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To: Members, Rules Committee, Legal Services Trust Fund Commission

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Subject: Proposed Changes to LSTFC Guidelines for the Pro Bono Allocation

EXECUTIVE SUMMARY

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

This memo presents the working group's recommendations regarding the pro bono allocation test for organizations that meet the definition of Qualified Legal Services Projects (QLSPs) under Business and Professions Code section 6214(b)(3)(A). This memo will review the following:

- Governing authorities and office practices in determining eligibility for the pro bono allocation;
- Whether the current two-step numerical tests for pro bono allocation eligibility sufficiently align with the statutory requirements; and
- Options to clarify and simplify the requirements for the pro bono allocation.

The working group met the week of March 15 to preview issues and develop preliminary recommendations. On April 1, 2021, the working group shared the preliminary recommendations with the Legal Aid Association of California (LAAC) for purposes of gathering feedback from the legal aid community. LAAC convened with QLSPs and shared a summary of the feedback with the working group on April 14, 2021.

This memorandum has been updated in light of the legal aid community's feedback. Once the Rules Committee makes final recommendations, these recommendations will be reviewed subsequently by 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 is 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. The process then involves circulating those preliminary recommendations to the legal aid community to obtain feedback. The Rules Committee will consider the feedback before making a final recommendation to the LSTFC which, in turn, will make a recommendation to the Board of Trustees.

GOVERNING AUTHORITIES

IOLTA grants are awarded to approximately 100 QLSPs and support centers each year. These organizations provide free civil legal aid in California to indigent persons¹, or legal training, legal technical assistance, and advocacy support to the organizations that directly serve indigent persons. IOLTA funds are mainly generated from interest accrued on lawyers' trust accounts.

IOLTA grants are governed by Business & Professions Code sections 6210-6228 (IOLTA statute), State Bar Rules, and Eligibility Guidelines for Legal Services Projects and Support Centers (Guidelines). The IOLTA statute is the primary governing authority that defines how IOLTA funds are generated and distributed, utilizing a formula to calculate individual award amounts.

The IOLTA formula provides that 85 percent of funds go to QLSPs, allocated to each county based on the relative size of each county's indigent population, and 15 percent to support centers. The formula reserves 10 percent of the QLSP funding in each county as an additional allocation for QLSPs that recruit "substantial numbers of attorneys in private practice to provide free legal representation to indigent persons or to qualified legal services projects" as their "principal means of delivering legal services." The 10 percent pro bono set-aside is distributed

¹ Per the IOLTA statute, an "indigent person" is an individual 1) whose income is 125 percent or less of the federal poverty threshold, or 2) is eligible for Supplemental Security Income or free services under the Older Americans Act (seniors 60+) or Developmentally Disabled Assistance Act (Bus. & Prof. Code, § 6213(d)).

to grantees qualifying for the pro bono allocation on a pro rata basis based on the relative amount of each grantee's qualifying expenditures. (Bus. & Prof. Code, § 6214(b)(3)(A) and § 6216(b)(1)(B).) This is commonly referred to as the "pro bono allocation." See Attachment A for excerpts of relevant governing authorities.

The Guidelines provide specific steps for applicants to demonstrate their eligibility for the additional pro bono allocation.

1. As a preliminary matter, applicants must demonstrate that they recruit "substantial numbers" of pro bono attorneys. To meet this threshold requirement, applicants must satisfy at least one of the following:
 - they recruited at least 30 attorneys who provided services in the previous calendar year; or
 - they recruited at least 5 percent of the licensed attorneys in the county served who provided services in the previous calendar year; or
 - the attorneys they recruited donated at least 1,000 hours of legal services to their clients in the previous calendar year.² (Eligibility Guidelines for Legal Services Projects, Guideline 2.9.1, referring in part to Guideline 2.6.3.1.)
2. If applicants meet the threshold requirement, applicants must then demonstrate that pro bono is their "principal means" of delivering legal services by meeting one of three tests in each county where they are requesting the allocation. The applicant can:
 - (A) show that the attorneys recruited actually provided substantial free civil legal services and that the number of hours of services provided in the previous calendar year by volunteer attorneys exceeded the number of hours of services provided by staff attorneys ("Test A"); or
 - (B) demonstrate:
 - (1) that the attorneys recruited actually provided substantial free civil legal services;

² Guideline 2.6.3.1. outlines additional factors relevant to a determination that an applicant has recruited "substantial numbers of attorneys." In practice, because some of the factors are somewhat repetitive of the three minimum threshold options discussed above (e.g. demonstrate substantial numbers through the number of attorneys recruited), meeting one of those thresholds is generally considered sufficient.

- (2) that the combined number of hours of service by volunteers, both attorneys and paralegals, exceeds the combined number of hours of service by staff attorneys and paralegals; and
 - (3) that the number of hours of service by volunteer attorneys is more than half as many as the combined number of hours of service by staff attorneys and paralegals (“Test B”); or
- (C) describe and explain its method used to demonstrate that pro bono is its principal means of delivering legal services (“Test C”). (Eligibility Guidelines for Legal Services Projects, Guideline 2.9.2, Bus. & Prof. Code, § 6216(b)(1)(B).)

These options for demonstrating “principal means” are commonly referred to as “Tests A, B and C.”

DISCUSSION

The IOLTA statute states that its purpose is “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.”³ An important part of this goal is the promotion of pro bono legal services. Pro bono allows the legal aid system to leverage the resources of the private bar to increase access to legal services for low-income Californians. The IOLTA statute encourages the establishment of pro bono programs by specifically setting aside 10 percent of QLSP funding for programs in each county that do significant pro bono work.

The IOLTA statute stipulates that this 10 percent set-aside will be distributed to programs that recruit “substantial numbers” of pro bono attorneys and demonstrate that their “principal means” of delivering legal services is through pro bono,⁴ but does not define either concept. The Guidelines outline the tests by which grantees can demonstrate “substantial numbers” and “principal means.”

Some grantees have expressed concerns that the numerical based tests have an “urban bias,” making it more difficult for rural and smaller organizations to meet the pro bono allocation tests in comparison to their urban counterparts. The issue has been raised with the Eligibility & Budget Review Committee in its review of IOLTA applications where QLSPs have applied for the pro bono allocation under Test C, as well as by organizations that fail to pass the threshold test.

With these considerations as background, the Rules Committee has the opportunity to examine the current pro bono allocation tests under the Guidelines and discuss options for promoting

³ Bus. & Prof. Code, § 6210.

⁴ Bus. & Prof. Code, § 6214(b)(3)(A) and § 6216(b)(1)(B).

equity, transparency, and clarity in determining eligibility for the pro bono allocation. The working group has considered the following:

- Eliminating or modifying the threshold test (i.e. “substantial numbers” test);
- Clarifying definitions within the Eligibility Guidelines; and/or
- Modifying the “principal means” tests (also known as Tests A, B, and C).

Below are the general considerations in relation to each issue. The working group has provided a variety of possible responses to address these issues and makes specific recommendations as to each.

THRESHOLD TEST

Options presented:

- 1. Eliminate the Pro Bono Allocation Threshold Test**
- 2. Use a Scaled Ratio for the Threshold Test**
- 3. Establish a More Flexible Threshold Test**
- 4. Maintain the Current Threshold Requirement**

The Guidelines’ threshold test determines whether a QLSP has a baseline “substantial number” of pro bono attorneys. If the QLSP cannot demonstrate that they recruited (1) 30 attorneys, or (2) recruited five percent of the county’s attorneys, or (3) the attorneys the QLSP recruited donated at least 1,000 hours of legal services, that is the end of the inquiry. The QLSP is not eligible for the additional pro bono allocation and does not continue to the second part of the test, despite the fact that it may meet Tests A, B, and/or C in the second part of the test.

The number of attorneys in each county and types of law firms vary widely across California. To address this diversity, it is important to examine what “substantial numbers” may look like for different counties. What constitutes a substantial number varies from one organization or one county to another. Urban centers have more attorneys, more law schools, and more large law firms, which often actively support their attorneys’ pro bono work. For example, Los Angeles County has a pool of 56,038 active attorneys from which to recruit; Napa County has 439; Alpine County has three.⁵ See Attachment B for a list of the number of active attorneys per county.

The composition of the bar varies widely across the state as well. In rural areas, the bar may consist primarily of district attorneys, public defenders, and the attorneys who work for QLSPs. The remaining attorneys likely work in very small firms or solo practices; this may make it very difficult for them to do pro bono work.

⁵ The State Bar of California, Attorney Demographics, as of March 4, 2021, https://members.calbar.ca.gov/search/demographics_counties.aspx.

Consideration of these differences should also take into account the pressing need for legal services in rural communities:

Aggravating the general lack of access to legal counsel in rural California is the fact that the vast majority of the state’s attorneys are based in metropolitan areas, which is consistent with national trends as well. Lawyers—including legal aid lawyers—are generally scarce in rural areas.⁶

The current Guidelines may not allow QLSPs a realistic equal opportunity to meet the threshold test, in that 20 of California’s 58 counties have fewer than 100 attorneys.⁷ A QLSP in a rural area with few active attorneys will not be able to recruit 30 attorneys or obtain 1,000 pro bono service hours. It may not even be able to recruit 5 percent of the county’s active attorneys if those attorneys already work at the QLSP, live in remote parts of the county, are conflicted out, or are small-firm practitioners who do not have the bandwidth to volunteer.

With this information as background, this section will examine whether the threshold test is a useful measure of the “substantial number” requirement. The Rules Committee may choose to make one of the following changes or keep the threshold test as is.

Option 1: Eliminate the Pro Bono Allocation Threshold Test

The pro bono allocation under the IOLTA statute requires that a QLSP recruit a “substantial number” of pro bono attorneys and that these pro bono attorneys’ services are its “principal means” of delivering legal services, but the statute does not require a unique threshold test to assess substantial number. Nor is there a statutory requirement that there be two separate tests for substantial number and principal means.

The threshold test’s purpose is to ensure that a QLSP recruits a substantial number of pro bono attorneys, but it may not be the most equitable way to do so. Such heavy reliance on a numerical approach to measure the recruitment of pro bono attorneys across counties may not account for the dramatic difference in size and composition of organizations, as well as the uneven distribution of attorneys across geographic regions.

Looking at the pro bono allocation test holistically, the substantial number threshold test measures may be unnecessary because the substantial number requirement may already be adequately measured by the principal means test (Tests A, B, and C). Instances have occurred where a small and/or rural organization’s pro bono attorney hours logged in a given year exceeded the number of staff attorney hours, which is the requirement to meet Test A, but the

⁶ California Commission on Access to Justice, *California’s Attorney Deserts: Access to Justice Implications of the Rural Lawyer Shortage*, July 2019, p. 7, <http://www.calbar.ca.gov/Portals/0/documents/accessJustice/Attorney-Desert-Policy-Brief.pdf>.

⁷ The State Bar of California, Attorney Demographics, as of March 4, 2021.

organization did not qualify for the allocation because it was not able to satisfy the initial threshold test.

Because there is no requirement in the IOLTA statute for a separate substantial number test, the working group believes that eliminating the threshold test is one option that could bring more simplicity and transparency to the pro bono allocation process, increase equity for smaller and rural organizations, and eliminate redundancy in the pro bono allocation tests.

Option 2: Use a Scaled Ratio for the Threshold Test

Another option is to keep the threshold test, but in a modified form. A scaled ratio lays out the threshold test proportionally, based on the number of active attorneys in each county:

Active attorneys in county	Recruit this number of attorneys OR	Recruit this % of active attorneys in county OR	Have this many pro bono attorney volunteer hours
1-49	1	5%	10
50-99	1	5%	30
100-299	2	5%	70
300-499	4	5%	130
500-999	8	5%	250
1000-2999	20	5%	670
3,000+	30	5%	1,000

For the numbers of active attorneys by county, and a summary of the complete methodology utilized for this proposed matrix, see Attachment B.

Using a scaled ratio may be cumbersome at first. It could also run the risk that, as the number of active attorneys increases or decreases, a county might have different metrics from year to year.

Using a scaled ratio for the threshold test takes into consideration QLSPs across counties with widely varying numbers of attorneys, law firms, and law schools. Scaling the threshold requirements would invite more equity in assessing what is a “substantial number” of pro bono attorneys across diverse areas of California.

A similar alternative would involve developing minimum numbers of pro bono attorneys or hours based on number of attorneys employed at an organization, instead of the number of active attorneys in the county. This scaled ratio could help avoid disadvantaging smaller programs operating in larger counties.

The working group notes that this option may be more equitable but more burdensome—particularly for organizations operating in multiple counties—and seeks feedback.

Option 3: Establish a More Flexible Threshold Test

The test options to establish an applicant's "principal means" of service delivery through pro bono offers two quantitative tests but provides an option to propose a narrative explanation for organizations that do not meet the quantitative tests. There is no corresponding option in the Eligibility Guidelines to meet the "substantial numbers" threshold test, nor is there a clear rationale for allowing flexibility regarding the "principal means" test but not the "substantial numbers" threshold requirement.

In fact, the Eligibility Guidelines already provide a list of relevant factors in establishing that the organization recruits "substantial numbers." Meeting the requirement of 30 attorneys, five percent of attorneys, or 1000 donated hours is not considered dispositive in the Eligibility Guidelines.⁸ Eligibility Guideline 2.6.3.1. goes on to say:

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

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

This Guideline could be changed so that the numeric tests are sufficient to satisfy the threshold, but, failing to meet one of those, the organization can provide a narrative response regarding the above-enumerated factors.

Adopting a more holistic approach towards meeting this threshold requirement could assist organizations that would otherwise fall short of the standard, allowing the Commission's Eligibility and Budget Review Committee more discretion in assessing the overall program. As it currently stands, failing to meet the threshold requirement precludes the Committee from finding an organization eligible for the pro bono allocation even when a program meets test A, B, or C, and that seems contrary to the intent of the authorization for an additional allocation for those programs providing a substantial amount of pro bono as their principal means of providing legal services to indigent Californians.

⁸ As noted previously, meeting one of the minimum thresholds is generally considered sufficient due to the overlap between the thresholds and some of the factors. This proposal would affirm that practice and retain the factors as an option for organizations that are unable to satisfy one of the numeric threshold requirements.

Option 4: Maintain the Current Threshold Requirement

Recognizing that some distinction between pro bono programs and other QLSPs is required in order to merit additional funding and increased client income eligibility threshold, the Rules Committee may prefer to maintain a bright-line minimum threshold requirement. Otherwise, there may be the potential for the exceptions to swallow the rule, erasing any meaningful differences between these two types of QLSPs.

Response from Legal Aid Community and Relevant Considerations Regarding the Threshold Test

The response from LAAC summarizing the legal aid community's feedback indicated that LAAC and others on its April 7 call primarily supported Option 1 (eliminating the threshold test). If the Rules Committee were not in favor of eliminating the test, the next best option from the community's perspective would be to make the threshold test more flexible (Option 3). LAAC and some individual organizations presented comments to staff in support of these options.⁹ (Attachment D.)

Generally, the feedback indicated that requiring programs to meet a minimum number of hours or persons recruited may not be fair to individual programs, particularly given different staff sizes, locations (urban versus rural), and service delivery methods (e.g. clinics versus appellate representation). All of these factors may affect the number and type of volunteers available to an organization.

A recent analysis by Commissioner Jim Meeker underscores these points by considering the ratio of active attorneys in each county to the number of persons who qualify for legal aid. He determined that in mostly urban counties, there was one active attorney for every 53 persons who would qualify for services using IOLTA/EAF funds. In contrast, in mostly rural counties, there was on average one active attorney for every 289 persons who would qualify for services.¹⁰ If we were to exclude the attorneys who already work for the legal aid organizations in these areas, the ratio would likely be even higher.

The dearth of attorneys in rural areas compared with the relative need shows why rural programs may perceive themselves at a disadvantage with an approach that has bright-line minimum requirements. Option 2 above (using a scaled ratio for the threshold test) maintains a graduated minimum requirement based on active attorneys in the county. This option was not preferred by LAAC or the legal aid community. In light of Commissioner Meeker's analysis, if the

⁹ LAAC cautioned that its comments are not representative of a unanimous opinion in the community. Nonetheless, it appears that the majority of those organizations interested in, and impacted by, this topic support these conclusions, based on this feedback as well as anecdotal comments staff has received over time.

¹⁰ The analysis used a poverty threshold of 200 percent of the federal poverty level (FPL) given the recent support and pending request with the Legislature to increase the income eligibility threshold from 125 percent to 200 percent FPL.

Rules Committee were to pursue Option 2, it may be necessary not only to consider the number of active attorneys in the county but that number in comparison to the size of the IOLTA/EAF income-eligible population. This would make that option even more cumbersome to develop and implement.

Working Group Recommendation Regarding the Threshold Test

In consideration of the legal aid community's feedback and the desire to make this process more equitable and simple, the working group recommends that the Rules Committee adopt Option 1 and eliminate the threshold test. The requirement of recruiting "substantial numbers of attorneys" may be met through minor modifications to the principal means tests,¹¹ as discussed elsewhere in this memo.

CLARIFICATION OF DEFINITIONS—"PRINCIPAL MEANS" TEST

Options presented (not mutually exclusive, the Committee could adopt any, all or none of these options):

- 1. Defining Staff Attorneys to Include Legal Fellows**
- 2. Revising Test B to Include Both Paralegal Hours and Non-Attorney Volunteer Hours**
- 3. Clarifying When Law Students Are Pro Bono Volunteers**
- 4. Counting Staff Hours as Pro Bono Hours**

If an organization meets the "substantial numbers" threshold test, it then must show that pro bono is the "principal means" by which it delivers legal services, by demonstrating one of the following:

- Test A: Pro bono attorney hours exceed staff attorney hours;
- Test B: Pro bono attorney and paralegal hours exceed staff attorney and paralegal hours AND pro bono attorney hours are more than half of staff attorney and paralegal hours;
or
- Test C: Describe and explain its method used to demonstrate that pro bono is its principal means of delivering legal services.

The Guidelines do not provide definitions for several of the terms used in this section. The Rules Committee may choose any, all, or none of the options provided to modify these terms.

¹¹ The principal means Test A requires volunteer attorney hours to exceed staff attorney hours. It may be inferred that this involves recruiting "substantial numbers of attorneys," though the actual number of volunteer attorneys may be considered along with the hours donated. Test C may need added language asking the organization to demonstrate how it recruited "substantial numbers of attorneys."

Option 1: Defining Staff Attorneys to Include Legal Fellows

The principal means tests measure pro bono attorney hours against staff attorney hours, but the Guidelines do not define who to include under “staff attorneys.”¹²

Legal fellows typically work at a QLSP full-time on a one-year or two-year fellowship. Fellows are employees of the QLSP;¹³ some have all or part of their salaries paid by a third-party sponsor. Fellows carry out important functions at the organizations they serve and are usually licensed or achieve licensure during the tenure of their fellowship. They typically perform duties similar to entry-level employees with a “staff attorney” title, and it is current office practice to instruct grantees to list fellows as “attorneys” during the budgeting process each cycle.

Providing a more precise statement that legal fellows should or should not be included under “staff attorneys”¹⁴ for the “principal means” tests would provide clarity for grantees and ensure consistency between grantees.¹⁵

Response from Legal Aid Community and Relevant Considerations Regarding Including Legal Fellows under the Definition of Staff Attorneys

LAAC and the legal aid community did not support this option. They felt it would disincentivize programs from seeking support from fellows if they believed it may negatively impact programs’ ability to qualify for the pro bono allocation by counting the fellows’ hours as staff attorney hours. The comments noted that fellows would likely not be on staff without third-party support of the fellows’ salaries. They further observed that fellows are usually newer law graduates and attorneys who would not perform the same type of work as staff attorneys. Some suggested removing fellows from the equation entirely.

Removing fellows entirely from the equation does not render a completely neutral result, however. It could possibly assist an organization in passing Test A by reducing the staff attorney hours in comparison to volunteer attorney hours. Moreover, some fellowship project sponsors require or strongly encourage a pro bono component,¹⁶ and if the organization were to count

¹² However, they do provide guidance about who to count as an “attorney in private practice”: “Any attorney who is not an employee of the applicant” (Commentary to Eligibility Guideline 2.6.3.2.).

¹³ This would marshal against interpreting the fellow’s role as a pro bono contributor; despite being a temporary position of one-to-two years, the fellow would be considered an attorney (or legal support staff if not licensed) employee.

¹⁴ Or possibly change the category to “paid attorneys.”

¹⁵ The Committee may also wish to discuss treatment of provisionally licensed lawyers, a program currently authorized through June 1, 2022. The program allows law graduates to work under the supervision of a licensed attorney either as a volunteer or paid position.

¹⁶ For example, Equal Justice Works fellowship applications ask about the intended fellowship’s plans to integrate or utilize pro bono services as part of the service delivery model and whether the host organization engages pro bono services elsewhere. Some sponsors specifically choose fellowship projects in part due to their ability to participate in the project through pro bono activities.

the pro bono attorney hours accrued under that project towards its donated hours, it would seem most appropriate to also count the fellow's hours related to that work as staff hours.

Working Group Recommendation Regarding Legal Fellows

The working group is inclined to adopt the legal aid community's recommendation to explicitly exclude fellows from the definition of "staff attorneys" but the group also believes the counterpoints to that proposal warrant further discussion among the Rules Committee.

Option 2: Revising Test B to Include Both Paralegal Hours and Non-Attorney Volunteer Hours

In the 30+ years since the enactment of the IOLTA statute, the delivery of legal services, including pro bono services, has changed. Many legal services organizations have evolved to take a more holistic approach, utilizing a wide variety of volunteers in addition to attorneys and paralegals to address problems that may not be traditionally "legal" in nature—but might become so if not addressed earlier—or that impact the individual's ability to secure their legally protected rights. The current codification process provides an opportunity to review and revise the rules and Guidelines to better align with the needs of the communities served by legal aid.

Principal means Test B measures pro bono attorney and paralegal hours against staff attorney and paralegal hours. Paralegals are required to perform substantial legal work under the direction and supervision of an attorney and must possess certain educational and certification credentials.¹⁷ In addition to volunteer paralegals, QLSPs incorporate a range of other non-attorney volunteers, including interpreters, legal assistants, social workers, undergraduate students, law students and intake volunteers into their practice models, thereby increasing the number of clients they serve. Current office practice allows counting some of these roles towards the Test B calculation, when related to the legal outcome. Explicitly including paralegal hours and non-attorney volunteer hours under Test B would acknowledge the breadth of volunteers serving legal aid clients and provide both consistency and clarity to staff and grantees as service models evolve.

In a January 2021 survey, grantees highlighted the use of non-attorney volunteers in their delivery of pro bono services, reporting:

- "[Our] principal means of delivering services depends on the coordination of recruitment of Volunteer Attorneys in private practice and the recruitment of community volunteers with foreign language skills . . . [T]he services of Volunteer Attorneys would be rendered ineffective without the assistance of the volunteer interpreters and translators . . ."

¹⁷ Bus. & Prof. Code, §6450

- “Bilingual, bicultural undergraduates, exploring a career in law, are a staple of our intake system; many have gone on to become attorneys because of their experience.”
- “Volunteer legal assistants help with housing intakes on a regular and consistent basis . . . Volunteers are core to how our small program delivers legal services . . .”

Like paralegals, these additional categories of volunteers are supervised by attorneys and are trained to be knowledgeable about the organization’s services and legal subject matters. Their work allows attorneys to serve clients that the QLSP may not otherwise reach. They also help attorneys to provide language-specific and culturally sensitive legal services, increasing access to legal assistance for vulnerable populations. (See Attachment C for more detailed results of the survey.)

Non-attorneys could be defined to encompass specific roles of interpreters, legal assistants, social workers, undergraduate students, law students, and intake volunteers, if related to the legal outcome. However, the limitation of that option, as noted, is the ever-changing nature of legal service delivery and various role titles, which may require future revisions to the regulations.

Response from Legal Aid Community and Relevant Considerations Regarding Paralegal and Non-Attorney Volunteer Hours

LAAC and the legal aid community supported this option. As noted in the preceding section, updating Test B to be more inclusive would better reflect the full scope of service delivery, as it has changed considerably over time. One rural program stated that it is more reliant on non-attorney volunteers, consistent with the finding that there are fewer available attorneys in rural areas. However, this organization also suggested that providing these opportunities to non-attorney volunteers should not merely be allowed as part of the principal means test, but would support recognition of their significant contributions by their inclusion in Test B. In this organization’s experience, non-attorney volunteer opportunities contribute to diversity in the legal profession as the experience often places non-attorney volunteers on a path to a legal career they otherwise may not have considered. These individuals may then go on to serve as legal aid staff attorneys or pro bono attorney volunteers in the future.

Working Group Recommendation Regarding Paralegal and Non-Attorney Volunteer Hours

The working group’s recommendation is to expand Test B to include both paralegals and non-attorney roles where the service is directly related to the legal outcome. (These roles would be counted in relation to both staff and volunteer hours. In other words, a staff social worker’s hours meeting this definition would count towards staff hours just as a volunteer social worker’s hours would count towards volunteer hours.)

Option 3: Clarifying When Law Students Are Pro Bono Volunteers

The Guidelines are silent on whether various categories of law students can be counted as pro bono volunteers under principal means Test B. Some law students receive a stipend from a third party (for example their school), while others may receive course credit. Defining which law students can be counted as pro bono volunteers would provide clarity to grantees. (Law student volunteers differ from legal fellows in that they are often primarily considered to be participating in a learning or educational experience—while also contributing to the work of the QLSP—whereas legal fellows are usually full-time junior staff members who have completed their education; law students may receive some compensation, though many receive no financial incentive, and their tenure with an organization may last a summer or a semester. In contrast, legal fellows are often full-time employees for a year or two.)

The Guidelines do not provide a definition of compensation as it relates to pro bono work, only that: “Attorneys can be considered to serve without compensation even when they are reimbursed for out-of-pocket expenses, whether by the client, the applicant, or other sources. (Eligibility Guidelines 2.6.3.1.)

Although some students receive a stipend, this stipend is usually from a third party. Thus, they are not compensated by the QLSP, do not receive benefits from the QLSP, and are not paid staff members. Even students receiving a nominal stipend from a QLSP do not usually earn enough to be considered a living wage and would still need to supplement their living expenses from another source. A small stipend may incentivize a student to undertake an internship, but the fact remains that QLSPs are providing a training opportunity not unlike what they offer pro bono attorneys who typically practice outside of the areas where they are providing volunteer services.

Moreover, students receiving course credit for their internships are receiving no tangible economic benefit. It is common for schools to provide internships so that law students can gain valuable hands-on experience, and in fact, the students are paying tuition in order to receive the credit. These law students support pro bono programs of all kinds across the state. As revealed in the Justice Gap Study, these experiences are instrumental in encouraging students to pursue legal aid employment or to become pro bono volunteers themselves after law school.

Response from Legal Aid Community and Relevant Considerations Regarding Law Students as Pro Bono Volunteers

LAAC and the legal aid community agreed with the idea of counting law students as pro bono volunteers, indicating that the above analysis is consistent with how legal aid organizations view their law student volunteers. Whether the student receives a small stipend or academic credit in exchange for their time is secondary to the learning experience provided to each student.

Working Group Recommendation Regarding Law Students as Pro Bono Volunteers

The working group recommends including law students as pro bono volunteers under Test B, including those law students who may receive a third-party or nominal QLSP stipend¹⁸ or course credit, as it furthers the goal of increasing access to legal services and has a positive impact on the attorney pipeline to legal aid. It also makes clear to grantees that law students can be counted as pro bono volunteers for the principal means test.

Option 4: Counting Staff Hours as Pro Bono Hours

Currently, office practice is to treat all QLSP staff legal services hours the same, regardless of whether the staff's time was devoted to direct service delivery, or to planning, organizing, or training volunteer attorneys as part of a pro bono program. Under the current Guidelines, no staff hours could or would count towards volunteer hours. (See Guideline 2.6.3.2.) However, the working group discussed the possibility of separating out hours spent supporting pro bono services from other work responsibilities. This would require applicants to add another layer of tracking which, though adding a complexity, may provide a more accurate understanding of the time and financial investment required in maintaining a pro bono program.

Under the current principal means tests, staff hours are compared with volunteer hours, but this undermines any recognition of the staff time devoted to developing a robust pro bono program. This sometimes leads to counterintuitive outcomes. For example, some organizations have had to apply for the pro bono allocation under Test C in the past because, due to a large increase in their training and support services for pro bono attorneys, the staff hours actually exceeded the volunteer attorney hours solely for that reason. This potentially jeopardizes their ability to receive the allocation, despite having a model centered on service delivery through volunteer attorneys.

Response from the Legal Aid Community and Relevant Considerations Regarding Counting Staff Hours as Pro Bono Hours

LAAC indicated that the legal aid community supported this option. We did not receive specific feedback as to this proposal. However, we did receive general feedback regarding the tension between growing an organization's staff while worrying that it will negatively impact the organization's ability to meet the pro bono allocation requirements. Reluctance to hire more staff could hinder service expansion and reduce access to justice, which runs counter to the intent of the IOLTA statute.

On the other hand, an increase in staff hours over volunteer hours in a particular year due to staffing changes and increases may be anomalous. Perhaps an explanation under Test C could

¹⁸ The Committee may wish to consider defining "nominal" and/or establishing a threshold amount in relation to QLSP stipends.

be sufficient, rather than requiring a change to the Guidelines. If the organization is a returning applicant, it would be possible to establish whether an increase in staff time in a particular year was an aberration or part of a pattern.

Working Group Recommendation Regarding Counting Staff Hours as Pro Bono Hours

The working group is still undecided regarding this option and does not have a recommendation about whether to proceed at this time. Adopting such a change would require a significant revision to the Guidelines and might make this part of the application more, rather than less, complex. As noted above, Test C may allow for some necessary flexibility from year to year.

ALTERNATE PRINCIPAL MEANS TESTS

Options presented (not mutually exclusive, the Committee could adopt any, all, or none of these options):

- 1. Principal Means Test Based on Number of Clients Served (Test A)**
- 2. Eliminate the Numeric Test Involving a Combination of Attorney and Non-Attorney Hours (Test B)**
- 3. Add Specific Elements of Pro Bono Program as Factors for Test C**

As the needs of a community change, the delivery of legal services adapts to these changes. New organizations are founded, and innovative programs are implemented. Pro bono services may take all kinds of forms. The Rules Committee has the opportunity to assess whether the current principal means tests are inclusive of all of the types of pro bono organizations that serve California's indigent, and may choose either, both, or none of the options provided.

Option 1: Principal Means Test Based on Number of Clients Served (Test A)

When determining whether pro bono is the "principal means" by which a QLSP delivers legal services, Test A considers only how many cumulative pro bono hours are donated. It does not consider how many clients are served via pro bono.

As an example, one attorney spends three hours conducting a workshop on DACA and answering individual questions and serves 50 clients. Another attorney spends three hours assisting an individual DACA client with a motion to reopen for an application that was erroneously denied. Both scenarios involve three hours of attorney service, but in the first instance 50 clients are served versus the second where one client is served.

Measuring attorney hours is not the only way to measure "principal means." If a QLSP's pro bono attorneys serve thousands of clients, while its staff attorneys serve hundreds, it is reasonable to argue that pro bono is the "principal means" by which the organization delivers

legal services. Like under Test A, pro bono services exceed staff services, except in this case it is based on the number of *clients* instead of the number of *hours*.

A test based on number of clients may be difficult to implement. It would be necessary to define whether a family constitutes one client or whether each member of the family should be counted individually, and this determination may vary based on the type of case. Also, this test would not be able to calibrate differences in the depth of services being provided; one client being served for an hour would be counted the same as a client whose case required dozens of hours. Such a change might disincentivize assigning a pro bono attorney a complex or long-term case, such as an appeal, to a volunteer, despite the resources and expertise the volunteer may be able to offer in such a case. Taken together, this test likely would not produce a fair measure of whether pro bono is truly the principal means by which a QLSP delivers legal services.

Response from Legal Aid Community and Relevant Considerations Regarding Number of Clients Served (Test A)

The legal aid community did not indicate a preference or provide specific feedback regarding this option.

Working Group Recommendation Regarding Number of Clients Served (Test A)

While the working group considered substituting clients served in place of volunteer attorney hours, it does not currently recommend this approach.

Option 2: Eliminate the Numeric Test Involving a Combination of Attorney and Non-Attorney Hours (Test B)

Test B involves a two-step calculation of volunteer hours exceeding staff hours and requires that the number of volunteer attorney hours be more than 50 percent of staff attorney and paralegal hours. The goals of this test are to ensure (1) that the majority of service hours are provided by volunteers rather than staff, and (2) that attorney volunteers provided more than half the number of service hours provided by all staff, presumably to ensure that the volunteer services are calculated towards achieving a legal outcome. However, as the practice of legal aid has evolved, as illustrated through the pro bono survey, and interpreters and other non-attorney volunteers provide necessary services to enable volunteer attorneys to communicate and outreach effectively with their clients. Thus, their work should be counted as part of the organization's pro bono hours.

The test is not intuitive, and in 2021, only three applicants out of 18 qualified for the pro bono allocation under Test B. (Other programs met the Test B threshold, but the three mentioned were the only programs that did not already qualify under Test A also.) Nonetheless, Test B allows programs that rely on substantial non-attorney assistance to capture those contributions

in a way that Test A does not. Perhaps such efforts could be captured through an explanation under Test C (discussed further below), which allows applicants a narrative explanation of their “principal means” of service delivery.

Options under consideration included:

Option 2A: Eliminate Test B entirely (and possibly incorporate these considerations under Test C).

Option 2B: Significantly revise the wording of Test B to make its intent clearer, or possibly mirror Test A (i.e. total volunteer legal services hours [both attorney and non-attorney] exceed total staff legal services hours).

Response from Legal Aid Community and Relevant Considerations Regarding the Numeric Test under Test B

The legal aid community did not provide specific feedback regarding this proposal.

Working Group Recommendation Regarding the Numeric Test under Test B

The working group recommends option 2A above (eliminate Test B entirely). Only a handful of organizations qualify exclusively under Test B, while other tests (like Test C) are expansive enough to encompass organizations utilizing a pro bono model that embraces a large number of non-attorney volunteers.

Option 3: Add Specific Elements of Pro Bono Program as Factors for Test C

Numerical tests tend to favor larger organizations with more sophisticated tracking mechanisms for volunteers. Smaller organizations, especially in rural areas, may not have sufficient staff or resources to follow up with and track volunteer hours. Test C is a valuable option for these organizations, as it allows a QLSP to describe how it satisfies the requirement that pro bono is its principal means of delivering legal services.

Test C could be expanded to include a set of factors to provide guidance to grantees on what the LSTFC considers to be salient elements of a pro bono program that support a demonstration that pro bono services is the principal means by which they provide legal services. To pass this revised Test C, organizations would need to make a strong showing of staff involvement in the activities encompassed in these factors. Factors may include:

- pro bono recruitment and retention strategy,

- Does the organization make a concerted effort to develop relationships with volunteers, such as working with board members who work at firms, community groups, universities, etc.?
 - Does it track the needs of the client community and actively recruit to fill service gaps?
 - Where and how often does the organization conduct outreach?
- training curriculum,
 - Does the organization offer regular trainings to prospective volunteers?
 - Does the organization develop and distribute substantial written training and reference materials (e.g. pro bono manual)?
- type and number of volunteer opportunities available,
 - Does the organization offer volunteer opportunities in all (or most) of its service areas?
 - Are volunteer opportunities frequent and varied (e.g. weekly daytime clinics, bi-monthly weekend intakes, etc.)?
- service delivery model that requires volunteers, and
 - How does the organization describe itself (through statements on its website, strategic plan, mission statement, etc.)?
- supervision and scope of support for volunteers
 - To what extent does the organization provide guidance or technical assistance throughout the volunteer experience?
 - Is the organization considered co-counsel?
 - How does the organization track volunteer hours?
 - How do documents like retainer agreements or engagement letters describe the relationship between the organization and the pro bono attorney?

Many QLSPs engage pro bono volunteers to some extent. Analysis of the factors should help distinguish organizations that rely on pro bono assistance as their principal means of service delivery from those that utilize volunteers as a smaller piece of their overall service model; the factors point to the level of the organization's investment in the pro bono model and whether or not the work of the organization would be sustainable without pro bono support.

This is not an exclusive list; QLSPs could continue to describe their programs and methodology for determining principal means as they deem appropriate. Yet these components would provide an overall view of how an organization incorporates pro bono, and to what extent.

Response from Legal Aid Community and Relevant Considerations Regarding Factors for Test C

The legal aid community did not provide specific feedback regarding this option. However, given the general comments received, it seems likely that maintaining an option that allows flexibility and consideration of individual or unique circumstances would be preferred.

Working Group Recommendation Regarding Factors for Test C

The working group recommends adopting this proposal. Updating Test C in this way would set clear standards to assess Test C applications. With a predetermined set of general factors on which to assess Test C, it would add consistency and objectivity to adjudication. These updates would also provide more transparency for grantees in that they would know what the LSTFC will likely consider as relevant in its determination.

Additional Feedback from the Legal Aid Community Not Included in Prior Proposals

LAAC reported that at least one support center (SC) asserted its belief that SCs that engage the services of pro bono attorneys should be considered “pro bono projects,” at least for the purposes of using a higher income threshold, if not for the additional allocation of funds reserved for pro bono projects. This issue arose in prior Rules Committee proceedings when considering the definition of indigency in October 2020.

The conclusion from the Office of General Counsel at that time was that SCs were not contemplated under the definition of “pro bono project,” given the meaning and usage of the phrase “project” elsewhere in the statute exclusively in reference to qualified legal services projects. The working group is not recommending that the Committee change its position on this point.

WORKING GROUP RECOMMENDATIONS

The working group’s recommendations to the Rules Committee are as follows. Attachment E reflects the specific proposed redlined changes to the Guidelines for all options under consideration throughout the memo (not just those that are recommended).

1. Eliminate the threshold test for establishing recruitment of “substantial numbers of attorneys,” and consider whether modifications to any of the principal means tests are necessary in order to incorporate the substantial numbers requirement
2. Clarify the following definitions related to the principal means tests:
 - a. Consider explicitly excluding legal fellows from the definition of “staff attorneys” (recommend further discussion before deciding)
 - b. Expand Test B to include both paralegal and non-attorney volunteer hours where the service is directly related to the legal outcome and require that similar roles fulfilled on the staff side also count toward staff hours. (This would be contingent on preserving Test B; see recommendation 3.a. below, in which case this clarification and consideration of the numbers of paralegal/non-attorney volunteers could be incorporated into Test C.)

- c. Specify that law students receiving credit or stipends from a third party, or nominal stipends from a QLSP, are considered pro bono volunteers
 - d. Continue to discuss whether to count staff hours dedicated to supporting or developing a pro bono program as “volunteer” hours or whether to consider increased staff time relative to volunteer time as part of the overall analysis under Test C
- 3. Make the following changes to the Principal Means Test:
 - a. Eliminate Test B
 - b. Outline specific elements of a pro bono program to be considered as factors when analyzing a request for pro bono allocation under Test C

Once the Rules Committee makes its final recommendations, these recommendations will be reviewed subsequently by both the LSTFC and, ultimately, the State Bar’s Board of Trustees.

ATTACHMENTS

- A.** Excerpts from governing authorities: Business and Professions Code; Eligibility Guidelines for Legal Services Projects
- B.** List of active attorneys in California by county, and methodology for proposed scaled ratio matrix
- C.** January 2021 Pro Bono Allocation Survey results
- D.** Comments from Legal Aid Association of California and Legal Aid of Sonoma County Regarding the Pro Bono Allocation
- E.** Proposed Revisions (redline) of Eligibility Guidelines for Legal Services Projects

**Excerpts of Governing Authorities:
Business and Professions Code sections 6213, 6214, and 6216;
Eligibility Guidelines for Legal Services Projects, Guidelines 2.6.3. and 2.9.**

California Business and Professions Code section 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.

California Business and Professions Code section 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.

California Business and Professions Code section 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.

Eligibility Guidelines for Legal Services Projects, Guideline 2.6.3.**2.6.3. The applicant must provide at least one of the following special services:**

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

Commentary:

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

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

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

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

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

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

[Guideline 2.6.3.2. omitted]

Eligibility Guidelines for Legal Services Projects, Guideline 2.9

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

2.9.1 the requirements of Guideline 2.6.3.1 above; and

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

Commentary:

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

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

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

Active Attorneys by County and Methodology of Scaled Ratio Matrix for Threshold Test

County	Active Attorneys
Alpine	3
Sierra	6
Modoc	7
Mariposa	15
Trinity	16
Glenn	17
Colusa	22
Lassen	22
Inyo	31
Plumas	38
Mono	39
Del Norte	42
San Benito	50
Calaveras	55
Tehama	55
Lake	70
Amador	70
Siskiyou	70
Tuolumne	71
Yuba	78
Sutter	101
Kings	103
Madera	106
Imperial	139
Merced	159
Mendocino	185
Humboldt	242
Nevada	279
Shasta	312
Butte	349
El Dorado	357
Tulare	391
Napa	439
Stanislaus	546
Solano	552
Yolo	589
San Luis Obispo	726
Santa Cruz	730

San Joaquin	798
Kern	854
Monterey	874
Placer	1,202
Santa Barbara	1,433
Sonoma	1,585
Fresno	2,011
Marin	2,098
San Bernardino	2,343
Ventura	2,843
Riverside	3,213
Contra Costa	4,049
San Mateo	4,763
Alameda	7,409
Sacramento	8,366
Santa Clara	9,903
San Diego	16,071
Orange	17,156
San Francisco	17,578
Los Angeles	56,162

Source: State Bar of California, https://members.calbar.ca.gov/search/demographics_counties.aspx

Data retrieved on March 4, 2021.

Methodology of Scaled Ratio Matrix for Threshold Test

PROPOSED MATRIX

The matrix modifies the threshold test to utilize a scaled ratio based on percentage of active attorneys within the county:

Active attorneys in county	Recruit this number of attorneys OR	Recruit this % of active attorneys in county OR	Have this many pro bono attorney volunteer hours
1-49	1	5%	10
50-99	1	5%	30
100-299	2	5%	70
300-499	4	5%	130
500-999	8	5%	250
1000-2999	20	5%	670
3,000+	30 (current test)	5% (current test)	1,000 (current test)

METHODOLOGY

Baseline Percentages

The proposed matrix began with a review of the 58 counties, sorted by the number of active attorneys. Please see this list above. The list was sorted and divided into seven bands based on the number of active attorneys in each county, banding together those counties with similar numbers of active attorneys and attempting to make each band roughly equal in number. The median (midpoint) of the number of active attorneys in each band was determined. The midpoint number of active attorneys in each band was then measured as a percentage of 3000, which is the number of active attorneys in the top band.¹ This is the baseline percentage used for the rest of the matrix.

For example, in Table 1 below, the counties in Band 4 have between 300 and 499 active attorneys per county. The median (midpoint) of this range is 400; 400 compared to 3000 is 13 percent. The baseline percentage of 13 percent will be used to calculate scaled ratios for Band 4 going forward.

Table 1 – Baseline Percentages

Band	Range of the number of active attorneys for each band	Midpoint of Range	Midpoint as a % of 3000 = Baseline percentage (figures are rounded)
1	1-49	25	1%
2	50-99	75	3%
3	100-299	200	7%
4	300-499	400	13%
5	500-999	750	25%
6	1000-2999	2000	67%
7	3,000+		

¹ The top band actually encompasses any county with 3,000 or more active attorneys.

Scaling of Threshold Test Option 1: Recruit Specific Number of Pro Bono Attorneys

The first threshold test option is to recruit 30 pro bono attorneys. To determine the scaled number for each band, the baseline percentage was used to calculate the respective percentage of 30.

For example, in Table 2 below, Band 4 has a baseline percentage of 13 percent. Thirteen percent of 30 attorneys is four attorneys. Organizations from counties in Band 4 must recruit four pro bono attorneys to meet this option of the threshold test.

Table 2 – Scaled Ratio for Number of Pro Bono Attorneys Recruited

Band	Range of the number of active attorneys for each band	Baseline % (from Table 1)	Scaled ratio (Baseline % compared to 30 attorneys)	Scaled ratio rounded up Number of pro bono attorneys required for each band
1	1-49	1%	0.25	1
2	50-99	3%	0.75	1
3	100-299	7%	2.00	2
4	300-499	13%	4.00	4
5	500-999	25%	7.50	8
6	1000-2999	67%	20.00	20
7	3,000+		30 (current test)	

Scaling of Threshold Test Option 2: Recruit 5% of the County's Active Attorneys

The second threshold test option is to recruit 5% of the county's active attorneys. Percentages, by their nature, are already scaled, so no amendment is suggested for this option.

Scaling of Threshold Test Option 3: 1000 Pro Bono Attorney Hours

The third threshold test option is to obtain 1000 donated hours from pro bono attorneys. To determine the scaled number for each band, the baseline percentage was used to calculate the respective percentage of 1000 hours.

For example, in Table 3 below, Band 4 has a baseline percentage of 13 percent. Thirteen percent of 1000 hours is 130 hours. Organizations from counties in Band 4 must obtain 130 hours from pro bono attorneys to meet this option of the threshold test.

Table 3 – Scaled Ratio for Number of Pro Bono Attorney Hours

Band	Range of the number of active attorneys for each band	Baseline % (from Table 1)	Scaled ratio (Baseline % compared to 1000 hours) Number of pro bono attorney hours required for each band
1	1-49	1%	10
2	50-99	3%	30
3	100-299	7%	70
4	300-499	13%	130
5	500-999	25%	250
6	1000-2999	67%	670
7	3,000+		1000 (current test)

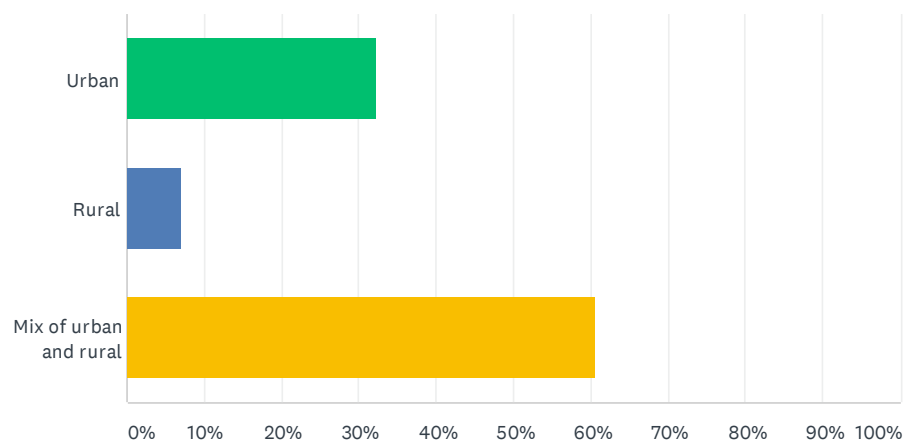
Q1 Name of organization

Answered: 28 Skipped: 0

#	RESPONSES	DATE
1	Bet Tzedek Legal Services	1/22/2021 5:50 PM
2	Veterans Legal Institute	1/22/2021 5:01 PM
3	Public Law Center	1/22/2021 4:53 PM
4	Casa Cornelia Law Center	1/22/2021 3:16 PM
5	Iacba	1/22/2021 3:09 PM
6	INLAND EMPIRE LATINO LAWYERS ASSOCIATION	1/22/2021 2:48 PM
7	Los Angeles County Bar Association	1/22/2021 1:43 PM
8	YUBA SUTTER LEGAL CENTER	1/22/2021 12:47 PM
9	NLSLA	1/22/2021 12:46 PM
10	Family Violence Appellate Project	1/22/2021 11:37 AM
11	Community Legal Aid SoCal	1/21/2021 2:22 PM
12	Public Law Center	1/21/2021 1:14 PM
13	Legal Access Alameda	1/21/2021 7:44 AM
14	SOCIAL JUSTICE COLLABORATIVE	1/20/2021 5:57 PM
15	Stephanie Haffner	1/20/2021 4:03 PM
16	Capital Pro Bono	1/20/2021 3:26 PM
17	Community Legal Services in East Palo Alto	1/19/2021 4:46 PM
18	Inland Empire Latino Lawyers Association	1/17/2021 5:35 PM
19	Justice & Diversity Center of The Bar Association of San Francisco	1/15/2021 6:53 PM
20	Legal Aid Society of San Bernardino	1/12/2021 6:04 PM
21	Alliance for Children's Rights	1/12/2021 10:00 AM
22	Legal Aid of Sonoma County	1/11/2021 4:28 PM
23	Public Counsel	1/11/2021 9:49 AM
24	San Diego Volunteer Lawyer Program, Inc.	1/11/2021 9:09 AM
25	Riverside Legal Aid	1/10/2021 1:06 PM
26	CCLS	1/9/2021 6:25 AM
27	Harriett Buhai Center for Family Law	1/8/2021 5:55 PM
28	San Diego Volunteer Lawyer Program, Inc.	1/8/2021 5:19 PM

Q2 Is your organization in a county that is:

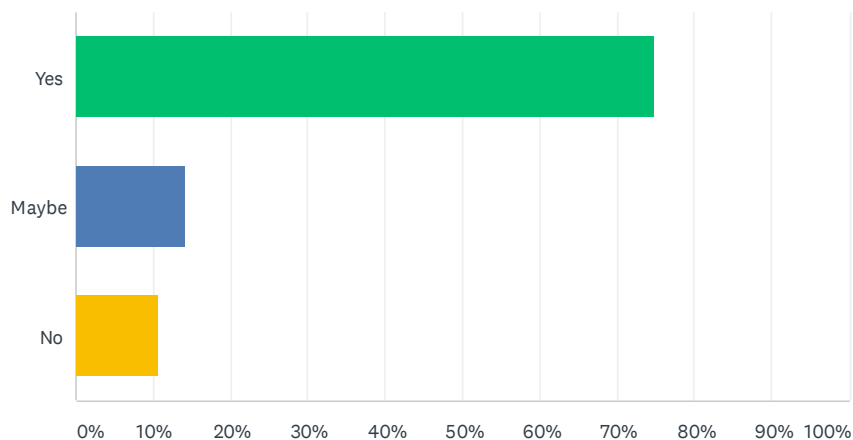
Answered: 28 Skipped: 0



ANSWER CHOICES	RESPONSES	
Urban	32.14%	9
Rural	7.14%	2
Mix of urban and rural	60.71%	17
TOTAL		28

Q3 Do you plan on applying for the Pro Bono Allocation for the 2022 grant year?

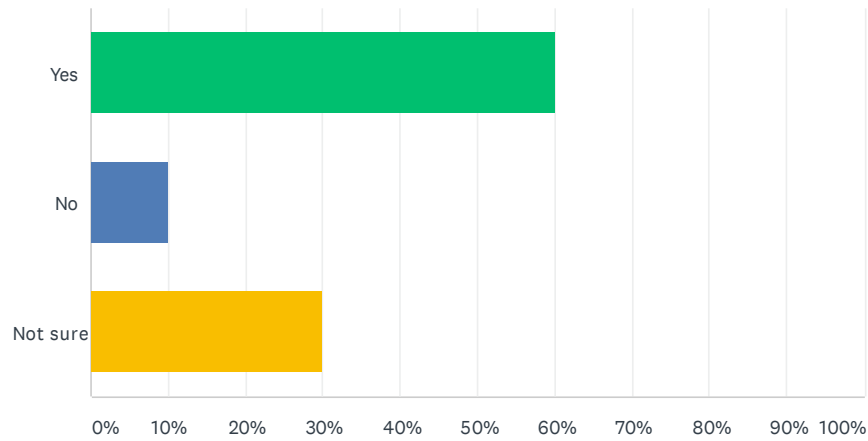
Answered: 28 Skipped: 0



ANSWER CHOICES		RESPONSES	
Yes		75.00%	21
Maybe		14.29%	4
No		10.71%	3
TOTAL			28

Q4 Do you anticipate that your organization may have difficulty meeting the Pro Bono Allocation requirements?

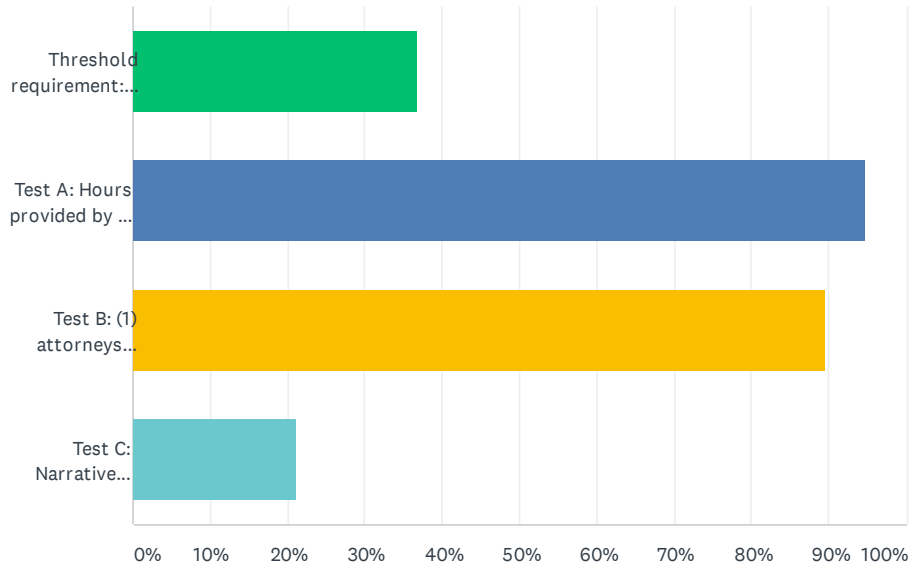
Answered: 20 Skipped: 8



ANSWER CHOICES	RESPONSES	
Yes	60.00%	12
No	10.00%	2
Not sure	30.00%	6
TOTAL		20

Q5 If you anticipate potential difficulty meeting the Pro Bono Allocation requirements, which of the following do you think that you will have difficulty with? (Check all that apply.)

Answered: 19 Skipped: 9

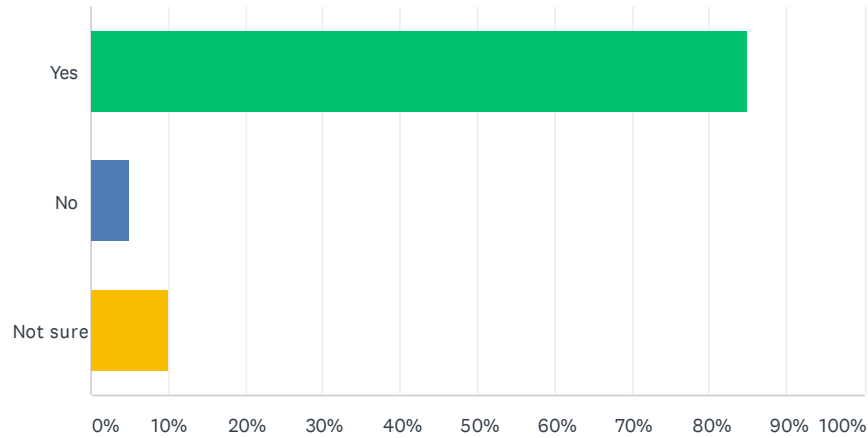


ANSWER CHOICES	RESPONSES	
Threshold requirement: Recruited 30 pro bono attorneys or recruited 5% of county's attorneys or 1000 pro bono attorney hours	36.84%	7
Test A: Hours provided by pro bono attorneys greater than hours worked by staff attorneys	94.74%	18
Test B: (1) attorneys recruited provided substantial free civil legal services; (2) hours by volunteers, both attorneys and paralegals, exceeds the hours by staff attorneys and paralegals; and (3) hours by volunteer attorneys is more than half of hours by staff attorneys and paralegals	89.47%	17
Test C: Narrative explanation for your method of calculating the delivery of services through pro bono attorneys	21.05%	4
Total Respondents: 19		

#	ANY ADDITIONAL INFORMATION YOU WOULD LIKE TO SHARE:	DATE
1	While our organization was able to place more individual matters with law firm attorneys for pro bono representation, the number of community volunteers we engaged this year dropped as compared the past years. Community volunteers are the individuals who, pre-COVID-19, would volunteer at our office and at our clinics. Remote work structures impacted the ability of volunteers to come to our office and volunteer with our staff. In addition, we had to take time to switch our in-person clinics, all of which were supported by volunteers, to a remote clinic model. During this time period, we were not able to use volunteers. Once the clinics were back up and running on a virtual model, it took time to recruit and retrain the volunteers. Not all volunteers were able to participate, sometimes because of technology issues. For those volunteers that would work side-by-side with our attorneys, and it took some time to facilitate their ability to volunteer remotely. Even after we were able to transition and more easily facilitate their remote volunteer experience, it remained difficult to recruit and integrate these volunteers.	1/22/2021 6:29 PM
2	Because we are currently collecting 2020 hours from volunteers, this survey question is a little bit premature. We'll know better in a few weeks.	1/22/2021 5:01 PM
3	We incorporate pro bono services into all of our work. Our program "feels" like a pro bono program. We also are adjacent to, but not in, a county where major law firms are located. Smaller firms in our county donate time, but do not have the resources to give away the type of hours that large firms often do.	1/20/2021 4:12 PM
4	COVID-19 demands on the lives of our volunteers, in combination with shelter in place orders, greatly hindered volunteer availability (and continues to), making it impossible for our small, purely pro bono organization, to meet the Pro Bono Allocation requirements for 2020. We are hopeful that the State Bar will take this into account when determining our eligibility. We are actively seeking all possible means to encourage and facilitate continued volunteer involvement with our organization while the vaccine is distributed and the situation improves.	1/20/2021 3:40 PM
5	The tests established long favored urban areas and are always difficult to meet in areas where there are mostly solo practitioners. Now, COVID is making volunteer attorney participation exceptionally difficult.	1/11/2021 4:33 PM
6	Our normal volunteer activities have been severely impacted by the remote work required by the pandemic. Historically our volunteers provide in office volunteer services directly to clients. This has been impossible given the current pandemic. It has been very difficult to replicate that system of volunteering in a remote setting due to security/ confidentiality concerns.	1/8/2021 6:20 PM

Q6 Did you have any current pro bono volunteers who were not able to take cases/provide services March-December 2020 because of COVID-19 (for any reason)?

Answered: 20 Skipped: 8



ANSWER CHOICES	RESPONSES	
Yes	85.00%	17
No	5.00%	1
Not sure	10.00%	2
TOTAL		20

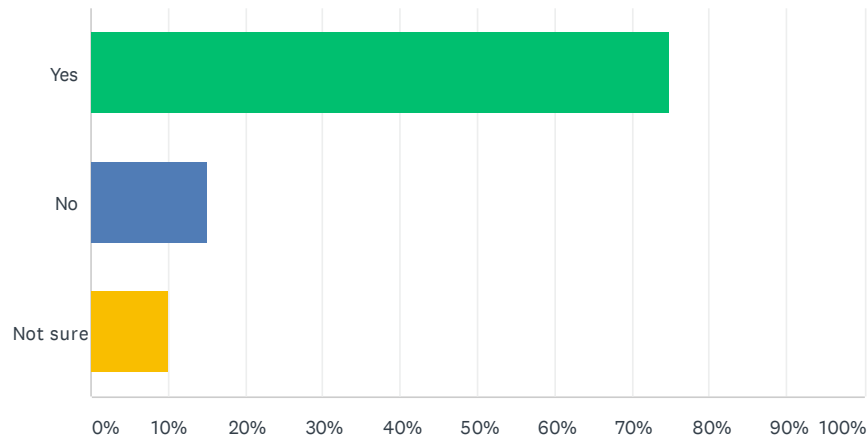
Q7 If yes, approximately how many?

Answered: 17 Skipped: 11

#	RESPONSES	DATE
1	We estimate that there were nearly 60 volunteers a week that were not able to volunteer with our agency as a result of COVID	1/22/2021 6:29 PM
2	10	1/22/2021 5:04 PM
3	Not certain	1/22/2021 5:01 PM
4	Dozens	1/22/2021 4:09 PM
5	40-50	1/22/2021 3:10 PM
6	20	1/22/2021 2:08 PM
7	3 firms minimum, possibly more	1/22/2021 11:11 AM
8	That is difficult to estimate - given the size of our pro bono program and fluidity of the situation with the pandemic. I would estimate a 30% to 40% drop in pro bono availability during certain heightened portions of the pandemic.	1/22/2021 10:51 AM
9	10	1/21/2021 7:53 AM
10	roughly 40	1/20/2021 4:12 PM
11	Approximately 30, which is a large number of our active volunteers.	1/20/2021 3:40 PM
12	10 or so? One firm.	1/20/2021 12:06 PM
13	30	1/17/2021 5:46 PM
14	5	1/12/2021 6:13 PM
15	3 to 4	1/11/2021 4:33 PM
16	6	1/10/2021 1:10 PM
17	We had 116 less volunteers provide services during Mar-Dec than the same period in 2109. The average number of hours per volunteer were also down from 25 to 19.	1/8/2021 6:20 PM

Q8 Did your organization have difficulty recruiting new pro bono volunteers in 2020 due to the impact of COVID-19?

Answered: 20 Skipped: 8



ANSWER CHOICES	RESPONSES	
Yes	75.00%	15
No	15.00%	3
Not sure	10.00%	2
TOTAL		20

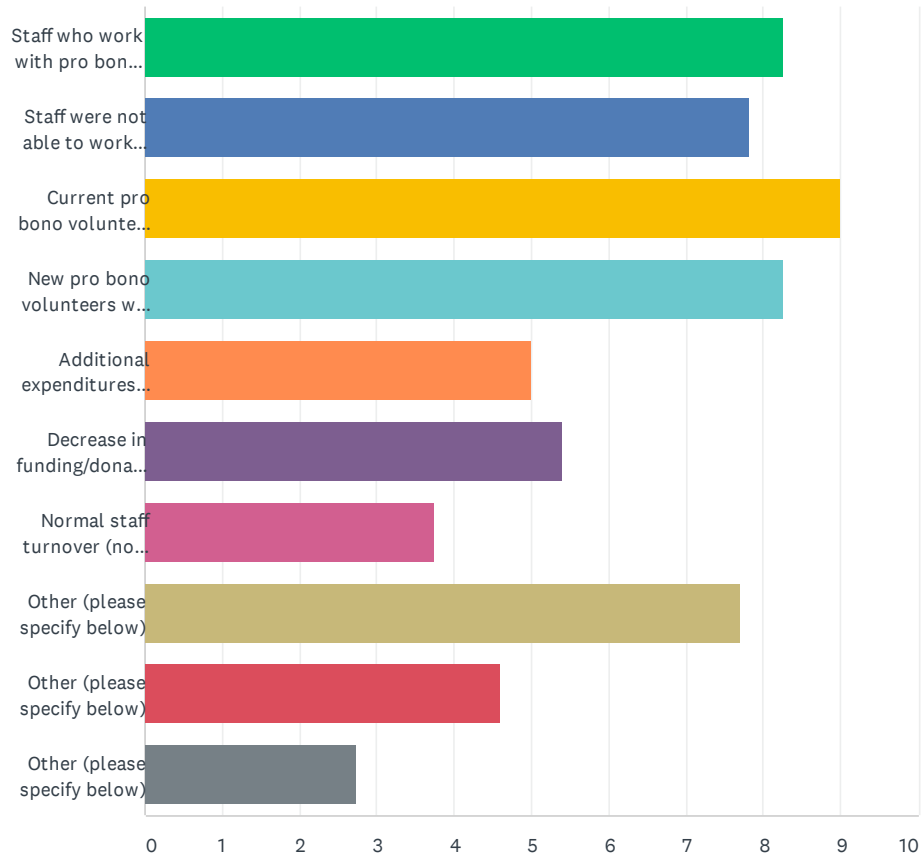
Q9 If yes, approximately how many new volunteers were unable to join your organization?

Answered: 16 Skipped: 12

#	RESPONSES	DATE
1	We estimate there were approximately 3 to 5 new volunteers a week that we were not able to recruit.	1/22/2021 6:29 PM
2	25	1/22/2021 5:04 PM
3	Not certain	1/22/2021 5:01 PM
4	See 14 for answer.	1/22/2021 3:25 PM
5	20-30	1/22/2021 3:10 PM
6	5	1/22/2021 2:08 PM
7	at least 5 firms (with an unknown number of associates)	1/22/2021 11:11 AM
8	See response to question 7.	1/22/2021 10:51 AM
9	we reached new volunteers who would not otherwise be available	1/20/2021 4:12 PM
10	Unknown, as we were unable to recruit new volunteers at all. We cannot provide adequate supervision for new and inexperienced volunteers using remote technology.	1/20/2021 3:40 PM
11	40	1/17/2021 5:46 PM
12	can't determine that number	1/15/2021 6:56 PM
13	5	1/12/2021 6:13 PM
14	6	1/11/2021 4:33 PM
15	unknown	1/10/2021 1:10 PM
16	We skipped 4 new volunteer onboarding cycles that would have normally been scheduled. Resulting in a loss of an estimated 40 new volunteers during the time period.	1/8/2021 6:20 PM

Q10 If your organization may not meet the Pro Bono Allocation requirements, what are the top 3 reasons why? (Please rank 1-3, with 1 being the primary reason.)

Answered: 19 Skipped: 9



Pro Bono Allocation for Grant Year 2022

ATTACHMENT C

	1	2	3	4	5	6	7	8	9	10	TOTAL	\$
Staff who work with pro bono volunteers/programs had to focus on transitioning services to a remote environment	26.67% 4	13.33% 2	46.67% 7	6.67% 1	0.00% 0	0.00% 0	0.00% 0	6.67% 1	0.00% 0	0.00% 0	15	
Staff were not able to work, or had to work fewer hours, because of COVID-related issues	16.67% 1	33.33% 2	0.00% 0	33.33% 2	0.00% 0	16.67% 1	0.00% 0	0.00% 0	0.00% 0	0.00% 0	6	
Current pro bono volunteers were not able to perform the duties they would normally perform due to COVID shelter-in-place orders	38.89% 7	44.44% 8	5.56% 1	0.00% 0	11.11% 2	0.00% 0	0.00% 0	0.00% 0	0.00% 0	0.00% 0	18	
New pro bono volunteers were not able to join our organization due to COVID shelter-in-place orders	26.67% 4	20.00% 3	40.00% 6	0.00% 0	0.00% 0	6.67% 1	6.67% 1	0.00% 0	0.00% 0	0.00% 0	15	
Additional expenditures due to COVID led to layoffs	0.00% 0	0.00% 0	0.00% 0	20.00% 1	40.00% 2	20.00% 1	0.00% 0	0.00% 0	0.00% 0	20.00% 1	5	
Decrease in funding/donations led to layoffs	0.00% 0	20.00% 1	0.00% 0	0.00% 0	20.00% 1	40.00% 2	0.00% 0	0.00% 0	20.00% 1	0.00% 0	5	
Normal staff turnover (not due to COVID)	0.00% 0	0.00% 0	0.00% 0	0.00% 0	0.00% 0	0.00% 0	75.00% 3	25.00% 1	0.00% 0	0.00% 0	4	
Other (please specify below)	30.00% 3	20.00% 2	20.00% 2	10.00% 1	0.00% 0	0.00% 0	0.00% 0	20.00% 2	0.00% 0	0.00% 0	10	
Other (please specify below)	0.00% 0	20.00% 1	20.00% 1	0.00% 0	0.00% 0	0.00% 0	0.00% 0	0.00% 0	60.00% 3	0.00% 0	5	
Other (please specify below)	0.00% 0	0.00% 0	25.00% 1	0.00% 0	0.00% 0	0.00% 0	0.00% 0	0.00% 0	0.00% 0	75.00% 3	4	

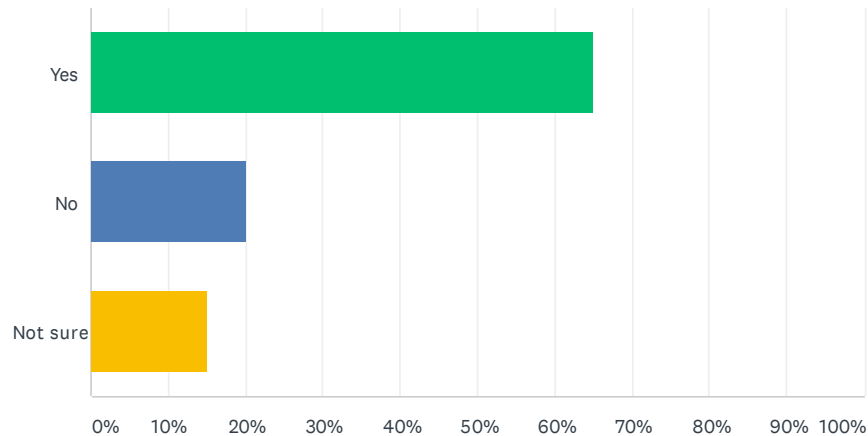
Q11 If you answered "Other" above, please specify here:

Answered: 8 Skipped: 20

#	RESPONSES	DATE
1	Some volunteers expressed difficult in being able to work remotely. Some of these difficulties were technology based. In other instances, our ability to utilize volunteers were impacted by the fact that it took a significant amount of time for our clinics, which were staffed by volunteers, to get back up and running on a virtual platform. In some instances, it took months of planning for these clinics to go virtual. After this, it took a great deal of time to get volunteers reconnected and retrained for these new clinic versions.	1/22/2021 6:29 PM
2	The pandemic created an immediate shift in legal needs. It took time to assess and create pro bono opportunities around these needs. Some of those needs (e.g., commercial lease re-negotiations) created conflicts for the usual pro bono supporters like the big firms. The pandemic also resulted in courts being closed and cases being continued. Many of our pro bono hours relate to litigation and court-related matters that require the courts to be open and processing cases in order for the work to be done.	1/22/2021 10:51 AM
3	Staff attys spend more hours than pro bono in aggregate	1/20/2021 5:59 PM
4	Potentially, application of the "C" test; lack of strong access to large firm markets	1/20/2021 4:12 PM
5	Virtually none of our volunteers were interested in or willing to provide legal services remotely. They lost a major benefit to them of the volunteer experience.	1/20/2021 3:40 PM
6	Big volunteer events are prohibitive now. We can't accommodate everyone who wants to volunteer. Our clients have a hard time accessing digital media for appointments. We also were told that some attorneys wanted to wait for the election to know what administration they would be against before taking cases. Services have changed - less housing cases because of moratorium. The courts run our zoom link for some events and they limit access. For reentry - we require fingerprints and the pandemic limited that - so we needed fewer volunteers.	1/20/2021 12:06 PM
7	Several Pro Bono Attorney Panel Members contracted COVID-19 and became too ill to volunteer.	1/17/2021 5:46 PM
8	Our typical volunteer model does not easy convert to a remote environment.	1/8/2021 6:20 PM

Q12 If your organization does not meet the Pro Bono Allocation requirements for grant year 2022, will this be the first time your organization has not met the requirements since you have been approved for a Pro Bono Allocation?

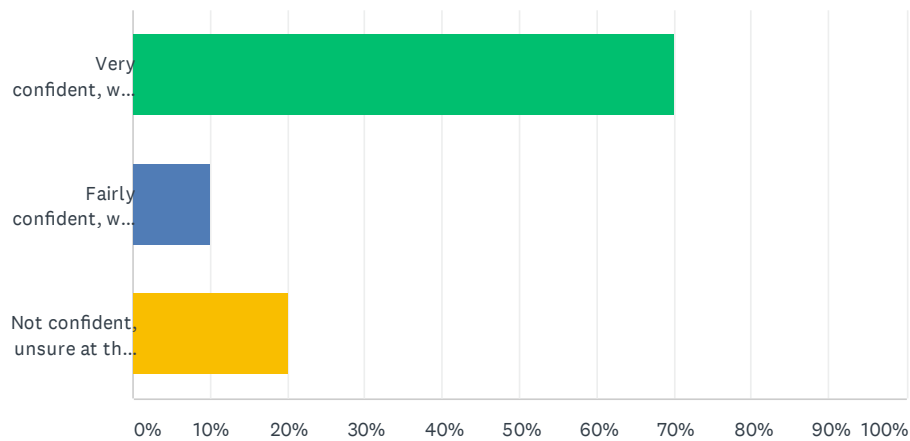
Answered: 20 Skipped: 8



ANSWER CHOICES	RESPONSES	
Yes	65.00%	13
No	20.00%	4
Not sure	15.00%	3
TOTAL		20

Q13 If not for COVID-19, how confident are you that your organization would otherwise meet the Pro Bono Allocation requirements?

Answered: 20 Skipped: 8



ANSWER CHOICES	RESPONSES	
Very confident, we have met it for many years	70.00%	14
Fairly confident, we have met it for a few years now	10.00%	2
Not confident, unsure at this time	20.00%	4
TOTAL		20

#	PLEASE SHARE ADDITIONAL COMMENTS, IF APPLICABLE	DATE
1	The biggest impact on volunteerism was in mid-March through April. Once we had remote clinics set up and the bugs worked out and once volunteers had come to grips with their own remote work capabilities and limitations we had better success in recruiting volunteers.	1/22/2021 5:01 PM
2	If not for COVID-19, as in past years, all of our in-person clinics and in-office opportunities would have had ample volunteers participating. However, the challenges of overseeing the work of remote volunteers, particularly new volunteer attorneys, greatly limited the number who could participate. It also limited the type of work they were willing to take on. In-person mentorship and supervision is often needed with new volunteers, and this was not possible. Consequently, far fewer volunteers were involved.	1/22/2021 4:09 PM
3	We were very confident that we would have met the pro bono this year because we came really close in 2019 to meeting the 1000 per county hours and we were implementing new strategies and ideas.	1/22/2021 3:10 PM
4	We are in conversation with the State Bar to learn more how we might qualify. This is so that our Board may assess how much effort to invest in qualifying as a pro bono program, and the realistic possibilities for doing so. Using the A and B tests, we are unlikely to qualify as a pro bono program at this time.	1/20/2021 4:12 PM
5	We do hope that the State Bar is able to come up with another way of evaluating the Pro Bono applicants this year.	1/8/2021 6:20 PM

Q14 Please share any additional general comments

Answered: 7 Skipped: 21

#	RESPONSES	DATE
1	You might consider doing this survey again in a month or so. Law firms typically report their pro bono hours annually and we don't have them all in yet.	1/22/2021 5:01 PM
2	Answer to question 9. This is hard to quantify how many new volunteers were unable to join the organization. However, our Volunteer Attorney Information sessions may provide some guidance. Pre-pandemic, these sessions were in-person, hour-long introductions to Casa Cornelia's work where volunteers could ask all manner of questions to attorneys and discuss their hope and goals for doing pro bono. These sessions (non-MCLE), served to route volunteer attorney recruits into the appropriate trainings. In 2018, approximately 55 new attorneys attended these introductory sessions, and approximately 40 in 2019, for a total of approximately 95 attorneys who were new to CCLC. However, in 2020 only 13 attended in-person Volunteer Attorney Information sessions. After the pandemic, we arranged individual Zooms to meet and assess new attorneys but it is not as effective a recruiting tool as an in-person session. For the full-representation services we offer for which many volunteers must commit months and perhaps years, it is very important to get a sense of a volunteer's level of commitment and suitability for a case, and that is still best done in person.	1/22/2021 3:25 PM
3	The firms' uncertainty (in particular with respect to summer programs and new associate classes) in the environment of the pandemic contributed to their hesitancy to take on pro bono work.	1/22/2021 11:11 AM
4	We'd like to get the pro bono allocation if it could be a bit more flexible	1/20/2021 5:59 PM
5	We would like to be able to pay law students if the funding is available, but we don't because of the impact it would have on the pro bono allocation. Volunteer hours would decrease and staff hours would increase.	1/20/2021 12:06 PM
6	We had to expend substantial time and funding in order to transition into a cloud-based delivery system. Some elderly pro bono attorneys are not tech savvy, and it took some time to get them acclimated and able to perform pro bono services remotely. COVID-19 has hit Riverside and San Bernardino County very hard. We had several volunteers who contracted COVID-19 and became too ill to volunteer. A few reported that they could no longer volunteer because they had to become a caregiver to a spouse or child who contracted COVID-19. We've also had volunteers report that they are coping with grief and loss due to losing a family member to COVID which exhausted them mentally from being able to volunteer. Needless to say, 2020 was a very difficult year to recruit volunteers, retain volunteers, and meet pro bono goals due to the pandemic.	1/17/2021 5:46 PM
7	Thank you for your continued support of our efforts to serve the most needy residents of California, who live in San Bernardino and Riverside County.	1/12/2021 6:13 PM

From: [Salena Copeland](#)
To: [Nguyen, Doan](#); [Carroll, Erica](#)
Subject: Comments on the pro bono allocation and exchange funds draft memos
Date: Wednesday, April 14, 2021 9:20:03 AM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Doan & Erica!

I will send a separate email with a question that arose in our meeting, but here are the community's comments, noting that a few other people do plan to submit separate comments.

Erin Smith also raised the additional issue that support centers that primarily use pro bono attorney should also be able to be considered "pro bono projects" for the purposes of a higher income threshold, even though they do not get a pro bono allocation. Though we didn't discuss that fully on this most recent call, she has raised it in calls before, and others have agreed with her.

LAAC and the Legal Aid Community's Comments on Rules Revision: Exchanged Funds and Pro Bono Allocation

The below is a summary of concerns heard by LAAC at a call convened on April 7, 2021. This does not represent the unanimous view of all IOLTA organizations, but does represent the opinions shared during the call.

Exchanged Funds

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.

Pro Bono Allocation

Threshold Test

LAAC and the community would support **Option 1 (Eliminate the Pro Bono Allocation Threshold Test)** or, in the alternative, **Option 3 (Establish a More Flexible Threshold Test).**

- One specific concern articulated by the community included the fact that it is challenging to hit a certain number of hours, even for urban programs.
- Also, if a threshold test exists, programs discussed the fact that there must be calibration based on program size.
- Adding a staff member becomes a challenging choice for organizations at the cusp because they can't expect the organization is going to meet the test by growing pro bono sufficiently to match the additional staff hours.
- In addition, there are trends in generating pro bono hours away from large pieces of litigation toward discrete opportunities like clinics and limited-scope, which has implications for hitting hours requirements.

Clarification of Definitions

LAAC and the community support **Option 2 (Revising Test B to Include Both Paralegal Hours and Non-Attorney Volunteer Hours)**, **Option 3 (Clarifying When Law Students Are Pro Bono Volunteers)**, and **Option 4 (Counting Staff Hours as Pro Bono Hours)**. But the community opposes **Option 1 (Defining Staff Attorneys to Include Legal Fellows)**.

- **Option 1 specific discussion:** Generally, the community did not like this proposal. Some organizations argued that legal fellows could be considered "carbon neutral," such that they don't benefit and don't harm the program when it comes to this matter. They also argued that fellows should be thought of more like law students, in that they cannot carry a caseload as staff attorneys, and the main reason why many of them are paid is due to outside funding. Several organizations shared that they struggle to decide whether or not to hire a fellow if they believe that fellow will jeopardize their pro bono allocation the following year.
- **Option 3 specific discussion:** Law students should be counted as volunteers no matter whether they're part of a stipend program or getting academic credit, and the community felt that the staff recommendation reflected how they think of their volunteer students.
- **General feedback:** organizations stressed that they are "competing" for a finite number of pro bono hours. When they hire more staff, there is not a new pool of attorneys to do pro bono work, so this will continue to be a challenge, and will grow, as organizations add staff.

Salena Copeland (pronouns she/her)
 Executive Director
 Legal Aid Association of California
The Unified Voice of Legal Services
 510-893-3000 x 106 (messages forwarded to my email)
[Donate](#) to support our work!
www.LAACOnline.org
www.LawHelpCA.org

Why include pronouns? I include pronouns in an effort to share my personal and professional commitment to transgender inclusivity and visibility. Through sharing my pronouns, I hope to support a safer and braver space for transgender professionals to share their pronouns.

From: [Ronit Rubinoff](#)
To: [Carroll, Erica](#)
Subject: Pro Bono Allocation
Date: Monday, April 12, 2021 3:39:34 PM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good afternoon Doan and Erica.

Here are some of our thoughts as a rural program.

➔ **Urban Bias:** The ratios the Bar developed are more suited to a program in an urban area. In urban centers there are far more attorneys, and there are many more large law firms. In rural areas, most attorneys are in very small firms or solo practice. This makes it very difficult for them to do pro bono work. In large firms, pro bono is often supported by the firm, even financially. We saw this dichotomy play out yet again when the fires hit our area. Even working directly with a special disaster subcommittee of our local bar association, we found it very difficult to recruit the sustained pro bono assistance we needed to run our disaster clinics. Most of our clinic volunteers came from the urban SF Bay Area and from very large firms.

We believe the ratios favor urban centers and that the Bar should consider adjusting them depending upon the size and composition of the bars in rural areas. A scaled ratio would be more equitable.

➔ **Include all program volunteers:** The type of hours that count towards the pro bono ratio are overly restrictive. LASC only has one very small law school to draw upon during the academic year, and no large law firms to draw upon, so we use other types of students and community members broadly in our program. Bilingual, bicultural undergraduates, exploring a career in law, are a staple of our intake system; many have gone on to become attorneys because of their experience. Again, the Bar's measurement tool seems to favor urban centers where there are multiple law schools and many firms.

➔ **Increasing diversity in the profession:** This is one of the Bar's central goals, especially today. If recruitment and development of a more diverse bar is the goal, we need to start working with students before they get to law school. We would have more impact, by focusing on bilingual bicultural undergraduates who need support, and encouragement, to finish school and pursue legal careers. One key strategy is recruiting them to volunteer or intern as undergraduates. LASC has seen multiple first

generation students intern with us, and as a result, go on to law school (several are now working with their communities as lawyers). This is possible because we use these bilingual students as part of our volunteer model. If the Bar allowed rural programs like ours to include bilingual undergraduates in the ratio, we would support diversity in the profession, as well as honoring the important role these students play in helping clients in programs like ours.

Thanks!

Ronit



Ronit Rubinoff

Executive Director

144 South E St. Suite 100

Santa Rosa, CA 95404

Phone: (707) 688-4034

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Proposed Revisions (redline) of Eligibility Guidelines for Legal Services Projects

The following illustrates possible revisions to the Eligibility Guidelines related to the pro bono allocation based on options detailed in the working group's memorandum. Not all are recommended by the working group. Nonetheless, they are included for the Committee's consideration in the event the Committee wishes to take a different approach.

THRESHOLD TEST

Option 1: Eliminate the Pro Bono Allocation Threshold Test

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

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

Commentary:

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

- ~~a. you recruited at least 30 attorneys who provided services in the previous calendar year; or~~
- ~~b. you recruited at least five percent of the licensed attorneys in the county you serve who provided services in the previous calendar year; or~~
- ~~c. the attorneys you recruited donated at least 1,000 hours of legal services for your clients in the previous calendar year. Provided you meet one of these minimum tests, you may demonstrate your project's recruitment of substantial numbers of attorneys in one or more of the following ways:~~
 - ~~a. the number of attorneys recruited;~~
 - ~~b. the percentage of attorneys in your local service area that donated services through your project;~~
 - ~~c. the verified value of donated civil legal services in comparison to your expenditures and budget;~~
 - ~~d. the number of hours donated by each attorney;~~
 - ~~e. the number of attorneys in your area who have special expertise needed to provide the services your project offers; or~~
 - ~~f. other considerations that may affect the availability of volunteer attorneys in your service area.~~

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

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

[Guideline 2.6.3.2. omitted]

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

~~2.9.1~~ the requirements of Guideline 2.6.3.1 above,; and

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

Commentary: See Commentary concerning Guideline 2.6.3.1. One method by which you may demonstrate ~~that such~~ recruitment **of substantial numbers of attorneys in private practice who serve without compensation, and that such recruitment** is your project's principal means of legal services delivery, is to show by objective evidence that the attorneys recruited actually provided substantial free civil legal services and that the number of hours of services so provided in the previous calendar year by attorneys recruited exceeded the number of hours of services provided by lawyer staff employed by the applicant.

An alternative method by which you may demonstrate ~~that such~~ recruitment **of substantial numbers of attorneys in private practice who serve without compensation, and that such recruitment** is your project's principal means of legal services delivery, is to show by objective evidence (1) that the attorneys recruited actually provided substantial free civil legal services; (2) that the combined number of hours of service by volunteers, both attorneys and paralegals, exceeds the combined number of hours of service by staff attorneys and paralegals; and (3) that the number of hours of service by volunteer attorneys is more than half as many as the combined number of hours of service by staff attorneys and paralegals.

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

Option 2: Use a Scaled Ratio for the Threshold Test

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

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

Commentary:

In deciding whether you are eligible to apply as a project that recruits substantial numbers of attorneys, the Legal Services Trust Fund Commission will consider **whether you have recruited substantial numbers of attorneys when compared with the scaled ratio, based on the number of active attorneys in the specific counties in which you wish to apply for the pro bono allocation, as listed in the table below.** ~~several factors. At a minimum you must meet at least one of the following tests:~~

~~a. you recruited at least 30 attorneys who provided services in the previous calendar year; or~~

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

Active attorneys in county	Recruit this number of attorneys OR	Recruit this % of active attorneys in county OR	Have this many pro bono attorney volunteer hours
1-49	1	5%	10
50-99	1	5%	30
100-299	2	5%	70
300-499	4	5%	130
500-999	8	5%	250
1000-2999	20	5%	670
3,000+	30	5%	1,000

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

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

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

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

Option 3: Establish a More Flexible Threshold Test

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

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

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

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

~~If provided~~ you ~~cannot~~ meet one of these minimum tests, you may ~~demonstrate~~ **substantiate** your project's recruitment of substantial numbers of attorneys ~~in one or more of the following ways~~ **by providing sufficient information regarding the following:**

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

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

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

Option 4: Maintain the Current Threshold Requirement

No change to Eligibility Guidelines

CLARIFICATION OF DEFINITIONS—"PRINCIPAL MEANS" TEST

Option 1: Defining Staff Attorneys to Include Legal Fellows

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

2.9.1 the requirements of Guideline 2.6.3.1 above; and

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

Commentary:

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

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

For purposes of demonstrating principal means of delivering legal services through the recruitment of attorneys in private practice, staff attorneys shall include legal fellows. Legal fellows are defined as law graduates that obtain licensure during the tenure of their fellowship or attorneys who are employees of the organization for a time limited duration with salaries that are paid in all or part by a third-party sponsor.

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

Option 2: Revising Test B to Include Both Paralegal Hours and Non-Attorney Volunteer Hours

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

2.9.1 the requirements of Guideline 2.6.3.1 above; and

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

Commentary:

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

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

For purposes of demonstrating principal means of delivering legal services through the recruitment of attorneys in private practice, paralegals and non-attorney volunteers may include interpreters, legal assistants, social workers, undergraduate students, law students, intake volunteers and other volunteers so long as their work is supervised by an attorney and their roles are related to the client's legal outcome.

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

Option 3: Clarifying When Law Students Are Pro Bono Volunteers

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

2.9.1 the requirements of Guideline 2.6.3.1 above; and

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

Commentary:

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

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

Further, for purposes of demonstrating principal means, law students volunteer hours shall be considered in the calculation of non-attorney pro bono hours, including hours contributed by law students that may receive a nominal stipend from the applicant or a third-party, or who receive course credit.

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

Option 4: Counting Staff Hours as Pro Bono Hours

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

2.9.1 the requirements of Guideline 2.6.3.1 above; and

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

Commentary:

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

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

In recognition of the staff resources and expertise required to develop and maintain a robust pro bono program, for purposes of demonstrating principal means, staff hours that are devoted to planning, organizing, recruiting, training and supporting pro bono attorneys and other volunteers shall be counted separately from staff hours dedicated to direct legal services. These segregated pro bono support staff hours shall be included in the calculation of attorney and non-attorney pro bono hours.

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

ALTERNATE PRINCIPAL MEANS TESTS

Option 1: Principal Means Test Based on Number of Clients Served (Test A)

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

2.9.1 the requirements of Guideline 2.6.3.1 above; and

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

Commentary:

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

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

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

Option 2: Eliminate the Numeric Test Involving a Combination of Attorney and Non-Attorney Hours (Test B)

Option 2A: Eliminate Test B entirely (and possibly add these considerations to Test C).

[Note: If Test B is eliminated, the updated definitions of paralegal/non-attorney volunteer hours and inclusion of law students as pro bono volunteers may be established under a new Guideline and consideration of the contributions of all non-attorney volunteers may need to be incorporated under Test C.]

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

2.9.1 the requirements of Guideline 2.6.3.1 above; and

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

Commentary:

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

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

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

Option 2B: Significantly revise the wording of Test B to make its intent clearer.

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

2.9.1 the requirements of Guideline 2.6.3.1 above; and

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

Commentary:

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

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

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

Option 3: Add Specific Elements of Pro Bono Program as Factors for Test C

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

2.9.1 the requirements of Guideline 2.6.3.1 above; and

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

Commentary:

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

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

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

In evaluating whether you have shown that such recruitment is your project's principal means of legal services delivery, the Legal Services Trust Fund Commission will consider additional information regarding your pro bono program, including but not limited to:

- pro bono recruitment and retention strategy,
- training curriculum,
- type and number of volunteer opportunities available,
- service delivery model that requires volunteers, and
- supervision and scope of support for volunteers.