

LEGAL SERVICES TRUST FUND COMMISSION
RULES COMMITTEE MEETING
Meeting Summary and Action Items
Friday, July 30, 2021, 12:00 p.m. – 3:00 p.m.
State Bar of California (Conference Call via Zoom)

Roll Call

Members Present

Chair Amin Al-Sarraf
Louise Bayles-Fightmaster
Catherine Blakemore
Erica Connolly
Jim Meeker

Liaisons

Salena Copeland (Legal Aid
Association of California)
Bonnie Hough (Judicial Council
of California)
Zach Newman (Legal Aid
Association of California)

Staff

Erica Carroll
Brady Dewar
Chris McConkey
Doan Nguyen
Kim Warmesley

Advisors

Hon. William Murray
Hon. Brad Seligman

Members Absent
Corey Friedman

OPEN SESSION

The chair called the meeting to order at 12:02 p.m.

I. ROLL CALL

Roll call was taken, and quorum was established.

II. CALL FOR PUBLIC COMMENT

The chair invited members of the public to comment on any items on the agenda.

Andie Grossman, at Bet Tzedek, addressed Item IV.A.

Jarrell Mitchell, Senior Staff Attorney at Neighborhood Legal Services of Los Angeles, addressed Item IV.A.

III. CONSENT

A. Approval of Meeting Summary and Action Items from July 13, 2021 Meeting

The committee approved the July 13, 2021, meeting summary and action items by majority roll call vote (Blakemore moved, Connolly seconded). The vote was as follows:

Yes (4): Al-Sarraf, Blakemore, Connolly, Meeker.

No (0): None.

Abstention (1): Bayles-Fightmaster.

IV. DISCUSSION AND ACTION ITEMS

A. Discuss and Approve Recommendation Regarding the Treatment of Expungement, Infractions, and Similar Legal Services Work for the Purposes of Primary Purpose and Qualified Expenditure Determination

Senior Program Analyst Carroll described how the Legal Services Trust Fund Commission and State Bar of California currently treat expungements, infractions, and similar legal aid services. Historically, they have considered this work to be qualifying spending under the Interest on Lawyers' Trust Accounts (IOLTA) statute. That is, this spending counted toward applicants' primary purposes as qualified legal services projects (QLSPs) and support centers as well as toward their award amounts and budgets.

Staff's research supports the conclusion that expungements and infractions are criminal law in nature. While the IOLTA statute's language would allow counting this work towards programs' primary purposes, it expressly prohibits using IOLTA funds to provide criminal law services. The 2021 IOLTA grant application, therefore, allowed programs to include spending on expungements and infractions in their qualified expenditures, and therefore to support primary purpose. Meanwhile, staff instructed programs to use other funding to provide these services.

The committee now seeks to revise the State Bar rules and/or eligibility guidelines to clarify how the commission and State Bar are to treat expungements and infractions. Currently, the IOLTA grant eligibility guidelines refer to "civil" legal services. Indeed, the purpose of the IOLTA statute is to improve the availability and quality of civil legal aid to very low-income Californians. Expungement and infractions work, however, can enhance these civil legal outcomes.

The working group and State Bar leadership recommend adding "civil" before "legal services" in the IOLTA statute. They also recommend that the statute make an explicit exception for expungement and infractions legal aid. This change would make it so that programs could use their IOLTA grants to provide these services. To avoid a delay of several months or longer, the working group recommends moving quickly so that the legislature might take up this matter during the current session.

Ms. Copeland reported that the Legal Aid Association of California (LAAC) asked its Directors of Litigation and Advocacy listserv for input about the working group's recommendations. Most IOLTA grantees participate in this listserv. That group overwhelmingly supported the working group's approach, as does LAAC. Ms. Blakemore noted that if this change becomes part of the State Bar Dues Bill, which is already on the assembly floor, it will have to go back to the Senate.

The committee discussed whether different procedures to clear criminal records are themselves criminal law in nature. Ms. Carroll reported on conversations that she had with East Bay Community Law Center and Law Foundation of Silicon Valley about this issue. The committee also discussed whether infractions defense should be an exception.

The committee agreed that a statutory exception should allow for spending on expungements, records sealing proceedings, and post-conviction infractions relief. It decided against including infractions defense. Assistant General Counsel Dewar noted that the committee's position would be consistent with the working group's recommendation. Ms. Connolly proposed revisiting the tentative decision to exclude infractions defense at a later date.

The chair thanked the working group for its work. Judge Seligman noted that the legislative calendar will be a limiting factor. If the committee is unable to propose a change during the current legislative session, the legal aid community will have to wait until next year to propose it, which risks losing momentum.

V. ADJOURN

There being no other business, the meeting adjourned at 12:59 p.m.