



Advancing Justice
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Via Email to: doan.nguyen@calbar.ca.gov; trustfundprogram@calbar.ca.gov

June 24, 2021

Legal Services Trust Fund Commission
180 Howard Street
San Francisco, CA 94105

Re: Treatment of Expungement, Infractions, and Similar Legal Services

Dear Legal Services Trust Fund Commission,

I am writing on behalf of the Law Foundation of Silicon Valley to express our support for continuing to count expungement, infraction assistance, and other similar activities as qualifying activities for determining an organization's primary purpose as well as the ability to use IOLTA/EAF funds for this work. The Law Foundation of Silicon Valley advances the rights of historically excluded individuals and families across Santa Clara County through legal services, strategic advocacy, and educational outreach. We are working towards a Black, Indigenous, People of Color (BIPOC)-centered, community and movement lawyering-based legal services practice. Relatedly, we believe that support for expungement and infraction work is critical to advancing racial equity. This work eliminates substantial barriers to employment and housing so clients can stabilize their lives. Not only does this improve clients' wellbeing, but it prevents them from accruing more legal problems. In recognition of disparate policing practices and biases in the judicial system, expungement work is one step toward leveling the playing field for many formerly incarcerated BIPOC people. The Law Foundation strongly believes that IOLTA and EAF should continue to support this important civil rights work.

Legal Services Corporation (LSC) supports our understanding of expungement work as non-criminal in nature. In a 2016, advisory opinion, LSC explained that work related to reducing convictions from felonies to misdemeanors after the individual has completed their sentence are allowable as non-criminal services because, they "(1) do not challenge the merits of the underlying conviction, and (2) occur after completion of the "adversary judicial process prosecuted by a public officer."¹ Expungement work also does "not challenge the merits of the underlying conviction" and also occurs after the adversarial process to determine guilt or innocence has ended. As a result, expungements should not be considered part of a criminal proceeding and should be allowable for IOLTA and EAF funding.

Similarly, infraction representation should not be considered part of a criminal proceeding. Because infractions cannot result in confinement or probation, individuals are not entitled to a state-funded attorney or jury trial. Infractions are penalties for minor rule violations that are sub-criminal in nature. Nevertheless, penalties for infractions often include fines that have a disproportionate impact on our low-income clients. Someone living from month-to-month on Social Security who gets a traffic ticket is forced to make the untenable choice between paying rent and paying the ticket so they can retain their

¹ <https://www.lsc.gov/about-lsc/laws-regulations-and-guidance/advisory-opinions/advisory-opinion-2016-006>

ability to drive to medical appointments. Civil legal service providers should be funded to assist with these cases, as needed, to avoid collateral consequences for our clients.

For these reasons, Law Foundation of Silicon Valley respectfully asks for your continued support for expungement and infraction work using IOLTA and EAF funding.

Sincerely,

Becky Moskowitz
Supervising Attorney

Cc:

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