



July 29, 2021

Eligibility & Budget Review Committee
The State Bar of California
845 South Figueroa Street
Los Angeles, CA 90017

To Whom It May Concern,

Thank you for your efforts to better understand the nature of nonprofit services in the eviction context, and more specifically the model for the provision of legal services that Eviction Defense Collaborative (EDC) applies. Before EDC responds to the questions posed, however, I find it necessary to take a moment to raise the issues of inequity that arise when applying a narrow definition of “expenditures attributable to” legal services to determine a qualifying services provider’s pro rata share of IOLTA funds - particularly in light of the Legislative intent set forth in the statute as well as the collective calls for equity throughout the Nation. Bus. & Prof. Code, §6216, subd. (b)(1)(A)

Section 6210 of the California Business and Professions Code sets forth the Legislative intent of the disbursement of interest earned in IOLTA accounts. Specifically it states:

The Legislature finds that, due to insufficient funding, existing programs providing free legal services in civil matters to indigent persons, especially underserved client groups, such as the elderly, the disabled, juveniles, and non-English-speaking persons, **do not adequately meet the needs of these persons.** It is the purpose of this article to expand the availability and **improve the quality** of existing free legal services in civil matters to indigent persons, and to initiate new programs that will provide services to them. The Legislature finds that the use of funds collected by the State Bar pursuant to this article for these purposes is in the public interest, is a proper use of the funds, and is consistent with essential public and governmental purposes in the judicial branch of government. The Legislature further finds that the **expansion, improvement, and initiation of legal services to indigent persons will aid in the advancement of the science of jurisprudence and the improvement of the administration of justice.** (emphasis added)

In short, in enacting this statute, the Legislature intended to expand and improve upon the quality of free legal services to indigent persons to further an understanding of jurisprudence and improve access to justice.

In drafting the statute, the Legislature foresaw the possibility that there would be multiple qualifying legal services providers (QLSP) within counties. Accordingly, the Legislature provided guidance on how to calculate a QLSP's pro rata share. Specifically, the Legislature set forth that expenditures "attributable to the representation of indigent persons" shall be considered in determining a qualified legal services providers' pro rata share. Bus. & Prof. Code, §6216, subd. (b)(1)(A)

To date, the California State Bar has applied a narrow definition of "expenses attributable to" the provision of legal services that is limited to services directly involving matters of law (e.g. issuing legal opinions, court representation, pleadings, etc.). This interpretation is contrary to the stated legislative intent to expand and improve the quality of free legal services to indigent persons. Bus. & Prof. Code, §6210

Specifically, limiting qualifying expenditures in this manner presumes a degree of privilege that, by definition, indigent persons do not have. Only an individual who has privilege as to housing stability, access to resources, available time, mobility, health, and language (to name a few) would require such a narrow interpretation of services in seeking legal assistance.

Those who meet the definition of "indigent" do not have that kind of privilege. Rather, an indigent person, by the very definition of the word "indigent," either does not have access to financial resources, is disabled, is non-English speaking, and/or is elderly. It is for this very reason that QLSPs expand their initial law programs. I would venture to say that the majority (if not all) QLSPs dream of having an agency that also offers social work services to its clients. Why? It's not that QLSPs want to add social work to their portfolio of services. It's that this work is **essential** to achieving a successful outcome to the legal issues indigent persons navigate. In fact, in many cases the lawyers and other staff at these QLSPs have already been doing this work because it is a necessary component to securing an indigent individual a successful outcome to their legal issue(s). In other words, the work is necessary and attributable to "adequately meet[ing] the needs of [indigent] persons...and improv[ing] the quality of" the legal services provided by QLSPs. Bus. & Prof. Code, §6210

For example, consider Tenant A who is employed with a living wage, is fluent in English, has access to financial resources as well as other resources (e.g. child care, health care, etc.) and will not need significant services beyond what are traditionally considered legal services. When their attorney succeeds in negotiating a pay and stay or a move out agreement, Tenant A will have the resources they need to pay to stay or pay a security deposit and moving costs in order to move.

Now consider Tenant B who is underemployed (or unemployed), who is not fluent in English and does not have access to financial resources or other resources (e.g. child care, health care, etc.) - that tenant will require significantly more support in order to have a successful outcome to their litigation. How does it help a tenant if an attorney succeeds in negotiating down their past due rent if the amount negotiated is still more than the tenant can afford?

Or consider Tenant C, who is similarly situated to Tenant B but whose attorney negotiates a move out agreement. How does that help if Tenant C doesn't have the financial resources to pay for a security deposit or moving costs? This is why RADCo exists - for tenants like Tenant B and Tenant C who make up the majority of (if not the entirety of) the clients we serve. RADCo's work is integral to EDC's ability to adequately meet the needs of its clients and ensure a successful outcome to the legal issue that brought them to EDC. Without RADCo, Tenant B and Tenant C would have to go elsewhere to have their needs adequately met in order to ensure a successful outcome to their legal issue - thereby increasing the work they need to do to receive meaningful help and oftentimes reducing the likelihood of a truly successful outcome. (Not everyone has the time, ability, nor resources to shop around for assistance.)

Applying an overly narrow definition of “expenditures attributable to” legal services in the context of legal services to the indigent population perpetuates the system of inequity the Legislature sought to address - the system that played an integral role in someone meeting that definition of “indigent” and their need for free legal services. The narrow interpretation (in addition to being contrary to the Legislature’s intent) ignores the reality of being an indigent individual and the myriad services required in order to adequately meet their needs, stabilize their lives and/or achieve a truly successful outcome to their legal issue. In other words, the myriad services attributable to providing indigent persons legal services.

In short, EDC respectfully requests the California State Bar adopt an interpretation of “expenses attributable to” the provision of legal services that includes the support services that exist **because** they are integral to successful outcomes to legal issues (i.e. adequately meeting the needs of indigent persons and improving the quality of the legal services provided). This interpretation is more reflective of the realities of providing legal services to indigent persons. It also has the added benefit of being equitable. EDC’s RADCo program was created and continues to exist because it is integral to the successful outcomes of the legal issues facing our clients. Our clients need these services in order to have a successful outcome for their legal issue. For this reason, EDC understands expenses incurred by RADCo to be expenses attributable to the provision of EDC’s legal services.

With all that being said, EDC submits the following responses to the questions posed:

Please provide more details on the program structure and administration of the RADCo Program, including how involved the Director of Litigation and Policy is with the RADCo program, the nature of attorney involvement during negotiations with property managers/landlords, and the extent to which the RADCo program staff perform administrative duties.

Program Structure

The Rental Assistance Disbursement Component (RADCo) Program is structured as a complementary program to EDC’s Litigation program. It is supervised by a program director with the help of more junior managers (Supervising Coordinators). The RADCo Program Director and Director of Litigation and Policy (DLP) frequently communicate with each other regarding the delivery and/or program services in RADCo and Litigation. (For purposes of structure, the legal clinic is included within the Litigation Program’s structure.) In addition to frequent as-needed communication, they meet at least twice a month to discuss service needs and ways to integrate the services into their respective program models.

Even though RADCo is a key component to the legal services EDC provides, it was structured outside of the Litigation Program (then Clinic Program) as its own separate program. This separation had nothing to do with the nature of the work provided by the respective programs. It was solely an effort to protect confidential client information, and to ensure that the rental assistance component does not impact negotiations with property owners/landlords. For example, if RADCo was not carefully siloed as a separate program it might create confusion on the part of landlords and their counsel, leading them to hold an indigent tenant defendant responsible for paying significant sums of money to resolve pending litigation based on the false assumption that RADCo would always make the payment given its close affiliation with defense counsel.

Furthermore, walling RADCo off from the litigation department allows RADCo Coordinators to negotiate directly with property owners and landlords. This has enabled EDC to prevent numerous evictions from being filed in the first place, or when there is an alleged breach of a stipulation

agreement. Moreover, separating RADCo from the litigation department prevents conflicts of interest for representation. No one in the legal department has access to RADCo case files. No one in RADCo has access to the legal department nor clinic case files. Doing so eliminates the risk of conflicts of interest when EDC is signing on for full scope representation.

Attorney Involvement

RADCo is (and always has been) an integral part of the legal services EDC provides to tenants. As its name indicates, it is one component of the many legal services provided. Combining rental assistance along with legal services has been an essential component of the City of San Francisco's approach to preserving tenancies and preventing homelessness and displacement.

In addition to being an embedded component of the legal services that EDC provides its clients, RADCo is also embedded in the legal services provided by all of the legal services organizations that make up San Francisco Tenant Right To Counsel Program (TRC). In fact, each legal services organization is assigned a RADCo Coordinator upon whom they can rely to assist with the legal services provided under TRC.

EDC's Litigation Department regularly trains RADCo Coordinators in the eviction process including laws, procedure, tenants' rights, and providing access to eviction prevention services in conformity with the guidance and policies set forth by the DLP, Ora Prochovnick. Ms. Prochovnick oversees TRC, and as such provides direct policy, procedures, general advice, training, materials, and specific instruction to RADCo staff regarding eviction defense and disbursement of rental assistance funds.

Staff Duties

RADCo staff do not provide their own legal interpretation of a situation, nor do they establish attorney-client relationships with the individuals they assist. They do, however, work in conjunction with Litigation staff to advocate on their client's behalf for services in order to avoid eviction and produce positive and sustainable outcomes. Moreover, they do this work in consultation with the litigation team, pursuant to trainings on the law provided by the litigation department, and utilizing the legal analysis provided by the DLP with respect to unlawful detainer laws, regulations, and local ordinances.

RADCo exists **in order** to support legal services work being done at EDC and throughout TRC. In other words, RADCo staff provide the same type of auxiliary legal services that a paralegal and case worker do under the supervision of an attorney. Virtually all services RADCo staff provide are essentially case work being done in the midst of an eviction to proactively ensure the tenant can stay in their home, not unlike a paralegal arranging for clean up in a nuisance case.

Below are examples of the duties assigned to RADCo Coordinators (other than enrolling clients for rental assistance). These duties are performed **in conjunction with or under the direct supervision of an attorney**:

- Write letters on the client's behalf, when a client has breached a stipulation and a judgement has been entered. Litigation staff reviews stipulations to ensure compliance and provides direction to RADCo staff.
- Correctly handle stipulations via specific training and attorney direction, to ensure stipulations are not violated due to missed payments.
- Create tenant declarations for court.
- Specific consultation with an attorney for nuisance cases (or anything non-payment related) to ensure that rental assistance will prevent the eviction before disbursement.

- Help Litigation team process intakes when short staffed, and provide translation assistance for Spanish speaking clients.
- Attend trainings for clinic staff and volunteers of the legal services organizations that comprise TRC.
- Offer trainings to all TRC attorneys on the work RADCo does as well as how to access RADCo's services as part of the full scope representation the attorneys are providing.
- After consulting with an attorney, RADCo staff negotiates with owners/landlords to accept rental payments in order to dismiss evictions, in compliance with the DLP's directives. This often frees up Litigation staff from attending settlement conferences, and more importantly, can prevent the unlawful detainer from occurring in the first place.

The many services RADCo Coordinators provide are indeed part and parcel of the legal services EDC provides to avoid eviction. They are a key component to the successful outcomes of the legal issues we seek to resolve. In fact, by providing the above services, RADCo has prevented the evictions of hundreds of tenants who otherwise would have been evicted once the moratoria were lifted.

RADCo Coordinators spend 100% of their time delivering legal services, and do not have reporting duties to funders. EDC's Administration staff provide all reporting services to funders. The RADCo Funds Specialist (1 FTE) is dedicated to processing payments in order to allow all other RADCo staff to be at full capacity for working directly with attorneys and clients to provide legal services under the guidance and supervision of the DLP. This position is very much akin to the support paralegals provide attorneys.

Does EDC believe the unique circumstances and demands of the past year of the pandemic are central to the analysis that RADCo services are legal services?

No. EDC has posited in previous applications that RADCo's services are expenses attributable to the legal services it provides. During the application process EDC was informed that RADCo expenses are not qualifying expenses - even if the services provided are necessary.

When submitting its application this year, EDC believed that the circumstances and demands of the past year opened the door to conversations regarding equity in the United States. Moreover, EDC believed that these unique circumstances were such that those outside of the nonprofit services world finally saw what nonprofit services providers have been seeing for decades: We cannot provide services in silos because the people we serve just do not have the privilege possessed by the "majority." EDC, therefore, took this opportunity to deepen the collective understanding of the nature of legal services for the indigent population.

RADCo's services have always been an essential part of the eviction defense services EDC provides. However, the pandemic illuminated the extent to which RADCo's work is an integral part of the services provided by Litigation. Even with eviction moratoria, without the funds to pay portions of their rent, tenants inevitably would be evicted. With the ever-changing laws, all programs were busier - which meant all cross-program collaboration was intensified. The legal analysis from the DLP played a more visible role in the work RADCo performed because the applicable laws were regularly changing and presented preemption issues. The DLP's evaluation and interpretation of the numerous, changing, and conflicting moratoria on evictions at the City, State, and Federal levels, combined with an analysis and understanding of the myriad new federal and state funding streams for homelessness prevention and/or rental assistance, have been fundamental to shaping the RADCo program and eviction defense strategies these past months. RADCo's programmatic and funding decisions were directly informed by and pursuant to the DLP's evaluations and instructions. It has never been clearer that RADCo is a vital component of eviction defense - particularly as it relates to eviction defense services in the City

of San Francisco. This interconnectedness will continue as EDC (and its clients) navigate the ongoing pandemic.

What makes RADCo so effective is that it is housed within a legal organization and is therefore informed and guided by the legal process and legal analysis. RADCo exists for the sole purpose of supporting EDC's legal and referral services. While the circumstances and demands of the past year particularly emphasized the need for close collaboration between the legal team and RADCo staff, especially given the complexities and frequent changes in the law, it did not change RADCo's purpose, process, nor program mission to support the provision of free legal services to San Francisco's tenant population.

Does EDC anticipate including these expenditures as part of its qualifying legal services expenditures in future applications?

Yes. As stated in the introduction, the services EDC provides via RADCo are integral to the successful resolution of our clients' legal issues. For this reason, EDC anticipates including these expenditures as part of its qualifying legal services expenditures in future applications. What we are witnessing today is not a change in terms of the needs faced by the indigent population. What we are witnessing today is a significant increase in the number of individuals who qualify as indigent and/or are on the cusp of indigency. In other words, our work hasn't changed. What has changed is the number of individuals who need these services and the dollar amounts they need to stabilize their housing.

Respectfully submitted,



Martina I. Cucullu Lim, Esq.
Executive Director

To Whom It May Concern,

EDC submits this addendum in support of its application for IOLTA eligibility. Eviction Defense Collaborative (EDC) is a legal services organization providing services in housing and shelter rights by way of full scope legal representation of tenants facing eviction, referrals to full scope representation for tenants facing eviction, limited scope services to tenants facing eviction, and advocacy for shelter clients whose shelters are seeking to evict them. In addition, EDC is the Lead Partner with the City and County of San Francisco overseeing, administering, and implementing the San Francisco Tenant Right to Counsel System (SFTRC). As part of the legal services provided, EDC provides emergency rental assistance through its Rental Assistance Disbursement Component (RADCo). RADCo's services expand and improve upon the legal services provided by EDC. Accordingly, EDC seeks to include in the calculation of its qualifying expenditures costs associated with the provision of services by RADCo.

Summary of Statutory Analysis

The Legislature stated in Section 6210 of the California Business and Professions Code that it sought to expand and improve upon the provision of legal services to indigent persons. Bus. & Prof. Code, §6210. Furthermore, the Legislature set forth that expenditures "attributable to the representation of indigent persons" shall be considered in determining a qualified legal services providers' pro rata share. Bus. & Prof. Code, §6216, subd. (b)(1)(A)

To date, the interpretation of "expenses attributable to" the provision of legal services has been limited to services directly involving matters of law (e.g. issuing legal opinions, court representation, pleadings, etc.). This interpretation is contrary to the stated legislative intent to expand and improve the quality of free legal services to indigent persons. Bus. & Prof. Code, §6210

Specifically, limiting qualifying expenditures in this manner presumes a degree of privilege that, by definition, indigent persons do not have. Only an individual who has privilege as to housing stability, access to resources, available time, mobility, health, and language (to name a few) would require such a limited scope of services in seeking legal assistance. In order to provide quality legal services to indigent persons, it is necessary to provide additional services such as public benefits counseling and rental assistance disbursements. Often, these services are **essential** to a successful outcome in an eviction matter.

In other words, limiting the interpretation of "expenditures attributable to" legal services is contrary to the legislative intent of expanding and improving upon the services to indigent persons. An interpretation that includes rental assistance disbursements is more reflective of the realities of providing legal services to indigent persons. It also has the added benefit of being equitable. EDC's RADCo program was created and continues to exist because it is integral to the successful outcomes of the legal issues facing our clients. Our clients need these services in order to have a successful outcome for their legal issue. For this reason, EDC understands expenses incurred by RADCo to be expenses attributable to the provision of EDC's legal services.

Qualifying Expenditures Calculation (\$692,852.57)

With all that being said, EDC understands the unique circumstances of the global pandemic. Moreover, EDC understands that it is proposing a novel argument for the interpretation of qualifying expenditures. Accordingly, EDC has prepared an alternative calculation its qualifying expenditures that includes costs associated with the following RADCo activities:

- Consultations with attorneys and assisting legal clinic (as needed) with intakes.
Total Cost \$239,833.58
- RADCo/SFTRC-attorney cross-trainings that inform the provision of SFTRC (including RADCo) services.
Total Cost: \$26,648.18
- Property manager/landlord negotiations in order to preserve tenancies and/or prevent homelessness.
Total Cost: \$426,370.81

	Qualified Expenditures	Non-Qualified Expenditures
Non-Cash -	\$ 0	\$ 0
Pass through		
Rental Assistance -	\$ 0	\$ 980,835
Personnel		
Lawyers	\$ 1,206,308.72	\$ 0
Paralegals	\$ 222,643.16	\$ 0
Other Staff	\$ 738,850.13	\$ 897,952.94
<i>Subtotal</i>	\$ 2,167,802.01	\$ 897,952.94
<u>Tax & Fringe @ 26%</u>	<u>\$ 553,936.19</u>	<u>\$ 229,452.98</u>
<i>Total Personnel</i>	<i>\$ 2,721,738.21</i>	<i>\$ 1,127,405.92</i>
Non-Personnel		
Space	\$ 328,291.81	\$ 21,644.24
Equipment Rental & Maintenance	\$ 16,502.00	\$ 1,088.52
Office Supplies & Small	\$ 35,126.02	\$ 2,317.03
Equipment	\$ 8,829.25	\$ 582.40
Telecommunications	\$ 195,987.60	\$ 12,928.01
Technology	\$ 0	\$ 0
Program Travel	\$ 0	\$ 0
Staff Training	\$ 38,545.75	\$ 2,542.60
Library	\$ 0	\$ 0
Insurance	\$ 22,034.34	\$ 1,452.73
Audit	\$ 10,120.42	\$ 667.57
Litigation Expense	\$ 84,403.50	\$ 5,567.54
Depreciation	\$ 12,412.20	\$ 818.75
Contract Service to Clients	\$ 0	\$ 0
Contract Service to Program	\$ 714,820.95	\$ 47,152.01
<u>Other</u>	<u>\$ 101,256.46</u>	<u>\$ 47,152.01</u>
<i>Total Non-Personnel</i>	<i>\$ 1,568,319.45</i>	<i>\$ 103,451.66</i>
Total Expenditures	\$ 4290,057.67	\$ 2,211,692.59

Respectfully submitted,

Martina I. Cucullu Lim, Esq

Executive Director, Eviction Defense Collaborative -