of students entering a California community college enrolled in at least one remediation course in math, English, or both during their college career.<sup>2</sup> Community college students placed into remedial math took an average of 2.5 terms to complete the sequence, while developmental English students took an average of 1.9 terms.<sup>3</sup> Low-income college students and students of color are most likely to have taken a remedial education course, with 86% of low-income and 87% of Latinx and Black community college students enrolled in remedial education.<sup>4</sup> Students placed in remedial education can experience increased debt and accrual of non-transferable credits, and the greatest harm is experienced by indigent students.<sup>5</sup>

AB 705, which went into effect in 2018, is intended to improve transfer pathways and reform remedial programs, which have often been a dead-end for indigent students. In 2019, we researched potential legal strategies for holding colleges accountable that do not comply with AB 705 and provided legal and strategic support to campus groups representing low-income students in advocating for the faithful implementation of the law.

As noted in our ILAW report, the US Department of Education’s National Postsecondary Student Aid Study for 2015–16 found that 42% of California residents attending California public colleges as

<sup>1</sup> “Overview of Remedial Education at the State’s Public Higher Education Segments,” Legislative Analyst’s Office, March 1, 2017, 2.

<sup>2</sup> Marisol Cuellar Mejia, Olga Rodriguez, and Hans Johnson, “Preparing Students for Success in California’s Community Colleges,” *Public Policy Institute of California*, November 2016, 9.

<sup>3</sup> *Ibid.*, 14.

<sup>4</sup> *Ibid.*, 11.

<sup>5</sup> *Ibid.*, 6.

undergraduates had incomes below 125% of the federal poverty guidelines. Based on this finding, 648,439 students currently enrolled in California's Community Colleges are indigent. Our advocacy for the implementation of AB 705's remedial education reforms primarily targets and benefits the disproportionate number of low-income students who are impacted by the full and faithful implementation of AB 705.

**Comprehensive longitudinal data is essential to identifying barriers to post-secondary education for indigent students and their needs**

Legal service providers rely on a client intake process not only to determine eligibility for free services but to obtain a range of demographic and personal information to identify the legal issues involved, the social and economic impacts of these issues, and the appropriate legal action or advocacy needed to represent an indigent client. In determining the eligibility and needs of indigent populations for legal and policy advocacy, we rely on publicly available data on populations and their social, economic, and demographic characteristics, supplemented with targeted research studies.

The Longitudinal Student Data System (SLDS) that we successfully advocated for in 2019 is an essential resource for identifying the advocacy and legal services needed by indigent students and the impact on them when their legal rights are violated, and policies harm them. The new SDLS will provide comprehensive data that we will use to identify the disparities and opportunity gaps impacting indigent students, the root causes of those obstacles, and the legal and policy reforms needed to protect and expand their access to and completion of higher education. In our advocacy for this new system we consistently underscored the importance of ensuring that it provides the data necessary to identify the specific needs of indigent students, that the data system be accessible to and serve as a tool for low-income students and their families and provide them the information they need to advocate on their own behalf, and that low-income students and families be included in advisory groups guiding the design of the system.

**Including first-generations students as a target population for the Student Centered Funding Formula benefits indigent students**

The Student Centered Funding Formula (SCFF) provides supplemental funding to California Community College districts that serve low-income students and incentivizes districts to improve completion rates for low-income students. "Low-income" students for purposes of the SCFF are students who receive federal Pell Grants, Cal Grants, or California Dream Act Grants. The receipt of federal Pell Grants is widely used as a proxy for low-income status, since Pell Grants are awarded based on financial need. The US Department of Education describes the share of students receiving Pell Grants as "one of the most commonly used measures of the degree to which institutions provide access to low-income students." In the most recent year of data available (2015-16), almost two-thirds (65%) of Pell Grant recipients attending California public colleges had family incomes that fell below 125% of the federal poverty guidelines and more than half (55%) had incomes that fell below 100% of the federal poverty guidelines, accounting for family size. Additionally, the average family income for California public college students who received Pell Grants in 2015-16 was 100.5% of the federal poverty guidelines, which falls below the California State Bar's definition of indigency.

Implementation of the SCFF has the potential to benefit a significant number of the 648,439 indigent students enrolled in California's community colleges. In 2019, we served on the Advisory Panel



supporting implementation of the new SCFF formula which generally seeks to better support low-income students through to completion. In addition, we successfully advocated for the inclusion of first-generation students, defined as students for whom neither parent has a bachelor's degree, as a target population in the SCFF supplemental allocation. The median family income for first-generation freshmen at two- and four-year institutions was \$37,565, compared to \$99,635 for non-first-generation freshmen; 27% of first-generation students come from households making \$20,000 or less, compared to 6% of non-first-generation freshmen.<sup>6</sup> A significant number of first-generation students come from immigrant families.

### **Reducing admissions barriers for indigent students increase access to public post-secondary education**

The standardized tests widely used by colleges and universities for determining admissions — the SAT and ACT — have well-documented biases against low-income and other disadvantaged students.<sup>7</sup> In light of this evidence we supported and testified in favor of ACR 64, which directed the CSU Trustees and UC Regents to study the effectiveness of SAT and ACT tests in college admissions. For the same reasons, we also opposed AB 751, which would have allowed school districts to administer the SAT/ACT in lieu of the California Assessment of Student Performance and Progress.

In 2019, we also weighed in on a proposal by CSU to add an additional year of math/quantitative reasoning to the high school coursework (known as the A-G requirements) required for admission. As proposed, this new requirement has the potential to negatively impact indigent students. Our concern is that because of inadequate funding, many K–12 schools, especially those in high-poverty districts, will be unable to provide the additional course. Indeed, many high schools and districts are struggling to provide the currently required A-G courses. An additional, compounding factor is that California is currently experiencing a severe shortage of teachers in STEM fields. According to a recent report, students in the highest poverty school districts are three times as likely to be taught by teachers lacking a full credential and/or STEM subject-area authorization.<sup>8</sup>

### **Reforming financial aid to address the affordability gap for indigent students**

The California Community Colleges, California State University, and University of California are public institutions open to all California residents who meet admissions standards. In 2017-18, 104,187 socioeconomically disadvantaged students (eligible for the Free and Reduced Meal Program) graduated from public high schools having met UC and CSU admission requirements, yet only 77% of these students actually enrolled in a college or university. This gap is largely due to the cost of college attendance.

Currently, state financial aid largely focuses on tuition and fees, insufficiently addressing other costs such as textbooks, educational supplies, housing, food, transportation and healthcare.<sup>9</sup> Perversely, qualifying for financial aid can make students ineligible for food stamps or affordable housing, which

<sup>6</sup> “First-Generation Students in Higher Education,” Postsecondary National Policy Institute, <https://pnpi.org/first-generation-students/>.

<sup>7</sup> See, for example, data included in Smith et al. v. Regents of the University of California, filed December 10, 2019, Alameda County Superior Court. <http://www.publiccounsel.org/tools/assets/files/1250.pdf>

<sup>8</sup> Wolf, Leni, *The STEM Teacher Drought: Cracks and Disparities in California's Math and Science Teacher Pipeline* (Education Trust–West, September 2015), 3.

<sup>9</sup> TICAS, “Unpacking California College Affordability,” 5.

further exacerbates affordability issues for indigent students.<sup>10</sup> For older students and working adults, non-tuition expenses may also include child/dependent care.<sup>11</sup> In 2015, the UC conducted the nation's largest higher education study on basic needs, which revealed that 48% of its undergraduates and 25% of its graduate students had experienced food insecurity.<sup>12</sup> The California State University (CSU) followed this effort with surveys, the most recent of which found that 41.6% of CSU students experienced food insecurity (a number surprisingly close to the public higher education's system overall indigency rate), 20% experienced low food security, and 21.6% experienced very low food security.<sup>13</sup> In 2017, the California Community Colleges surveyed administrators, faculty, and staff across 70 campuses to identify basic needs and found that 56.8% of respondents "had direct contact with students experiencing basic needs insecurity, multiple times per week or every day."<sup>14</sup>

Affordability impacts initial enrollment in college, the ability to complete courses, enrollment intensity (studying part-time vs. full-time), the time it takes to complete a degree, and debt incurred.<sup>15</sup> The lack of affordability also exacerbates existing equity gaps for low-income, underrepresented, and nontraditional students.<sup>16</sup>

Students with a community college degree nearly double their earnings within three years. The incidence of poverty among bachelor's degree holders is 2.5 times lower than it is for those with only a high school degree. Bachelor's degree holders are 47% more likely to have health insurance and can expect to live seven years longer than their peers with no postsecondary education. The insurmountable costs of obtaining a college degree in California effectively denies many indigent students these fundamental opportunities to improve their lives and move out of poverty.<sup>17</sup>

In light of this evidence, with our student partners, we supported two measures that would address the affordability challenges indigent students are facing. AB 1314 and SB 291 proposed reforms to state financial aid programs that would address students' total cost of attendance, which would primarily benefit indigent students. While these bills are under consideration, the legislature authorized the California Student Aid Commission to establish a Working Group to make specific recommendations for reforming the Cal Grant program. In these conversations, which we are actively participating in, the goal of our advocacy is to ensure that any reforms address the total cost of college attendance as the priority need of indigent students.

<sup>10</sup> Amy Ellen Duke-Benfield, "Bolstering Non-Traditional Student Success: A Comprehensive Student Aid System Using Financial Aid, Public Benefits and Refundable Tax Credits," *Center for PostSecondary and Economic Success*, December 2015, 7.

<sup>11</sup> TICAS, "Unpacking California College Affordability," 10.

<sup>12</sup> Office of the President Global Food Initiative, "Global Food Initiative: Food and Housing Security at the University of California," University of California, December 2017, 5.

<sup>13</sup> Rashida Crutchfield and Jennifer Maguire, "Study of Student Basic Needs," *The California State University Basic Needs Initiative*, January 2018, 20.

<sup>14</sup> Chancellor's Office, "Basic Needs Survey Report," *California Community Colleges*, 2018, 1.

<sup>15</sup> *Ibid.*, 5.

<sup>16</sup> *Ibid.*, 10.

<sup>17</sup> "How Does a College Degree Improve Graduates' Employment and Earnings Potential?" Association of Public & Land-Grant Universities, <https://www.aplu.org/projects-and-initiatives/college-costs-tuition-and-financial-aid/publicvalues/employment-earnings.html>

**Public Advocates empowers indigent students to advocate on their own behalf**

Central to our theory of change is our community partnership model. We work with community organizations representing indigent people and provide legal and policy expertise to build their capacity to advocate on behalf of low-income community members (Main Benefit M2). Indigent students at California's three public higher education segments are represented by student associations — the California State Student Association (CSSA), the University of California Student Association (UCSA), and the Student Senate for California Community Colleges (SSCCC). Together, these organizations represent more than 900,000 indigent students. In 2019, our legal advocacy supported two successful measures to increase the ability of college student organizations and student representatives to elevate the needs of indigent students in policy conversations. AB 1504 allows the SSSCC to collect a modest student fee, which increases its ability to represent the needs of the nearly 650,000 indigent students attending California's community colleges. Prior to passage of AB 1504, low-income community college student leaders from SSSCC described having to sleep in their cars when they travelled to Sacramento to advocate in legislative and administrative forums. AB 514, which gives voting rights to second student members of the CSU Board of Trustees, will similarly increase the influence of student voice in key policy conversations.

We also provided technical and legal support to build the advocacy capacity of student organizational networks that represent low-income community college students, including Students Making a Change and Young Invincibles. For example, we helped Students Making a Change write a Public Records Act request to City College of San Francisco regarding expenditure of Student Equity and Achievement Funds, which are generated by low-income community college students and are supporting Young Invincibles expand its capacity to advocate around the new Student Longitudinal Data System.

**Organization:** National Immigration Law Center

**1. Case Name:** MRNY et al. v. Pompeo et al. (Make the Road New York, African Services Committee, Central American Resource Center-NY, Catholic Charities Community Services, and Catholic Legal Immigration Network, Inc., Alicia Doe, Brenda Doe, Carl Doe, Diana Doe, and Eric Doe v. Michael Pompeo, U.S. Department of State, Donald Trump, Alex Azar, and U.S. Department of Health and Human Services).

**2. Case Status:** Open

**3. Court Name:** U.S. District Court for the Southern District of New York, Case No. 1:19-cv-11633 (GBD)

**4. Is this an IOLTA qualifying activity as defined by B&P 6213, State Bar Rule 3.672, and Eligibility Guideline 2.3?**

If you answered no, reminder to deduct expenditures related to this non-qualifying activity in the next IOLTA/EAF grant application cycle.

Yes

**4. Partner Organizations:**

### Partner Organizations

State Bar Grantees

Other Organizations

Center for Constitutional Rights  
Legal Aid Society of New York  
Paul Weiss LLP

**5.a. Support Centers Only: If this is an IOLTA qualifying activity, and no QLSP was listed as a partner organization, indicate how the activity is qualifying under B&P 6213.:**

By addressing the civil rights issue underlying the case, our work extends to increase justice for families living in poverty.

**6. Counties Impacted**

Check all that apply

\*Statewide, Out of State

## 7. Substantive Area

Check all that apply

Health and Long-term Care, Immigration

## 8. Constituencies Impacted

Check all that apply

Children/Youth, Immigrants, Low Wage Workers, Persons with Disabilities, Seniors

## 9. Parties or Class Represented

Make the Road New York, African Services Committee, Central American Resource Center-NY, Catholic Charities Community Services, and Catholic Legal Immigration Network, Inc. (legal services and advocacy organizations serving immigrant communities and applicants for consular processing and adjustment of status), Alicia Doe, Brenda Doe, Carl Doe, Diana Doe, and Eric Doe (individual Plaintiffs who are either consular processing applicants themselves or U.S. citizen spouses of consular processing applicants).

**a. If available, provide the estimated number of total people impacted:**

An estimated 397814 family-based immigrant visa applicants applying for consular processing nationwide each year based on the U.S. Department of State's ("DOS") own number of estimated respondents to the new DS-5540 Form published in DOS's DS-5540 Emergency Paperwork Reduction ("PRA") Supporting Statement designed to implement the Department of State's October 11 2019 Interim Final Public Charge Rule ("IFR") and the President's October 4 2019 Health Care Proclamation.

## 10. Is named plaintiff(s) indigent?

This answer alone will not decide whether the activity is or is not a qualifying expense.

Yes

## 11. Explain how the majority of those impacted are indigent, as defined in B&P §6213(d)

If the majority of persons impacted are not indigent, type n/a.

The majority of family-based immigrant visa applicants and their family members and sponsors who are impacted are low to moderate income, and would be penalized under the DOS Foreign Affairs Manual ("FAM") Revisions, IFR, Health Care Proclamation and agency implementing actions (the "Consular Rules") for being low income, having a low credit score, having less access to education, ever having applied for a fee waiver due to being indigent, having limited English proficiency, being unemployed, having been indigent, low-income, or using Medicaid, food stamps, Section 8 housing and cash benefits for 12 months in a 36 month period under the DOS FAM Revisions and IFR; and 65 percent of visa applicants lack health insurance or have health insurance that does not qualify under the Health Care Proclamation.

The implementation of the Consular Rules, one of which, the IFR, is effectively being applied to all consular processing applications as of February 24, 2020, could lead to permanent family separation and increase the risk of already low-income and indigent applicants and their family members falling into further poverty or cause them to forego enrollment in supplemental benefits programs, including Medicaid, food stamps, Section 8 housing, Affordable Care Act Health Insurance plans, and state based benefits programs for fear of a visa denial and permanent family separation. Enjoining these actions would mitigate the nationwide chilling effect and stop the harm to low-income and indigent visa applicants and their family members.

## 12. Describe the impact this case will have on indigent persons

If available, include the estimated number of total indigent persons impacted and how this was determined. If no impact on indigent persons, type n/a.

See above. The impacts of the DOS public charge criteria and the healthcare proclamation and agency implementing actions challenged in this case will be particularly severe on indigent and low-income immigrant families of color, who are now more likely to be denied admission and separated as a result of the Consular Rules. For example, plaintiff Eric Doe, a U.S. citizen suffering from a chronic form of cancer requiring ongoing treatment, is sponsoring his wife, an intending immigrant from Mexico. They also reside with three of their children. As a result of the proclamation and agency implementing actions, Eric Doe could be separated from his wife upon whom he relies on for care; and the children could be separated from their mother. Plaintiff Carl Doe, a business owner from El Salvador who is the primary financial and emotional support for his U.S. citizen wife, could be barred from entry if he does not purchase highly expensive insurance that does not provide basic coverage. If he is barred, his wife will not be able to support herself in her low-wage job, and may have to access supplemental public benefits as a result.

As a further consequence of these draconian policies, more low-income immigrants and mixed-status families like theirs are also more likely to refuse or cease use of benefits such as health care to which they are entitled, even benefits not impacted by the new policies. The new rules impose nonsensical requirements on low-income immigrants and will cause needless hardship and suffering.

## 13. Briefly describe the legal issue(s) of the case and the overall goal(s)

Specifically, Plaintiffs seek to stop three interrelated government actions that apply to intending immigrants seeking to enter the U.S. as lawful permanent residents ("LPRs"):

(a) the DOS January 2018 changes to the public charge provisions of its FAM, which governs consular processing (the "FAM Revisions") and which led to a twelve-fold increase in visa denials, largely of low-income, nonwhite immigrants;

(b) the DOS's October 11, 2019 Interim Final Rule, which changes the public charge regulations that apply at the point of consular processing (the "IFR"), and would require DOS to apply previously enjoined Department of Homeland Security (DHS) "public charge" criteria; and

(c) the October 4, 2019 "Presidential Proclamation Suspending the Entry of Immigrants Who Will Financially Burden the Health Care System" (the "Proclamation"), issued on October 4, 2019 (which would bar entry to any immigrant who cannot demonstrate the ability to obtain certain types of private health insurance within 30 days of arrival), in addition to subsequent agency actions to implement the Proclamation by DOS and the U.S. Department of Health and Human Services ("HHS") ("Proclamation Implementing Actions") (collectively, the "Consular Rules").

The impact lawsuit challenges the legality of, and seeks to enjoin (both preliminarily, and permanently) the Consular Rules as both unlawful and arbitrary and capricious under the Administrative Procedure Act (APA), as well as unconstitutional under Equal Protection, and in the case of the Presidential Proclamation, a violation of 8 U.S.C. 1182(f) and a violation of constitutional separation of powers.

#### 14. List case outcomes

If case remains open, highlight accomplishments (if any) achieved during the evaluation year.

NILC and co-counsel filed a Complaint on December 19, 2019, and as of February 27, 2020, are completing briefing on a Motion for Preliminary Injunctive Relief and an Opposition to Defendants' Motion to Dismiss, seeking to enjoin all three Consular Rules. Briefing on the motions is set to be argued on Friday, February 28, 2020 at 11:00 a.m. before Judge Daniels in the U.S. District Court for the Southern District of New York in Courtroom 11A. On behalf of Plaintiffs, NILC and co-counsel have asked the court to issue a preliminary injunction blocking nationwide implementation of the FAM Revisions, the IFR, and an unprecedented Presidential Proclamation that bars entry to immigrants who cannot demonstrate the ability to obtain certain private health insurance plans within 30 days of arrival or financial resources to pay for foreseeable medical costs.

The Proclamation claims, with no support, that new lawful permanent residents impose financial burdens on the health care system. No president has ever used the Immigration and Nationality Act's proclamation authority to impose new immigration requirements based on domestic policy goals. Our lawsuit alleges this, too, violates the public charge statute, which requires that the government evaluate immigrants based on a totality of circumstances, not just whether they can purchase expensive private health care plans.

#### 15. Describe any economic benefit(s) achieved (client award and/or costs averted)

If the case remains open, but there is an expected future economic benefit, describe the estimated benefit. Report the information you have available (e.g., estimated range). Do not extrapolate.

n/a

a. Enter economic  
benefit amount, if  
applicable:

#### 16. Total Staff Hours

Report total staff hours spent on this case in the evaluation year

85

#### 17. Total Volunteer Hours

Report total volunteer hours spent on this case in the evaluation year. Enter 0 if there were no volunteer hours.

0



Organization:	National Immigration Law Center
1. Case Name:	P.K. v. Pompeo (previously Tillerson)
2. Case Status:	Open
3. Court Name:	U.S. District Court for District of Columbia

4. Is this an IOLTA qualifying activity as defined by B&P 6213, State Bar Rule 3.672, and Eligibility Guideline 2.3?

If you answered no, reminder to deduct expenditures related to this non-qualifying activity in the next IOLTA/EAF grant application cycle.

Yes

4. Partner Organizations:

Partner Organizations
State Bar Grantees
Other Organizations

Jenner & Block  
ACLU Immigrant Rights Project  
American-Arab Antidiscrimination Committee

5.a. Support Centers Only: If this is an IOLTA qualifying activity, and no QLSP was listed as a partner organization, indicate how the activity is qualifying under B&P 6213.:	By addressing the civil rights issue underlying the case, our work extends to increase justice for families living in poverty.
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6. Counties Impacted

Check all that apply

Out of State

## 7. Substantive Area

Check all that apply

Immigration

## 8. Constituencies Impacted

Check all that apply

Children/Youth, Disaster Victims, Immigrants

## 9. Parties or Class Represented

Diversity visa applicants denied visas due to the Muslim Ban

a. If available, provide  
the estimated number  
of total people  
impacted:

## 10. Is named plaintiff(s) indigent?

This answer alone will not decide whether the activity is or is not a qualifying expense.

No

## 11. Explain how the majority of those impacted are indigent, as defined in B&P §6213(d)

If the majority of persons impacted are not indigent, type n/a.

Unknown as diversity visas are not income-based.

## 12. Describe the impact this case will have on indigent persons

If available, include the estimated number of total indigent persons impacted and how this was determined. If no impact on indigent persons, type n/a.

The case will permit family reunification, providing greater stability and income-earning ability for recipients.

### 13. Briefly describe the legal issue(s) of the case and the overall goal(s)

The case contends that the Department of State unlawfully denied diversity visas to people entitled to them relying upon the President's Muslim Ban. It also contends that the visa-issuance decision is not coterminous with the admissibility bar.

### 14. List case outcomes

If case remains open, highlight accomplishments (if any) achieved during the evaluation year.

Previously, the district court dismissed the case as moot, citing the end of the fiscal year for which the diversity visas were authorized. In 2019, the U.S. Court of Appeals for the D.C. Circuit reversed, holding that the case is not moot. The case has been returned to the District Court for further proceedings.

### 15. Describe any economic benefit(s) achieved (client award and/or costs averted)

If the case remains open, but there is an expected future economic benefit, describe the estimated benefit. Report the information you have available (e.g., estimated range). Do not extrapolate.

n/a

a. Enter economic benefit amount, if applicable:

### 16. Total Staff Hours

Report total staff hours spent on this case in the evaluation year

20

### 17. Total Volunteer Hours

Report total volunteer hours spent on this case in the evaluation year. Enter 0 if there were no volunteer hours.

0

Organization:	National Immigration Law Center
1. Case Name:	Zelaya v. Hammer
2. Case Status:	Open
3. Court Name:	Eastern District of Tennessee

4. Is this an IOLTA qualifying activity as defined by B&P 6213, State Bar Rule 3.672, and Eligibility Guideline 2.3?

If you answered no, reminder to deduct expenditures related to this non-qualifying activity in the next IOLTA/EAF grant application cycle.

Yes

4. Partner Organizations:

Partner Organizations
State Bar Grantees
Other Organizations

Southern Poverty Law Center  
Skadden Arps Slate Meagher & Flom, LLP  
Sherrard Row Voight & Harbison, PLC

5.a. Support Centers Only: If this is an IOLTA qualifying activity, and no QLSP was listed as a partner organization, indicate how the activity is qualifying under B&P 6213.:	By addressing the civil rights issue underlying the case, our work extends to increase justice for families living in poverty.
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6. Counties Impacted

Check all that apply

Out of State

## 7. Substantive Area

Check all that apply

Employment, Immigration

## 8. Constituencies Impacted

Check all that apply

Immigrants, Low Wage Workers, Rural

## 9. Parties or Class Represented

We represent 7 individual plaintiffs, two of which are putative class reps of a class consisting of all Latinos who were working at a meat plant in rural Tennessee when federal agents raided the plant, and detaining the Latino workforce, violating the workers' right to be free from unlawful discrimination, as well as search and seizure.

a. If available, provide the estimated number of total people impacted:

## 10. Is named plaintiff(s) indigent?

This answer alone will not decide whether the activity is or is not a qualifying expense.

Yes

## 11. Explain how the majority of those impacted are indigent, as defined in B&P §6213(d)

If the majority of persons impacted are not indigent, type n/a.

See below.

## 12. Describe the impact this case will have on indigent persons

If available, include the estimated number of total indigent persons impacted and how this was determined. If no impact on indigent persons, type n/a.

The workers we represent were low-income workers, many of whom were being exploited and underpaid by the meatpacking plant. Since the raid, most of these workers have been unable to find new jobs. According to Bureau of Labor and Statistics 2018 report, the annual mean wage for those working in the animal slaughtering and processing industry was \$28, 620.

### 13. Briefly describe the legal issue(s) of the case and the overall goal(s)

We are challenging the militaristic-style of the raid, and the violation of the workers' Fourth Amendments rights against unlawful searches and seizures. Additionally, we are challenging the discriminatory nature of the raid, since the federal officers seized only the Latino workers. We are also challenging the sufficiency of the warrant the agents used to get into the meatpacking plant, since it was issued only for the seizure of the company's documents.

### 14. List case outcomes

If case remains open, highlight accomplishments (if any) achieved during the evaluation year.

Case is still open. It was filed in February 2019.

### 15. Describe any economic benefit(s) achieved (client award and/or costs averted)

If the case remains open, but there is an expected future economic benefit, describe the estimated benefit. Report the information you have available (e.g., estimated range). Do not extrapolate.

We're seeking to hold the federal government accountable for violating the constitutional rights of low income immigrant workers, and to make it costly for them to continue engaging in work place raids like the one in Tennessee, which, at the time it happened, had been the largest raid in a decade.

a. Enter economic benefit amount, if applicable:

### 16. Total Staff Hours

Report total staff hours spent on this case in the evaluation year

17. Total Volunteer Hours

Report total volunteer hours spent on this case in the evaluation year. Enter 0 if there were no volunteer hours.

0