



The State Bar of California

OPEN SESSION

AGENDA ITEM

OCTOBER 2021

EXECUTIVE COMMITTEE OF THE LEGAL SERVICES TRUST FUND COMMISSION ITEM IV.B

DATE: October 27, 2021

TO: Members, Executive Committee, Legal Services Trust Fund Commission

FROM: Dan Passamaneck, Senior Program Analyst, Office of Access & Inclusion

SUBJECT: Report on Complaint against Grantee Legal Services of Northern California

EXECUTIVE SUMMARY

State Bar Rules provide a process to address and seek to resolve complaints from any person or entity that a recipient of an Interest on Lawyers Trust Accounts (IOLTA) grant fails to meet trust fund requirements. That process involves bringing the complaint to the Commission if it has not been resolved within 90 days after receipt by staff.

This memo reports on a complaint received against grant recipient Legal Services of Northern California (LSNC), stating that LSNC failed to provide legal services to an individual residing in their service area who sought assistance with a legal controversy. Staff review of the complaint has not identified any failure by LSNC to meet its duties and obligations as a State Bar grantee. Though it has taken longer than 90 days to resolve, as of October 8, complainant has indicated that he is satisfied with the services provided to him. Staff will recommend to the LSTFC that this complaint be dismissed. A copy of this report has been provided to both the complainant and to LSNC on October 20, and is brought to the Executive Committee as an informational item as required by State Bar Rules.

BACKGROUND

AUTHORITIES

Recipients of IOLTA grants must meet several requirements under the IOLTA Statute (Business and Professions Code sec. 6210 et seq.) and State Bar Rules. The IOLTA Statute requires recipients to maintain quality service and professional standards, and to prevent anyone from interfering with any attorney funded by IOLTA funds in carrying out their professional responsibility to their client (sections 6217(a) and (d), respectively). Grant applications include assurances, signed under penalty of perjury, that the applicant will not discriminate on the basis of race, color, national origin, religion, sex, handicap, or age. State Bar rules require grant recipients to retain records of client eligibility for at least five years.¹

State Bar Rules also provide procedures for review of complaints against a grant recipient for failure to meet Trust Fund requirements.² This rule directs staff to work with the complainant and grantee to seek resolution. If the complaint remains unresolved after 90 days, staff must provide the commission, complainant, and recipient with a written report of its efforts to resolve the complaint and a recommendation of what action, if any, is appropriate.

Within 30 days of the staff report, the complainant or grant recipient may provide a written response with additional information and may request a review by the commission. The commission or a committee of its members must consider the staff report and any response received, and then must dismiss the complaint or schedule an informal conference with the complainant, recipient, and the staff member who prepared the commission report.³

After the informal conference, the commission must issue a decision either dismissing the complaint, requiring corrective action, or terminating funding. Decisions to dismiss are final; decisions to terminate funding may be appealed to the State Bar Court within 30 days and then become final.⁴

CLIENT COMPLAINT

Complainant states that he contacted LSNC's Redding office in October 2020 to request legal help, and that he called that office again on November 9 and had a 27-minute conversation with LSNC staff. The complainant states that he provided all necessary intake information to LSNC during their November 9 call. In December, having not yet heard back from LSNC, the complainant began to call LSNC asking to talk to a lawyer. The complainant states that he eventually reached LSNC's deputy director and then their executive director, who both spoke to him on the telephone but did not move his matter forward.

The complainant contacted the State Bar on March 8, 2021 to file a complaint regarding LSNC's failure to provide him with legal services. The complainant advised the State Bar at the time he filed this complaint that he relied exclusively on his telephone for communication.

EFFORTS TO RESOLVE THE COMPLAINT

¹ State Bar Rule 3.681(C).

² State Bar Rule 3.692.

³ State Bar Rule 3.692(C)-(E).

⁴ State Bar Rule 3.692(E)-(H).

State Bar staff attempted telephone contact with the complainant eight times over an eight-week period. During this time the complainant also attempted to reach out to State Bar staff, and was able to reach the State Bar on July 8. Initial fact-finding determined that difficulties in previous attempts at communication by both State Bar staff and the complainant were due to the use of incompatible telephone technology. This resulted in ongoing communications with the complainant taking longer than anticipated.

Staff contacted LSNC's executive director on July 18 to advise them of this complaint and provide a copy. The executive director provided detailed information about prior contact with, and attempts to assist, the complainant, but stated that the complainant had declined to provide the necessary information to complete the intake process to verify his eligibility for services.

The executive director also stated that the complainant's calls to LSNC's field offices had become increasingly challenging. The executive director was initially disinclined to provide further assistance to the complainant because these difficulties were detracting from LSNC's ability to serve others in need of legal services. After further discussion with the State Bar, the executive director agreed that LSNC would review a written intake form if the complainant would send them one.

After several attempts in July and August by State Bar staff to facilitate an intake between complainant and LSNC, LSNC's deputy director wrote to the State Bar on August 24 to report that she had spoken with the complainant for 90 minutes but had been unable to complete an intake for him. This message and one from LSNC's executive director also indicate LSNC's assessment that most of the complainant's legal concerns were not within LSNC's areas of expertise, but that LSNC had provided resources to the complainant as to one of his legal concerns, and information as to another legal concern. The deputy director subsequently reported that she was continuing to provide legal resources and information for the complainant through the month of September. As of October 4, LSNC reported that they were continuing to assist complainant.

Staff contacted the complainant on October 8 to assess the status of his complaint. During that conversation the complainant stated that although his legal concerns had not all been resolved, he was satisfied that LSNC was providing him with legal resources and no longer wished to pursue his complaint against LSNC. Staff advised him that they were preparing an informational report for the LSTFC regarding his complaint as required by State Bar rules. Staff further advised him that he was entitled to a copy of that report and would then have 30 days to request further review if he wished. The complainant stated that he was satisfied with the services LSNC was providing to him, did not intend to ask for further review, and asked that an electronic copy of this report be sent to an email address he maintains. This report was sent to both LSNC and to the complainant on October 20, together with copies of the original complaint and State Bar Rule 3.692.

DISCUSSION

The complainant's primary contention is that LSNC failed to provide him with legal services. It does not appear that there was an attorney-client relationship formed between LSNC and complainant and there is no written agreement between them, or similar documentation pre-dating the complaint. In addition, it does not appear that LSNC discriminated against, or imposed any improper restrictions on, the complainant. Staff review indicates that LSNC made significant efforts to accommodate complainant by setting multiple appointments for telephone interviews.

LSNC's actions appear to have aligned with their obligations to the State Bar, and their responsibilities toward their other clients and their staff. LSNC's insistence on completing an intake for the complainant was consistent with their duty to ensure that all individuals accepted as clients meet client eligibility requirements and have legal problems that are among the types of issues for which LSNC provides services.

As indicated above, LSNC has provided legal information and resources to complainant, and complainant no longer wishes to pursue the complaint. Because efforts to resolve the complaint fell outside of the 90-day window, this report is being provided for informational purposes as required by State Bar Rules. In the absence of additional information provided by LSNC or complainant, staff recommends that this complaint be dismissed.

NEXT STEPS

State Bar Rule 3.962(C) allows the complainant and the grant recipient 30 days to respond in writing to this report or to request review by the commission. Complainant and grant recipient were provided copies of this report on October 20 and have until November 19 to submit a written response. As set forth above, complainant has stated on October 8 that he is satisfied with the services that LSNC has provided, and does not intend to respond.

Staff will report on this matter to the LSTFC at its November 17 meeting with an update on any requests received for a conference regarding this matter. Unless such a request is timely received, staff will request that the Commission approve dismissal of this complaint after November 19.

ATTACHMENT LIST

- A. State Bar Rules Title 3, Div. 5, Chapter 2: Legal Services Trust Fund Program (Rules 3.660-3.692)

TITLE 3. PROGRAMS AND SERVICES

Adopted July 2007

DIVISION 5. PROVIDERS OF PROGRAMS AND SERVICES

Chapter 2. Legal Services Trust Fund Program

Article 1. Administration of the Legal Services Trust Fund Program

Rule 3.660 Legal Services Trust Fund Commission

The Board of Trustees of the State Bar of California has established a Legal Services Trust Fund Commission ("Commission") to administer, in accordance with legal requirements and these rules ("Trust Fund Requirements"), revenue from IOLTA (Interest on Lawyers' Trust Accounts) and other funds remitted to the Legal Services Trust Fund Program of the State Bar.

Rule 3.660 adopted effective March 6, 2009; amended effective January 1, 2012.

Rule 3.661 Duties of the Legal Services Trust Fund Commission

- (A) The Commission must determine an applicant's eligibility for grants and notify each grant applicant that its application has been approved or denied. If the Commission tentatively approves an application, it issues a notice of the grant award, including the tentative allocation. If the notice requires submission of additional information, the Commission considers the application incomplete pending receipt of the information.
- (B) The Commission must monitor and evaluate a recipient's compliance with Trust Fund Requirements and grant terms. The evaluation may be based on
 - (1) application information, grant reports, and additional information reasonably necessary to determine compliance with Trust Fund Requirements;
 - (2) reasonable site visits scheduled upon adequate notice;
 - (3) an evaluation of a recipient by an impartial third party designated and funded by the Commission; or
 - (4) information from other sources, such as an evaluation provided by the Legal Services Corporation or other funding entity.
- (C) The Standards for the Provision of Civil Legal Aid adopted by the American Bar Association's House of Delegates on August 7, 2006, as limited by the general introduction to the standards, are the guidelines used by the Commission in

approving the quality control procedures and reviewing and evaluating the maintenance of quality service and professional standards of applicant and recipient programs. With due notice, the Commission may also rely on other standards that are consistent with law and generally accepted access to justice principles in the legal aid community.

- (D) The Commission may terminate a grant for noncompliance or take other action in accordance with Article 4 of this chapter.

Rule 3.661 adopted effective March 6, 2009.

Rule 3.662 Legal Services Trust Fund Commission membership and terms

The Commission consists of twenty-one voting members and three nonvoting judicial advisors. At least two members must be or have been within five years of appointment indigent persons as defined by statute.¹ No employee or independent contractor acting as a consultant to a potential recipient of Trust Fund grants may be appointed to the Commission.

- (A) The Board of Trustees appoints fourteen voting members, ten of whom must be licensees of the State Bar and four of whom must be public members who have never been admitted to the practice of law in any United States jurisdiction. Each member serves at the pleasure of the Board for a term of three years that begins and ends at the State Bar annual meeting. Upon completion of an initial term, the Board may reappoint a member for a second three-year term. The Board may extend an initial or second term by one or two years to allow a member to serve as chair or vice-chair.
- (B) The chair of the Judicial Council appoints seven voting members, five of whom must be licensees of the State Bar and two of whom must be public members, as well as three nonvoting judges, one of whom must be an appellate justice. Each member serves at the pleasure of the chair of the Judicial Council for a term of three years.
- (C) The Board of Trustees appoints voting members as chair and vice-chair.

Rule 3.662 adopted effective March 6, 2009; amended effective January 1, 2012; amended effective September 14, 2014; amended effective January 25, 2019.

Article 2. Construction of certain statutory provisions

Rule 3.670 Operation in California by qualified entities

- (A) A qualified legal services project is required by statute to be a nonprofit corporation operating exclusively in California or a program operated exclusively

¹ Business & Professions Code § 6213(d).

in California by a nonprofit law school accredited by the State Bar.² A qualified legal services project that is a California nonprofit corporation with operations outside California may be considered as meeting the statutory requirement if it otherwise meets Trust Fund Requirements and expends Trust Fund Program grant funds only in California.

- (B) A qualified support center is required by statute to be an incorporated nonprofit legal services center that provides through an office in California a significant level of legal support services to qualified legal services projects on a statewide basis.³

Rule 3.670 adopted effective March 6, 2009.

Rule 3.671 Primary purpose and function

- (A) A qualified legal services project is required by statute to have as its primary purpose and function providing legal services without charge to indigent persons.⁴ A qualified legal services project applying for Trust Fund Program funds is presumed to have such a purpose and function if 75% or more of the budget for the fiscal year for which it is seeking funds is designated to provide free legal services to indigents, and 75% or more of its expenditures for the most recent reporting year were incurred for such services. The calculation of 75% of expenditures may include a reasonable share of administrative and overhead expenses.
- (B) A qualified support center is required by statute to have as its primary purpose and function the provision of legal training, legal technical assistance, or advocacy support without charge.⁵ A qualified support center applying for funds is presumed to have such a primary purpose and function if 75% or more of its budget for the fiscal year for which it is seeking funds is designated to provide such support services, and 75% or more of its expenditures for the most recent reporting year were incurred for such services.
- (C) A qualified legal services project or qualified support center that does not meet the 75% test may nevertheless apply, provided that the applicant can satisfactorily demonstrate that it meets the primary purpose and function requirement by other means.

Rule 3.671 adopted effective March 6, 2009.

² Business & Professions Code § 6213(a).

³ Business & Professions Code § 6213(b).

⁴ Business & Professions Code § 6213(a)(1).

⁵ Business & Professions Code § 6213(b).

Rule 3.672 Delivery of legal services

- (A) “Legal services” include all professional services provided by a licensee of the State Bar and similar or complementary services of a law student or paralegal under the supervision and control of a licensee of the State Bar in accordance with law.⁶
- (B) “Legal support services” required by statute to be provided by a qualified support center include but are not limited to
 - (1) professional services to qualified legal services projects; and
 - (2) the direct provision of legal services to an indigent client of a qualified legal services project, provided the services are provided directly to the client
 - (a) as co-counsel with an attorney employed or recruited by a qualified legal services project; or
 - (b) at the request of an attorney employed or recruited by a qualified legal services project that is unable to assist the client.⁷

Rule 3.672 adopted effective March 6, 2009; amended effective January 25, 2019.

Rule 3.673 Permissible uses of funds

- (A) A qualified legal services project or qualified support center must use funds received under Business and Professions Code Section 6216 to provide legal assistance to indigent persons or qualified legal services projects as defined by statute.⁸ Reasonable administrative expenditures and overhead required to deliver such services meet the statutory requirement.
- (B) No recipient may use an allocation made under Business and Professions Code Section 6216 to provide services in a fee-generating case, except as described in Business and Professions Code Section 6213(e)(1)-(4). If a recipient determines that a case is not fee generating because it qualifies for a statutory exemption,⁹ the recipient must maintain records reflecting the facts that led to that conclusion and any action taken to confirm it. Client reimbursements of nominal costs or expenses are not considered fees. If attorney fees are generated in cases funded by Trust Fund Program grants, the fees must be used only for purposes

⁶ Business & Professions Code § 6213(a).

⁷ Business & Professions Code § 6213(b).

⁸ Business & Professions Code §§ 6216 and 6223.

⁹ Business & Professions Code § 6213(e)(1).

permitted by statute.¹⁰ Recipients must maintain complete records of all such fees.

Rule 3.673 adopted effective March 6, 2009.

Article 3. Applications and distributions

Rule 3.680 Application for Trust Fund Program grants

To be considered for a Trust Fund Program grant, a qualified legal services project or qualified support center seeking a Trust Fund Program grant must submit a timely and complete application for funding in the manner prescribed by the Commission. The applicant must agree to use any grant in accordance with grant terms and legal requirements.

- (A) A qualified legal services project must meet statutory criteria.
- (B) A qualified support center must agree to offer support services in two or more of the following ways: consultation, representation, information services, and training. The board of directors of the support center must establish priorities for providing such services after consulting with legal services attorneys and other relevant stakeholders.
- (C) A support center not in existence prior to December 31, 1980 must demonstrate that it is deemed to be of special need by a majority of qualified legal services projects in accordance with Trust Fund Program procedures. Upon request, the Commission must make available to the applicant a list of all the names and addresses of qualified legal services projects.
- (D) A nonprofit corporation that believes it meets the criteria for a qualified legal services project and qualified support center may submit two applications, one as a project and one as a support center, indicating in each application whether it is to be considered the primary or secondary application. The Commission will consider the secondary application only if the primary application is not approved. No applicant may receive a grant as a qualified legal services project and as a qualified support center.
- (E) An application must include
 - (1) an audited financial statement by an independent certified public accountant for the fiscal year that concluded during the prior calendar year. A financial review in lieu of an audited financial statement may be submitted by an applicant whose gross corporate expenditures were less than the amount specified in the Schedule of Charges and Deadlines;

¹⁰ Business & Professions Code § 6223.

- (2) information about the maintenance of quality service and professional standards and how the applicant maintains standards, such as internal quality control and review procedures; experience and educational requirements of attorneys and paralegals; supervisory structure, procedures, and responsibilities; job descriptions and current salaries for all filled and unfilled professional and management positions; and fiscal controls and procedures.
- (3) a budget and budget narrative, which must be submitted within thirty days of receipt of a notice of tentative allocation, explaining how funds will be used to provide civil legal services to indigent persons, especially underserved client groups such as, the elderly, the disabled, juveniles, and non-English-speaking persons within the applicant's service area; and
- (4) information about program activities, such as substantive practice areas, extent and complexity of services, a summary of litigation, and populations served.

Rule 3.680 adopted effective March 6, 2009; amended effective January 25, 2019.

Rule 3.681 Duties of Trust Fund Program grant recipient

The recipient of a Trust Fund Program grant must

- (A) use the grant in accordance with the terms of the grant agreement and Trust Fund Requirements;
- (B) maintain complete financial records, including budgets, to account for the receipt and expenditure of all grant funds and all income earned by a grant recipient from grant-supported activities, such as income from fees for services (including attorney fee awards and reimbursed costs), training, sales and rentals of real or personal property, and interest earned on grant amounts;
- (C) maintain records for five years after completion of services to a client regarding the eligibility of the client and promptly provide such records to the Commission for inspection upon demand;
- (D) annually submit information that describes, in the manner required by the Commission, the grant recipient's maintenance of quality service and professional standards and compliance with program requirements and, as requested by the Commission,
 - (1) information for evaluative purposes about program activities in the prior grant year; and
 - (2) information to enhance the delivery system of legal services;

- (E) cooperate regarding any reasonable site visit;
- (F) submit timely quarterly financial reports and any other information reasonably required by the Commission; and
- (G) pay any noncompliance fees set forth in the Schedule of Charges and Deadlines for processing documents that are substantially noncompliant with Trust Fund Requirements or that are late without permission.

Rule 3.681 adopted effective March 6, 2009.

Rule 3.682 No abrogation of legal or professional responsibilities

Nothing in these rules may limit or impair in any way the professional responsibility of an attorney to provide a client with legal services appropriate to the client's needs. Trust Fund Program applicants and recipients and their staffs; volunteers; consultants; and clients and prospective clients are entitled to all rights and privileges under the law. Nothing in these rules may be interpreted to require a grant applicant or recipient to violate the law.¹¹

Rule 3.682 adopted effective March 6, 2009.

Article 4. Requests for review and complaint process

Rule 3.690 Receipt of document

For purposes of this article, receipt of a document mailed by staff or the Commission is deemed to be the earlier of either five days after the date of mailing or is the actual time of receipt when staff or the Commission delivers a document physically by courier or otherwise.

Rule 3.690 adopted effective March 6, 2009.

Rule 3.691 Denial or termination of funding

- (A) The Commission has the authority to deny an application for initial funding or for renewal of funding, or to terminate existing funding in accordance with law and these rules.¹² The applicant or grant recipient is entitled to written notice of the denial or termination.
- (B) The applicant or grant recipient may request reconsideration by the Commission.

¹¹ Business & Professions Code § 6217(d).

¹² Business & Professions Code § 6224.

- (1) The request must be provided to the Commission in writing within thirty days of receipt of the notice of denial or termination of funding. The request may include additional information.
 - (2) The Commission may affirm its decision, modify its decision, or schedule an informal conference to be held within ninety days of receipt of the request. The applicant or recipient is entitled to written notice of the date, time and place of the conference, and must have an opportunity to present information at the conference.
 - (3) Unless all parties agree otherwise, the Commission must mail or otherwise deliver a written decision within sixty days of the conference.
- (C) Within thirty days of receipt of written notice of the Commission decision on the request for reconsideration, the applicant or grant recipient may file a request for review by the State Bar Court. The request must be submitted to the State Bar Court in accordance with the Rules of Procedure of the State Bar on Legal Services Trust Fund Proceedings. Pending a final decision by the State Bar Court, a current grant recipient must continue to receive funding.
- (D) The decision of the Commission on the request for reconsideration is final if the applicant or grant recipient fails to file a timely request for review by the State Bar Court.

Rule 3.691 adopted effective March 6, 2009.

Rule 3.692 Complaints

- (A) Any person or entity may file a formal written complaint that a grant recipient fails to meet Trust Fund Requirements.
- (B) Staff must provide a copy of a formal written complaint to the grant recipient whom it concerns and attempt to resolve the complaint. If the complaint is not resolved within ninety days after staff receives the complaint, staff must provide the Commission, complainant, and recipient with a written report of its efforts to resolve the complaint and recommendation of what action, if any, is appropriate.
- (C) Within thirty days of receipt of the staff report, the complainant and grant recipient may provide the Commission with a written response that may include additional information and may request review by the Commission.
- (D) Within a reasonable time, the Commission or a committee of its members appointed by the Commission must consider the staff report and any response. The Commission or committee must then dismiss the complaint or schedule an informal conference. The complainant and grant recipient are entitled to written notice of a dismissal or the date, time, and place of the conference.

- (E) At the informal conference, the staff member who conducted the investigation must be present barring extenuating circumstances. The complainant and grant recipient must have an opportunity to present information. The Commission must issue a written notice dismissing the complaint; requiring corrective action; or terminating funds. The complainant and recipient are entitled to written notice of the decision.
- (F) If the Commission or committee decides to dismiss the complaint, the decision is final.
- (G) If the Commission or committee decides to terminate funding, within thirty days of receipt of written notice of the decision the grant recipient may file a request for review by the State Bar Court. The request must be submitted to the State Bar Court in accordance with the Rules of Procedure of the State Bar on Legal Services Trust Fund Proceedings. Pending a final decision by the State Bar Court, a current grant recipient must continue to receive funding.
- (H) The decision of the Commission to terminate funding is final if the grant recipient fails to file a timely request for review by the State Bar Court.

Rule 3.692 adopted effective March 6, 2009.