



Date: April 23, 2021

To: Members, LSTFC Rules Committee

From: Richard Reinis, Co-Vice Chair, Legal Services Trust Fund Commission
Erica Connolly, Member, Legal Services Trust Fund Commission
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Subject: Proposed Changes to Rules of the State Bar Regarding Exchanged Funds

EXECUTIVE SUMMARY

The Rules Committee (Committee) of the Legal Services Trust Fund Commission (LSTFC) is working to gather, revise, and codify, as necessary and appropriate, all of the decision points and considerations related to the grants administration process. The purpose of this process is to ensure transparency, ease of administration, and clarity for grantee applicants, the Commission, and State Bar staff.

This memorandum presents the Working Group's analysis and recommendations on the following issues regarding Exchanged Funds:

- How funds exchanged between grantees impact grant awards; and
- Whether to recommend codification of longstanding practices regarding funds exchanged between two IOLTA-funded organizations.

On March 30, 2021, the State Bar shared a draft of this memo with the Legal Aid Association of California (LAAC) for the purpose of gathering feedback from the legal aid community on the recommendations. LAAC shared the draft memo with the requesting feedback. On April 14, LAAC submitted feedback to the State Bar indicating a community preference for one of the options under consideration. The Working Group's recommendation is consistent with the LAAC feedback: that the State Bar Rules be revised to codify the Exchanged Funds deduction and extend it to all applicants.

These issues will be presented to the Rules Committee on April 23, 2021. Any final recommendations from the Rules Committee will be subsequently considered for adoption by both the LSTFC and, ultimately, the State Bar's Board of Trustees.

BACKGROUND

CODIFICATION PROCESS

In 2019, following the recommendation of the Board of Trustees, State Bar staff and the LSTFC began a multi-phase process of revising and/or codifying all decision points employed in the grant-making process for IOLTA and Equal Access Fund (EAF) grants. The intent was to provide more transparency about the process and to ensure consistency in administering the grants.

Members of the LSTFC have formed working groups to investigate the questions raised in the Rules Committee's work plan and develop preliminary recommendations. Those preliminary recommendations were then circulated to the legal aid community to obtain feedback. The Rules Committee will consider and discuss that feedback before making a final recommendation to the LSTFC, and in turn, the Board of Trustees.

GOVERNING AUTHORITIES

Statutory Framework

Approximately 100 nonprofit legal services organizations receive IOLTA and EAF grants each year as either Qualified Legal Services Projects (QLSPs) or Qualified Support Centers (SCs), under criteria set forth in the IOLTA Statute¹ as implemented by State Bar Rules.

State Bar staff and the Exchanged Funds Working Group reviewed these and other relevant authorities for direction regarding the appropriate approach for administration of exchanged funds transactions for IOLTA grant applicant organizations. Of particular relevance to this question are the following:

- Business and Professions Code Section 6216, which provides the formulas for calculating grant allocations; and
- State Bar Rule 3.671, which provides standards for determining whether an applicant is presumed to meet the relevant eligibility criteria.

Goals and Structure of the IOLTA Grants Program

The preamble to the IOLTA Statute states an intention to expand the availability and improve the quality of free legal services in civil matters to indigent persons, and to initiate new programs that will provide services to them.² Its legislative purpose is to allocate funding for

¹ Business & Professions Code sections 6210-6228.

² Business and Professions Code sec. 6210

legal services where the need is greatest, on the basis of an organization's "service population" as measured by the amount of money it spent providing services.³

Two types of organizations are eligible for grants under the Statute: Qualified Legal Services Providers (QLSPs) and Qualified Support Centers (SCs). QLSPs have the primary purpose and function of providing free civil legal aid in California to indigent persons; SCs have the primary purpose and function of providing legal training, legal technical assistance or advocacy support without charge to organizations that provide legal services to indigent persons.⁴

Applicants establish eligibility for IOLTA grants by demonstrating that their primary purpose and function meets the definition of a QLSP or an SC. This is principally determined by comparing expenditures for the purposes stated in those definitions ("qualified expenditures") to the organization's total qualified corporate expenditures: an applicant is presumed to meet the eligibility criteria if at least 75 percent of its budget and expenditures are qualified.⁵

Calculating IOLTA Grants Requires Additional Deductions

Grant award amounts for eligible QLSPs and SCs are calculated using different formulas under the IOLTA Statute. The formula for SCs allocates an equal share to each eligible applicant.⁶ Once they have been found eligible based on their qualified expenditures, SC award amounts are easily calculated by dividing the available funding by the number of grantees.

The remaining funding is allocated among California's 58 counties proportionate to their respective indigent population, and is then allocated among the QLSPs serving each county pro rata based on the amount of their total budget expended in the prior year for legal services for indigent people in that county, compared to the total expended in the prior year by all qualified legal services projects applying for a grant in that county.⁷ This formula awards larger grants to QLSPs with more qualified expenditures.

However, this formula is not applied until QLSPs take some further deductions. One of these relates to "Exchanged Funds" – funds paid by one QLSP to another QLSP. These transactions are subject to special rules in the application process because such transactions have the effect of duplicating expenditures for the same services, as described in more detail below.

³ "County poor person population and the size of a project's service population are the best, though imperfect, allocation criteria available." The Bar had considered, but rejected, metrics tied to program performance, but opted to rely on expenditures as more objective. Letter from Robert Raven to Rep. Elihu Harris, Chair of California Senate Judiciary Committee, August 14, 1981. See also, Letter from Sen. Nicholas Petris to 15 members of the California Assembly, seeking co-authors for SB 713 (the IOLTA Statute), February 17, 1981.

⁴ Business and Professions Code section 6213(a), (b)

⁵ State Bar Rules, 3.671(A), (B)

⁶ Business & Professions Code section 6216(c)

⁷ Business & Professions Code section 6216(b)

DISCUSSION

CURRENT PRACTICES REGARDING EXCHANGED FUNDS ARE CONSISTENT WITH THE GOALS AND INTENTIONS OF THE IOLTA STATUTE

The Statute Does Not Address the Impact of Exchanged Funds

Under the IOLTA Statute, an organization's expenditures are used both to determine its eligibility for grants, and to calculate its grant allocation if it is a QLSP. The legislature chose this methodology because it was thought to be a non-discretionary and objective measure of the organization's expenses towards legal services, seeking to ensure that all grant applications will be treated alike. The record does not reflect that the drafters of the IOLTA Statute considered how expenditures can be inflated by extraneous factors that impair the accuracy or consistency of the funding formula's methodology.

One factor that affects the operation of the QLSP funding formula is funds that are exchanged between two QLSPs. The funding formula presumes unique expenditures for unique services. If two applicants both report expenditures for the same services, each will receive funding credit, but the total amount of services provided will not have increased. This will lead to larger grant award amounts for both parties, based in part on fiscal activities rather than program services. That outcome would be contrary to the intention of the IOLTA Statute. The language of the QLSP funding formula has been interpreted by LSTFC and State Bar staff to presume unique expenditures for unique services, and accordingly, funds exchanged between QLSPs have never been credited to both programs for allocation purposes.⁸ This procedure has been documented in the Legal Services Trust Fund Program *Application Materials for Legal Services Programs*, Instructions (Attachment C).

Historical Approach to Exchanged Funds

Instructions for the first set of IOLTA applications in 1983 required all applicants to declare any funds exchanged with any other applicant; only one of them could count those sums toward its grant allocation.⁹

⁸ The other funds that QLSPs must deduct are IOLTA and EAF grant expenditures, and grants received through the Sargent Shriver Civil Legal Aid Act. Shriver funds are deducted under the terms of their enabling legislation; IOLTA and EAF grants are deducted by State Bar policy.

⁹ "In order to avoid "double counting" of funds, funds which are contributed by one program to another program, when both are applicants for an allocation from the Legal Services Trust Fund Program, will 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 the receiving and contributing programs made a contrary agreement differently allocating the credit for the contributed funds between the two programs. If such an agreement is made both programs must disclose such agreement to the Commission." Legal Services Trust Fund Program *Application Materials for Legal Services Programs*, Instructions (1983, at 4-5).

This practice was initially required of both QLSPs and SCs, but by 1990 only QLSPs were required to declare and deduct Exchanged Funds.¹⁰ Only their expenditures are “counted” for purposes of calculating grant award amounts; allocations for SCs are calculated without regard to their relative expenditures, so no adjustments are necessary to prevent double counting of any funds they may pay to or receive from another grantee.

Current Office Practice

Deductions of Exchanged Funds continue for QLSPs today substantially as they originally did in 1983. The current application requires QLSPs to separate funds paid out from funds received, and specifies that exchanges of IOLTA, EAF, or Shriver grant funds should not be identified in this section. Those funds are deducted elsewhere in the application process, and including them as Exchanged Funds would amount to a double deduction. Guidance regarding these practices is provided solely in the Application Instructions.

WORKING GROUP RECOMMENDATION

The working group considered several options, listed below, with respect to Exchanged Funds.

Option 1 – Suspend the Exchanged Funds Deduction

The Exchanged Funds deduction was implemented at the inception of the IOLTA program because these transactions were recognized as inconsistent with the funding formula’s expectation that expenditures would be unique. That logic remains valid; when two QLSPs claim credit for the same services, other providers will receive smaller grants and their communities might receive less service. Double-counted expenditures award grant funds on the basis of their financial activities rather than their program services, which is contrary to the Statute’s goals and intentions. The working group does not recommend that the Exchanged Funds deduction be suspended.

Option 2 – Codify the Exchanged Funds Deduction

The Exchanged Funds deduction as described in Application Instructions helps the funding formula operate as its drafters intended. The IOLTA program relies on this adjustment to ensure equity and consistency in grant award calculations. However, the Exchanged Funds deduction is an office practice that is described only in the Application Instructions, which can be revised administratively; the practice of deducting Exchanged Funds is not in any formal regulation or rule.

¹⁰ Available records do not include sample applications from prior to 1990, at which time the SC exchanged funds deduction had been eliminated.

The process of codification reduces inconsistencies and ambiguities and creates a uniform source that is easy to access for all stakeholders.¹¹ Clear regulatory standards regarding Exchanged Funds would improve clarity for applicants, consistency in implementation, and accountability to stakeholders. The working group therefore recommends that the Exchanged Funds deduction be codified and not remain solely an informal office practice documented only in Application Instructions.

Option 3 – Codify the Exchanged Funds Deduction and Extend it to All Applicants

The working group also considered whether transparency would be improved by requiring both SCs and QLSPs to report Exchanged Funds. If SCs began reporting Exchanged Funds again, the additional data would ensure that all applicants meet the same standard of transparency regarding their common financial relationships. The additional information would also assist the Commission with the duties of administering grant programs, by providing insight into the relationships within the network of 100 providers that comprise the IOLTA grantee community. The working group recommends that this requirement be extended to SCs as well as QLSPs.

Continued and expanded reporting and deductions for Exchanged Funds would be consistent with the goals and intentions of the IOLTA Statute. The working group therefore recommends that longstanding office practices regarding Exchanged Funds be formalized, clarified, and expanded by amending State Bar Rule 3.671 to incorporate guidance and instruction as to these transactions as follows:

Exchanged Funds are funds exchanged between any two organizations seeking eligibility for IOLTA grants, not falling under any of the following exceptions: (1) Passthrough Expenditures¹² as defined in these Rules; (2) payments of funds allocated under section 6216 of the Business and Professions Code; (3) funds received under any program which prohibits those funds from being credited toward IOLTA grant allocations. Any funds exchanged between two applicants and not falling under any of the foregoing exceptions must be reported by both the payor and the recipient. If both parties are QLSPs, one of them must deduct the transaction for purposes of calculating grant allocations. In such cases, the funds will be credited to the recipient absent a written agreement to the contrary.

¹¹ *Wex Legal Encyclopedia*, Legal Information Institute (Cornell Law School)

¹² Passthrough Expenditures are disbursements meeting certain criteria that require the funds to be excluded from consideration when determining an organization's primary purpose and function because they are not considered to be part of the organization's budget. The Rules Committee is separately reviewing practices around these transactions.

CODIFICATION RECOMMENDATIONS

Currently, sections (A) and (B) of Rule 3.671 establish that QLSPs and SCs, respectively, are presumed to be eligible for grants if at least 75 percent of their total organizational expenditures are qualified; section (C) permits organizations with lower qualified expenditures ratios to establish their eligibility “by other means.”

The working group recommended that this rule be revised and reorganized to establish the 75 percent presumption for both QLSPs and Support Centers at section (A), to permit other organizations to establish eligibility by other means at section (B), and to replace section (C) with a new section to identify funds that would not be considered for the primary purpose test or that must be deducted for QLSP grant allocation purposes. This could include a subsection with a definition and instructions for Exchanged Funds as stated above. This new section (C) would also be an appropriate place to codify the current practice of excluding funds paid pursuant to a “passthrough” agreement, which the Rules Committee is also reviewing.

COMMUNITY FEEDBACK

On March 30, 2021, a draft of this memorandum was circulated for comments to the Legal Aid Association of California (LAAC) and the community of IOLTA grantees. LAAC provided comments on April 14, as follows: “LAAC and the community would support option 3 (codify the exchanged funds deduction and extend it to all applicants) because it codifies the current process with QLSPs and would extend that to support centers, treating all IOLTA programs equitably.” This comment is consistent with the Working Group’s recommendation.

PROPOSED ACTION

Timing Considerations and Next Steps

This working group recommends a regulatory change to codify existing practices regarding Exchanged Funds. If the Rules Committee and LSTFC approve, the LSTFC will request that the Board of Trustees release proposed text for public comment. The proposed text will be reconsidered and revised as necessary in light of any comments received. The revised text will be submitted for the Board’s approval and adoption together with other recommendations arising through the codification process.

ATTACHMENTS LIST

A. Governing Authorities:

1. Text of Business and Professions Code sections 6210-6228 (The IOLTA Statute)
2. State Bar Rules, Title 3, Division 5, Chapter 2, Article 1, Rules 3.660-3.692 (The Rules)

B. From the legislative record for SB 713 (1981) (The IOLTA Statute):

1. Robert Raven, President, State Bar of California, letter to Assembly Member Elihu Harris (August 14, 1981)
2. Nicholas Petris, California State Senator, letter to fifteen members of the State Assembly (February 17, 1981)

C. IOLTA & EAF Application Instructions / Legal Services Projects (2022 grant year)

D. Proposed Revision to State Bar Rule 3.671



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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 SERVICESChapter 2. Legal Services Trust Fund ProgramArticle 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.¹ 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

¹ Business & Professions Code § 6213(d).

in California by a nonprofit law school accredited by the State Bar.² 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.³

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.⁴ 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.⁵ 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.

² Business & Professions Code § 6213(a).

³ Business & Professions Code § 6213(b).

⁴ Business & Professions Code § 6213(a)(1).

⁵ 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.⁶
- (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.⁷

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.⁸ 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,⁹ 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

⁶ Business & Professions Code § 6213(a).

⁷ Business & Professions Code § 6213(b).

⁸ Business & Professions Code §§ 6216 and 6223.

⁹ Business & Professions Code § 6213(e)(1).

permitted by statute.¹⁰ 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;

¹⁰ 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.¹¹

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.¹² 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.

¹¹ Business & Professions Code § 6217(d).

¹² 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.

THE STATE BAR OF CALIFORNIA



ATTACHMENT B

RECEIVED

AUG 17 1981

CAPITOL OFFICE

Office of the President

ROBERT D. RAVEN

SPEAR STREET TOWER

FORTIETH FLOOR

ONE MARKET PLAZA

SAN FRANCISCO, CALIFORNIA 94105

TELEPHONE (415) 777-6295

BOARD OF GOVERNORS

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GEOFFREY VAN LOUCKS, San Jose

WILLIAM F. WENKE, Newport Beach

SAMUEL L. WILLIAMS, Los Angeles

August 14, 1981

Assemblyman Elihu M. Harris

Chair, Assembly Judiciary Committee

State Capitol

Sacramento, CA 95814

RE: SB 713 (Petriss) (Client trust
fund legislation)

Dear Assemblyman Harris,

SB 713 will be before the Judiciary Committee for a vote on Wednesday, August 19th; I am writing on behalf of the State Bar Board of Governors and the many volunteer attorneys who have helped in development of SB 713 to urge you to vote in favor of the bill.

As you are undoubtedly aware, federal congressional actions have created a public funding crisis for programs now providing civil legal services to the needy in California. SB 713 may be all that stands between those programs and abolition. In a time of decreasing government fiscal resources and the public's desire for less expensive government, SB 713 provides a solution through use of private sector financial resources.

As Senator Petriss explained at the August 12th Judiciary Committee hearing on SB 713, the bill has been amended to require the participation of all attorneys and of any client who makes a nominal, short-term trust deposit to his or her attorney. These amendments were compelling in light of indications from the Internal Revenue Service that a voluntary program would have adverse tax consequences to clients. The "mandatory" aspects of SB 713 should, however, be viewed in their appropriate context:

(1) Under current professional practice, many client deposits are of a nominal, short-term nature. Such deposits are currently placed by attorneys in unsegregated non-interest bearing accounts.

Creation of a separate interest bearing account for each client is not expected by clients depositing nominal funds with their attorneys. Doing so would be financially impracticable for lawyers and clients. For clients, such an arrangement would be of negligible, if any, financial benefit as a nominal, short-term deposit would entitle the client to miniscule interest income which, in turn, would be subject to taxation and possibly bank service charges. Therefore, requiring lawyers to utilize interest bearing, unsegregated trust accounts for nominal, short-term client deposits, with interest income going to SB 713 purposes, does not deprive clients of any practicable or significant income opportunity.

(2) Clients whose deposits are not of a nominal short-term nature now are afforded, by their attorney, the opportunity of having a separate interest bearing account. SB 713 would not change this practice.

(3) Lawyers have, from time immemorial, made the discretionary judgment as to whether a client deposit is or is not nominal. SB 713 does not change this familiar decision making process, nor does it require attorneys to take on any new professional responsibilities vis-a-vis the handling of client trust funds.

To the extent that the bar's membership expresses a need for guidelines or decision-making factors to use in determining whether or not a client deposit is "nominal" or "short-term", the State Bar will furnish examples and informational guidelines for attorneys as to what funds should be placed in unsegregated client trust fund accounts.

The State Bar is receptive to the useful suggestions offered to date by the members of the Judiciary Committee with reference to SB 713:

(1) Committee members and Mr. Lopez, your consultant, have inquired as to whether, in all cases, a recipient program should have to furnish the bar with a formal fiscal audit. We intend to amend SB 713 to allow recipient programs to utilize other reliable financial reports in appropriate circumstances. The intent of this amendment is to prevent the situation wherein a moderate to low budget project is compelled to furnish a fiscal report, the preparation and expense of which would drain the project's fiscal resources.

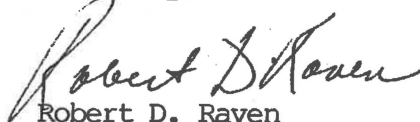
(2) The State Bar remains committed to the bill's non-discretionary fund allocation formula. It should be remembered that the beneficiaries of SB 713 are needy clients, not individual legal assistance programs. Therefore funding formulas tied to county poor person population and the size of a project's service population are the best, if imperfect, allocation criteria available.

The bar did examine other alternatives which would have given greater weight to the merits of each program's administration and performance. All those alternatives were rejected because they would have diverted program revenues into administrative overhead and created the potential for a new State Bar bureaucracy which no one desires. However, to enhance the provision of high quality, efficiently funded legal services, the State Bar is prepared to amend Section 6222 of SB 713 to require program recipients to furnish reports that address the recipients' efforts to maintain the delivery of high quality professional services.

SB 713 is a significant measure that will have far-reaching consequences for the indigent persons of California who need civil legal services. If you desire more information on the bill, you should feel free to contact our legislative representative, Ralph F. Simoni (916/444-2762) or the bar's Legal Services Department (415/561-8227).

Thanks in advance for your careful consideration of this matter.

Cordially,

A handwritten signature in cursive script, appearing to read "Robert D. Raven".

Robert D. Raven
President, State Bar of California

cc: Senator Nicholas Petris
Senator Omer L. Rains.

PLEASE REFER TO:
SACRAMENTO ADDRESS
STATE CAPITOL, ROOM 2082

XX

SACRAMENTO
95814
445-6577

LEGISLATIVE ADDRESS
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□

NICHOLAS C. PETRIS

NINTH SENATORIAL DISTRICT
ALAMEDA COUNTY

ATTACHMENT B

RULES
FINANCE
REVENUE AND TAXATION
JOINT LEGISLATIVE BUDGET
JOINT RULES
SELECT COMMITTEE ON
HOUSING AND URBAN
AFFAIRS
SELECT COMMITTEE ON
MARITIME INDUSTRY

CALIFORNIA LEGISLATURE

S e n a t e

February 17, 1981

TO: Assemblymen Art Agnos, Richard Alatorre, Tom Bane,
Tom Bates, Willie Brown, Peter Chacon, Walter Ingalls,
Lawrence Kapiloff, Mel Levine, Bill Lockyer, Herschel
Rosenthal, Art Torres, John Vasconcellos, Assemblywomen
Teresa Hughes and Maxine Waters

FROM: Senator Nicholas C. Petris

SUBJECT: Co-authorship Request - Client Trust Funds

I am authoring legislation on behalf of the State Bar of California to permit the use of interest on attorney trust accounts to fund civil legal services for the elderly, the poor, and provide scholarships for needy law students.

The legislation proposes that client trust funds normally held in non-interest bearing accounts instead be deposited in interest-bearing checking or savings accounts and that the bank and the attorney voluntarily agree to turn over earned interest to the State Bar. The State Bar would disburse the monies statewide (using a "non-discretionary formula") to legal services programs, support centers and local bars providing services to the indigent and the elderly. It should be emphasized that the participation of banks (which may collect administrative costs), attorneys, and clients is strictly voluntary.

The State Bar is simultaneously in the process of obtaining a ruling from the Internal Revenue Service that neither the client nor the attorney incurs tax liability for such earned interest.

In 1978 you were a co-author of Assembly Bill 2450 (Berman) which proposed a similar expansion of legal services to the elderly and poor, but provided for a state appropriation from the General Fund. Since this proposal contemplates funding from

the voluntary efforts of the private sector, I encourage you to join with me in this innovative approach to funding legal services to the needy.

Yes, I would like to co-author Client Trust Funds legislation.

.....

PLEASE PRINT

.....

SIGNATURE

Please return to Room 2082.



The State Bar
of California

OFFICE OF ACCESS & INCLUSION

IOLTA & EAF Application Instructions Legal Services Projects

Organizations seeking IOLTA and EAF funding should thoroughly review Business & Professions Code (B&P) sections 6210 et seq., State Bar of California Rules 3.660 – 3.692 (Rules), and the Legal Services Projects Eligibility Guidelines (Eligibility Guidelines). Refer to the “Key Documents & Authorities” section of the SmartSimple homepage to access these governing authorities.

The online application **must be submitted on SmartSimple by 5:00 p.m. on the application deadline**. At that time, the funding opportunity will close and applications will no longer be accepted. Contact the State Bar’s Office of Access & Inclusion (OA&I) if you believe there are extenuating circumstances to justify submission of a late application. The decision whether or not to accept a late application is within the sole discretion of the Legal Services Trust Fund Commission (Commission). It is the applicant’s responsibility to ensure timely submission of the application and all applicable information and attachments. Applications are public records once submitted.

OVERVIEW

A completed application will include the following components:

GENERAL

- FORM I – ELIGIBILITY CRITERIA
- FORM II – DESCRIPTION OF ORGANIZATION
- FORM III – STAFFING AND VOLUNTEERS
- FORM IV – APPLICATION FOR PRO BONO ALLOCATION
- FORM V – QUALITY CONTROL REVIEW
- FORM VI – SOURCES OF FUNDING
- FORM VII – TOTAL CORPORATE EXPENDITURES
- FORM VIII – QUALIFIED EXPENDITURES
- FORM VIII.A – EXPENDITURES BY COUNTY FORM
- FORM IX – CERTIFICATIONS & ASSURANCES

Helpful Tip: Click on the “Save & Finish Later” button at the bottom of each form to save your work. This button also refreshes the form to enable automatic calculations and other form options. Save often to avoid losing your work.

NOTE: FISCAL YEAR VS. CALENDAR YEAR REPORTING

The application will require information from either the organization’s previous fiscal year (which varies by organization), or the previous calendar year (January 1 – December 31). While each form specifies which year to reference (fiscal or calendar), a summary is provided below for reference:

CALENDAR YEAR	FISCAL YEAR
<i>Reference the previous calendar year (January 1 – December 31)</i>	<i>Reference the organization’s fiscal year that ended during the previous calendar year</i>
<ul style="list-style-type: none"> • Form II: Description of Organization • Form III: Staffing and Volunteers • Form IV: Application for Pro Bono • Form VI: Sources of Funding 	<ul style="list-style-type: none"> • Form VII: Total Corporate Expenditures • Form VIII: Qualified Expenditures • Form VIII-A: Expenditures by County (refer to the organization’s fiscal year for the entire form, not just the left column)

IOLTA/EAF APPLICATION**GENERAL**

Check the two checkboxes to verify that both your organization record is up to date, and that you have read and are familiar with the Eligibility Guidelines, then select the button, “Proceed to Application” to create a draft application. Addition information regarding these buttons are below.

Note that after creating a draft application, you can later access your draft on SmartSimple by selecting “IOLTA/EAF Applications” from the top-right “Applications” drop-down menu.

Review Organization Profile

- Click on the “Review Organization Profile” button to open it in a new page.
- Review the Organization Profile, including the “Main,” “Organization Details,” and “Documents” tabs; make any necessary updates, and click Save.
- Confirm that the following information is up to date:
 - Designated Primary and Secondary Contacts
 - Identified responsible staff are displayed on the application

- “Executive Contact” should be the Executive Director/CEO (or Clinic Director for law schools) and should have the authority to sign grant agreements with the State Bar.
- A direct phone number is needed for the Executive Contact (including an extension, if applicable). “Executive Contact” and “Primary Contact” are used interchangeably. Secondary Contacts for an organization will receive the same email communications as the Executive/Primary Contact.
- To update contacts in the Organization Profile, refer to the **SmartSimple Managing Contacts** user guide posted on the homepage under the “Key Documents & Authorities” section for more information on how to update contact information.

Eligibility Guidelines

Access the Eligibility Guidelines by clicking on the button, “Eligibility Guidelines” on the application, or refer to the “Key Documents & Authorities” section on the SmartSimple homepage for all governing authorities.

FORM I – ELIGIBILITY CRITERIA

1. **New or Currently Funded Applicant.** Indicate whether your organization is a new applicant or a current IOLTA/EAF State Bar grantee seeking funding renewal.
2. **Applicant Type.** Indicate whether your organization is a nonprofit corporation that provides legal services to indigent persons without charge OR is an identifiable unit of a law school.
3. **Applicant Eligibility.** Indicate which eligibility requirement(s) pertain(s) to your organization. Where applicable, upload a copy of the requested documentation.

3.A. Community Support. Describe the community support for the operation of a viable, ongoing program.

3.B. Which of the following services does your organization provide?

If applicable, complete questions i through iv

FORM II – DESCRIPTION OF ORGANIZATION

Provide a comprehensive and concise description of the organization’s work in the previous **calendar year**. Currently funded organization should not limit responses to activities funded by the State Bar.

Click “Save & Finish Later” after adding counties

Include information on all activities, regardless of funding source. In addition to activities funded by the State Bar, organizations are also encouraged to include activities funded by non-State Bar monies.

County(ies) for Funding

Select the “Add Counties” button to enter the county(ies) for which the organization is seeking funding. Counties entered in this table will appear in both Form VIII-A in order to report expenditures for each county, as well as Form IV if applying for an additional pro bono allocation.

1. Organization’s Mission and Vision

Provide the organization’s mission and vision statement(s) describing the organization’s purpose and impact.

2. Core Programs. Describe the organization's core programs as reflected in promotional materials (include a summary of all work, not just activities funded by State Bar monies).

3. Client Population. Describe the constituencies served by the organization. Include demographic information, such as age, gender, ethnicity, income levels, and any other characteristics particular to the service population.

4. Income Eligibility for Services. Describe how the organization verifies and documents an individual’s income eligibility for services. Identify all income criteria and guidelines used to establish eligibility for services.

5. Program Activities. Select all the program activities the organization engaged in during the previous **calendar year**. Do not include fundraising or administrative activities (Eligibility Guideline 2.3).

5.A. Legal Services Activities. Select all applicable legal services activities the organization engaged in during the prior **calendar year**. If “Other Legal Services” is selected, provide a brief description in the field below.

5.B. Other Activities. Select all applicable other activities the organization engaged in during the prior **calendar year** that were not the provision of free civil legal services to indigent persons in California.

i. Legal Services. Select all that pertain to your organization.

ii. Under which funding sources did you serve these clients? Select from the options listed.

iii. Other Services. Select all non-legal services that were provided in the prior calendar year. If “Other non-legal services” is selected, provide a brief description in the field below.

NEW APPLICANTS ONLY

The following question only applies to new applicants or returning applicants who are not currently funded by the State Bar.

6. Impact Litigation and Advocacy Work (ILAW)

- Complete individual forms for each of the organization's top 10 advocacy activities and top 15 impact litigation cases, including class actions, based on the highest number of staff hours spent in the previous calendar year.
 - If the organization engaged in fewer than 10 advocacy activities and fewer than 15 impact cases, complete individual forms for each activity.
 - If the organization participated in more than 10 advocacy activities and/or 15 impact litigation cases, report a summary of all remaining activities from the prior **calendar year**.
 - If the organization did not engage in any impact litigation or advocacy activities in the previous year, enter "0" in questions 6.A. and 6.B. and proceed to Form III.

6.A. Total number of impact litigation cases (include partner/co-counsel cases)

Report all impact litigation cases your organization engaged in during the previous calendar year, both open and closed.

6.B. Total number of policy advocacy activities

Report all advocacy activities your organization engaged in the previous calendar year, both completed and ongoing.

6.C. Summarize Additional Activities

If you engaged in more than 10 advocacy activities or more than 15 impact litigation cases in the previous calendar year, briefly summarize the nature of these additional activities.

Create Impact Litigation Case Form/Create Advocacy Activity Form

- Select the "Create Advocacy Activity Form" button and the "Create Impact Litigation Case Form" button to complete individual forms. If the two form buttons do not appear on the application, click the "Save & Finish Later" button.
- After creating an individual ILAW form, click "Save & Finish Later" in the pop-up form for the appropriate fields to appear.
- The two ILAW charts at the end of Form II on the application will log activities/cases as forms are saved, and you may continue to access the individual forms by clicking the "View" button. When the individual ILAW forms are final, select the "Submit Form" button in the pop-up form.

- Based on the highest number of staff hours spent in the previous calendar year, complete individual forms for each of the top 10 advocacy activities and top 15 impact litigation cases, including as co-counsel.
- Include open and closed cases, and completed and ongoing advocacy activities.
- Activities are to be based on the highest number of staff hours only, and not by other factors such as funding source or constituencies served.

FORM III – STAFFING AND VOLUNTEERS

1. Staffing Worksheet

Select the "Open" button to complete the table. Round to the nearest two decimals for full-time equivalent (FTE) assignments entered in the staffing table and in any narratives.

Staffing information reported should be as of December 31 of the previous calendar year.

- **Full-Time Staff** refers to individuals who were employed on a continuous full-time basis; i.e., the standard workweek. Indicate the number of full-time employees in each category in the Full- Time Staff column.
- **Part-Time Staff** refers to individuals who were employed less than full-time. Indicate the number of part-time employees in each category. Then, in the next column, report the number of full- time equivalent positions are represented by these part-time employees. For example, four half-time (0.5 FTE) employees are equivalent to two full-time positions (2.00 FTE).
- **Temporary Staff** refers to individuals who were employed for a specific period, or intermittently, as their services were required. Indicate the number of temporary employees in each category and the number of hours worked by those persons.
- **Volunteers** refer to individuals who donated time and services. Indicate the number of volunteers who actually contributed services and the number of hours contributed for each category of volunteer. Complete the Volunteer columns regardless of whether the applicant seeks the additional pro bono allocation on Form IV.
- **Professional Services** (under Personnel Category) include licensed or trained professionals who are not attorneys; e.g., counselors, doctors, social workers, policy analysts, etc.

1.A. Professional Services and Other Personnel. For each position included under Professional Services and Other Personnel, state the title and full-time equivalent of the position(s).

2. **Use of Non-Legal Professionals.** Describe how the organization utilizes non-legal professionals in its service delivery model.
3. **How many hours per week does the organization consider a full-time schedule?** Do not include non-numeric characters, this includes commas, etc.
4. **Staffing and/or Organizational Changes.** Describe any significant changes in staffing levels or structure in the previous calendar year, and its impact on programmatic activities. Identify any significant vacancies and explain whether the organization is actively recruiting for the position or is holding the position for budgetary or other reasons.

FORM IV – APPLICATION FOR PRO BONO ALLOCATION

To qualify for the pro bono allocation in the county(ies) in which the organization provides services, the organization must meet both these requirements (1) coordinate the recruitment of substantial numbers of attorneys in private practice to provide free legal representation to indigent persons or to qualified organizations as its principal means of delivering legal services; and (2) demonstrate that its principal means of delivering legal services is “the recruitment of attorneys in private practice to provide free legal representation to indigent persons or to qualified legal services projects in California” through one of the three tests described in Eligibility Guideline 2.6.3. and 2.9.

1. Are you applying for a pro bono allocation per the qualifications listed?

If yes, the organization should annually recruit at least 30 attorneys, OR recruit at least five percent of the licensed attorneys in the county served, OR receive at least 1,000 hours of donated legal services from volunteer attorneys. If no, proceed to Form V (Quality Control Review).

Note: The State Bar’s Provisionally Licensed Lawyer (PLL) program began on November 17, 2020. If approved PLL program participants volunteered with your organization from November 17 through December 31, 2020, you may count their hours from that period as volunteer attorney hours for purposes of applying for the pro bono allocation.

If the applicant seeks the additional allocation, there is a two-step process to qualify for the pro bono allocation. Applicants must show that they both (1) recruit substantial numbers of attorneys in private practice who provide services without compensation and (2) this is their principal means of service delivery to indigent persons. (Note: An applicant that provides services in multiple counties must meet these criteria for each county where they wish to seek the allocation; it is possible to qualify for the allocation in one county but not another.)

Applicants seeking the pro bono allocation must be able to answer “Yes” in question 1, indicating the organization annually recruits at least 30 attorneys, OR recruits at least five percent of the licensed attorneys in the county served, OR receives at least 1,000 hours of

donated legal services from volunteer attorneys. The Pro Bono Eligibility chart will show a list of county(ies) the applicant serves based on the responses entered in Form II, County(ies) for Funding. Complete the chart in question 1 for each county in which the additional pro bono allocation is sought. If the applicant provides services in a county but not principally through the recruitment of substantial numbers of attorneys in private practice and is not seeking a pro bono allocation for that county, leave the table blank.

For each county, answer the question at the top of the form, and indicate the number of paid staff and volunteers, and the total legal services hours provided to indigent persons for each personnel category during the previous calendar year.

Legal Services Hours: List only the hours spent providing legal services. 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 (State Bar Rule 3.672). These include, but are not limited to, the following activities:

- Work with and for individual clients, including interviews, group clinics, research, document preparation, and advocacy, or similar or related work for organizational or group clients
- Legislative, administrative, and other policy advocacy
- Community legal education, including research, writing, preparation, and presentations
- Editing, writing, and updating substantive legal manuals, self-help materials for clients, and materials for policy advocacy
- Legal training, including preparation and training time for both presenters and trainees
- Supervising the legal work of staff and volunteers (including time spent both by the supervisor and by the person being supervised), and directing and managing litigation or other legal projects, which includes group meetings as well as individual meetings and document review

For the purpose of this form, “legal services” do not include the following activities:

- Management and administration of the non-legal activities of the organization (e.g., fundraising, grant management, financial management)
- Administrative coordination of volunteers, including recruitment, scheduling, and recognition
- Recruitment, hiring, and personnel management of staff
- Leave time, including vacation, holidays, and sick leave
- Travel time

The organization must also demonstrate that its principal means of delivering legal services is “the recruitment of attorneys in private practice to provide free legal representation to indigent persons or to qualified legal services projects in California.” There are two ways to quantitatively demonstrate compliance with this requirement through the information provided in the chart, based on overall attorney volunteer hours or a combination of

attorney and other volunteer hours; the application program will automatically calculate this based on the information entered and indicate whether your application meets one of these tests. In the event it does not, the Commission has left open the possibility that applicants can establish their eligibility by alternative means, which requires a narrative explanation (Eligibility Guideline 2.9.2).

Complete additional requested fields regarding pro bono activity as appropriate:

- 1.A.** Describe how the organization utilizes volunteers who are not attorneys.
- 2.** Describe how the organization obtains and maintains information about hours of service donated by volunteers. If the organization does not have written documentation corroborating the legal services hours reported, explain the basis of the reported figures. For example, if the organization relies upon estimates, provide the elements that were factored into the calculations.
- 3.** If the applicant does not count all staff hours worked as legal services hours, for each paid staff position, explain the method used to calculate the number of legal services hours and, with respect to each county, describe the general nature of the non-legal services activities.

FORM V – QUALITY CONTROL REVIEW

- 1. Quality Control Report.** Has the organization received a written quality control review from the Legal Services Corporation, the California Department of Aging, or an Area Agency on Aging in the previous calendar year?
 - 1.A. Upload Quality Control Report(s).** If Yes, upload reports issued by the Legal Services Corporation, the California Department of Aging, or an Area Agency on Aging in previous calendar year.
- 2. Legal Services Staff Supervision.** Describe how legal services staff are supervised to ensure quality service. Identify supervisory personnel and provide information regarding their oversight (frequency of case management meetings, etc.). If there is only one staff attorney or the organization only employs contract attorneys, describe how oversight and quality control are ensured.
- 3. Volunteer Supervision.** Describe the method(s) by which volunteers (attorneys, paralegals, and law students) are supervised. If the organization does not actively supervise its volunteers or review their work product, explain how the organization ensures compliance with its quality standards.
- 4. Describe case opening and closing oversight practices.**

FORM VI – SOURCES OF FUNDING**1. Sources of Funding Worksheet**

Select the “Open” button to complete the Sources of Funding worksheet. Itemize all sources and amounts of cash funding for the previous calendar year. Do not include in-kind donations or any State Bar monies in this section. The worksheet provides lines to enter the largest three sources of funding per category only. After identifying the largest three sources, enter the remaining combined total of all other funding sources within each category in the relevant “Other” line.

1.A. Other Funding. Itemize sources included in any “other” line items listed in the Sources of Funding worksheet.

FORM VII – TOTAL CORPORATE EXPENDITURES

Qualified expenditures will be calculated based on the organization’s most recent audit or financial review from the prior fiscal year. For example, the organization’s application for a 2022 grant will be based on its audited or reviewed financial statement that ended in 2020, regardless of whether the audit period is July 1, 2019 to June 30, 2020, or January 1, 2020 to December 31, 2020.

This information is essential to the determination of whether the organization’s primary purpose and function is the provision of free civil legal services to indigent persons (Rule 3.671), and to calculate the organization’s award allocation. Identify in-kind donations and unrealized losses in the top section of the table. Identify pass-through funds in the next section. Lastly, identify cash expenditures for personnel and non-personnel. The total Non- Cash, Pass-Through, Personnel, and Non-Personnel expenditures should generally reconcile to the organization’s uploaded audited financials.

If the applicant is a law school program (B&P §6213(a)(2)), the applicant may indicate the total expenditures for the applicant’s identifiable law school unit with a primary purpose and function of providing legal services without charge to indigent persons. This information must correspond to the law school’s uploaded audited financial statement, or a separate schedule on the law school’s audited financial statement that specifically reports on the program’s activities, income, and expense.

Organization’s Fiscal Year End

This field is pre-populated with the date listed in your Organization Profile. If the fiscal year end date is incorrect, edit the date in the Organization Profile, under the Organization Details tab.

1. Upload Audited or Reviewed Financial Statement from Prior Fiscal Year

Upload to this section a final copy of the organization's audit or financial review for the prior fiscal year. Organizations with gross corporate expenditures less than \$500,000 can provide a financial review in lieu of an audited financial statement (Rule 3.680(E)(1)). It is also the obligation of the applicant to upload a copy of the most recent audit or financial review **as soon as available, and no later than May 1**, to the Organization Profile under the Documents tab.

2. Complete Total Corporate Expenditures Worksheet

Itemize total corporate expenditures based on uploaded audit or reviewed financial statement ending in 2020.

Select the "Open" button to complete the Total Corporate Expenditures Worksheet. Itemize total corporate expenditures based on the uploaded audit or financial review for the previous fiscal year.

Non-Cash Expenditures refer to accounting entries rather than actual movement of cash. Depreciation is not included in the Non-Cash section, as it is a method of capturing the cost of capital assets, which are an actual cost, over time.

- In-kind Donations and Donated Services: Include expenditures reflecting pro bono and other in-kind services.
- Unrealized Losses
- Other: Any non-cash expenditures not identified above.
- Total Non-Cash Items: This field automatically calculates the total of the amounts entered in the lines under Non-Cash Expenditures.

Pass-Through/Fiscal Sponsorship: In this section, identify funds that are passed through from the applicant to another organization, for which the applicant has no involvement, oversight, or engagement in the execution of the funded work (e.g. program simply forwards payment to another organization but is not involved in decision-making and does not have oversight responsibilities, or involvement is limited to selecting a sub-grantee but program does not participate in decision-making or oversight beyond that). The Commission will determine whether what is reported conforms to statutory and State Bar requirements, and may seek additional information from the applicant to make a final determination.

Personnel:

- Attorneys: Salaries and wages paid to staff attorney(s), whether full-time, part-time, or temporary (includes participants in the Provisionally Licensed Lawyer program).

- Paralegals: Salaries and wages paid to program paralegal(s), whether full-time, part-time, or temporary, and wages paid to any law students who provided legal services under the supervision and control of an attorney.
- Other Staff: Salaries and wages paid to all other staff, whether program, administrative, or clerical, and whether full-time, part-time, or temporary.
- Subtotal: (This field automatically calculates the total of the amounts entered under Attorneys, Paralegals, and Other Staff.)
- Employee Benefits: Fringe benefits paid on behalf of employees, such as retirement, FICA, health and life insurance, workers' compensation, unemployment insurance, and other payroll- related costs.
- Total Personnel: This field automatically calculates the total of the amounts under Subtotal and Employee Benefits.

Non-Personnel:

- Space: Expenditures on rent, mortgage payments, utility payments, and maintenance or janitorial expenses for all property owned or leased by the organization for any purpose.
- Equipment Rental and Maintenance: Lease or rental expenses for office furniture, fixtures, and equipment, and maintenance costs for that equipment whether pursuant to a service contract or individual repair bills.
- Office Supplies and Small Equipment: Basic office supplies, including materials used in copiers and printers, and small equipment purchases. Do not include any equipment listed on the schedule of depreciation.
- Printing and Postage: Outside printing, postage, and other mailing and delivery services.
- Telecommunications: Local, long distance, or cellular telephone service expenses, similar or related expenses for conference calls, videoconferencing, or other telecommunication services, and expenses for rental of telecommunications equipment, and any other related telecommunications expenses.
- Technology: Expenses related to computer software purchases, subscriptions and updates, Internet service, website hosting, online data management, and electronic research services (e.g., Lexis-Nexis, Westlaw).

- Program Travel: Travel expenses directly related to specific client matters or projects, community outreach, or trainings for the public, other organizations, or clients.
- Training: All non-personnel costs associated with the training or continuing education for staff members or volunteers, e.g., travel to and from training events, per diem, conference registration fees or tuition, purchase of training materials, and accommodations. Do not include expenses associated with training that you provide to the public, or to other organizations or clients.
- Library: Expenses for the maintenance and expansion of office libraries, including subscriptions to periodicals, books, and update services.
- Insurance: Professional liability insurance, bonding, property insurance (fire and theft), and liability insurance for property and automobiles.
- Audit: Costs related to the independent fiscal review or audit of the organization's financial statements.
- Litigation: Court costs, witness fees, expert witness expenses, photocopying fees, and other expenses incurred in litigation on behalf of eligible clients.
- Depreciation: Depreciation expense on furniture, equipment, or other purchases over \$1,000 per item. Itemize the capital expenditures that are included in depreciation on the organization's financial statement in the space provided. While the full list should appear in the organization's financial statement, you may use broad categories (e.g. equipment, building, furniture and fixtures, lease, etc.) to itemize expenditures in the space provided.
- Contract Service to Clients: Payments to private attorneys, consultants, or organizations to provide professional services to clients. Itemize all contracts, including those to other legal services programs or supports, identifying the provider, the nature of the service, and the contract amount in the space provided.
- Contract Service to Program: Contract services supporting general office operations, rather than legal program expenses, i.e., expenses for legal counsel for the organization, consultant fees for staff training, IT services, bookkeeping, and other accounting services. Itemize all contracts, identifying the provider, the nature of the services, and the contract amount in the space provided.
- Other: Include all expenses not included above. Itemize any large or unique expenses and state the nature and amount of the expenditure in the space provided.

- Total Non-Personnel: (Automatically calculates the total of the amounts entered in the lines under Non-Personnel.)
- Total Corporate Expenditures: (Automatically calculates the total of Total Pass-Through, Non-Cash, Total Personnel, and Total Non-Personnel expenses.)
- Total Personnel + Non-Personnel Expenditures: (Automatically calculates the total of Personnel and Non-Personnel Expenditures. This number will pre-populate in the next section for Qualified Expenditures.)

3. **Explain Any Variance.** If your organization's total corporate expenditures reported in this worksheet do not align with your organization's uploaded audit, please explain the variance.

FORM VIII – QUALIFIED EXPENDITURES

ENTER AMOUNTS BASED ON YOUR FISCAL YEAR; AMOUNTS SHOULD MATCH THOSE OF THE ORGANIZATION'S MOST RECENT AUDITED OR REVIEWED FINANCIAL STATEMENT ENDED IN 2020. CLICK ON "SAVE & FINISH LATER" TO VIEW CALCULATED VALUES.

This form segregates expenditures for the provision of free civil legal services to indigent persons in California from expenditures for all other activities. This information will be used to determine whether an applicant has met the primary purpose requirement (B&P 6213(a)) and to calculate the appropriate grant allocation. B&P §6216 provides the method of allocation of funds between qualified programs based on civil legal services provided without charge to indigent persons.

Qualified Expenditures Worksheet

Select the "Open" button to complete the Qualified Expenditures Worksheet.

Enter amounts based on the organization's fiscal year. Amounts should match those of the organization's uploaded audit or financial statement. If the answer is "yes" to any of the questions below, enter the amount, an explanation of the activity, and how the corresponding amount was calculated. If your answer is no, you may enter "0" and leave the explanation blank. Do not include pass-through or fiscal sponsor funds that were listed in Form VII.

1. Total Corporate Expenditures: The amount of total corporate expenditures from the previous fiscal year, as calculated on Form VII, will automatically carry-over to the top line of this form.

Confirm that the responses to question 2 to 9 correspond to responses on Form II. Careful attention to this form will avoid the need for follow-up by State Bar staff.

2. Non-Legal Activities: Non-legal programmatic activities, i.e., job training, financial literacy, cash aid, intake line that provides non-legal service or advice.
3. Leased or Subleased Space: If the organization leased space to (sub)tenants, enter the actual expenses for the space that is leased to the (sub)tenant and related administrative costs. Explain how this sum was calculated and what it includes (e.g. if rent was prorated based on number of people using the space).
4. Property Management Activities: If the organization owns or manages property and a portion of the property is leased or rented, list all expenses incurred related to the cost of the property including management and maintenance of the leased or rented portion. Explain how this sum was calculated and what it includes.
5. Criminal Matters: Expenses incurred to provide legal services in criminal matters.
6. Fee-Generating Cases: Expenses incurred to provide any legal services for which you charged a fee, other than requiring payments for costs and expenses, or a processing fee of \$20 or less. Do not include the amount charged in fees (Eligibility Guideline 2.3.2).
7. Non-Indigent Clients: Expenses incurred to provide free civil legal services to persons who were not indigent, as defined in B&P §6213(d), or to organizations that do not primarily serve or provide benefits to the indigent, as explained in Eligibility Guideline 2.3.3.
8. Outside California: Expenses incurred to provide legal services outside of California.
9. Other: Any other expenses incurred that did not contribute to the provision of civil legal services to indigent people and were not already listed above.
10. Total Non-qualified Expenditures: Automatically calculates the total of the amounts entered in Questions 2 through 9.
11. Subtotal of Qualified Expenditures for Free Civil Legal Services to Indigent Persons: Automatically calculates the total of the amount in Question 1 minus the amount in Question 10.
- A. **Non-Qualifying Cases/Activities (Current Grantees Only) – Impact Litigation & Advocacy Work (ILAW)**: Select the “Reference Non-Qualifying ILAW Cases/Activities” button to see a list of cases/activities the organization reported in the ILAW report for the previous year that were found to be non-qualifying. Include appropriate deductions for expenses related to these non-qualifying activities in question 1 to 9.
12. **Percent of Qualified Expenditures for Free Civil Legal Services to Indigent Persons**. Once you have completed and saved the Qualified Expenditures table above, click the “Save &

Finish Later” button to automatically calculate this percentage (question 11 divided by question 1).

12.A. Less than 75% Explanation. If the percentage of expenditures for free civil legal services to indigent persons calculated above is less than 75 percent, explain how the organization meets the primary purpose requirement for funding (B&P §6213(a)).

13. Exchanged Funds.

Not including funding from IOLTA, EAF, or a Sargent Shriver grant which are reported separately below, if the applicant paid money to, or received money from, another legal services project (LSP), both programs must disclose this fact and the amount of any such payment(s) in their applications. Expenditures will be attributed to the program receiving the funds unless a contrary agreement has been made between the two applicants.

13.A. Monies paid to another legal services project applicant.

13.B. Monies received from another legal services project applicant.

In the appropriate sections, enter Bank Grant, Partnership Grant, Homelessness Prevention Grant, non-State Bar, and non-Shriver monies that were paid to an LSP or received from an LSP. Indicate which organization will be credited with the funds towards its qualified expenditures. DO NOT include any IOLTA, EAF, or Shriver exchanged funds as those are deducted separately.

13.C. Upload All Exchanged Funds Agreements. Include all agreements pertaining to the funds exchanged with another legal services project applicant reflecting the contract period, amount, and how the exchanged funds will be claimed by each organization.

13.D. Discrepancies in Reported Funds and Agreements. Explain any difference between the amounts listed in 13.A. and 13.B., and the corresponding agreements uploaded in 13.C.

14. Total Deduction of Exchanged Funds. (This field automatically calculates the total non-IOLTA, non-EAF, non-Shriver fund monies paid to another LSP applicant and received from another LSP applicant that is credited to the partner LSP applicant. Expenditures will be attributed to the program receiving the funds unless the uploaded agreements state otherwise.)

15. Shriver Funds. Enter funds received for a grant, subgrant, or contract) for a pilot project pursuant to the Sargent Shriver Civil Counsel Act of 2009.

16. Total Qualified Expenditures for Free Civil Legal Services to Indigent Persons in California. (This field automatically calculates the total qualified expenditures for free civil legal services to indigent persons in question 11 minus questions 14 and 15.)

17. IOLTA and EAF Expenditures Net of Capital Additions

Current State Bar Grantees: Enter all IOLTA and EAF expenditures for the organization's previous fiscal year in 17.A. and 17.B. This should include any carry-over amounts. Select the "Reported IOLTA and EAF Expenses" button to reference expenditures as reported by the organization in the previous year's quarterly reports.

New Applicants: Enter "0" in 17.A. and 17.B. if you are applying as a new applicant.

17.A. IOLTA Expenditures Net of Capital Additions (FISCAL YEAR). Enter all IOLTA expenditures (net of capital additions) for the organization's fiscal year. This should include any IOLTA carry-over also spent in that year.

17.B. EAF Expenditures Net of Capital Additions (FISCAL YEAR). Enter all EAF expenditures (net of capital additions) for the organization's fiscal year. This should include any EAF carry-over also spent in that year.

17.C. IOLTA AND EAF EXPENDITURES NET OF CAPITAL ADDITION EXPENDITURES (AUTO-CALCULATED). This field auto-calculates total IOLTA and EAF expenditures for the organization's fiscal year, net of capital additions.

18. GRAND TOTAL NON-STATE BAR QUALIFIED EXPENDITURES FOR FREE CIVIL LEGAL SERVICES TO INDIGENT PERSONS IN CALIFORNIA. This field auto-calculates the grand total qualified expenditures for free civil legal services to indigent persons in California (amount will also appear in top left corner of Form VIII-A).

Upload Any Additional Expenditure Documents. Include any additional documents regarding the information entered in Form VIII

FORM VIII-A – EXPENDITURES BY COUNTY**GRAND TOTAL NON-STATE BAR QUALIFIED EXPENDITURES FOR FREE CIVIL LEGAL SERVICES TO INDIGENT PERSONS IN CALIFORNIA.**

This amount is automatically carried over from Form VIII-Question 18. In most cases, this amount should equal the "Qualified Expenditures" total column in the bottom right corner of County Totals portion of the Expenditures by County table that appears in Form VIII-A.

1. Allocation of Expenditures for Each County.

If you provide free civil legal services to indigent persons in more than one county, describe the basis for your by county allocation of expenses and how it relates to the services in each county. Include any calculations or relevant data to support your explanation.

Explain the basis for the calculation of the by-county expenditures among counties served. In the past, the Commission has found the following explanations to be reasonable under certain circumstances: numbers of cases handled in each county; actual or estimated hours of service provided to clients in each county; actual expense of providing services to clients in each county, including both personnel and non-personnel expenses.

In certain circumstances, it may be necessary to use a combination of these or other bases to arrive at a reasonable allocation methodology. If more than one basis for the calculation is used, describe each one and separately list the amounts allocated on that basis.

2. New or Discontinued Counties.

If applicant is seeking 2021 IOLTA and EAF funds to serve any counties that differ from the counties for which applicant is currently receiving 2020 IOLTA and EAF funds, provide information on new and/or discontinued counties. See application instructions for additional details. Enter N/A if not applicable.

Provide an explanation if the applicant is seeking IOLTA and EAF funds to serve any counties that differ from the counties for which applicant is currently receiving IOLTA and EAF funds. If applicant is requesting an allocation for any new county(ies), or if applicant is not requesting continued funding for any county for which it currently receives an allocation, provide brief explanations regarding the circumstances including:

- If applying to serve any new county(ies), include name of county(ies), nature of work, start and end date(s), anticipated budget to serve new county(ies), and any other relevant information. If service has been (or will be) discontinued in counties for which applicant received IOLTA and EAF funding, include name of county(ies) and explanation of discontinued service.
- Enter N/A, if not applicable, or if you are a new applicant.

3. Out of County Work.

Describe any work in county(ies) other than those detailed in the questions above. Include name of county(ies), nature of work, start and/or end date, approximate county expenditures, and any other relevant information.

If the applicant works or has cases in any counties other than those detailed in the questions above, include the name of county(ies), nature of work, start and/or end date(s), approximate county expenditures, and any other relevant information.

If the county(ies) listed are incorrect, update Form II with the appropriate county(ies) and select "Save and Finish Later" to refresh the information in Form VIII-A.

EXPENDITURES BY COUNTY TABLE:

SELECT THE “COUNTY EXPENSES” BUTTON TO COMPLETE THE TABLES FOR EACH COUNTY IN WHICH THE APPLICANT PROVIDES FREE LEGAL SERVICES IN CIVIL MATTERS TO INDIGENT PERSONS AND FOR WHICH THE APPLICANT SEEKS AN ALLOCATED SHARE OF FUNDING. EVEN IF YOU ONLY SERVE ONE COUNTY, YOU MUST COMPLETE THE INFORMATION FOR THAT COUNTY HERE. FUNDS ALLOCATED TO A COUNTY MUST BE SPENT IN THAT COUNTY. CONTACT OA&I TO DISCUSS IF THE APPLICANT IDENTIFIES FUNDS FOR A COUNTY THEY HAVE NOT BEEN FUNDED FOR PREVIOUSLY, OR FOR WHICH EXPENDITURES IN THAT COUNTY ARE TEMPORAL.

- County Expenditures: Indicate the total amount spent to provide free civil legal services to indigent persons in California in the selected county per the organization’s previous fiscal year. Amounts should match the uploaded audited financials.
- IOLTA Expenditures: Enter the amount of IOLTA grant expenditures incurred in the selected county during the organization’s previous fiscal year. Note: for organizations with a fiscal year that is not January 1 to December 31, you no longer have to adapt your expenditures to the calendar year. Use the reference button to view the quarterly reports that fall within your fiscal year. See above for details. If the organization had carry-over funds from the grant two years prior, those expenditures must also be incorporated in the by county table(s) in accordance with your fiscal year.
- EAF Expenditures: Enter the amount of EAF grant expenditures incurred in the selected county during the organization’s previous fiscal year. Note: for organizations with a fiscal year that is not January 1 to December 31, you no longer have to adapt your expenditures to the calendar year. Use the reference button to view the quarterly reports that fall within your fiscal year. See above for details. If the organization had carry-over funds from the grant two years prior, those expenditures must also be incorporated in the by county table(s) in accordance with your fiscal year.
- Qualified Expenditures: This field automatically calculates the total expenditures minus IOLTA and EAF expenditures incurred in the selected county. This amount will be used to determine the grant award for the selected county. Any negative numbers will be calculated as zero to avoid a negative allocation.

The total amount of the Qualified Expenditures (bottom right column of the Expenditures by County table) should match the amount calculated in Form VIII Question 18 that also appears at the top of Form VIII-A.

Current State Bar grantees: Select the “View” button next to “Previous Fiscal Year Quarterly Reports” to view quarterly expenditures, as reported by the organization. Note that the entire Expenditures by County table(s) should match the organization’s fiscal year.

If your organization has a January 1 – December 31 fiscal year, your IOLTA and EAF expenditures should match the Quarterly Report submissions for the previous year, including any carry-over spent in that year.

If your organization's fiscal year is not January 1 – December 31 or July 1 – June 30, use the Quarterly Report information to calculate your IOLTA and EAF by county expenditures for your fiscal year. Total the amounts from the relevant quarters (or pro-rata quarters) that fall within your fiscal year ending in the previous year for each county. For example, if your fiscal year is February 1 to January 31, include two-thirds of the total Q1 amount and the total Q2, Q3, Q4 amounts for 2018, plus one-third of Q1 for 2019. The same formula would apply to any Q5 or Q6 reports that fall within your fiscal year. Contact your OA&I staff contact if you have any questions.

FORM IX. CERTIFICATIONS & ASSURANCES

DOWNLOAD AND PRINT THE CERTIFICATIONS DOCUMENT. OBTAIN THE REQUIRED SIGNATURES, THEN SCAN AND UPLOAD A PDF OF THE SIGNED DOCUMENT.

CAREFULLY READ THE CERTIFICATIONS AND ASSURANCES, AND ALSO ENSURE THE BOARD'S AUTHORIZED REPRESENTATIVE DOES SO. SIGNING THIS FORM CERTIFIES THAT THE ORGANIZATION HAS UPDATED ITS INFORMATION ON THE STATEWIDE LEGAL SERVICES DIRECTORY (LAACDIRECTORY.ORG), LAWHELPCA.ORG, AND IF APPLICABLE, ON ITS SMARTSIMPLE ORGANIZATION PROFILE FOR USE IN THE PRO BONO DIRECTORY HOSTED ON THE STATE BAR WEBSITE.

THIS FORM MUST BE SIGNED BY THE EXECUTIVE DIRECTOR, OR THE ORGANIZATION'S EQUIVALENT LEADERSHIP POSITION, AND BY THE BOARD CHAIR. IF THE BOARD CHAIR IS NOT AVAILABLE, ANOTHER OFFICER AUTHORIZED TO BIND THE ORGANIZATION MAY SIGN THE DOCUMENT. UPLOAD THE SIGNED COPY TO THE APPLICATION.

Proposed Revision to 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. 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. A qualified legal services project or qualified support center applying for Trust Fund Program funds is presumed to have such a purpose and function if 75% or more of ~~the its~~ budget for the fiscal year most recently concluded for which it is seeking funds is ^{*} was designated to provide ~~free legal~~ such 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. 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.~~

(BE) 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.

(C) When determining whether an applicant has demonstrated the necessary primary purpose and function, or when determining the budget and expenditures of the program under section 6216(b) of the Business and Professions Code, the following expenditures will be excluded or deducted as specified:

(subpart) Exchanged Funds are funds exchanged between any two organizations seeking eligibility for IOLTA grants, not falling under any of the following exceptions: (1) Passthrough Expenditures as defined in these Rules; (2) payments of funds received under a grant allocated under section 6216 of the Business and Profession Code; (3) funds received under any program that prohibits those funds from being credited toward IOLTA grant allocations. Any funds exchanged between two applicant organizations and not falling under any of the foregoing exceptions, must be reported by both the payor and the recipient; if both are applying as QLSPs, one of them must deduct those funds for purposes of calculating grant allocations. In such cases the funds will be credited to the recipient absent a written agreement to the contrary.

* This proposed revision incorporates a revision previously recommended by the Rules Committee, deleting reference to the year for which funding is sought. That recommendation has yet to be presented to the Board of Trustees with a request to be released for public comment.