

**LEGAL SERVICES TRUST FUND COMMISSION**  
**RULES COMMITTEE MEETING**  
**Meeting Summary and Action Items**  
Friday, April 23, 2021, 10:00 a.m. – 2:00 p.m.  
State Bar of California (Conference Call via Zoom)

---

**Roll Call**

**Members Present**

Chair Erica Connolly  
(temporary)  
Louise Bayle-Fightmaster  
Catherine Blakemore  
Corey Friedman  
Jim Meeker

**Advisors**

Hon. Brad Seligman

**Liaisons**

Salena Copeland

**Public Members**

Heidi Slater

**Staff**

Erica Carroll  
Brady Dewar  
Elizabeth Hom  
Doan Nguyen  
Judi McManigal  
Dan Passamaneck

-----  
**Members Absent**

Amin Al-Sarraf

---

**OPEN SESSION**

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

**I. ROLL CALL**

Roll call was taken, and a quorum was established. Program Manager Doan Nguyen informed the committee members that the chair of the committee could not attend this meeting and a temporary chair would be required.

Bayles-Fightmaster moved and Blakemore seconded a motion to designate Erica Connolly as chair for this meeting. The motion was approved by unanimous roll call vote.

**II. CALL FOR PUBLIC COMMENT**

Chair Connolly invited members of the public to comment on any items on the agenda. No public comment was made at that time.

**III. CONSENT**

Nguyen provided some administrative announcements about the Rule Committee's work plan. She reported that the office is receiving several questions related to expungement work and whether it is considered civil or non-civil in nature for purposes of IOLTA/EAF funding. The Office of General Counsel has concluded that expungement work is criminal legal services and will provide full analysis of this issue at the Legal Services Trust Fund Commission (LSTFC) meeting in

June and the Rules Committee will need to address the issue at an upcoming meeting, preferably in July, in order to resolve any questions in a timely manner before the next application cycle.

Nguyen also shared that the recommendation from a prior Rules Committee meeting to increase the client income eligibility threshold in the IOLTA statute to 200 percent of the federal poverty level has reached the Legislature. The current bill proposes such a change, and it also include a provision to disregard veterans disability benefits as part of the income determination. LAAC Liaison Salena Copeland reported that there won't be a firm decision until the fall. If it passes, the bill will become law in January 2022. The Committee then discussed the possible impact this would have on grant applications and when.

#### **A. Approval of Meeting Summary and Action Items from October 16, 2020 Meeting**

The Rules Committee approved the October 16, 2020 meeting summary and action items by majority roll call vote (Meeker moved, Blakemore seconded). The vote was as follows:

Yes (4): Bayles-Fightmaster, Connolly, Friedman, Meeker

Abstention (1): Blakemore

### **IV. DISCUSSION AND ACTION ITEMS**

#### **A. Discuss and Approve Recommendations Regarding Pro Bono Allocation Tests**

Senior Program Analyst Judi McManigal presented on the options before the Committee regarding the pro bono allocation sought by some qualified legal services projects (QLSPs) as part of the IOLTA/EAF application process. Currently, QLSPs need to demonstrate that they recruit substantial numbers of attorneys and that their principal means of service delivery is through pro bono. Options under consideration included eliminating or modifying the threshold "substantial numbers" test, clarifying definitions within the Eligibility Guidelines, and modifying the "principal means" test.

Currently, the "substantial numbers" test requires organization to meet a minimum threshold of 30 attorneys, or 1000 hours, or five percent of a county's active attorneys recruited in order to move on to demonstrating its principal means of service delivery utilizing pro bono services. The "principal means" test can be satisfied through quantitative means (Tests A and/or B) where volunteer time exceeds staff time or a narrative explanation of the organization's pro bono service model and delivery (Test C).

The Committee discussed at length the potential consequences of each of the changes under consideration. The Committee contemplated the impact on grant applicants and staff time, wanting to ensure fairness and efficiency if a certain change were made, particularly in light of the variability among programs, such as rural versus urban settings, or large versus small staff size. Feedback from the legal aid community was discussed, including comment at the meeting from Heidi Slater of Harriett Buhai Center for Family Law.

The Committee determined that there were some areas that required further investigation and analysis before making an ultimate decision. A motion was made to recommend to the LSTFC:

- a. Eliminating the “substantial numbers” threshold test (subject to further analysis that this would not run afoul of any statutory or State Bar Rules requirements);
- b. Clarifying that legal fellows who are attorneys are counted as staff attorneys and that organizations may explain the impact of these temporary staff on their reported staff hours as part of Test C, if necessary;
- c. Allowing applicants to count law students as pro bono volunteers, even if they receive a nominal stipend for their work; and,
- d. Establishing factors for the Test C analysis

Any outstanding areas were delegated back to the working group to make a recommendation to the LSTFC without needing to pass through the Rules Committee again.

The motion was approved by unanimous roll call vote (Connolly moved, Blakemore seconded; Friedman was not present for this vote).

#### **B. Discuss and Approve Recommendations Regarding Exchanged Funds**

Senior Program Analyst Dan Passamaneck presented to the Committee regarding the reporting of exchanged funds in the IOLTA/EAF application process.

Passamaneck explained that when funds are exchanged by two grant recipients, it is possible that those expenditures would be counted in both organizations’ yearly audits, resulting in double-counting of the funds. If both organizations count the funds as expenditures, this could inappropriately impact grant allocations for QLSPs.

Passamaneck further explained that there is no applicable statute or State Bar Rule pertaining to exchanged funds. The current practice is to deduct exchanged funds after calculating qualified expenditures so that the organizations’ primary purpose determination is not impacted but award amounts are correctly calculated. Since 1990, support centers have not been required to report exchanged funds.

Passamaneck outlined the options under consideration: (1) suspend the practice of deducting exchanged funds; (2) keep the current practice, or; (3) keep the current practice but extend the requirement to include support centers.

The Committee discussed the options but ultimately tabled a vote on this item as it was determined that it would be more appropriate to consider the question of pass-through funds and exchanged funds together at a later meeting.

#### **C. Preliminary Discussion on Pass-Through Funds**

Staff reported that more time was needed to consider and incorporate feedback on this topic before presenting it to the Rules Committee and would be discussed at a subsequent meeting.

### **V. ADJOURN**

There being no other business, the meeting was adjourned at 2:01 p.m.