

LEGAL SERVICES TRUST FUND COMMISSION
RULES COMMITTEE MEETING
Meeting Summary and Action Items

Friday, March 6, 2020, 10:00 a.m. – 2:00 p.m.
State Bar of California, 180 Howard Street, San Francisco, CA
State Bar of California, 845 Figueroa Street, Los Angeles, CA

OPEN SESSION

The meeting was called to order at 10:03 a.m.

I. ROLL CALL

Attendance was confirmed by roll call:

Committee Members

Chair Amin Al-Sarraf (LA)
Corey N. Friedman (SF)
Zahirah Mann (LA)

State Bar Staff

Catherine Borgeson (SF)
Erica Carroll (LA)
Brady Dewar (SF)
Christine Holmes (SF)
Elizabeth Hom (SF)
Doan Nguyen (SF)

Advisors

Judge Brad Seligman (SF)

Liaisons

Salena Copeland (Legal Aid Association of California Liaison) (SF)

Public

Kevin Clune (Director of Strategic Partnerships, Legal Aid at Work) (telephone)
Guillermo Mayer (President and CEO, Public Advocates, Inc.) (telephone)

Quorum was confirmed. Legal Services Trust Fund Commission's Rules Committee (Committee)
Chair Al-Sarraf led the meeting.

II. CALL FOR PUBLIC COMMENT

Chair Al-Sarraf asked whether any member of the public wished to address the Committee. Kevin Clune and Guillermo Mayer announced themselves, and asked to speak on the preliminary discussions for the primary purpose requirement for qualified legal services projects (QLSPs), how to define civil legal services, how to define and demonstrate indigent clients. Their public comments were deferred until later in the meeting in order to comment

with relevant agenda items. No other member of the public requested an opportunity to address the Committee.

III. CONSENT

A. Approval of Meeting Summary and Actions Items from January 17, 2020 Meeting

The Committee made a motion to approve the meeting summary. Friedman moved and Chair Al-Sarraf seconded. The Committee adopted the resolution by roll call vote.

IV. DISCUSSION AND ACTION ITEMS

A. Discuss Timeline and Process to Codify Grant Administration Practices

Staff provided an overview of the revised codification process and the Committee work plan included in the meeting materials. The Committee determined at its meeting on January 17, 2020 to extend the timeline and restructure the codification process in an effort for greater consideration and incorporation of feedback from community stakeholders before developing recommendations to the Board of Trustees (Board). In response to the Committee's request to solicit community input, staff emailed an update on the codification process and circulated the Committee work plan to executive directors of IOLTA/EAF grantees and members of Legal Services Trust Fund Commission (Commission) to seek feedback.

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

Staff summarized the audit issues and recommendations as represented in the "Codification of Grant Administration Practices: Audit or Review of Financial Statements Requirement" memo dated November 15, 2019. Staff recapped that at the previous Committee meeting on January 17, 2020, the Committee made a motion to accept staff's recommendation in concept but did not approve the final language for the definition of independent certified public accountant, to exclude in-kind donated services for the purpose of determining whether an organization can submit a financial review in lieu of a financial audit, and to keep the threshold requiring an audited financial statement at \$500,000.

Staff presented the proposed final written amendments included in the meeting materials to State Bar Rule 3.680(E)(1), Schedule of Charges and Deadlines, Eligibility Guidelines for Qualified Legal Services Projects Section 2.7, General Grant Provisions 4.05, and the grant agreement template for consistency in language in the governing authorities. Friedman moved to accept the final written amendments to the language. Chair Al-Sarraf seconded. The motion

passed by unanimous roll call vote. The Committee's recommendation will need to be approved by the Commission and then sent out for formal public comments before the Board makes an ultimate determination.

E. Preliminary Discussion on the Primary Purpose Requirement for Legal Services Projects and Support Centers

As part of the codification process, subject matter and issues are first previewed at a Committee meeting to gather initial perspectives and collect any preliminary questions or comments to drive additional research for drafting recommendations. At this meeting, staff presented the three topics out of order from the agenda, starting with the crux of the IOLTA statute – previewing how to establish the primary purpose and function of a QLSP or as a support center. First discussing the primary purpose and function requirement will lay the foundation for the following agenda items of previewing how to define civil legal services and how to define and demonstrate that a program serves indigent clients.

Staff provided an overview of the primary purpose and function requirement for QLSPs, support centers, identifiable law school units, and for meeting primary purpose “by other means.” Staff highlighted the governing authorities (Business and Professions Code section 6213, State Bar Rule 3.671, Eligibility Guidelines for QLSPs 2.3.5, and Eligibility Guidelines for Support Centers 2.3), and summarized current office practices for presuming to meet the primary purpose and function requirement or elevating to the Eligibility and Budget Review Committee.

The IOLTA statute prescribes the method for distributing IOLTA and IOLTA-formula EAF funds to grantees 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). Qualifying expenditures are used to determine if applicants satisfy the primary purpose and function requirement. Activities found to be non-qualifying would need to be deducted in the organization's IOLTA and EAF grant application. A reduction in the amount of qualifying expenditures could result in reducing the allocation of funds to an organization.

Staff flagged policy considerations around the presumptions for satisfying the primary purpose and function requirement, specifically whether the 75 percent qualified expenditures presumption should be changed; if the practice of finding programs between 50 percent to 75 percent qualified expenditures eligible should be codified; whether applicants' budgets for previous fiscal and/or budgets for year seeking funding should be considered; and whether the Commission should retain discretion to find eligible by “other means.”

For codification next steps, a staff-led working group comprised of three Commissioners will draft a memo with recommendations and then share the memo with Legal Aid Association of California (LAAC) for community feedback. The working group will present the draft recommendation to the Committee on July 24, 2020 for an in-depth discussion. The Committee's recommendation will need to be approved by the Commission and then sent out for formal public comments before the Board makes an ultimate determination.

C. Preliminary Discussion on How to Define Civil Legal Services

Staff previewed the next topic for discussion on defining civil legal services, which impacts QLSPs. For support centers, "legal support services" as defined in State Bar Rule 3.672(B) will be grouped with the other support center discussions later in the codification process. Staff cited the governing authority for the QLSP primary purpose and function requirement, Business and Professions Code section 6213(a)(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.

Staff referenced the supporting governing authorities for defining civil legal services (Business and Professions Code section 6210, State Bar Rule 3.672, and Eligibility Guidelines for QLSPs 2.3.1), summarized the issues around defining civil legal services, and reported on office practices for presuming whether or not activities qualify as civil legal services.

The Committee discussed if "civil legal services" should include advocacy and policy work, Health Insurance Counseling and Advocacy Program (HICAP) and other counseling, and social services work. Historically, advocacy and 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 has been allowed as qualifying work.

Kevin Clune, Director of Strategic Partnerships with Legal Aid at Work (LAAW), made public comment regarding qualifying advocacy work and how much of the work LAAW engages in has a disproportional impact on indigent clients. Specifically, he referenced LAAW's participation in Governor Newsom's Paid Family Leave Task Force and related legislative activity on Senate Bill 135. LAAW sought to ensure that the needs of low-wage workers were taken into account as part of the task force's larger conversation about enacting enhancements to family supportive workplace policies.

Clune explained that while the impact of this advocacy work was exclusively intended for persons qualifying as indigent, it also benefited employees above the 125 percent federal poverty threshold. However, he argued that families with low incomes are disproportionately impacted as they are both the least likely to have access to employer-provided paid leave and also least likely to have savings to lean on during family emergencies. He also commented on the data challenges that this type of advocacy activity poses for demonstrating and reporting to the State Bar that the majority impacted were indigent clients, and therefore more likely to be counted as qualifying work. He stated programs want to know if work will qualify before accepting to take on a large case.

Staff reported that office practice has been that in order for non-legal programmatic support services to qualify, such as HICAP and other counseling and social services, it must tie directly to the legal services. Discussion continued on how the State Bar rule as written for defining civil legal services is narrower than how staff and the Commission have interpreted in past practice, and that specialized non-legal professionals trends with the holistic approach that legal services are moving towards. For 2019, 13 grantees reported having social worker staff and three grantees received HICAP funding.

President and CEO of Public Advocates Guillermo Mayer addressed the Committee through public comment in support of a broad definition of civil legal services for attorneys, law students, and paralegals to provide a wide range of services in both litigation and advocacy work. Mayer continued to make public comment on the challenges encountered with lacking data to demonstrate whether impact litigation and advocacy work primarily impacts indigent persons and providing a basis for reaching that conclusion. He flagged how using the threshold of one more than fifty percent proves problematic and onerous and should be discontinued because in some cases indigent persons are not the majority, yet the impact is disproportionately greater to low-income clients.

He used the example of Public Advocates work advocating at the state, local, and regional levels in partnership with grassroots groups representing low-income residents to promote legislation, policies, and investments that address transit equity for indigent and very-low income residents. He stated this advocacy disproportionately impacts indigent residents, especially seniors and the disabled, who depend on public transportation, not only to travel to work, but to access health care, education, legal services, recreation, and other essential needs, by increasing investments in transit operations, in particular bus service, and reducing transit fares. Mayer explained that the data on indigency either simply does not exist or has been hard to acquire and package in reporting to the State Bar, and that using proxies would be helpful.

For codification next steps, a staff-led working group comprised of two Commissioners will draft a memo with recommendations for defining civil legal services and then share the memo with Legal Aid Association of California (LAAC) for community feedback. The working group will present the draft recommendation to the Committee at a future meeting for an in-depth discussion. The Committee's recommendation will need to be approved by the Commission and then sent out for formal public comments before the Board makes an ultimate determination.

C. Preliminary Discussion on How to Define and Demonstrate Indigent Clients

Staff provided an overview of defining and demonstrating indigency. Staff referenced the governing authorities Business and Professions Code section 6213(d) and 6218 and Eligibility Guidelines for QLSPs 2.3.4 which defines "indigent person" as "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".

Staff summarized the issues around defining "indigent person," explaining that the different categories of "indigent person"— and application of some of the provisions of the statute — require clarification through a new State Bar Rule. Staff explained that programs with pro bono allocations may use higher income threshold as cited at Health and Safety Code section 50079.5, which varies county to county as is up to individual agencies that choose to use the guidelines as a threshold how to apply them.

Staff explained the issue for demonstrating indigency where the statute requires QLSPs and support centers to adopt financial eligibility guidelines for indigent persons, but there are no current State Bar Rules or guidelines for what constitutes income or how to determine household size. As a result, there are inconsistencies across organizations for income screening. For example, some organizations include benefits such as Social Security, while others do not. Staff presented for the Committee's consideration different ways income has been defined by relevant agencies and authorities.

Staff provided an overview of Impact Litigation and Advocacy Work (ILAW) and explained the issues with demonstrating indigency. ILAW are reports completed by all grantees that contain information about impact litigation, including class actions, and advocacy work they engaged in during the evaluation year, with the purpose to ensure organizations are engaging in qualified legal activities that benefit indigent persons in order to count as part of the organization's qualified expenditures. However, only the Eligibility Guidelines provide direction to programs on how to demonstrate that their ILAW is on behalf of/benefiting "indigent persons"; the statute does not specifically address this type of work, and there is no State Bar Rule, so the

guideline is based on the Commission and staff interpretation. Cases and advocacy work are elevated to the Commission when the work is not obviously legal services, or benefitting indigent persons, and/or there is insufficient supporting research or data. Categories previously found to meet indigency requirements by the Commission include work in affordable housing, low-income immigrants, public benefits, and education equity, using the free or reduced lunch as proxy.

For codification next steps, a staff-led working group comprised of three Commissioners will draft a memo with recommendations for defining and demonstrating indigency and then share the memo with Legal Aid Association of California (LAAC) for community feedback. The working group will present the draft recommendation to the Committee at a future meeting for an in-depth discussion. The Committee's recommendation will need to be approved by the Commission and then sent out for formal public comments before the Board makes an ultimate determination.

At the conclusion of the presentation and discussion, and there being no other business, the meeting was adjourned at 2:00 p.m.