



Neighborhood Legal Services
of Los Angeles County

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State Bar of California
Legal Services Trust Fund Commission Rules Committee
80 Howard Street
San Francisco, CA 94105

RE: Recommendation Regarding the Treatment of Expungement, Infractions, and Similar Legal Services Work for the Purposes of Primary Purpose and Qualified Expenditure Determination

Dear Legal Services Trust Fund Commission Rules Committee:

We are writing in response to the Committee's proposed recommendation regarding the treatment of expungement, infractions, and similar legal services work for the purposes of primary purpose and qualified expenditure determination. Neighborhood Legal Services of Los Angeles County (NLSLA) is a non-profit law firm that provides free legal assistance to over 100,000 individuals and families each year. The mission of NLSLA is to expand access to justice and address the most critical needs of impoverished communities.

Over the past several years, NLSLA has developed a comprehensive and robust program to support persons with criminal records ("system-involved persons") in their efforts to reintegrate into their communities. Understanding that low-income persons are disproportionately brought within our criminal justice system and that a criminal record makes it extremely difficult to escape poverty, NLSLA assists system-involved persons with clearing their criminal records, resolving infraction citations, and removing the civil legal barriers they face because of their criminal records when seeking employment, housing, and other resources. Expungement and other criminal record clearing relief as well as infraction citation assistance are essential to this work. For our clients, resolving these legal needs is often functionally the necessary first step in helping them to remove the civil legal barriers they face and successfully re-enter society.

To address these needs, NLSLA assists hundreds of clients and litigants each year with expungement and other criminal record clearing remedies through our expungement clinics and direct representation. Additionally, our program coordinates monthly traffic citation workshops to educate litigants about their rights during the traffic citation adjudication process, reducing and clearing old traffic citation debt, and restoring their driver's licenses. NLSLA also engages in policy advocacy, community education, and impact litigation to address the systemic barriers facing system-involved persons in Los Angeles County. Through our advocacy in this area we have learned that these services are necessary to helping low-income persons support themselves, take care of their families, escape poverty, and live with dignity.

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For the reasons set forth below, NLSLA applauds the Committee's recommendation to amend the IOLTA/EAF statute to allow this funding to support legal services related to expungement and infraction work. Despite their nominal criminal nature, expungement, infraction, and related legal proceedings are largely civil in nature and assisting litigants in these proceedings is necessary to effectively serve low-income Californians, especially those with criminal records. Thus, legal services in this area fall squarely within the mission of the IOLTA/EAF program 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."¹

Expungement and Criminal Record Clearance Advocacy Improves the Quality of Existing Free Legal Services in Civil Matters to Indigent Persons and More Effectively Serves Their Needs

Nearly one in five Californians, or a staggering eight million people, have a conviction record.² Even more sobering, these persons face nearly 4,800 laws that impose additional civil legal barriers on them because of their conviction. These barriers limit their access to housing, employment, professional licensing, education, public benefits, and other key resources.³ For example, a criminal conviction can make it nearly impossible to find housing, and as a result, system-involved persons are almost ten times more likely to be homeless as compared to the general public.⁴ In the employment sector, the unemployment rate for persons with criminal records is also staggering—"five times higher than the unemployment rate for the general United States population, and substantially higher than even the worst years of the Great Depression."⁵ Indeed, a recent survey of Californians with criminal records revealed that nearly fifty percent of persons surveyed found it difficult to find a job as a result of their conviction; persons of color were twenty-nine percent more likely to report facing this employment barrier.⁶ As President Biden sagely observed in his recent Second Chance Month Proclamation, these barriers to reentry make transitioning back into society overwhelming for system-involved persons, their families, and communities.⁷

Despite the numerous civil legal barriers faced by persons with criminal records, California's extensive expungement and criminal record clearance statutes provide powerful tools for reducing and eliminating these barriers. After expungement, a person often cannot be denied housing and most jobs and professional licenses based on that conviction.⁸ To wit, for many of our clients, expungement and other criminal record clearing relief opens the door to jobs and professional licenses as well as economic security for themselves and their

¹ Cal. Bus. & Prof. Code § 6210.

² Californians for Safety and Justice, *Repairing the Road to Redemption in California*, May 2018, available at https://safeandjust.org/wp-content/uploads/CSJ_SecondChances-ONLINE-May14.pdf.

³ *Id.*

⁴ Lucius Couloute, Prison Policy Initiative, *Nowhere to Go: Homelessness Among Formerly Incarcerated People* (August 2018), available at <https://www.prisonpolicy.org/reports/housing.html>.

⁵ Lucius Couloute and Daniel Kopf, Prison Policy Initiative, *Out of Prison & Out of Work: Unemployment Among Formerly Incarcerated People* (July 2018), available at <https://www.prisonpolicy.org/reports/outofwork.html>, (internal citations omitted).

⁶ Californians for Safety and Justice, *Repairing the Road to Redemption in California*, May 2018, available at https://safeandjust.org/wp-content/uploads/CSJ_SecondChances-ONLINE-May14.pdf.

⁷ A Proclamation on Second Chance Month, 2021 (Mar. 31, 2021), available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/03/31/a-proclamation-on-second-chance-month-2021/> ("Transitioning back into society can be overwhelming for those who are formerly incarcerated as well as their families and communities.")

⁸ Cal. Bus. & Prof. Code 480(c)(prohibiting denial of occupational license based on expunged conviction); Cal. Govt. Code § 12952(a)(3)(C)(prohibiting denial of employment in public and private sector based on expunged conviction); Cal. Code Regs. Tit. 2, § 12269(a)(3)(prohibiting denial of housing based on expunged conviction).

families. Further, on a more personal level, these forms of relief help our clients remove the stigma they face and feel as persons with criminal records and give them the confidence to continue moving forward on their paths to successfully re-enter their communities. NLSLA and other legal services programs ensure that low-income litigants can access this relief and attain its benefits by helping litigants navigate the maze of criminal record clearing laws and court filing procedures through *pro per* clinics, direct representation, and other systemic advocacy.

Infraction Citation Assistance at all Stages is Essential to Effectively Serving the Needs of Low-Income Californians

Similarly, low-income Californians face significant barriers as a result of infraction citations. For example, California's traffic fines and fees are some of the highest in the country.⁹ Traffic base fines combined with add-on fees and penalties can easily cause one traffic infraction with an initial base fine of \$100 to rack up to over \$1000 in fees in a matter of months. Relatedly, low-income Californians face a web of quality-of-life infraction statutes that criminalize poverty and unhoused persons and their families. These infraction statutes make it difficult, if not impossible, for unhoused persons to secure stable housing and escape poverty. Although these infraction statutes usually carry only fines and fees, any attempt at paying even a partial payment of just one infraction citation is likely to deplete the monthly expenses for a low-income family, leaving no money for necessities such as food and shelter.

Like expungement and criminal record clearance, prompt resolution of infraction citations is essential to helping low-income people escape the crushing cycle of infraction citation debt without sacrificing their livelihoods. California provides several options for resolving citations both before and after judgment, from demurrer and dismissal statutes that provide early resolution of infraction citations to ability-to-pay proceedings that allow low-income litigants to reduce and eliminate post-conviction infraction debt. Despite these advancements, these options are simply out of reach for most low-income litigants without the assistance of counsel. This is especially true in pre-conviction infraction proceedings where representation is necessary to ensure that low-income litigants have a fair opportunity to litigate their cases and raise meritorious defenses.

Even though these options exist, there is a significant knowledge gap about these options in low-income communities. Often, many of our clients only learn about the options available to resolve infraction citations after connecting with our program's traffic citation clinics. Relatedly, there is a significant access to justice gap at all stages of infraction advocacy because, unlike litigants in misdemeanor and felony cases, infraction defendants do not enjoy a Sixth Amendment right to counsel in their cases.¹⁰ Further, in our experience, because these matters are discrete and administrative in nature, these cases are not attractive to the private bar for representation, and there are few low-cost or affordable legal options for low-income litigants in these matters. As a result, most litigants in infraction courts like traffic court are unrepresented.¹¹

Through our advocacy before and after judgement in these cases, NLSLA has helped clients dismiss their traffic citations before judgement through demurrers and motions to dismiss, reduce and clear decade-old traffic citation debt, and get their lives back on track so that they can secure jobs and housing. Further, this

⁹ UCLA Labor Center, *Work, Pay, or Go to Jail Court-Ordered Community Service in Los Angeles* (October 2019), available at https://www.labor.ucla.edu/wp-content/uploads/2019/10/UCLA_CommunityServiceReport_Final_1010.pdf.

¹⁰ *E.g. Scott v. Illinois*, 440 U.S. 367 (1979).

¹¹ Lawyers' Committee for Civil Rights of the San Francisco Bay Area, *Paying More for Being Poor* (2017) <https://lccrsf.org/wp-content/uploads/LCCR-Report-Paying-More-for-Being-Poor-May-2017.pdf>] (noting that over 90% of individuals who appear in traffic court represent themselves because of the lack of legal services available to assist them with these matters).

work has confirmed for us that direct representation, *pro per* assistance, and community education at all stages of infraction proceedings are necessary to help low-income persons resolve post-conviction infraction debt and ensure that low-income litigants do not face such crushing debt in the first place. By providing free legal services with these issues, NLSLA and other legal services programs play an integral role in closing access to justice and knowledge gaps in this area, and improve the quality of legal services for such litigants.

NLSLA Applauds the Efforts of the State Bar and Others to Amend the IOLTA/EAF Statute to Make Clear That Such Funds May be Used to Assist Litigants with Expungement and Infraction Citation Advocacy

NLSLA applauds the efforts of the State Bar and others to amend the IOLTA/EAF statute to make clear that this work falls squarely within the letter and intent of the statute. Indeed, such clarification will encourage other recipients of IOLTA/EAF funds to provide these crucial legal services and better support programs that currently engage in this work.

NLSLA also recommends that the Committee, either now or at a later date, revise its proposed amendment to better reflect current criminal record clearance practice and infraction citation advocacy and to ensure that these funds effectively serve the needs of low-income Californians facing these legal issues. As currently written, this amendment states that “[c]ivil legal services includes legal services related to expungements, record sealing proceedings not requiring a finding of factual innocence and post-conviction infraction relief related to reduction or elimination of fines, fees and penalty assessments.” However, the State Bar should broaden this definition of “Civil Legal Services” to “expungement, record clearance proceedings, and infraction relief” and remove the restriction on the use of IOLTA funds in pre-conviction infraction advocacy.

As it relates to criminal record clearing, the proposed language would not permit IOLTA/EAF funds recipients to use these funds to assist low-income litigants with important forms of criminal record clearing relief, including vacatur relief for human trafficking survivors¹² and post-conviction relief for non-citizen, litigants.¹³ Further, the express exclusion of factual innocence record sealing remedies would prevent the use of these funds to assist victims of criminal identity theft¹⁴ and wrongful arrests¹⁵ with sealing criminal records that result from these terrible acts. Thus, as currently written, legal services organizations could not adequately assist these vulnerable populations with these criminal record clearance needs. Indeed, this is especially problematic given that these forms of relief often serve the same rehabilitative purpose as many of the criminal record clearance services currently covered under the proposed amendment.

In regards to infractions, the current prohibition on the use of IOLTA/EAF funds in connection with pre-conviction infraction advocacy will negatively impact programs’ ability to effectively serve low-income litigants at all stages of infraction proceedings. As stated previously, pre-conviction advocacy is necessary to give such litigants a fair opportunity to defend themselves in these proceedings and avoid unnecessary and overly-punitive citation debt. Further, this restriction does not address the glaring access to justice gap that

¹² Cal. Penal Code § 266.14 (permitting vacatur of convictions and arrests of human trafficking survivors where these records are the result of their trafficking).

¹³ E.g. Cal. Penal Code § 1016.5 (allowing vacatur of convictions where court failed to properly advise a non-citizen defendant of the immigration consequences of a guilty or no-contest plea); Cal. Penal Code § 1473.7 (permitting vacatur of conviction where a non-citizen defendant is not properly advised of the immigration consequences a guilty or no-contest plea).

¹⁴ Cal. Penal Code § 530.6 (providing victims of criminal identity theft with a Certificate of Identity Theft and Factual Innocence where they can show they were victims of criminal identity theft).

¹⁵ E.g. Cal. Penal Code § 851.8 (allowing sealing and destruction of arrest records for people factually innocent of the alleged arresting offense).

exists for low-income litigants in infraction cases. Thus, legal services organizations should be permitted to use these funds for this work to ensure that they are adequately serving their low-income clients.

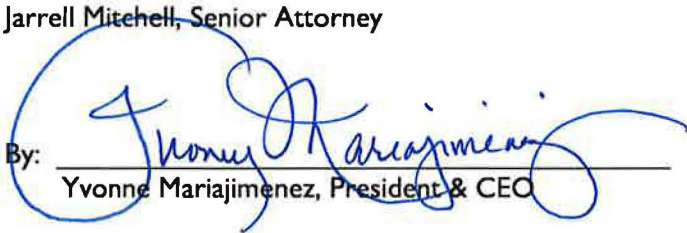
In sum, NLSLA strongly believes that the proposed amendment to include legal services related to expungement, criminal record clearance, and infractions advance the mission of the IOLTA/EAF program. To this point, we applaud the efforts of the State Bar and others to amend the IOLTA/EAF statute to make clear that such funds may be used for these purposes. We are hopeful that these proposed amendments along with the revisions we suggested here will ultimately help ensure that persons with criminal records have the opportunity to rejoin their communities and obtain employment and housing as well as promote racial justice.

If you have any questions regarding this letter, please feel free to contact Jarrell Mitchell by telephone at (818) 834-7512 or by email at jarrellmitchell@nlsla.org.

Sincerely,

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Jarrell Mitchell, Senior Attorney

By:


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