



# The State Bar of California

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## **OPEN SESSION**

## **AGENDA ITEM**

## **DECEMBER 2021**

## **LEGAL SERVICES TRUST FUND COMMISSION ITEM VI.B**

**DATE:** December 13, 2021

**TO:** Members, Legal Services Trust Fund Commission

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

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

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### **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 Legal Services Trust Fund Commission (LSTFC) if it has not been resolved within 90 days after receipt by staff. The complainant and grant recipient are allowed 30 days to respond to the report or request further review. The LSTFC must consider the report and any responses, and then either dismiss the complaint or set an informal review conference.

This is an update on the report provided at the November 17, 2021 meeting of the LSTFC regarding a complaint received against grant recipient Legal Services of Northern California (LSNC). Staff review of that complaint has not identified any failure by LSNC to meet its duties and obligations as a State Bar grantee, and staff therefore recommended that this complaint be dismissed.

Copies of this report were provided to LSNC on October 20 and to the complainant on October 25; this matter was reported to the Executive Committee as an informational item on October 27 and reported to the full Commission on November 17. The Commission deferred action at that time in favor of reconsidering the matter after November 24, when the 30-day period for responding to the report expired.

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## **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.<sup>1</sup>

State Bar rules also provide procedures for review of complaints against a grant recipient for failure to meet Trust Fund requirements.<sup>2</sup> This rule directs staff to make efforts to resolve the complaint. 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.<sup>3</sup>

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.<sup>4</sup>

### **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.

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<sup>1</sup> State Bar Rule 3.681(C).

<sup>2</sup> State Bar Rule 3.692.

<sup>3</sup> State Bar Rule 3.692(C)-(E).

<sup>4</sup> State Bar Rule 3.692(E)-(H).

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 and was not able to use written materials.

## **EFFORTS TO RESOLVE THE COMPLAINT**

State Bar staff attempted telephone contact with the complainant to initiate review of this complaint eight times, leaving messages without success. 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 inquire into LSNC's contacts with the complainant. 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 State Bar did not provide LSNC with a copy of the complaint at this time.

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, LSNC was providing him with legal resources. Staff advised him that they were preparing an informational report for the LSTFC regarding his complaint as required by State Bar rules, that he was entitled to a copy of that report, and that he would then have 30 days to provide additional information and to request further review if he wished. The complainant asked that an electronic copy of this report be sent to an email address he maintains. This report together

with a copy of the original complaint and State Bar Rule 3.692, was sent to LSNC on October 20 and to the complainant on October 25.

The complainant left a series of voice mail messages with the State Bar on October 26 and 28, and on November 3, 8, and 15. With respect to LSNC, he stated that LSNC had left him a voice mail message that they were closing his file and that he was not satisfied with their services.

## **DISCUSSION**

As previously reported, 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 provided legal information and resources to complainant. The complainant may be dissatisfied with these services, but staff review has not identified any failure by LSNC to meet the requirements of the rules and policies of the Legal Services Trust Fund Program. No information provided by the complainant establishes an obligation to provide more or different services than those which LSNC has provided to him.

This matter has come before the LSTFC pursuant to State Bar Rule 3.692(B), which requires that any complaint not resolved by staff within 90 days be reported to the commission with a recommendation for further action to be taken. Rule 3.692(D) requires the commission or a committee of its members to consider this report and any additional information that the complainant or grant recipient provide within 30 days of receiving the report, and then to dismiss the complaint or set an informal conference to consider the matter further. The report was provided to LSNC on October 20 and to the complainant on October 25; the 30-day period for submitting a response or requesting further review expired on November 24.

The commission considered this matter on November 17 and opted to defer action until the period for submitting responses had expired. LSNC's November 15 response to the staff report is Attachment B to this memo. The complainant did not provide any written response; his telephone messages received during the 30-day response period do not provide any new information indicating that LSNC failed to meet its obligations in this matter. Staff therefore recommends that the commission dismiss this complaint.

## **NEXT STEPS**

State Bar Rule 3.962(D) requires the commission, after consideration of this report and any responses provided by either the complainant or the grantee within 30 days, to either dismiss this complaint or set an informal conference for further review. The period to submit a response to this report expired on Wednesday, November 24. Staff recommends that the commission dismiss this complaint.

## **RECOMMENDATION**

Should the commission concur with staff's review and determinations, passage of the following resolution is recommended.

**RESOLVED**, that the **Legal Services Trust Fund Commission**, after review of the staff report, finds that Legal Services of Northern California (LSNC) has met the requirements of Trust Fund Program rules and policies, and dismisses the complaint received in March 2021.

## **ATTACHMENT LIST**

- A. State Bar Rules Title 3, Div. 5, Chapter 2: Legal Services Trust Fund Program (Rules 3.660-3.692)
- B. Letter from Gary Smith, Executive Director, Legal Services of Northern California, November 15, 2021

### 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.<sup>1</sup> 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

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<sup>1</sup> Business & Professions Code § 6213(d).

in California by a nonprofit law school accredited by the State Bar.<sup>2</sup> 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.<sup>3</sup>

*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.<sup>4</sup> 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.<sup>5</sup> 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.*

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<sup>2</sup> Business & Professions Code § 6213(a).

<sup>3</sup> Business & Professions Code § 6213(b).

<sup>4</sup> Business & Professions Code § 6213(a)(1).

<sup>5</sup> 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.<sup>6</sup>
- (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.<sup>7</sup>

*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.<sup>8</sup> 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,<sup>9</sup> 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

<sup>6</sup> Business & Professions Code § 6213(a).

<sup>7</sup> Business & Professions Code § 6213(b).

<sup>8</sup> Business & Professions Code §§ 6216 and 6223.

<sup>9</sup> Business & Professions Code § 6213(e)(1).

permitted by statute.<sup>10</sup> 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;

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<sup>10</sup> 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.<sup>11</sup>

*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.<sup>12</sup> 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.

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<sup>11</sup> Business & Professions Code § 6217(d).

<sup>12</sup> 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.*

**LEGAL SERVICES**  
of  
**NORTHERN CALIFORNIA**

November 15, 2021

Executive Committee of the Legal Services Trust Fund Commission  
State Bar of California  
180 Howard Street  
San Francisco, CA 95105

Re: Item IV.B - Response to Report on Complaint against Grantee Legal Services of  
Northern California (LSNC)

Dear Committee Members:

This letter is the response of Legal Services of Northern California (LSNC) to the October 27, 2021 report to this committee by Senior Program Analyst Dan Passamaneck regarding the complaint made to the Bar by [REDACTED] an applicant for LSNC's services. While LSNC certainly agrees with the report's recommendation that the complaint be dismissed, we strongly disagree that the Trust Fund Commission has any authority—as its handling of the complaint seems to presume—to review a decision by a grantee to deny or limit services based upon factors clearly left to the discretion of the grantee, including but not limited to issues of program capacity (e.g., lack of staffing or resources), mission, program priorities, the lack of legal merit of the problem, or, as in this case, the utter and abusive refusal of the applicant to complete the intake process, which rendered LSNC unable to even answer the threshold question of whether the applicant was eligible for services funded by the Commission. Simply put, outside of a very narrow limited review of complaints arising from unlawful discrimination based upon personal characteristics of the applicant (see below)—none of which were alleged in any way, and at any time, to either LSNC or the Bar by this complainant—the Trust Fund has no authority to determine whether the denial or limitation of a grantee's services to an applicant or client is appropriate.

Accordingly, LSNC requests that the Commission dismiss the complaint as groundless on its face, because it fails to allege that LSNC in any way failed to meet any applicable Trust Fund requirements imposed upon grantees, and because it presupposes an obligation of grantee programs to assist all applicants for assistance—even those applicants who refuse to provide evidence to permit the grantee to determine whether they are even eligible for Trust Fund services—that does not exist.

LSNC also strongly protests the handling of this complaint, particularly the fact that the complaint form was not provided to LSNC as required under Rule 3.692 (B) until the October 27, 2021 report was issued. As a result of that delay, LSNC was not prompted to provide a timely written response to

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A Legal Services Corporation Program



the complaint. When informed that the Commission would review the complaint due to the State Bar's failure to timely resolve it, LSNC provided a lengthy and detailed response to State Bar staff members' description of the complaint by phone. Mr. Passamaneck neglected to provide that response along with his report to the Commission. Furthermore, the report both misstated and ignored highly relevant facts related to the complainant's interactions with LSNC, resulting in an incomplete and deficient report regarding LSNC's conduct. (For a more complete and accurate description of the interactions between LSNC and this applicant, see the letter of LSNC Deputy Director Julie Aguilar Rogado to Elizabeth Hom dated August 24, 2021, which is attached hereto). LSNC requests that the Commission address this failure by State Bar staff members to properly handle this complaint, and to ensure that in the future the rights of grantees to promptly address complaints are protected.

**NOTE:** As a result of the Commission's failure to properly process this complaint, there is a significant discrepancy between the content of the complaint form attached to the report and Mr. Passamaneck's verbal description of the complaint to LSNC staff. The written complaint dated November 13, 2020, which was provided to LSNC along with the October 27, 2021 report, alleges "the business providing uncertified lawyer referrals itself," and also claims that the complainant requested a referral, but was not provided one. However, Mr. Passamaneck's verbal description of Mr. [REDACTED] complaint focused on an alleged failure by LSNC to provide him with an appointment for assistance, among other issues. Mr. Passamaneck never mentioned that Mr. [REDACTED] alleged LSNC had somehow wrongfully provided a "referral" to an attorney (or refused to do so). To the extent Mr. [REDACTED] complaint was regarding an attorney referral, that allegation is baseless. LSNC did not refer Mr. [REDACTED] to a private attorney and Mr. [REDACTED] complaints to LSNC management did not indicate he ever requested one. LSNC routinely provides the certified lawyer referral service information to callers.

### **Scope of Commission Authority Regarding Applicant/Client Complaints**

Trust Fund grantees are required to perform the duties described in Rule 3.681, which incorporates, at subsection (A) the terms of the grant agreement and Trust Fund Requirements. Under Calif. Bus. & Prof. Code § 6213, grantees must have quality control standards approved by the State Bar and under § 6213 (a), maintain quality service and professional standards. There is, of course, no obligation to serve every eligible applicant for services. To the extent there is any (implied) obligation imposed upon grantees with respect to services for applicants, it would be the threshold duty to consider the provision of any services only to applicants **who provide sufficient evidence that they are eligible for Trust Fund services**. This the complainant utterly refused to do until long after he submitted his complaint.

The Trust Fund's eligibility guidelines at 1.3.3 require that grantees, "...not discriminate on the basis of race, color, national origin, religion, sex, handicap, or age." The commentary following this guideline clarifies that programs are free to target certain indigent populations and that restricting services to certain vulnerable populations does not violate 1.3.3. Mr. [REDACTED] did not allege discrimination in his complaint – neither in the written complaint nor in the complaint as described by Trust Fund staff. Absent some allegation of discrimination or denial of services on an unlawful basis, the Trust Fund lacks any authority to compel a grantee to serve a particular client. Thus, such a complaint for denial of assistance, or in this case denial of an immediate appointment upon demand, is



outside the scope of the authority of the State Bar and Trust Fund and such a complaint should have been rejected on its face for that reason alone

LSNC interacts with tens of thousands of persons every year requesting our assistance with legal problems. Across California, IOLTA-funded organizations annually interact with hundreds of thousands of such individuals. Limitations upon all of these organizations based upon issues already identified—capacity, resources, mission, program priorities, etc., make it impossible to provide any assistance at all to many of these applicants—even those determined to be eligible for those services—and certainly to provide less service than the applicant/client hoped to receive in virtually all cases. If the Commission intends to provide all such disappointed applicants/clients—of whom this complainant is simply a more vociferous than typical example—a formal complaint mechanism and extended process to scrutinize the basis of such routine denials or limitations of services, then (1) it must promulgate appropriate and specific authority to do so, since none now currently exists, and (2) it should be prepared to hire a significant number of new staff to devote full time to this endeavor.

### **The October 27, 2021 Report Contains Factual Inaccuracies**

As noted above, the attached August 24<sup>th</sup> letter to the Bar, written at the request of Ms. Hom, describes the history of LSNC's staff interaction with Mr. [REDACTED] in detail. Despite providing this detailed account, Mr. Passamaneck's report includes several significant errors and omissions.

- The report states that State Bar Staff contacted LSNC Executive Director Gary Smith on July 18, 2021 to advise him of the complaint and provide a copy. In fact, Mr. Passamaneck originally contacted Mr. Smith via email on May 14, 2021 (see attached) and on that same day, they spoke about Mr. [REDACTED] complaint. Mr. Passamaneck did not indicate that the contact from Mr. [REDACTED] was a formal complaint, nor did he offer to provide a copy of the complaint form, of which Mr. Smith was unaware. Mr. Smith informed Mr. Passamaneck that Mr. [REDACTED] was provided several appointments to complete an intake in December and January 2021, which he did not keep. Mr. Passamaneck contacted Mr. Smith again via email on July 9, 2021, requesting, "Can you determine what kind of processing Mr. [REDACTED] might have had during his November 9, 2020 call to your Redding office?" Mr. Smith again contacted Mr. Passamaneck by phone and relayed the information in LSNC's records about the call Mr. [REDACTED] alleged he had with LSNC's Redding office in November 2020. Later in July, Mr. Passamaneck and Ms. Hom made efforts to connect Mr. [REDACTED] to Mr. Smith or Deputy Director Julie Aguilar Rogado for an intake interview.
- The report states that Ms. Aguilar Rogado wrote in her August 24, 2021 letter that she had spoken with Mr. [REDACTED] for 90 minutes but had been unable to complete an intake for him. That characterization of the letter is incorrect. The letter actually indicates that Ms. Aguilar Rogado agreed to assist Mr. [REDACTED] on a limited basis. Her letter did not address whether or not an intake was completed. In fact, she did complete an intake, though Mr. [REDACTED] refused to provide some information. Mr. Passamaneck appears to have misunderstood a prior conversation with Ms. Aguilar Rogado and Mr. Smith when Ms. Aguilar Rogado explained that if Mr. [REDACTED] refused to provide information required to open a case and provide legal advice, she could provide legal information. This was possible based upon general information

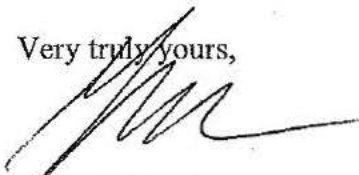
about the topic of his legal issue, and Ms. Aguilar Rogado was prepared to do this prior to his missed intake appointment with her in December 2020.

- The report does include several accurate findings regarding LSNC's conduct (that it did not discriminate against [REDACTED] that it made "significant efforts to accommodate" him by offering multiple appointments and that it was correct to insist upon completion of an intake.) However, the report fails to make findings regarding the baselessness of Mr. [REDACTED] allegations. Mr. [REDACTED] verbally abused LSNC staff members, lied about not having been offered appointments, and repeatedly missed scheduled appointments after which he made no further contact with the program despite having the direct line telephone numbers of both Mr. Smith and Ms. Aguilar Rogado. His complaint to the State Bar in March 2021 was entirely without merit.

#### **The State Bar Recommendation Fails to Adjudicate Mr. [REDACTED] Complaint**

The report's conclusion fails to make a finding about whether or not Mr. [REDACTED] complaint had merit, rather it notes his disinterest in pursuing the complaint as it recommends dismissal. The report fails to make a credibility determination, rather it appears to present all facts offered by both Mr. [REDACTED] and LSNC staff as true. This failure to make a determination about whether the allegations of the complaint were (1) even actionable under the Bar's process, and (2) credible, leaves LSNC (and the Bar) vulnerable to another meritless complaint by Mr. [REDACTED]. The report also fails to explain the basis upon which either the State Bar or the Trust Fund is empowered to compel a grantee to serve a particular applicant. A failure to dismiss this complaint on its merits, and to acknowledge the inconsistencies and omissions of the complainant's allegations, leaves open the possibility that Mr. [REDACTED] or others will assert a right to services which has no basis in the law. It also will waste countless hours of grantee staff and State Bar staff time—as this process has wasted—engaged in a process for which there is no simply authority. Rather, the Commission should dismiss the complaint as outside the scope of its authority, and it should also, just to be clear to the complainant, deny it with prejudice as meritless.

Very truly yours,



Gary F. Smith  
Executive Director

# LEGAL SERVICES

of  
NORTHERN CALIFORNIA

August 24, 2021

Elizabeth Hom  
Program Manager  
Office of Access & Inclusion  
The State Bar of California  
180 Howard Street  
San Francisco, CA 94105

RE: Complaint by [REDACTED] Against Legal Services of Northern California

Dear Ms. Hom:

This letter is LSNC's formal response to the "complaint" of [REDACTED], who alleges that he contacted LSNC for assistance and that he completed the intake process, but was denied the opportunity for a consultation with an advocate. This allegation is not true. In fact, Mr. [REDACTED] never completed the intake process and he spoke directly with two of the most experienced attorneys in the program (a deputy director and the executive director), yet did not follow through with appointments provided to him at times specifically scheduled for his convenience, and to accommodate his described special communication needs.

Notwithstanding the above, and the abusive and insulting manner in which he has treated every staff person with whom he has spoken over a period of many months, LSNC remained prepared to provide Mr. [REDACTED] assistance, and to schedule a new appointment to complete an intake with him. LSNC also offered to provide him with legal information that would eliminate the need for him to engage in the intake process, however he never provided an email or mailing address to send legal information materials on the topic of his legal issue as we understood it.<sup>1</sup>

<sup>1</sup> Mr. [REDACTED] called and left a voice mail for me on August 21, 2021 at 3:04 p.m. He said that Dan Passamaneck told him to call me. He left some information about himself, including his age and the county in which he resides, but said his mailing address is protected. He also said, "You have done nothing for me, you have not responded to me." Assuming Mr. [REDACTED] wanted another appointment, I called the voice mail number he provided today, gave him my name and direct line telephone number again, noted that I am an attorney and I will discuss his legal matter with him and provided him the option of three different appointment times on Friday, August 27, 2021. I told him I would be available and wait for his call at 11 a.m., 12 p.m. and 1 p.m. August 27. I told him I would wait 15 minutes at each appointment time for his call. He called me at 1:43 p.m. on Monday, August 23 and wanted an immediate intake. Our call lasted until 3:30 p.m., during which he described a variety of things he wanted help with,

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A Legal Services Corporation Program 

In reviewing LSNC's response to this complaint, the State Bar staff (and/or the Trust Fund Commission) must not lose sight of this critical threshold fact: Because Mr. [REDACTED] never provided any of the information required by LSNC in the intake process, LSNC did not, and could not, ascertain whether he is even eligible to receive our services. LSNC's many funders - including, for example, the State Bar Trust Fund Commission, and the federal Legal Services Corporation - expect and require their grantees to scrupulously ensure that the services supported by their funds are provided only to clients who meet the eligibility criteria which those funders have established. The provision of services to clients for whom LSNC has not ascertained eligibility would violate the commitment and assurance we make to our funders, i.e., to use their funds to serve only those clients who meet their eligibility standards.

#### LSNC's Contacts with Mr. [REDACTED]

We believe Mr. [REDACTED] first contacted LSNC's Mother Lode Regional Office in Auburn on August 31, 2020. On that date, a clerical staff person in that office took Mr. [REDACTED] name and a telephone number for an initial intake process step, which is running a conflict check. There is no further record from that contact to our office and that single contact record in our online case management system is the only record we have of Mr. [REDACTED] other than staff notes and email related to attempts to address concerns he raised on various calls to our offices.

Mr. [REDACTED] contacted LSNC's Shasta Regional Office in Redding in November 2020 by phone and he spoke with an administrative support clerk who began to ask our ordinary intake questions and recorded that information by hand onto a paper form. We do not know how many questions Mr. [REDACTED] answered, but at some point in the process he balked at providing ordinary intake information (possibly income, assets, demographic or address data) and demanded to speak with an attorney. The Shasta Regional Office operates on a call-back system for telephone intake. Clerical staff gather the basic intake information from applicants for services during the initial call and the next available advocate, either a law clerk, paralegal or attorney, calls the applicant back to verify the data collected and to conduct the initial intake interview. Mr. [REDACTED] wanted to speak with an advocate immediately or to be provided an appointment immediately. Since the office does not operate on an appointment setting system, the clerk told him that was not possible.

LSNC trains its staff members to address requests for accommodation related to disability and a variety of other barriers applicants for services might face in accessing legal services. These needs vary widely, and when a clerical staff member is unsure about how to handle a request, they refer the request to the

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*but only one legal issue - his inability to learn the status of a formal complaint he filed with the Public Utilities Commission. I agreed to assist him to find out the status of the complaint. I declined to assist with a related legal problem - he sought representation in a class action lawsuit for damages against his former mobile telephone/internet provider. I also declined to assist him with another matter - compelling his elected representatives to help him resolve his PUC complaint. I explained LSNC was prohibited from engaging in class action suits for damages or advocacy with elected officials as Legal Services Corporation grantees. He also requested help with access to non-stimulus CARES Act funding, which I agreed to discuss with him once I completed the inquiry with the PUC. I warned him that his interest in CARES Act funding was not a legal issue and that his reticence in discussing a personal information with me would hinder my ability to identify any public programs for which he might be eligible.*



office manager, who will find a solution or consult with the managing attorney for assistance. In this instance, we do not know if Mr. [REDACTED] provided any information during the initial call with the clerk that indicated he needed an appointment or immediate assistance due to a special circumstance or if he simply demanded service in this way without further explanation. Regardless of how he made the request, the clerk referred him to the office manager to resolve his concerns. The clerk transferred him to the office manager's voice mail because the office manager was not available to talk to him immediately. She returned his call. We are unsure how many calls were exchanged due to Mr. [REDACTED] not answering calls and only responding to voice mail, but when they eventually spoke, the office manager was unable to offer him any solution for providing service that satisfied him. At the conclusion of their telephone conversation, she concluded that he no longer wanted assistance. The office manager informed the clerk and, following LSNC's personal information security protocols, she shredded the paper intake form on which she had recorded whatever information he provided.

Mr. [REDACTED] later called the office back, berated the clerical staff who took his calls, and left voice mail messages demanding an appointment. In a voice mail left on November 25, 2021, his instructions were to call him back with an appointment time on any day in the afternoon or after 11 a.m. He said the number staff should call is his voice mail only. He said the message should provide the day and time of the appointment and phone number and extension for the attorney who will provide his phone consultation. He made a variety of other comments in his messages, disparaging the office staff, complaining that the office did not provide an appointment yet, and accusing non-attorney staff members of trying to provide him legal advice. He called repeatedly to the office during work hours and interfered with staff attempting to answer other calls.

The office manager called me on November 30, 2020 to let me know about the calls and to ask if I would address the complaint. I called his message number and left a voice mail with my direct line phone number. He returned my call after 5 p.m., but I answered immediately. I spoke with him for a moment or two, and offered to assist him immediately. He then said he could not hear me and that something was wrong with the phone line. He continued to talk over me and eventually it was clear he was not responding to what I was saying or could not hear me. He said several times he left a message for Gary Smith. We ended the call, but I immediately called back his message line and left a message that I would be available for him to call my direct line at 11 a.m. the following day. The next morning, I called the message line again, from the phone in my office, reminding him that I would be available to take his call at 11 a.m.

In order to make sure there were no phone problems related to the voice over internet phone I was using during our initial call, I went to my office and waited for his call until noon. He did not call. When he missed his appointment with me, I contacted the clerk and the office manager in our Shasta Regional office, told them about the missed appointment and that if he called back, I would make another appointment for Friday, Dec. 4 at 11 a.m., 12 noon or 3 p.m. I told them that if he called the office, they should offer any of those three times and then let me know which time he chose. I also told them that he might want to be reassured that I am an experienced attorney along with being a deputy director and I can both receive his complaint and talk to him about his legal issue. He did not call me or the Shasta Regional Office and he did not leave any voice mails following this missed appointment. I waited in my office for a call from him on December 4, but he did not call. Despite the fact he had my direct line telephone number, I did not receive any contact from Mr. [REDACTED] until January 4, 2021.

Mr. [REDACTED] also left a voice mail message for Executive Director Gary Smith on November 30, 2020. Mr. Smith did not return the call because I had informed Mr. Smith that I set the intake appointment with Mr. [REDACTED] for December 1. After the missed appointment with me, Mr. [REDACTED] continued calling Mr. Smith and the two eventually spoke in late December, agreeing on a telephone appointment on January 5, 2021 at 3 p.m. I researched the legal topic Mr. [REDACTED] had mentioned several times in his voice mail messages and provided Mr. Smith information about the issue to facilitate providing legal information or advice in the event Mr. [REDACTED] completed the intake process.

On January 4, 2021, Mr. [REDACTED] left a voice mail message on my direct line, again demanding an appointment. He did not mention the missed appointment with me on December 1. He demanded that I set an appointment and call his message line immediately with the appointment date and time. At this time, he already had an appointment to talk with Gary Smith at 3 p.m. on January 5. I confirmed with Mr. Smith that the appointment was still set, so I did not schedule another appointment for Mr. [REDACTED]. Mr. Smith told me that the Shasta Regional Office also received a call from Mr. [REDACTED] on January 4, demanding an appointment with an attorney – he told that office to tell Mr. [REDACTED] that he had an appointment with Mr. Smith on January 5 at 3 p.m.

Mr. [REDACTED] did not keep his phone appointment with Mr. Smith on January 5, 2021 and did not call later to explain the missed appointment.

On January 7, 2021, Mr. [REDACTED] called my direct line and left me a voice mail message demanding an appointment with an attorney. He did not mention either of his missed appointments. He also began calling other LSNC offices demanding an appointment and berating the staff who answered his calls. On that date, we determined that he was either not genuinely interested in accessing services or that he was not presently able to benefit from services given his inability, **despite providing precisely the service in the way in which he requested it**, and we began to block his incoming calls. We believe he then used a variety of other Google App phone numbers to call our offices and we blocked those numbers as well.

On February 1, 2021, he left a voice mail message on the toll free number established for intake for applicants who need to be served outside ordinary business hours – the expanded access project. In that message, he demanded a return voice mail with an appointment time in the afternoon on any day with an attorney. He also said non-attorneys at the office tried to give him legal advice. The managing attorney for the project returned the call promptly and left a voice mail saying that if Mr. [REDACTED] needed an evening intake, that it could help the project get an evening intake scheduled faster for him if he provided certain information (i.e., income, household size, and county of residence) so they do a basic eligibility screening. That information allows the project to schedule intakes via voicemail for people who are hard to catch on the phone. Mr. [REDACTED] called the following evening and left a voice mail complaining that he was not yet provided an appointment. He said, “You people are so incompetent you can’t set an appointment.” He provided none of the information the attorney requested and ended his message demanding an appointment, “Do it now you dumb jerks.” The attorney returned the call and left another voice mail for Mr. [REDACTED] which he never returned.

### State Bar Complaint

In May 2021, Dan Passamaneck of your office contacted Mr. Smith via email regarding a call from Mr. [REDACTED] to the State Bar complaint line. Mr. Smith described in great detail LSNC's interaction with Mr. [REDACTED]. On July 9, 2021, Mr. Passamaneck contacted Mr. Smith again via email and asked for information about the "processing" Mr. [REDACTED] had when he contacted our Shasta Regional Office in November 2021. Mr. Smith and Mr. Passamaneck spoke again by phone and Mr. Smith explained that Mr. [REDACTED] did not complete the intake and eligibility process with LSNC and at no time had an open case or matter with any of our offices. Mr. Smith offered then to send Mr. [REDACTED] an intake form to complete, if Mr. Passamaneck obtained a mailing address for him, or to set another telephone appointment with Mr. [REDACTED] to complete an intake.

### Services for People with Special Needs

While we do not know very much about Mr. [REDACTED] in some of his voice mail messages, he referenced disability law in relation to his legal matter. He apparently has also informed State Bar staff that he has a disability that makes written communication difficult. In his conversations with our staff members and in his voice mail messages, he is most often shouting. We have perceived his tone as intended to intimidate the other participant on the call, but it may also evidence some auditory problems. Given all of this information about the possibility that Mr. [REDACTED] has special needs, we have proceeded at all times as if he is a person with disabilities who requires accommodation to access our services. The accommodations we offered to him, and to which he did not respond, were appointments on at least 3 occasions with two of our most experienced attorneys, at times he indicated he was available. He failed to keep those appointments or to acknowledge that they were ever offered to him.

LSNC serves thousands of clients with disabilities each year, including many with physical and mental communication-related impairments. It is exceedingly rare for us to refuse service to any client or to impede their ability to contact us, however, Mr. [REDACTED] conduct in calling several of our offices, berating our staff and leaving repeated voice mail messages demanding appointments, which he did not keep or acknowledge, interfered with our ability to serve eligible clients and applicants for services. While our staff members expect to interact with callers who are under tremendous stress and who may have a variety of impairments that sometimes result in discourteous or hurtful conversations, LSNC does not permit anyone interacting with our staff members to be repeatedly abusive. This is the reason Mr. Smith and I provide our direct line telephone numbers to callers who engage in abusive behavior – it is our intention to deflect that abuse from our staff. In Mr. [REDACTED] case, our attempts to serve him directly and avoid his behavior interrupting office functioning failed. For that reason, we discontinued communication with him and blocked his calls.

However, as Mr. Smith informed Mr. Passamaneck in July, and as I explained when we spoke last week, we remained willing to assist Mr. [REDACTED]. He needed only to set and keep an appointment and either complete our intake process, which includes answering eligibility and contact information fully, or have a more general discussion with us about the topic of his legal issue so we could provide legal information rather than advice, enabling him to avoid answering intake questions. We could provide information via email or U.S. Mail if we had a reliable address to contact Mr. [REDACTED].



### **Elevation of Mr. [REDACTED] Complaint to the Trust Fund Commission**

LSNC is troubled by the elevation of Mr. [REDACTED] complaint. Mr. [REDACTED] alleges he completed an intake and was not provided services. Mr. [REDACTED] did not complete the intake process with LSNC and did not avail himself of services when they were offered in precisely the way he requested. Mr. [REDACTED] has no evidence of having completed an intake with LSNC – no intake form, citizenship declaration, retainer, or other written communication that a client with an open case would ordinarily have. We agree that Mr. [REDACTED] contacted us repeatedly, but he did not cooperate in the most basic way to enable LSNC to serve him. It should be clear to the State Bar that Mr. [REDACTED] is either insincere about wanting to access legal help or that some special circumstances, such as a significant disability, prevent him from benefiting from services at this time, even when all requested accommodations have been provided to him.

It is our understanding that Mr. [REDACTED]'s complaint should have been resolved within 90 days, and because it was not, it is now elevated to the Commission under some new process adopted by the Bar and not disclosed to IOLTA programs. From his interactions with Mr. Passamaneck, both by telephone and email, Mr. Smith certainly did not understand that LSNC was involved in some formal complaint process that might require adjudication by the Trust Fund Commission. It was LSNC's impression that the State Bar was gathering information in order to either mediate a solution for Mr. [REDACTED] such as facilitating an intake, or to make a determination about whether it would ask LSNC to take some action or dismiss Mr. [REDACTED] complaint. The fact that a number of weeks elapsed between Mr. Smith's initial conversation with Mr. Passamaneck in May, and Mr. Passamaneck's renewal of that discussion in July, only reinforced that understanding. Had LSNC been aware that Mr. [REDACTED] complaint might be elevated to Commission review rather than informally investigated and resolved, it would have immediately prepared a full and complete response. If this process is to be repeated with any complaint going to the Bar, even those as baseless and patently false as Mr. [REDACTED] complaint, IOLTA providers will need to begin to keep detailed records regarding every applicant contact wherein the applicant was not satisfied to prepare to defend against such complaints.

The fact that LSNC has remained, at all times, prepared to provide assistance to Mr. [REDACTED] should prevent any elevation of this complaint to the Commission. It is unclear what remedy the Bar or the Commission could possibly recommend other than the one we have continued to offer – that we will set another appointment with Mr. [REDACTED] if he provides us with a few reasonable options for appointment days and times. If Mr. [REDACTED] has experienced any disadvantage related to not receiving legal assistance to date, it has been due to his own refusal to accept such assistance when offered to him in the exact manner he demanded.

The State Bar staff should not permit a baseless complaint to proceed to the Commission level. Allowing an applicant who has demonstrated his lack of sincerity and credibility throughout his interactions with both LSNC and the State Bar to get special access to assistance, disadvantages applicants who promptly engage with providers to access services, including those who access services with accommodations for their special needs, and rewards entitled and abusive applicants who demand priority over other applicants and clients. It is imperative that the State Bar develop criteria for assessing and a process for investigating complaints from clients and applicants for services that enable IOLTA programs to




engage meaningfully when a complaint goes to the Bar, correct any errors that may have occurred in the programs' conduct, and bring the complaint process to a quick resolution.

LSNC respectfully requests that the State Bar and the Trust Fund Commission dismiss Mr. [REDACTED] complaint and inform him of the obligation of IOLTA programs to conduct intake interviews with clients that include questions regarding their personal contact information, date of birth, income, assets, and a variety of other data the State Bar and numerous other funders demand. In addition, LSNC asks that the State Bar inform Mr. [REDACTED] that in order to access legal assistance, an applicant must communicate and cooperate with a provider of legal assistance, and to engage in an interactive process to determine the most appropriate accommodations to permit the applicant to establish eligibility for services and, if eligible, to access services if the accommodation offered by the provider is insufficient. Applicants for service do not have a right to demand immediate assistance from an attorney and IOLTA programs may decline to serve an applicant who, despite being offered accommodations for any barriers to service, fails to cooperate or is abusive to program staff. Finally, LSNC asks for a finding that it provided Mr. [REDACTED] access to services, accommodation for his special needs and an opportunity to air his grievances on more than one occasion prior to finally completing an intake with him on August 23, 2021.

Please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Julie', with a large, stylized flourish extending to the right.

Julie Aguilar Rogado  
Deputy Director

Google Apps

Legal Services of  
Northern California

Julie Aguilar Rogado &lt;jaguilar@lsnc.net&gt;

**Inquiry regarding complaint:** [REDACTED]

4 messages

**Passamaneck, Daniel** <Daniel.Passamaneck@calbar.ca.gov>

Fri, May 14, 2021 at 10:13 AM

To: "gsmith@lsnc.net" &lt;gsmith@lsnc.net&gt;, "jaguilar@lsnc.net" &lt;jaguilar@lsnc.net&gt;

Cc: "Hom, Elizabeth" &lt;Elizabeth.Hom@calbar.ca.gov&gt;

Hello Gary and Julie, I hope you are both well. I'm writing to see if you have any information you can share regarding a call received earlier this year through the State Bar's public complaint hotline from a man named [REDACTED]. It is our understanding that he contacted LSNC late last year seeking representation, and is unhappy with the outcome of that process. Can you provide any more context about this incident? Can you describe any steps LSNC has taken to address Mr. [REDACTED] concerns?

As always I would be happy to discuss this with you if that would be a more convenient way to respond. Thank you for your assistance in this matter.

Best regards —

Dan

Daniel Passamaneck (he/him/his)

*Senior Program Analyst, Office of Access and Inclusion*

The State Bar of California | 180 Howard Street | San Francisco, CA 94105

(415) 538-2403 | daniel.passamaneck@calbar.ca.gov

***Working to protect the public in support of the mission of the State Bar of California.***

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May 14, 2021 at 10:37 AM