

LEGAL SERVICES TRUST FUND COMMISSION

RULES COMMITTEE MEETING

Meeting Summary and Action Items

Wednesday, October 13, 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
Corey Friedman
Jim Meeker

Advisors

Judge Brad Seligman

Liaisons

Salena Copeland
Bonnie Hough

Public Members

None

Staff

Doan Nguyen
Erica Carroll
Brady Dewar
Elizabeth Hom
Danielle MacRae
Kim Warmesley

Members Absent

Erica Connolly

OPEN SESSION

Chair Amin Al-Sarraf called the meeting to order at 12:00 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. No public comment was made.

III. DISCUSSION AND ACTION ITEMS

A. Discuss and Approve Recommendations Regarding Definition of Indigency and Methods to Demonstrate Services to Indigent Clients

Defining indigency:

Acting Program Supervisor Erica Carroll presented on the committee's past efforts related to defining indigency. In the fall and winter of 2020/2021, the Rules Committee and Legal Services Trust Fund Commission (LSTFC) discussed a statutory change to increase the poverty threshold for defining indigency from 125 percent of the Federal Poverty Level (FPL) to 200 percent. The commission delegated the decision to a subcommittee, which recommended the increase to the Board of Trustees after gathering feedback from the legal aid community. The Board of Trustees adopted the statutory change as part of the State Bar's legislative priorities

in January 2021, and in October 2021 it was signed into law (SB 498). The law increases the threshold for determining income eligibility but does not impact income-based funding formulas.

There is no corresponding State Bar rule to define an “indigent person,” nor is there statutory definitions of “income” or “household.” The working group tasked with exploring this issue recommends the State Bar adopt the Legal Services Corporation (LSC) definition of income. LSC has several exceptions under which people may be found income-eligible up to 200 percent of the FPL. Given California’s income threshold has now been increased to 200 percent, using LSC’s exceptions seemed less relevant. LSC also allows grant recipients to determine the definition of “household.” The proposed rule in the meeting materials allows organizations to define when they would make exceptions in defining income, subject to commission review.

Erica Carroll reported that the working group also discussed the higher income threshold available to programs that receive a pro bono allocation (as outlined in statute). The State Bar has always interpreted that the higher income threshold is only available to pro bono allocation recipients. Some organizations felt this policy was too restrictive and wanted the higher income threshold to apply to discrete projects served by pro bono attorneys even when the organization does not meet requirements for the pro bono allocation. The working group’s recommendation is to leave the policy unchanged. Salena Copeland from the Legal Aid Association of California noted that programs felt they were having to turn away a lot of potential clients when the income threshold was 125 percent of the FPL; she’s hopeful the increase to 200 percent will alleviate some of this concern.

The committee discussed the funding implications of having the income threshold for client eligibility raised to 200 percent of the FPL but having the funding formula based on the number of residents under 125 percent of the FPL. The committee also asked whether 200 percent of the FPL and the income threshold for pro bono allocation recipients are substantively different. The higher income threshold is county specific. In rural counties, the two are similar; in urban counties, the higher income threshold available to pro bono allocation recipients is still significantly higher than 200 percent of the FPL.

The Rules Committee passed a motion to recommend the Legal Services Trust Fund Commission approve the “Proposed State Bar Rule Clarifying the Definition of “Indigent Person” as written in the meeting materials. Commissioner Blakemore made the motion; Commissioner Bayles-Fightmaster seconded. The motion pass by unanimous roll call vote (5-0).

The Rules Committee passed a motion to recommend State Bar staff and the working group draft language to codify OA&I's practice of allowing a higher income threshold to be available only to programs that receive the pro bono allocation. Chair Al-Sarraf made the motion; Commissioner Friedman seconded. The motion passed by unanimous roll call vote (5-0).

Demonstrating services to indigent clients:

Erica Carroll reported that the other issue regarding indigency relates to how programs demonstrate indigency in annual Impact Litigation and Advocacy Work (ILAW) reports. Qualified Legal Services Projects (QLSPs) must report whether the plaintiff is indigent, where a majority of those who would benefit from the work are indigent, relation of issues raised in the matter to the legal needs of indigent persons, and whether indigent persons are disproportionately affected by the legal issues raised (in addition to other factors). Eligibility guidelines for QLSPs require programs to "quantify... the percentage of the persons who would benefit from the services who are indigent persons." This is time- and resource-intensive for organizations to report and State Bar staff to review.

The working group considered two options:

1. Set a minimum threshold to require reporting (ex: 10 percent of legal services or 100 hours are devoted to these activities, whichever is less). Reporting requirements would remain the same once the threshold is met.
2. Establish acceptable means of demonstrating benefits to indigent persons (ex: allow the use of internal data; demonstrate disproportionate impact to indigent persons based on the nature of the activity and specific anticipated outcomes as they relate to the needs of indigent persons). This approach has been allowed in the last when data is limited or unavailable.

When presented with the first option, the legal aid community preferred the threshold be 10 percent of legal services or 100 hours, whichever is more. The working group was concerned that a "whichever is more" approach could exclude a substantial amount of work conducted by large organizations, since 10 percent of their qualifying legal services still comprises a significant amount of service and funding.

The committee discussed the link between ILAW reporting and the primary purpose requirement the organizations must meet to be eligible QLSPs. Activities found to be not qualifying would need to be deducted from qualifying expenditures. Though,

Erica Carroll noted that of the hundreds of activities reviewed each year, only a handful (about 2 to 4) are found to be non-qualifying. Brady Dewar also noted that programs' activities need to be consistent with the organization having a primary purpose of serving indigent clients, which is why a determination of indigency is required.

The committee discussed how a threshold option would impact the number of reports submitted. State Bar staff did not assess how many programs would be excluded from reporting requirements if a threshold was used, but many programs would still need to submit ILAW reports. The median number of hours spent on ILAW activities last year was about 125-140 hours.

The working group did not draft a proposed rule for determining indigency in ILAW reporting; they wanted to have a discussion as a committee first. Before deciding on a threshold, the committee preferred to see data on how reporting would be impacted under both versions: 10 percent or 100 hours, whichever is less, or 10 percent or 100 hours, whichever is more. State Bar staff will prepare more information and perhaps draft language before the committee's next meeting on November 5. No vote was required or taken on this issue.

IV. ADJOURN

There being no other business, the meeting was adjourned at 1:15 p.m.

DRAFT