

# 2022 LSTFC RULES COMMITTEE WORK PLAN

**Goal:** Complete codification process by 2023 IOLTA/EAF Application for 2024 funding.

**Process:** (1) Preview subject matter and issues at Rules Committee meeting to gather initial perspectives → (2) Staff and Commissioners draft memo with recommendations → (3) Memo shared with LAAC for community feedback (provide programs two weeks for comments) → (4) Rules Committee have in-depth discussion and approve recommendations (with sufficient time for public/community) → (5) Legal Services Trust Fund Commission approve Committee’s recommendations → (6) Send rules to State Bar Board of Trustees (BOT) for consideration in phases as matters are ready; do not wait until end process to send all at once → (7) BOT circulate 45 day formal public comment period → (8) BOT vote to approve rule change (note, BOT may need to recirculate for public comment if there are substantive changes)

2022 Rules Committee Meetings (all meetings from 12-3pm):

**Thursday, February 24:** (1) Accountability for late submissions; (2) Functional Matrix; and (3) Indigency (carryover from 2021)

**Thursday, April 21:** (1) Law school clinics (including indirect costs); (2) Client complaint process

**Thursday, June 9:** (1) Definition of civil legal services; and (2) Primary purpose for QLSPs (carryover from 2021)

**Thursday, August 4:** (1) Reserve policy for IOLTA revenue; and (2) Carryover and budget modifications

**Thursday, October 6:** (1) Fee generating work and contingency fee arrangements

**Thursday, November 10:** (1) Defining “significant support services”; and (2) Deeming for support centers

RULES COMMITTEE MEETING DATE	SUBJECT MATTER	ITEMS TO COVER/EXAMPLES/INCONSISTENCIES	EXISTING RULE OR GUIDELINE?	RECOMMENDATION	STAFF LEAD	COMMISSIONERS	COMMISSION MEETING	BOT MEETING
February 24, 2022	Accountability for late submissions	There is a current State Bar Rule regarding late audit submissions; however, there is no guidance on how to handle late submissions of other requirements, such as discretionary grant and budget applications.	State Bar Rule 3.680(E)(1), and the associated entry in the Schedule of Charges and Deadlines	Perhaps create a grace period and confer more authority to staff to approve late submissions	Danielle	Erica?	March 11, 2022	
February 24, 2022	Functional Matrix	Update Functional Matrix to account for passage of SB 211		Opportunity to reset roles and responsibilities for staff and commissioners	Doan	Amin	March 11, 2022	N/A
February 24, 2022	Define indigency and how programs can demonstrate indigency,	1. Defining indigency and standards to demonstrate indigency (e.g, no specific age for AAA funding based on Statute)		Only pending issue is ILAW; draft State Bar Rule to integrate committee’s feedback.	Erica	Chris Jim Banafsheh	March 11, 2022	

\* This schedule is tentative and subject to change; revised December 6, 2021.

	particularly in impact and class action cases	2. Clarify categories of indigency from B&P 6213 3. How to determine client income (E.g. veterans benefits)						
April 21, 2022	Law school clinics	1. Should there be a cap on indirect costs and what must be submitted to justify cost? 2. Provide clarity on audit requirement 3. Define identifiable law school unit	LSP Guideline 2.3.5	If there is a cap for indirect cost, it should be across all grantees, not just law school clinics	Dan	Jim	June 17, 2022	
April 21, 2022	Client complaint process	Revise existing State Bar Rule to improve client complaint process; define what “resolving” a complaint means	State Bar Rule 3.692	Consider delegating authority to Co-chairs or staff for recommendations of dismissal	Erica	Pamela	June 17, 2022	
June 9	Define civil legal services	1. Define civil legal services – including advocacy, counseling, policy work, HICAP, social work and related services) 2. What is negligible so not needed for review (ie, signing letters of support)	Amend Rule 3.671 rule to specify and define “civil legal services”	Form working groups to refine recommendations	Chris	Catherine	August 12, 2022	
June 9	Primary Purpose (only for QLSPs; save SCs for later discussion)	1. Should 75% QE presumption for satisfying primary purpose requirement change? 2. Should practice of finding programs between 50% to 75% QE eligible be codified? If yes, what other factors to include? 3. Should Commission retain discretion to find eligible by “other means?” 4. We currently don’t look at future budget about QE at 75%; we only look at previous year (e.g., delete the first clause of the future budget in that rule section).	1. Revise rule 3.671a, which directs review of future budget 2. LSP Guidelines 2.3.5 commentary SC Guidelines 2.3 Commentary	Recommendations for this topic are almost complete; working group would like to see what the new definition of civil legal services is before it finalizes recommendations.	Christal	Judge Seligman Corey Rich	August 12, 2022	
August 4	Reserve policy for IOLTA revenue	Existing reserve policy provides insufficient guidance on how to set reserves when IOLTA revenue is declining; should four-step calculation for rising income environment remain.	Create new State Bar Rule	Consider establishing reserves to provide stable funding for three years	Carolina	Salena Catherine Jim	November 16, 2022	

August 4	Carryover and budget modifications	Existing policy allows staff to approve requests between 10-25% and Commission above 25%; consider whether thresholds are appropriate; should this standard apply for all grants including discretionary	Create new State Bar Rule	Consider whether there should be a cap for carryovers, maybe 50% of grant	Danielle	Pamela	November 16, 2022	
October 6	Fee generating work and contingency fee arrangements	Current definition insufficient; need more clarity and examples.			TBD		November 16, 2022	
November 10	Defining “significant support services”		Update SC Guideline 2.2.1	Create more defined benchmarks for Support Centers	Chris		TBD 2023	
November 10	Deeming for support centers	1. What are the rules on deeming every 3 years? 2. Commission role has the authority if there is a failure to pass 3. Should entire deeming process should be reviewed?			Christal	Judge Seligman	TBD 2023	

2021 Rules Committee Meetings:

**April 23, 2021** → (1) Pro bono allocation (completed)

**Friday, June 4, 2021** → (1) Passthrough funds and (2) Exchange funds **CANCELLED**

**Tuesday, July 13, 2021** → (1) RFP Review Process for Discretionary Grants (preview)

**Friday, July 30, 2021** → (1) Expungements, infractions, and other non-civil areas of law

**Tuesday, August 24, 2021** → (1) RFP Review Process for Discretionary Grants (in-depth)

**Friday, September 24, 2021** → (1) Passthrough funds and (2) Exchange funds

**Wednesday, October 13, 2021** → (1) Indigency

**Friday, November 5, 2021** → (1) Define civil legal services and (2) Primary purpose for QLSPs

Early 2022 → Fiscal: audit, out of county determination, carryover and budget mods, indirect cost, and IOLTA formula or (2) Law School Clinics

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January 2020: Approve	Audit & In-kind donated Services	1. Clarify the audit requirement	1. Rule 3.680	1. In-kind donated services, like pro bono, <u>not count</u> toward gross corporate expenditures 2. Financial reviews must be prepared by independent certified public accountants	Christine	Corey Kim	June 17, 2022  * Waiting for law school clinic issues to be finalized.	
March 6, 2020: Preview issue  October 16, 2020: Propose work plan for Working Group and discuss preliminary recommendations In-depth discussion: November 5, 2021	Define civil legal services	1. Define civil legal services – including advocacy, counseling, policy work, HICAP, social work and related services) 2. What is negligible so not needed for review (ie, signing letters of support)	1. Amend Rule 3.671 rule to specify and define “civil legal services”		Erica	Kim Amin Corey	August 12, 2022	TBD
March 6, 2020: Preview issue  Week of September 21, 2020: Memo sent to LAAC  October 16, 2020: In-depth Discussion	Define indigency and how programs can demonstrate indigency, particularly in impact and class action cases	1. Defining indigency and standards to demonstrate indigency (e.g, no specific age for AAA funding based on Statute) 2. Clarify categories of indigency from B&P 6213 (Greg) 3. How to determine client income (E.g. veterans benefits) (Christal)			Erica	Chris Jim Banafsheh	August 12, 2022	TBD
March 6, 2020: Preview issue  Week of September 21: Memo sent to LAAC  November 5, 2020: In-depth Discussion	Primary Purpose (only for QLSPs; save SCs for later discussion)	1. Should 75% QE presumption for satisfying primary purpose requirement change? 2. Should practice of finding programs between 50% to 75% QE eligible be codified? If yes, what other factors to include? 3. Should Commission retain discretion to find eligible by “other means?” 4. We currently don’t look at future budget about QE at 75%; we only look at previous year (e.g., delete	1. Revise rule 3.671a, which directs review of future budget 2. LSP Guidelines 2.3.5 commentary SC Guidelines 2.3 Commentary		Christal	Judge Seligman Corey Rich	August 12, 2022	TBD

		the first clause of the future budget in that rule section).						
October 16, 2020: Preview issue  September 24, 2021: In-depth Discussion	Exchange Funds	1. Exchange Funds a. When one grantee subgrants to other IOLTA, there is no policy on who counts on QE. b. Inconsistent reporting requirements of who counts the QE.			Dan	Zahirah Rich Erica	November 17, 2021	Early 2022
April 23, 2021: Preview and In-depth Discussion	Pro Bono Allocation	1. Define principal means of delivery of legal services 2. There is urban bias on pro bono test 1. Rules to simplify and eliminate urban bias			Staff TBD	Erica Eric Louise	June 17, 2021	TBD
April 23, 2021: Preview issue  September 24, 2021: In-depth discussion	Passthrough Funds	2. Passthrough Funds a. Process for analyzing passing through funds and impact on primary purpose of legal services. b. Defining what is qualified expenditures or pass through and impact on primary purpose analysis. (ex. DOJ funding)			Dan	Zahirah Rich Erica	November 17, 2021	Early 2022
April 23, 2021: Preview issues  November 4, 2021: In-depth Discussion	Law School Clinics	1. What is the definition of an “identifiable law school unit” from Statute? (Dan) 2. Standards of a financial audit which is normally from the entire institution which is not aligned with the statutory requirement (Christine) Clarity on application of indirect costs (Dan)			Dan	Louise Catherine Corey	June 17, 2022	TBD

June 4, 2021: Preview issues  July 30, 2021: In-depth discussion	Expungements, infractions, and other non-civil areas of law	1. How to categorize expungements, infractions, and collateral activities as civil or criminal? 2. How to determine what is a qualified expenditure? 3. What activities can be budgeted using IOLTA/EAF funds?			Erica	Justice Murray Judge Seligman Catherine	August 13, 2021	September 23, 2021
July 13, 2021: Preview issues  August 24, 2021: In-depth Discussion	RFP Review Process for Discretionary Grants	1. Process for reviewing applications, especially those that are RFP based like partnership and bank grants. Creation of a scoring rubric based on criteria, understanding there are subjective factors.			Christal	Amin Jim Christina	March 11, 2022	TBD
October 16, 2020: Preview issues  November 5, 2021: In-depth discussion	Fiscal	1. Out of County Determination (TBD) a. Process or analysis to determine counting work and allocation for multiple counties (currently inconsistent) 2. Carry over, budget, and cost reporting (TBD) What should be the standards for financial management? Should IRS standards be used? And review of 990s included? Should financial & program performance be integrated? Additional challenges with discretionary multi-year grants? a. Review of current reports. Why quarterly reports? Why have detailed budgets? Why have 25% non-personnel and Administrative cost limits? b. Process and clarity of who approves at what point of time. With current funding distributions does budget	1. There is no rule or guideline on application of out of county work as applied to statewide/impact cases 2. There is no rule or guideline on how indirect costs are considered for QE		Carolina Michael	Catherine Amin Corey	February 2022	May 2022

		<p>variances of 10% or \$1,000/\$10,000 still make sense. In consistent application of 25% director approval.</p> <p>3. Indirect Cost: should there be a cap? (Dan)</p> <p>4. Codify how IOLTA formula is calculated (Judi) → defer until statutory change on income threshold</p> <ol style="list-style-type: none"> <li>ACS Survey</li> <li>Rounding of decimals</li> <li>Minimum county amounts</li> </ol>						
<p>November 5, 2021: Preview issues</p> <p>TDB 2022: In-depth Discussion</p>	(7) Support Centers	<p>1. Defining “significant support service?”</p> <p>1. How to measure income screening for support centers. Support Centers are currently not required to screen clients for income if referred by QLSP or pro bono attorney. Technically, QLSP could refer all ineligible clients for SC representation (ex. over income and out of CA cases) and SC could use IOLTA/EAF funding</p> <p>2. Revisit definition of statewide support services</p> <p>3. Delete Rule 3.680(B) and the requirement that support centers have to provide services in two or more of the following ways: consultation, representation, information services, or training. Inconsistent with statute.</p> <p>4. Can SCs charge the QLSP that attend trainings (for food, or rental, no minimum or %)</p>	<p>1. Delete Rule 3.680 which is not consistent with statute</p> <p>2. With change of eliminated State Bar districts, new Rule on defining statewide services</p>	Doan/Chris	Judge Seligman Corey Kim			

		5. Deeming (Christal) <ol style="list-style-type: none"> <li>1. What are the rules on deeming every 3 years?</li> <li>2. Commission role has the</li> <li>3. authority if there is a failure to pass</li> <li>4. Should entire deeming process should be reviewed?</li> </ol>						
TBD 2022: Preview issues  TBD 2022: In-depth Discussion	(9) Quality Control	<ol style="list-style-type: none"> <li>1. What should be the standards governance, leadership and administration of organization?</li> <li>2. What should be the consequences of findings from monitoring visits or other events that raise questions of quality control?</li> <li>3. Are there ways to streamline some of the processes with other County/State/Federal audits?</li> <li>4. How to create enforcement tools for the Commission?</li> </ol>			Chris	Amin Catherine Jim		
TBD 2022: Preview issues  TBD 2022: In-depth Discussion	(10) Administration	<ol style="list-style-type: none"> <li>1. What's the process for accountability on late submission or failure to submit documents, and repeated failure to abide by deadlines (under fines and penalties under Rule 3.681)</li> </ol>			Judi	TBD		
TBD 2022: Preview issues  TBD 2022: In-depth Discussion	(11) Other Issues	<ol style="list-style-type: none"> <li>1. What are the rebuttal factors for AAA and LSC for 6214(a) on the presumption for qualifications?</li> <li>2. What does having a presumption and what factors could rebut or should be conclusive presumption? Currently, we aren't applying the presumption.</li> <li>3. Purchase of Real Property and Tangible Property: revise policy, too dense</li> <li>4. IOLTA Reserve Policy</li> </ol>			TBD			



		5. Fee generating work						
		6. Contingency Fee Arrangements						

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