



# The State Bar *of California*

## OFFICE OF ACCESS & INCLUSION

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Date: February 12, 2021

To: Members, Executive Committee of the Legal Services Trust Fund Commission

From: Chris McConkey, Senior Program Analyst

Subject: Selection Criteria and Other Parameters for the 2021-2022 Provisionally Licensed Lawyers (PLL) Grants

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### EXECUTIVE SUMMARY

On September 30, 2020, Governor Gavin Newsom signed Assembly Bill 3362 (AB 3362). AB 3362 amends Section 6140.03 of the California Business and Professions Code to increase by five dollars the contribution collected as part of the attorneys' annual license fee to support IOLTA funded organizations. According to the new law, the additional five dollars "shall be allocated to qualified legal services projects or qualified support centers...to hire law school graduates with a temporary provisional license issued by the State Bar."<sup>1</sup>

AB 3362 specifies that grants to hire provisionally licensed lawyers (PLLs) shall be competitive awards and gives the Legal Services Trust Fund Commission (Commission), in consultation with the State Bar Board of Trustees, authority to set grantmaking priorities. The State Bar must use the Interest on Lawyers' Trust Accounts (IOLTA) funding formula to reallocate to QLSPs and support centers any funds that remain after the Provisional Licensure Program ends on June 1, 2022.<sup>2</sup>

This memo recommends to the Commission's Executive Committee (Committee) selection criteria and other parameters for administering these competitive awards, which will also be brought to the Board of Trustees for their consideration. After consulting with the Committee, staff will present the criteria to the Board of Trustees Executive Committee for approval. Underlying this memo's recommendations is the goal of balancing flexibility for California's QLSPs, support centers, and PLLs with ensuring compliance with AB 3362's language and protecting the public.

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<sup>1</sup> California Business and Professions Code Section 6140.03(b)(1). Note that attorneys may "opt out" of making this contribution.

<sup>2</sup> California Business and Professions Code Section 6140.03(b)(2)-(4). The IOLTA funding formula is in California Business and Professions Code Section 6216.

## BACKGROUND

The Legislature has for several years authorized a \$40 contribution as part of lawyers' annual licensing fees for the support of legal services. Attorneys are permitted to "opt out" of paying this \$40. The Legislature has increased the amount of this opt-out by five dollars for 2021 and 2022 licensing fees to fund competitive grants for QLSPs and support centers to hire participants in the State Bar's Provisional Licensure Program. Any funds left over when the Provisional Licensure Program lapses on June 1, 2022 will go to QLSPs and supports centers via the IOLTA funding formula.<sup>3</sup>

The California Supreme Court authorized the Provisional Licensure Program in response to the extraordinary disruptions to law students of the COVID-19 pandemic. Starting on November 17, 2020, the Program allows 2020 law school graduates, as defined, to practice law before passing the California Bar Exam.<sup>4</sup> Participants must satisfy other requirements to practice in California and have a regularly-licensed attorney supervise and take responsibility for their work.<sup>5</sup> As of January 11, 2021, 1,200 people had applied to be PLLs in California. The State Bar had approved 621 as of that date, though many are expected to be terminated from the program, having passed the October 2020 bar exam. As of January 11, the State Bar had denied only twenty-seven applicants.

On December 15, 2020, the Commission delegated authority to staff to create, in consultation with the Committee, the application and selection criteria for the PLL grants arising under AB 3362. In that same meeting, the Commission also delegated authority to staff to review and approve PLL grant applications in consultation with the Committee.<sup>6</sup> Both resolutions reflect that the Commission and staff expect that the PLL grant process will need to move quickly. Staff propose to make awards by June 1, 2021, at least one year before the Provisional Licensure Program expires. While grant-funded PLLs would need to partner with their host organization before applying for licensure, the State Bar can review PLL applications quickly.

In accordance with the Commission's December 15 resolutions, this memo invites the Committee's feedback at its February 12 meeting about the PLL grant selection criteria and other parameters. After the Committee provides its feedback, staff will present the criteria to the Board of Trustees in late February or early March. Staff are moving quickly to ensure that it can post the application shortly after Board approval. This will maximize the time available to QLSPs and support centers to seek PLL candidates and apply for funds.

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<sup>3</sup> California Business and Professions Code Section 6140.03(b)-(d). The statute further instructs that the entire five-dollar increase from each licensee who contributes must go to QLSPs and support centers without any deductions for State Bar costs. *Id.*

<sup>4</sup> On January 8, 2021, the Board of Trustees Executive Committee voted to send a proposed rule of court to the Supreme Court that would expand eligibility for the Provisional Licensure Program. The Program currently serves those who graduated from law school in 2020. The new rule would include those who scored a 1390 or higher on the Bar Exam between July 2015 and February 2020.

<sup>5</sup> Additional information about the Provisional Licensure Program is available at <https://www.calbar.ca.gov/Admissions/Special-Admissions/Provisionally-Licensed-Lawyers>.

<sup>6</sup> The resolution qualifies, however, that "[i]f there are significantly more funds or grant applications than anticipated, the Executive Committee may recommend the Commission reconvene to approve a different approach."

## DISCUSSION

### Grant Timeline

Staff recommend an award period of January 1, 2021, the date that AB 3362 became operative, to June 1, 2022, the date that the Provisional Licensure Program expires. AB 3362 requires the State Bar to reallocate using the IOLTA formula any funding that remains after the Provisional Licensure Program ends. This seventeen-month award period would maximize compensation to PLLs and support to programs. It would achieve this by allowing grantees to count their payments to PLLs retroactive to the law's effective date and to budget for the longest possible award. Additionally, this approach conserves administrative resources by distributing funding from two fee statements—that in 2021 and in 2022—in a single award cycle. Staff recommend setting a deadline of July 1, 2021—or at least one month after announcing awards—for successful grantees to hire a PLL. If a grantee has yet to hire by that date, then it would need to return its award so that staff can reallocate the funding to another applicant. Any funds left over when the Provisional Licensure Program terminates on June 1, 2022 will go to QLSPs and supports centers via the IOLTA funding formula.<sup>7</sup>

#### Proposed Timeline

| Date(s)                   | Activity   |
|---------------------------|--|
| February 12, 2021         | (Staff) Consult with the LSTFC Executive Committee       |
| Late February/early March | (Staff) Seek approval from the Board                     |
| March 1, 2021             | (Staff) Circulate the request for proposals              |
| March 15, 2021            | (Staff) Release the application in SmartSimple           |
| April 16, 2021            | (Applicants) Submit applications in SmartSimple          |
| April 17-30, 2021         | (Staff) Review and score applications                    |
| May 1-15, 2021            | (Committee) Approves grantees                            |
| May 17, 2021              | (Staff) Notify applicants about awards                   |
| July 1, 2021              | Deadline to hire a PLL or return funds                   |
| June 1, 2022              | Grant period ends, triggering the return of unused funds |

### Revenue Projections and Award Amounts

The number and size of awards will depend on how much the State Bar collects from the five-dollar increase during the 2021 and 2022 fee cycles. This in turn depends on how many State Bar licensees opt out of that contribution. As of January 28, staff project about \$552,000 from 2021's five-dollar increase. For 2022 fees, staff conservatively project \$500,000 from the five-dollar increase.

Staff recommend inviting applicants to submit a budget for their expenses to hire a PLL between January 1, 2021, when AB 3362 takes effect, and June 1, 2022, when the law requires staff to reallocate unspent

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<sup>7</sup> California Business and Professions Code Section 6140.03(b)(4).

funds. This seventeen-month award period would bridge two State Bar fee cycles, requiring staff to make awards using the known total for 2021 contributions and projected total for 2022 contributions. Applicants would need to acknowledge that the State Bar will have to adjust proportionally their final award amount to reflect the actual contributions for 2022. Conservatively projecting next year's donations, however, should minimize the risk of having to decrease awards. Licensees typically must pay their statements by February 1 of each year. Therefore, the alternative of waiting until the State Bar has identified the total contributions for 2022 to make a second-round of grants would leave just four months to administer the substantial amount of funding that staff project for next year.

While applicants can propose their own budget, staff recommend making grants of at least \$50,000 so that grantees can hire a full-time PLL for at least one year. Grants of at least \$50,000 will help organizations meet the salary floor for exempt employees over twelve months.<sup>8</sup> The salary floor for exempt employees is twice the state's minimum wage. In 2021, exempt employees in California who work a forty-hour week must earn a minimum annualized salary of \$54,080 at organizations with twenty-five or fewer employees and \$58,240 at organizations with twenty-six or more employees.

### **Required Contribution from Host Organizations**

Successful applicants will likely have to contribute some funding to compensate a full-time PLL. Organizations will need to commit to compensating their PLL with the salary and benefits commensurate to entry-level lawyers at their organization (please see the section on "Required Assurances", *infra*). Organizations with a salary scale, for instance, will need to apply that scale to identify the PLL's salary. The purpose of this requirement is to ensure adequate compensation for PLLs and avoid the inequities that might arise if the State Bar instead set a statewide rate of pay for PLLs whose positions receive these grants. For instance, inequities could occur if a statewide rate resulted in a PLL earning significantly more or less than the PLL's peers at the same organization. Other major funders, such as Equal Justice Works, adopt a similar approach to setting compensation for postgraduate fellows.<sup>9</sup>

Nonprofits often budget eighteen to twenty-five percent of a staff member's salary to cover payroll taxes and fringe depending on the generosity of benefits. At the exempt salary floor of \$54,080, full personnel costs could range from about \$63,800 to about \$67,600. With an award of exactly \$50,000—the proposed minimum—an organization's contribution to a PLL's total compensation over a one-year period could therefore cost about \$13,800 to \$17,600. Structuring awards so that grantees participate financially increases the probability that the organization can afford to keep the PLL on staff after the grant ends since they would already be budgeting for some of the PLL's compensation.

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<sup>8</sup> Most PLLs will classify as exempt employees under the Learned Professional Exemption. 29 CFR § 541.301.

<sup>9</sup> In their guide for host organizations, Equal Justice Works states, "Equal Justice Works will provide up to \$50,000 toward the Fellow's salary per year for the duration of the project. If similarly experienced lawyers on your staff earn more than \$50,000 per year, your organization must make up the difference. Additionally, the organization must provide the Fellow with health insurance and any fringe benefits available to full-time staff members." *Fellowship Host Organization Guide*, Equal Justice Works, available at <https://www.equaljusticeworks.org/wp-content/uploads/2020/03/EJW-host-guide-2020-03.20.20.pdf>. (p. 8).

## **Statutory Eligibility Requirements**

AB 3362 instructs that only QLSPs and support centers “as defined in [California Business and Professions Code] Section 6213” may receive a PLL grant.<sup>10</sup> This means that only current QLSPs and support centers may qualify for an award. Staff recommend interpreting AB’s 3362’s language to allow as many current QLSPs, support centers, and PLLs as possible to qualify within the definition of “to hire”.<sup>11</sup> Staff propose to interpret the hiring of PLLs as encompassing the employment of any PLL who: previously left the organization and would be returning under the grant, previously volunteered for the organization, works for the organization as an external contractor, or is otherwise not currently an employee of the host organization. The Committee might also consider allowing an organization to keep on staff a full-time, paid PLL whose position would otherwise end due to lack of funding unless they received a grant. This broad interpretation is consistent with dictionary definitions of “hire”, which go further than the act of hiring a new individual and can refer to continued employment, as well as the intent of AB 3362 to provide funding for the employment of PLLs in legal aid.

Adopting a broad, albeit semantically sound, definition of “to hire” will avoid penalizing PLLs or organizations that have worked together before. To support AB 3362’s intent to create positions for PLLs, however, staff recommend safeguarding against the return of unused funds by limiting grants to hiring only full-time PLLs. Hiring part-time PLLs, by contrast, risks underspending awards and PLLs disqualifying for benefits under host organizations’ policies.

With respect to allowable costs, staff recommend that funds pay for only the salaries, payroll taxes, and benefits of PLL hires. Although some organizations might experience an increase in non-personnel costs associated with hiring a PLL such as those for advertising the position, purchasing the PLL a computer, and training the PLL, staff expect these costs to be manageable for most organizations. Limiting grant funds to PLL salaries, payroll taxes, and benefits would adhere to the statute’s “to hire” restriction and promote reasonable compensation for PLLs.

## **Selection Criteria**

Unlike other discretionary awards that the State Bar administers, AB 3362 does not limit PLL grants to averting or redressing specific legal harms. Instead, the statute states that “The Legal Services Trust Fund Commission in consultation with the board of trustees may create priorities for allocating the competitive grants.”<sup>12</sup> Staff recommend that the Committee approve selection criteria that will direct awards toward those applicants best equipped to support their PLL on a compelling project, thereby maximizing the PLL’s access-to-civil-justice contribution and retention while protecting consumers.

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<sup>10</sup> California Business and Professions Code Section 6140.03(b)(1). Section 6213 defines “qualified legal services project” and “qualified support center” for establishing an applicant’s eligibility for an IOLTA award. California Business and Professions Code Section 6213(a)-(b).

<sup>11</sup> California Business and Professions Code Section 6140.03(b)(1).

<sup>12</sup> California Business and Professions Code Section 6140.03(b)(3).

Staff recommend looking at the organization's ability and plans to recruit, engage, train, supervise, and mentor its PLL in projects that fall within the host's existing expertise. Staff propose that a successful response to the request for proposals persuasively and in detail describe:

1. How the organization will leverage the legal knowledge, skills, and licensure status of the PLL on a highly active or compelling QLSP or support center project;
2. How the organization will train, mentor, and otherwise develop the PLL who might have to onboard and work remotely due to the COVID-19 pandemic;
3. How the organization will protect the experiences of both its clients and the PLL through quality assurance safeguards for the PLL's legal work; and
4. How the organization will support—or, if the organization has already selected a PLL, supported—PLL engagement and retention through a process to locate, evaluate, and select strong PLL candidates.

Criterion One seeks information about how the organization will make the highest use of its PLL to help ameliorate the civil justice gap. Criterion Two emphasizes onboarding, professional development, mentorship, and other developmental support for the PLL to maximize the PLL's value to and experience at the organization. Criterion Three prioritizes oversight to protect consumers considering that the PLL will have yet to pass the Bar Exam and might have to start work remotely. And Criterion Four seeks to ensure that host organizations can or did select an enthusiastic and qualified candidate, thereby increasing the chances of retaining the PLL and spending down the grant.

To maximize the funding that goes to compensating PLLs, staff recommend granting special consideration to organizations that have selected a PLL candidate by the time they apply. The Committee might also want to give special consideration to those organizations that would focus their PLL on a pressing access-to-justice crisis. Staff recommend granting special consideration to those projects that would focus their PLL on the legal issues facing those:

- Suffering due to COVID-19;
- Suffering due to natural disasters; and/or
- Residing in rural areas.<sup>13</sup>

Staff propose the scoring rubric below, which is based on the Partnership Grant rubric in concept as of December 15, 2020. This rubric is shorter than those for the Partnership and Homelessness Prevention Grants. This is because staff also propose to streamline the PLL grant application given the short timeline for organizations to apply and for staff to review submissions. The four categories below would track approximately four prompts in the application.

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<sup>13</sup> *The California Justice Gap: Measuring the Unmet Civil Legal Needs of Californians*, State Bar of California, November 2019, available at: <http://www.calbar.ca.gov/Access-to-Justice/Initiatives/California-Justice-Gap-Study>.

| Category   | Below Expectations | Meets Expectations | Exceeds Expectations |
|--|--------------------|--------------------|----------------------|
| <b>Impact:</b> Applicant envisions compelling legal work that will leverage the PLL's knowledge and skills as a provisionally licensed lawyer within realistic expectations. |                    |                    |                      |
| <b>Support:</b> Applicant describes a thoughtful plan to provide onboarding, training, and mentorship to the PLL for work that is within the organization's expertise.       |                    |                    |                      |
| <b>Safeguards:</b> Applicant articulates robust supervision and other quality assurance measures to protect the experiences of both its clients and the PLL.                 |                    |                    |                      |
| <b>Recruitment:</b> Applicant lists thoughtful steps to select a motivated and qualified candidate (even if it has already selected a qualified candidate).                  |                    |                    |                      |
| <b>Number of check marks</b>   | <b>X10 points</b>  | <b>X15 points</b>  | <b>X20 points</b>    |
| <b>Total points</b>  |                    |                    |                      |

In their budget narrative, organizations will need to estimate the total costs—salary, benefits, and payroll taxes—of hiring a fulltime PLL. Applicants can include costs between January 1, 2021 and June 1, 2022. Additionally, they will need to explain how they arrived at the PLL's rate of pay in accordance with their existing policies and list the benefits that the PLL will receive.

### Reporting Requirements

Documenting how grantees effectively use statutory funds critically supports their existence in the future. Grantees will have to file regular financial reports and describe the types of cases or matters on which the PLL worked, including notable outcomes.

#### Financial Reporting

Organizations that receive a PLL grant will have to submit an interim and final financial report for their payments to PLLs. To ensure compliance with the authorizing statute, the State Bar would reserve the right to require proof, at any time, of the amount, timing, and nature of payments towards PLL salaries, payroll taxes, and benefits. Proof might include paystubs, third-party payroll processor reports, benefits invoices, etc. that show the organization's payments for its PLL's work during the grant period.

#### Evaluation

At the end of the grant period, organizations must submit a report describing the contributions of its grant funded PLL to the organization's services. The report will likely seek information about the following topics, among others:

- The scope of work that the PLL performed during the grant period, including the PLL's greatest accomplishments;

- The effect that the PLL's work had on the organization's services to QLSPs or very low-income Californians, especially notable case outcomes;
- The organization's and PLL's experiences during the award period; and
- Whether the organization plans to keep the PLL on staff.

### **Required Assurances and Documents**

Staff propose to require several assurances from applicants as a condition to receiving an award. Organizations will need to attest that they would use PLL grant funds for only those purposes that the authorizing statute contemplates, follow all applicable employment laws, and abide by the Provisional Licensure Program's requirements for supervising PLLs. To ensure that the State Bar can comply with AB 3362's requirement that it redistribute unspent funds after the Provisional Licensure Program ends, applicants will also have to agree to return their left-over funds by July 1, 2022. For the full list of assurances, please see the attached request for proposals.

At the time of application, organizations will need to submit the:

- Signed grant assurances;
- PLL's resume (if available); and
- Written policy, such as a salary scale, that they used to determine the PLL's compensation in the budget narrative (if available).

Before July 1, 2021, organizations will need to submit:

- A copy of the signed declaration form that the PLL submitted in its application for provisional licensure showing that the grantee is supervising the PLL;
- Proof that the Provisional Licensure Program has accepted the PLL; and
- The organization's written offer of employment to the PLL, which the PLL has accepted.

### **CONCLUSION**

Through its PLL grants for QLSPs and support centers, AB 3362 seeks to increase free civil legal services to low-income Californians while supporting PLLs and cultivating a desire to work in the public interest. The competitive nature of these funds offers the opportunity to ensure that they reach organizations that will provide thoughtful vision and rigorous support to PLLs who will perform compelling, attorney-level work. This memo describes selection criteria and other parameters to accomplish those goals. Staff seek and value the Committee's feedback about these recommendations at its upcoming meeting on February 12, 2021.

### **ATTACHMENTS**

- A. PLL Grant Request for Proposals





# The State Bar of California

## 2021-2022 Provisionally Licensed Lawyers ("PLL") Grant Request for Proposals

### Background

On September 30, 2020, Governor Gavin Newsom signed Assembly Bill 3362 (AB 3362). AB 3362 amends Section 6140.03 of the California Business and Professions Code to increase by five dollars the opt-out donation to qualified legal services projects (QLSPs) and support centers on attorneys' annual license fee statements. According to the legislation, the additional five dollars "shall be allocated to qualified legal services projects or qualified support centers...to hire law school graduates with a temporary provisional license issued by the State Bar." The statute instructs that the entire five-dollar increase from each licensee who contributes must go to QLSPs and support centers without any deductions for State Bar costs.

AB 3362 specifies that these grants to hire Provisionally Licensed Lawyers (PLLs) shall be competitive awards and gives the Legal Services Trust Fund Commission, in consultation with the State Bar Board of Trustees, authority to set grantmaking priorities. Any funds remaining after the State Bar's Provisional Licensure Program ends must be reallocated to QLSPs and support centers through the statutory Interest on Lawyers' Trust Accounts formula in California Business and Professions Code Section 6216. The Provisional Licensure Program will end on June 1, 2022. The following is an excerpt of AB 3362's relevant language:

Section 6140.03 of the Business and Professions Code is amended to read:

6140.03.

(a) The board shall increase each of the annual license fees fixed by Sections 6140 and 6141 by an additional forty-five dollars (\$45), to be allocated only for the purposes established pursuant to subdivision (b) and Section 6033, except to the extent that a licensee elects not to support those activities.

(b) (1) Five dollars (\$5) of the forty-five-dollar (\$45) fee shall be allocated to qualified legal services projects or qualified support centers as defined in Section 6213 to hire law school graduates with a temporary provisional license issued by the State Bar. The State Bar shall not make any deductions from the five dollars (\$5) for any reason, including, but not limited to, administrative fees, costs, or expenses by the State Bar.

(2) Funds shall be allocated pursuant to a competitive grant process and not through the formula set forth in Section 6216.

(3) The Legal Services Trust Fund Commission in consultation with the board of trustees may create priorities for allocating the competitive grants.

(4) Any funds allocated under paragraph (1) remaining after the termination of the temporary provisional license program shall be reallocated only for the purposes established pursuant to Section 6033.

(c) The invoice provided to licensees for payment of the annual license fee shall provide each licensee the option of deducting forty-five dollars (\$45) from the annual license fee if the licensee elects not to have this amount allocated for the purposes established pursuant to Section 6033.

(d) This section shall remain in effect only until January 1, 2023, and as of that date is repealed.

Although this amendment to Section 6140.03 is effective until January 1, 2023, the State Bar's Provisional Licensure Program will end on June 1, 2022. Thus, the Legal Services Trust Fund Commission and State Bar staff must reallocate any funds left over as of that date.

### **Eligibility**

AB 3362 specifies that only current California QLSPs and support centers—those “defined in [California Business and Professions Code] Section 6213”—may receive a competitive PLL grant. Interested organizations must submit their grant proposal via the State Bar's grants management platform, SmartSimple, by **April 16, 2021 at 5 PM**.

### **Award Information**

The number and size of awards will depend on how much the State Bar collects from the five-dollar increase during the 2021 and 2022 fee cycles. This in turn depends on how many State Bar licensees opt out of that contribution. As of January 28, the State Bar projects about \$552,000 from 2021's five-dollar increase.

Applicants may submit a budget for their expenses to hire a PLL between January 1, 2021, when AB 3362 takes effect, and June 1, 2022, when the law requires the State Bar to reallocate unspent funds. This seventeen-month award period bridges two State Bar fee cycles, requiring the Bar to make awards using the known total for 2021 contributions and a projected total for 2022 contributions. Applicants will need to acknowledge that the State Bar will have to adjust proportionally their final award amount to reflect the actual, to-be-determined contributions for 2022. **Conservatively projecting next year's**

**donations will lower—but not eliminate—the risk of having to decrease awards during the grant period.**

Since California Business and Professions Code Section 6140.03(b)(4) requires reallocating leftover funds after the Provisional Licensure Program sunsets, grantees will have to return any unused portion of their award shortly after June 1, 2022. Extensions will be unavailable. To mitigate challenges with returning funds, grant payments will likely arrive in two or more installments during the one-year grant period and State Bar staff will monitor spend down via multiple financial reports.

### **Required Contribution from the Host Organization**

Please note that successful applicants might have to contribute some funding to compensate a full-time PLL. The State Bar will require grantees to set their PLL's salary and benefits in accordance with their existing organizational policies and practices. As an example, if a grantee's salary scale sets a first-year attorney's salary at \$60,000, then the grantee will need to pay the PLL the \$60,000 salary plus benefits, even if the grant is less than the total.

Example: An organization that sets first-year attorney salaries at \$60,000 might find that it spends about twenty-two percent of that salary on the same position's payroll taxes and benefits. The full cost of the position, therefore, would run about \$73,200. If the organization's PLL award were exactly \$50,000, then the organization's contribution to the PLL's compensation would be about \$23,200.

### **Selection Criteria**

Unlike other discretionary awards that the State Bar administers to QLSPs and support centers, AB 3362 does not limit PLL grants to averting or redressing specific legal harms. The Legal Services Trust Fund Commission, in consultation with the Board of Trustees, has therefore set selection criteria that will support PLLs in reaching their full potential to serve clients safely. This includes looking at the organization's ability and plan to recruit, train, guide, supervise, and mentor its PLL in projects that fall within its existing experience and expertise.

A successful response to the RFP will persuasively and in detail describe:

- How the organization will leverage the legal knowledge, skills, and licensure status of the PLL on a highly active or compelling QLSP or support center project;
- How the organization will train, mentor, and otherwise develop the PLL who might have to onboard and work remotely due to the COVID-19 pandemic;
- How the organization will protect the experiences of both its clients and the PLL through quality assurance safeguards for the PLL's legal work; and

- How the organization will support—or, if the organization has already selected a PLL, supported—PLL engagement and retention through a process to locate, evaluate, and select strong PLL candidates.

Organizations are welcome to choose any of their QLSP or legal support center services for a PLL's proposed scope of work. In its ongoing commitment to helping address our state's most pressing access-to-justice crises, the Legal Services Trust Fund Commission might allow special consideration for projects that focus on confronting the legal issues facing those:

- Suffering due to COVID-19;
- Suffering due to natural disasters; and/or
- Residing in rural areas.

To maximize funding to compensate PLLs, the State Bar may grant special consideration to organizations that have selected a PLL with whom to work by the time that the organization applies for funding.

Staff will use the following scoring rubric to evaluate proposals:

| Category   | Below Expectations | Meets Expectations | Exceeds Expectations |
|--|--------------------|--------------------|----------------------|
| <b>Impact:</b> Applicant envisions compelling legal work that will leverage the PLL's knowledge and skills as a provisionally licensed lawyer within realistic expectations. |                    |                    |                      |
| <b>Support:</b> Applicant describes a thoughtful plan to provide onboarding, training, and mentorship to the PLL for work that is within the organization's expertise.       |                    |                    |                      |
| <b>Safeguards:</b> Applicant articulates robust supervision and other quality assurance measures to protect the experiences of both its clients and the PLL.                 |                    |                    |                      |
| <b>Recruitment:</b> Applicant lists thoughtful steps to select a motivated and qualified candidate (even if it has already selected a qualified candidate).                  |                    |                    |                      |
| <b>Number of check marks</b>   | <b>X10 points</b>  | <b>X15 points</b>  | <b>X20 points</b>    |
| <b>Total points</b>  |                    |                    |                      |

PLL Grant award decisions are within the sole discretion of the State Bar and will be final. There is no appeals process.

## Grant Parameters

The legislation requires that organizations use these grants “to hire law school graduates with a temporary provisional license issued by the State Bar.” To maximize flexibility for programs and PLLs while complying with the language of the statute, the State Bar has interpreted “to hire” to include employing a PLL who: previously left the organization and would be returning under the grant, previously volunteered for the organization, works for the organization as an external contractor, or is otherwise not currently an employee of the host organization.

To ensure compliance with the statute’s emphasis on hiring and to support a fair compensation for PLL staff, grant funds may be used for only PLL salaries, payroll taxes, and benefits. All other costs associated with the PLL’s work, such as professional development and supplies, must come from other funds.

## Application Questions

The Legal Services Trust Fund Commission and State Bar have sought to streamline the application for PLL grants so that it can make awards on a one-year timeline with an end date aligning with that in the statute. The application asks for the following information:

Prompt 1. Please describe in detail the legal work that the PLL would perform over the grant period (from January 1, 2021 to June 1, 2022). If the PLL already works with your organization, this can be the same work that the PLL performs now. In your response, please describe the types of cases with which the PLL will be assisting and the PLL’s role in those cases, noting how you intend to leverage their provisional license to its full advantage. Consider describing the community or communities—geographic, demographic, linguistic, etc.—on which the PLL will focus their legal work. Finally, please note what makes this PLL particularly qualified to perform this work.

Prompt 2. Since PLLs have yet to pass the Bar Exam and might be starting work remotely, it is imperative that grantees be able to provide robust supervision and other support to their PLL. The State Bar, therefore, will give strong preference to applicants that can establish the ability to guide and monitor their PLL’s work.

Prompt 2.a. Please describe your organization’s experience and expertise in the PLL’s proposed projects—the interventions themselves (e.g. clinics vs. litigation), the areas of law, and the communities they serve. Who will oversee the PLL and what is their experience with the project and supervising others?

Prompt 2.b. Please describe with specificity the substantive law, legal skills, and other (e.g. diversity, equity, and inclusion, trauma-informed care, and cultural humility) trainings that the PLL will receive. Please note whether trainings are usually in-house or external and who will

provide them. Please note the other supports (e.g. access to legal templates and commercial research databases) that you will provide to the PLL to assist them in their work.

Prompt 2.c. Please describe in detail how you will safeguard the quality of your PLL's services to clients as well as the PLL's own experience at the organization. How will the PLL onboard, receive trainings, meet with their supervisor, and collaborate with other staff? What steps will the supervisor take to ensure that the PLL provides safe, effective, and sensitive legal services to clients? Finally, please describe how you will accomplish these goals if the PLL must start and work remotely due to the COVID-19 pandemic.

Prompt 3. Please describe how you recruited or will recruit your PLL by one month into the grant period (by July 1, 2021). How do you screen for motivated and qualified candidates? Please note whether/how your evaluation criteria relate to the proposed project.

Budget narrative prompt: Please estimate the total costs—salary, benefits, and payroll taxes—of hiring a fulltime PLL. You may include costs between January 1, 2021, when AB 3362 took effect, and June 1, 2022, when the Provisional Licensure Program ends. Additionally, please explain how you arrived at the PLL's rate of pay in accordance with your existing policies and list the benefits that the PLL will receive.

### Requirements/Next Steps

| Estimated Dates | Activity   |
|-----------------|--|
| March 15, 2021  | Release application in SmartSimple                   |
| April 16, 2021  | Deadline to submit RFP applications in SmartSimple   |
| May 17, 2021    | Notify applicants about awards                       |
| July 1, 2021    | Deadline to hire a PLL or return funds               |
| June 1, 2022    | End of grant period, triggers return of unused funds |

### Reporting Requirements

Documenting how grantees effectively use statutory funds critically supports their existence in the future. Grantees will have to file regular financial reports and describe the types of cases on which the PLL worked, including notable outcomes.

#### Financial Reporting

Organizations that receive a PLL grant will have to submit interim and final financial reports for their payments to PLLs. To ensure compliance with the authorizing statute, the State Bar reserves the right to require proof, at any time, of the amount, timing, and nature of payments towards PLL salaries, payroll taxes, and benefits. Proof might include paystubs, third-party payroll processor reports, benefits

invoices, etc. that show the organization's payments for its PLL's work during the grant period.

If an organization reports for its PLL grant its costs for a PLL's salary/wages, payroll taxes, or benefits, it must then exclude those expenses from other State Bar financial reports. That is, organizations must avoid double counting their spending to hire PLLs except to the extent that a PLL's compensation exceeded the amount of the PLL grant award.

### Evaluation

At the end of the grant period, organizations must submit a report describing the contributions of its grant-funded PLL to the organization's services. The report will likely seek information about the following topics, among others:

- The scope of work that the PLL performed during the grant period, including the PLL's greatest accomplishments;
- The effect that the PLL's work had on the organization's services to QLSPs or very low-income Californians, especially notable case outcomes;
- The organization's and PLL's experiences during the award period; and
- Whether the organization plans to keep the PLL on staff.

### **Required Project Assurances:**

Applicants must agree to:

1. Use the funds only "to hire law school graduates with a temporary provisional license issued by the State Bar." California Business and Professions Code Section 6140.03(b)(1).
2. Return any unused PLL Grant funds within 30 days of the end of the award period (by July 1, 2022).
3. Let the State Bar adjust—increase or decrease—their total award for January 1, 2021-June 1, 2022 to reflect the total funding that becomes available for PLL grants from the 2022 license fee statement. Grantees would likely see the increase or decrease in their final PLL Grant payment. This assurance is necessary because licensees typically have until February 1 to pay their annual fees to the State Bar. State Bar staff, therefore, will probably know the total contributions for 2022 only after February 1, 2022. The State Bar will make seventeen-month awards using the known amounts for 2021 and a conservative projection for 2022. To the extent that 2022 funding is higher or lower than the State Bar's initial projections, the Bar will distribute the increase or decrease across all grantees proportionally after February 1, 2022.

4. File all required reports. Upon request, submit proof (e.g. paystubs, a third-party payroll processor's report, benefits invoices, etc.) of the timing, amounts, and nature of all qualifying payments to compensate PLLs for their work during the award period.
5. Immediately notify the State Bar if the grant-funded PLL leaves the organization before it has finished spending down its award. Grantees that are unable to hire a PLL by July 1, 2021 and within 30 days of a PLL leaving early, must return their unused funds unless the State Bar, in its sole discretion, makes an exception.
6. Abide by its own current personnel policies, collective bargaining agreements, and salary scales in setting the PLL's compensation. This means that organizations must compensate their grant-funded PLL at the organization's rate of pay for entry-level attorneys, as well as offer to them the same benefits. If a conflict arises between the organization's policies and these assurances, the PLL Grant Agreement, the PLL Licensure Program's requirements, or any legal requirements that operate on the organization, then the organization's policies must give way to those other provisions.
7. Comply with all State Bar Provisional Licensure Program requirements. The PLL's attorney supervisor(s) must meet regularly with the PLL to ensure attentive onboarding, training, case reviews, and mentorship.
8. Make available to the PLL resources that are similar to those it provides to its other attorneys such as a space to work, computer hardware, computer software, furniture, supplies, telecommunications, online services, etc. If the organization has temporarily closed its offices due to the COVID-19 pandemic, then agree to make available to the PLL work-from-home resources like those it provides to other attorneys on staff.
9. Strive to offer the same alternatives, if any, to in-office or in-person work during the COVID-19 pandemic that it generally provides to other attorney staff members. Additionally, communicate to the PLL its expectations for in-person vs. remote work due to the pandemic prior to the PLL accepting the position. If the PLL already works with the organization, then agree to revisit these expectations upon accepting an award.
10. With respect to the PLL only, waive any policy that would normally require the PLL to pass a bar exam during the award period. Like any leave request, organizations may grant bar exam leave in accordance with its policies for all staff members. The PLL grant should not pay for the PLL's salary during leave unless—and then only to the extent that—such leave would normally be paid under the employer's policies.
11. Comply with all applicable federal, state, and local employment laws (e.g. those governing leave and the treatment of exempt versus non-exempt employees) as well as all other applicable laws and regulations including those governing the State Bar Provisional Licensure Program.



## **Required Documents**

At the time of application, organizations will need to submit the:

- Signed grant assurances;
- PLL's resume (if available); and
- Written policy, such as a salary scale, that they used to determine the PLL's compensation in the budget narrative (if available).

Before July 1, 2021, organizations will need to submit:

- A copy of the signed declaration form that the PLL submitted in its application for provisional licensure showing that the grantee is supervising the PLL;
- Proof that the Provisional Licensure Program has accepted the PLL; and
- The organization's written offer of employment to the PLL, which the PLL has accepted.

**If you have any questions, please contact:**

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