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To: Members, Legal Services Trust Fund Commission (LSTFC) Rules Committee

From: Pamela Bennett, LSTFC Rules Committee
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Subject: Addressing Complaints from the Public against State Bar-Funded Grant Recipients

EXECUTIVE SUMMARY

The Legal Services Trust Fund Commission (LSTFC) administers funding to legal services organizations throughout California with the support of the staff of the State Bar's Office of Access & Inclusion. On occasion, the State Bar receives complaints from members of the public regarding grantee organizations. The scope of review for these complaints is limited to whether the grantee is acting in compliance with the governing authorities (Business and Professions Code, Rules of the State Bar, grant agreements). Under existing rules, if a grantee organization is found to be in violation, the LSTFC may require corrective action or terminate funding to the organization after completing the applicable review process.

Current State Bar Rules regarding these complaints do not provide clear guidance about the process, nor are they conducive to efficient resolution of the issues. This working group proposes amendments to the rules to clarify staff timelines; confirm when a complaint is resolved; and allow an advisory body of the LSTFC to perform the initial review of most complaints elevated by staff with a recommendation to the LSTFC as to how to resolve if no agreement is reached by all parties. This would balance the need for fair and thorough review with the desire to timely address these complaints. Also included are minor updates to reflect the current state of technology, including allowing electronic submission of documents.

BACKGROUND

GOVERNING AUTHORITIES

A number of authorities provide guidance for processing complaints from the public against State Bar grant recipients: the California Business and Professions Code; Rules of the State Bar (Title 3, Division 5, Chapter 2, Rules 3.660-3.692); and Rules of Procedure of the State Bar of California.

California Business and Professions Code section 6224 states that the “State Bar shall have the power to ... deny future funding, or to terminate existing funding because the recipient is not operating in compliance with the requirements or restrictions of this article.” (The “article” comprises all of the statutory provisions governing Interest on Lawyers’ Trust Accounts [IOLTA] funding and grant recipient eligibility and obligations.) Decisions to terminate or deny funding shall not be final until the recipient has been afforded notice and an opportunity for a timely hearing. (California Business & Professions Code section 6224; see Attachment A.) Rule 3.692 of the Rules of the State Bar expressly authorizes a person or entity to file a formal complaint about grantees that they contend do not comply with applicable requirements under the governing authorities. (Attachment B.)

Initiating a Complaint, State Bar Staff Investigation, and LSTFC Decision

Rule 3.692 outlines the public complaint process in broad strokes, from the time a complaint is lodged, through staff review, and up to LSTFC review and decision when necessary. A written complaint is required, and State Bar staff investigate the complaint and attempt informal resolution between the grantee and the complainant.¹ This must be completed within 90 days. If no resolution is reached, staff prepares a written report with recommendations for what action, if any, is appropriate. Both the complainant and the grantee that is the subject of the complaint may submit a response. The complaint then moves on to LSTFC review.

The LSTFC (or a committee comprised of LSTFC members) reviews the report within a “reasonable period of time” and may dismiss the complaint or schedule an informal conference. If a conference takes place, then the LSTFC may dismiss, require corrective action, or terminate funding. If the complaint is dismissed—regardless of whether dismissal comes after review of the report and response or an informal conference—the decision is final. (Attachment B.)

¹ The rule does not expressly state whether “resolution” must be in the judgment of State Bar staff or to the satisfaction of the complainant and/or grant recipient. Office practice has been to deem a complaint resolved only when all parties agree.

State Bar Court Review of LSTFC Decision

Within 30 days after written notice of the LSTFC's decision to terminate funding, the grant recipient may file a request for review by the State Bar Court. See State Bar Rule 3.692(G) and Rule of Procedure 4302. (Attachments B and C.) If the request is timely filed and the LSTFC's decision was to terminate, then funding will continue during the State Bar Court review period. (Business and Professions Code section 6224; Attachment A.) If the request for review is not timely filed, the LSTFC's decision becomes final.

SCOPE OF THE COMPLAINT PROCESS

The rules discussed in this memo have fairly narrow application and relate only to complaints by the public about whether a grantee is acting in accordance with grant requirements (i.e., applicable Business and Professions Code provisions and Rules of the State Bar, grant agreements, etc.). Examples of complaints that satisfy this requirement include: a grantee receiving a pro bono allocation while not meeting the eligibility requirements for such funding; an allegation that a grantee is charging for services and not making appropriate deductions on its grant applications.

If the complaint is about individual attorney misconduct, it would most likely not be the proper subject of a complaint under Rule 3.692. Staff, however, would refer the complaint to the Office of Chief Trial Counsel. To the extent such a complaint regarding an individual attorney suggests deficiencies in the grantee's governance or administration, staff may investigate whether the grantee is meeting the quality control standards embodied in the American Bar Association Standards for the Provision of Civil Legal Aid.²

Staff does not generally investigate the merits of complaints from the public regarding grantees' services in individual representations (e.g., where a current or former client of a grantee is dissatisfied with the grantee's decision regarding the level of service provided to the individual where the grantee has discretion as to the level of services to be provided).³ In contrast, staff will investigate if it is alleged that the grantee has no formal internal grievance procedure for the client to follow.⁴

² An example of this would be in instances where individual attorney misconduct or negligence is alleged, and it becomes apparent that the grantee was not providing sufficient supervision to intervene or prevent the attorney's actions. See Standard 6.4 on Responsibility for the Conduct of Representation. (Attachment D.)

³ Anecdotally, these are the types of complaints staff most frequently receives.

⁴ Standard 5.8 of the American Bar Association Standards for the Provision of Civil Legal Aid (2021) recommends that legal aid organizations have the opportunity to resolve client complaints internally first, before inviting external intervention, as it is typically more efficient and responsive to the complainant's needs. The Standards for the Provision of Civil Legal Aid are the LSTFC's quality control standards for grantees under State Bar Rule 3.661(C).

COMPLAINT BACKGROUND, CURRENT STAFF PRACTICE, AND THE ROLE OF MONITORING VISITS

Historically, the number of public complaints received by staff each year has been fairly low (fewer than five).⁵ In many instances, complainants are redirected to the Office of Chief Trial Counsel and/or the grantee's internal complaint process, as appropriate, or staff is able to resolve the issue informally between the complainant and the grantee. Complaints requiring elevation for LSTFC decision are rare.

The general topic of complaints is addressed at monitoring visits with grantees by reviewing their written internal grievance procedure for client complaints, and ensuring, specifically, that it allows for review by management and then the grantee's board, if necessary. If a complaint is not resolved internally, the client may bring their concerns to the State Bar's Office of Access & Inclusion.

Staff and the LSTFC review grantee activities during monitoring visits and identify areas for improvement, which may assist in resolving problems that would otherwise lead to complaints from the public. The regular monitoring and evaluation of grant recipients' programs, services, and finances act thus as a protective factor by addressing any apparent noncompliance proactively.

DISCUSSION

State Bar Rule 3.692 states that if a "complaint is not resolved within ninety days," the "Commission or a committee of its members" must review staff's report, any additional response from the complainant and/or grant recipient, and then dismiss or schedule an informal conference.

"RESOLVED" COMPLAINTS

The current rule does not provide guidance for determining when a complaint is "resolved," and whether this would be from the point of view of staff and/or the parties involved. Having access to both complainant and grantee, as well as close knowledge of the applicable governing authorities, staff is often well-positioned to assess the merit of a complaint and attempt to resolve it.

⁵ This refers to complaints that originate with the Office of Access & Inclusion. The Office of the Chief Trial Counsel (OCTC) may receive complaints regarding individual attorneys employed by State Bar grant recipients, but currently there is no defined process for information pertaining to the grantee organization to be referred to Access & Inclusion from OCTC.

Informal resolution is quite common. Often, even if it appears that the statute and Rules of the State Bar are not implicated (and thus that the complaint process could result in no formal corrective action), staff involvement can help by facilitating a productive dialogue between complainant and grantee. This is the preferred approach under the ABA's Standards for the Provision of Civil Legal Aid. (See Attachment D, Standard 5.8.)

Additionally, of the small number of complaints received, many do not fall within the LSTFC's purview. Once a complainant is informed of this, they may not wish to proceed. Staff also educates complainants about the process. If the complaint relates to a topic within LSTFC oversight but, based on its investigation, staff believes that the grant recipient is not in violation of the governing authorities, staff will share this conclusion with the complainant. Sometimes the complainant agrees with the results of the investigation and chooses not to further pursue the issue.

On the other hand, if a compliance issue exists—such as a grant recipient mistakenly applying the wrong eligibility threshold—but the grantee acknowledges it, acts quickly to correct it, and the complainant is satisfied, this might also be considered resolved. Staff could still provide updates to the LSTFC, just as staff might with findings from monitoring visits, but it would not require a formal decision by the LSTFC.

Nonetheless, principles of due process would seem to dictate that there should be recourse to the LSTFC as part of its oversight role and responsibilities if either party objects to staff's proposed resolution of a complaint. This ensures an additional layer of review and a check against arbitrary outcomes, thus strengthening the process. Consequently, a modification to the existing rule is proposed, which would clarify that staff may resolve the complaint, but that if any party objects to staff's recommended resolution of a complaint, it will be elevated for review by the full commission. (Attachments E and F.)

COMPLAINT PROCESS TIMELINE

The wording of Rule 3.692(B) is somewhat vague in describing staff's obligations. While it is clear that staff must notify the grant recipient of the complaint, for example, it does not specify the timeframe in which staff must do so. Similarly, staff has 90 days to attempt to resolve the complaint, but the rule is ambiguous as to when staff's written report must be provided in the event the complaint is not resolved: Must it be submitted by or before the ninetieth day? Or does a new timeline start after the ninetieth day, during which staff must produce a written report, and what is the length of that process?

State Bar staff endeavors to resolve complaints promptly, but to ensure consistency in the treatment of complaints, it is recommended that Rule 3.692(B) be revised to specify that staff must inform the grant recipient within 10 calendar days of a complaint being lodged, and if a

complaint is not resolved within 90 days, staff's written report must be submitted by the end of that period.⁶ (Attachments E and F.)

The timeline required of the LSTFC under the same rule is also unclear. To mitigate any ambiguity, the working group proposes updates to Rule 3.692 subsections (D) and (E), and inserting a new subsection (F), regarding the LSTFC timeline. This will keep the process moving forward at a steady and reasonable pace.

COMMISSION AUTHORITY

The existing version of Rule 3.692 requires the full LSTFC—or a committee appointed by the LSTFC—to consider complaints not resolved by staff. Neither of these options is conducive to prompt resolution of complaints. Unless the LSTFC establishes a standing complaints committee, forming a committee for review of each complaint would be an additional step delaying the process. However, these complaints are not commonplace and rarely rise to the level of LSTFC review. Thus, a standing committee does not appear justified. As for directing complaints immediately to the full LSTFC for review, unless the LSTFC were to schedule an ad hoc meeting in response to a complaint, a complaint may potentially remain pending for months between LSTFC meetings. And, having ad hoc meetings of the full LSTFC for each complaint not resolved by staff would be a disproportionately large commitment of LSTFC resources.

Instead, and for the additional reasons discussed below, the working group proposes a rule change to allow the commission co-chairs to designate a two-person advisory body to perform the initial review and make a recommendation to the LSTFC to resolve at its next meeting. (Attachments E and F.)

Rationale for Appointing an Advisory Body as Review Committee

From an efficiency standpoint, having an advisory body perform the initial review of the complaint will help the process move forward in a timely fashion. This is important to ensure that the grant recipient is in compliance with the funding requirements, or to take corrective action if not. It would also serve to bring closure to both complainant and grant recipient without protracted wait times.

It is rare for these complaints to require elevation to the LSTFC. When they do, staff reported to this working group that it is unaware of any example thus far where the LSTFC's decision has required corrective action by the grant recipient or resulted in termination of funding. Nonetheless, LSTFC meetings are public and highly visible. Under the current rule, any

⁶ Unless otherwise specified, all references to "days" mean calendar days.

complaint that is not resolved at the staff level must be referred to the LSTFC or a committee, which may, under the Bagley-Keene Open Meeting Act, generally act only in meetings open to the public. This may place the grant recipient in a negative light even if the complaint is ultimately dismissed. It may also share details that might be personal from the complainant's perspective.

Perhaps a better way to address these complaints would be to undertake initial review in a less formal setting through a two-member advisory body that would be permitted to meet with a complainant and grantee outside of a meeting open to the public.⁷ The full commission would ultimately resolve the complaint after reviewing the advisory body's recommendation, unless the complainant and grantee both agree with the advisory body's recommendation.⁸ The intent here would be similar to the way monitoring visits are conducted: There would still be LSTFC review and oversight, but the level of intervention would be calibrated to the level of violation, if any.

In the event that the grantee organization were found noncompliant, the advisory body could recommend corrective action for the commission's consideration. This could include any number of steps, such as a report from the organization's board, a follow-up monitoring visit to confirm required changes have been implemented, or submission of updated policies and documents conforming to the governing authorities, among other things. These findings and any response from the grantee could be considered in future discretionary funding analyses.

To eliminate redundancy, the working group recommends that serious noncompliance which threatens a grantee's eligibility for funding should be referred to the LSTFC under Rule 3.691. This Rule addresses the process for denial or termination of funding, and some provisions are repeated in the current version of Rule 3.692. The working group believes that in the vast majority of cases, the complaint process should serve as an opportunity for course correction (where needed) and wishes to encourage collaboration among all parties.

The working group also envisions the complaint process as an opportunity for feedback to improve grants administration generally, and the proposed amended rule reflects this. If the advisory body ultimately recommends dismissal of a complaint, for example, but identifies areas where additional rule or policy changes may be warranted, it can use this opportunity to make such recommendations to the LSTFC.

⁷ This also seems to be in keeping with the spirit of the rule, which refers to an "informal conference," but as the rule is currently written, any conference would be a publicly noticed hearing.

⁸ Even if most complaints are ultimately dismissed, if the advisory body notices a pattern of staff noncompliance with the prescribed timelines, this could constitute a separate item for the full commission to address.

ELECTRONIC RECEIPT OF DOCUMENTS

The Rules of the State Bar discussed in this memorandum were first adopted, and last updated, 13 years ago. In the interim, electronic communication, specifically email, has become a dominant form of business communication. This trend only accelerated during the Covid-19 pandemic when many people were prevented from meeting or working in person. Email is a common and reliable form of communication. In fact, many of the complaints received by staff arrive through email.

The working group proposes to update State Bar Rules 3.690 and 3.692(A) to reflect current practice and norms, which is to say that electronic delivery and transfer of documents are acceptable, and even preferred. However, it would require the recipient's consent for the State Bar to primarily use email for these communications.

LEGAL AID COMMUNITY FEEDBACK AND WORKING GROUP RESPONSE

A draft of this memorandum was shared with the Legal Aid Association of California (LAAC) to obtain feedback from its members regarding the recommended changes and updates to the process. (See Attachment G for LAAC's comments.) Overall, the feedback appeared to agree with the majority of the changes. Below are some highlights from the feedback with responses and observations from the working group.

Anonymous Complaints

The original draft of this memorandum recommended development of an online reporting page or website to allow for filing of complaints. It referenced the possibility of filing anonymous complaints with a caveat that any opportunity to fully investigate such a complaint would likely be limited. The legal aid community strongly opposed this recommendation and detailed several examples of how and why anonymous complaints hamper their ability to respond. The feedback also noted that many complaints are lodged anonymously as a form of harassment by opposing parties or individuals who do not support the grantees' work. The community believed this would open the possibility of creating more work for little benefit for State Bar staff, grantee staff, and possibly the LSTFC, if this practice facilitates filing baseless complaints that nevertheless require processing.

The working group's consideration in making this recommendation was primarily concern for complainants who might have relevant information but fear retaliation, future denial of services, or some other negative consequence by revealing their identity. The working group appreciates the points raised by the legal aid community and acknowledges the difficulties that anonymous complaints can create. Nonetheless, the working group believes there might be

instances where an anonymous—or at least a confidential⁹—complaint might be warranted; it would be helpful to discuss this topic further as a committee to respond to grantee concerns and provide additional guidance to staff in the development of a reporting page.

One possible compromise might be to explicitly state in the rule that staff may close the complaint when it lacks specificity or appears unrelated to Trust Fund requirements after giving the complainant opportunity to amend (if the complainant's contact information is provided).¹⁰ If a complainant is aware of this possible outcome and chooses not to disclose their identity anyway when reporting, staff could close the complaint without needlessly taking up grantee time and resources, because there would be no way to clarify the complaint. On the other hand, it would not preclude a complaint that provides enough detail such that follow-up with the complainant is not required. This is one idea, but the working group welcomes additional suggestions for discussion.

Confidentiality and Attorney-Client Privilege

Another main point of feedback related to waiver of confidentiality and attorney-client privilege when a complainant who is a past or current client of the grantee, or an applicant for services, may not understand the effect of lodging a complaint with the State Bar. Staff informed LAAC that it is current practice to notify a complainant who is a client of the grantee of the possible consequences of lodging a complaint and that a release may be required in order to discuss the matter or obtain further information from the grantee. Staff confirmed that such information would be provided and language accessible on any reporting page created, and the working group agrees.

Resolution after Informal Conference

It should be noted that the suggestion to allow resolution after an informal conference if all parties agree with the advisory body's recommendation in proposed Rule 3.692(F) was not included in the draft rule changes shared with LAAC, so the working group has not obtained feedback on this point. The process is similar to the recommendation to allow resolution at the staff level and would potentially avoid the need for public hearing, which were both suggestions that were met with approval in the prior review. However, the working group would welcome feedback from the community on this point at the meeting.

⁹ The feedback from LAAC noted that the Legal Services Corporation (LSC), which often provides a useful basis for comparison with administration of State Bar grants, does not allow anonymous complaints. The LSC's website does, however, allow a complainant to request confidentiality without guaranteeing that the person's identity will remain undisclosed indefinitely.

¹⁰ As noted earlier, it is already staff's practice to discuss the complaint with the reporting party to obtain additional information or redirect complaints that are not relevant to the governing authorities.

WORKING GROUP RECOMMENDATIONS

The working group recommends the following changes to the Rules of the State Bar regarding complaints from the public regarding State Bar-funded grantees:

- Update Rules 3.690 and 3.692(A) to allow for electronic delivery of documents and prescribe method for determining time of receipt.
- Revise Rule 3.692(B) to clarify staff timelines in handling complaints, as well as specify what is required for a complaint to be “resolved.”
- Revise Rule 3.692(D)-(F) to clarify the timeline for the LSTFC to meet its obligations under the rule.
- Revise Rule 3.692 generally to allow a two-person advisory body designated by the co-chairs of the LSTFC to review unresolved complaints and recommend appropriate resolution to the full commission (unless all parties agree to the advisory body’s recommendation). Move all consideration/discussion of termination of funding to Rule 3.691.

Though not included in the proposed rule change, the working group further recommends that State Bar staff consider developing a reporting page or site to facilitate lodging online complaints with further input from the Rules Committee regarding whether to recommend a practice of allowing anonymous and/or confidential complaints.

ATTACHMENTS

- A.** California Business and Professions Code section 6224
- B.** Rules of the State Bar, Legal Services Trust Fund Program, Rules 3.690-3.692 (Current Version)
- C.** Rules of Procedure of the State Bar of California, Rule 4302
- D.** American Bar Association Standards for the Provision of Civil Legal Aid (2021), Standards 5.8 and 6.4
- E.** Proposed Changes to Rules 3.690 and 3.692 (Track Changes)
- F.** Proposed Changes to Rules 3.690 and 3.692 (Clean Version)
- G.** LAAC Comments/Feedback Regarding Proposed Changes to the Complaint Process

Attachment A: California Business and Professions Code section 6224

6224. The State Bar shall have the power to determine that an applicant for funding is not qualified to receive funding, to deny future funding, or to terminate existing funding because the recipient is not operating in compliance with the requirements or restrictions of this article. A denial of an application for funding or for future funding or an action by the State Bar to terminate an existing grant of funds under this article shall not become final until the applicant or recipient has been afforded reasonable notice and an opportunity for a timely and fair hearing. Pending final determination of any hearing held with reference to termination of funding, financial assistance shall be continued at its existing level on a month-to-month basis. Hearings for denial shall be conducted by an impartial hearing officer whose decision shall be final. The hearing officer shall render a decision no later than 30 days after the conclusion of the hearing. Specific procedures governing the conduct of the hearings of this section shall be determined by the State Bar pursuant to Section 6225.

(Added by Stats. 1981, Ch. 789, Sec. 1.)

**Attachment B: Rules of the State Bar, Legal Services Trust Fund Program, Rules 3.690-3.692
(Current Version)**

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. 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.
 - (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.

Attachment C: Rules of Procedure of the State Bar of California, Rule 4302

Rule 4302. INITIATION OF PROCEEDINGS

Proceedings under these rules shall be initiated by the filing with the Clerk of the State Bar Court of a written request for hearing in accordance with the Trust Fund Rules. The applicant or recipient shall have thirty (30) days from service of a notice of denial or termination of funding to file the request for hearing with the Clerk of the State Bar Court. The request for hearing shall be accompanied by a copy of the notice of denial or termination and shall contain an address to which all further notices to the applicant or recipient in relation to the particular proceeding may be sent. A copy of the request for hearing shall also be served by the applicant or recipient on the Legal Services Trust Fund Commission (hereinafter "Commission") at the San Francisco office of the State Bar.

Eff. September 1, 1989; Revised April 17, 1993; Revised and renumbered January 1, 1996.
Source: TRP 776.

**Attachment D: American Bar Association Standards for the Provision of Civil Legal Aid (2021),
Standards 5.8 and 6.4**

STANDARD 5.8 ON CLIENT COMPLAINT PROCEDURE

STANDARD

The legal aid organization should establish a policy and procedure for individuals to complain about a denial of service or about the quality and manner of assistance offered including any reporting obligations under the Rules of Professional Conduct.

COMMENTARY

General Considerations

Legal aid organizations generally serve many clients. Over time, therefore, they will encounter persons who are denied service or who are dissatisfied with the organization's assistance. The organization should establish policies and procedures for handling such complaints.

The nature of the policies and procedures will vary based on the nature of the organization. An organization should have an internal procedure to give it an opportunity to correct any errors without disruptive intervention by outside entities. Such a procedure can also provide a sympathetic forum for an aggrieved client or applicant who may have no other means to complain about perceived improper or inadequate service. The existence of a complaint procedure, however, should not be used to deter aggrieved persons from seeking other appropriate remedies from lawyer discipline agencies or from private counsel for alleged malpractice.

Organization Responsibilities

Resolution of complaints by a supervisor. All applicants and clients who express a complaint should be promptly informed of how to pursue their complaint. Each organization should have a system for prompt complaint resolution by a person with supervisory authority. The organization's policy should address issues related to the nature and quality of service, as well as a review of denials of service to applicants.

The organization should recognize that the complaint procedure is an important tool for maintaining positive relations with the communities it serves and for identifying when a staff member may not be meeting the organization's standards, or when aspects of its

operation are not functioning properly. The organization should seek to resolve complaints expeditiously and fairly. Often, a complaint can be resolved by a person in authority correcting the problem or providing an explanation to the person complaining of why a particular action was taken or refused.

The complaint procedure should be known by all staff so that they can promptly refer the dissatisfied individual to a supervisor with authority and responsibility to review the complaint and to resolve it, when appropriate. Participating outside attorneys and clients whose cases are referred to them should be informed of the nature of the policy and procedure.

Notice of the procedure. The organization should have a prominently displayed sign or handout at its intake office that advises persons seeking assistance of the complaint procedure; if intake is done online, the notice shall be available there. The notice should be written in the predominant languages in the organization's service area. An organization does not have an obligation to provide written notice to persons whose only contact with the organization is by phone or in writing. If the only contact is in writing or online, the organization should use its judgment regarding when it is appropriate to provide written notice of a complaint procedure. Legal information provided online does not call for such a notice.

Organization Grievance Committee. Individuals who are dissatisfied with the organization's actions in response to a complaint should be advised of any further recourse they may have within the organization construct. Complaint procedures may offer the person complaining the opportunity for further review by a grievance committee of the governing body. The procedure may exclude from review straightforward matters, such as the proper application of established eligibility guidelines or case acceptance policies that strictly exclude certain types of cases. A board-level grievance committee should include both attorney and client members of the governing body.

Complainants should be offered assistance submitting their complaint to a board grievance committee, if necessary. Complainants in formal hearings should be allowed assistance presenting their complaint by a person of their choice, other than organization personnel. A written explanation of the grievance committee's decision should be given to each grievant.

Complaints Regarding Representation

A complaint that challenges the quality or manner of representation can pose difficult problems. If the grievance involves a practitioner for whom the organization is responsible and if there is a potential malpractice claim, the organization faces a conflict

between its duty to the client and the risk of jeopardizing its insurance coverage if it admits malpractice. Similarly, if the complaint involves a possible ethical violation by a practitioner, the organization may have an obligation to report the matter to the appropriate authority and to advise the client regarding the individual's rights, which may be adverse to the organization. If it appears that a complaint involves possible malpractice or an ethical violation, the organization should consult counsel regarding how it is proper to proceed under the rules of its jurisdiction.

When a complaint concerns the conduct of a lawyer, ethical constraints prohibit the governing body or its grievance committee from ordering a practitioner to take or refrain from specific action. In addition, the governing body is normally restricted from access to confidential client information which it is likely to need for effective review of the grievance. Therefore, the complainant should be advised of the prohibition against disclosure of client confidences and that in order for the grievance to proceed, the client may have to waive the protections that attach to the information that has been given to the organization.

Different issues are involved when a client complains about an outside practitioner to whom the organization has referred a case. How the complaint can be treated will differ depending on the agreement among the client, the organization, and the outside practitioner. The degree to which the organization can take direct action, such as looking into the facts and suggesting what action should be taken in the case or assigning the matter to another attorney, is a function of its being a party to the attorney-client relationship with the client. If there is no attorney-client relationship between the organization and the client, the organization should notify the outside practitioner of the concerns raised and informally seek to resolve the matter. If informal resolution is not possible and the complaint involves a possible ethical violation, the organization should consider whether the matter should be referred to the appropriate lawyer disciplinary authority.

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STANDARD 6.4 ON RESPONSIBILITY FOR THE CONDUCT OF REPRESENTATION

STANDARD

In addition to a practitioner's ethical duties relating the representation, a legal aid organization also is responsible for the representation and assistance undertaken by its practitioners and should supervise the work to assure that each client receives high-quality representation or assistance. Supervision can be done in person, remotely, or using a combination of the two.

COMMENTARY

The responsibility and authority for supervision of representation are grounded in the ethical and legal responsibility the organization assumes for each accepted case. For legal aid organizations, this institutional responsibility arises from the relationship that is created as a contract between the organization and the client.

According to the ABA Standing Committee on Ethics and Professional Responsibility Formal Rule 334, "It must be recognized that an indigent person who seeks assistance from a legal services office has a lawyer-client relationship with its staff of lawyers that is the same as any other client who retains a law firm to represent him. It is the firm, not the individual lawyer, who is retained. ... Staff lawyers of a legal services office are subject to the direction of and control of senior lawyers, the chief lawyer, or the executive director (if a lawyer), as the case may be, just as associates of any law firm are subject to the direction and control of their seniors. Such internal communication and control is not only permissible but salutary. It is only control of the staff lawyer's judgment by an external source that is improper."²³¹

The ABA Model Rules of Professional Conduct clarify that lawyers who possess "comparable management authority" to law firm partners are required to "make reasonable efforts" to ensure that the organization has measures in effect to give reasonable assurance that all practitioners conform to the rules of professional conduct in their jurisdiction.²³² The fact that primary responsibility for cases rests with the organization does not absolve the individual practitioner from the duty to represent clients competently. Rather, it creates the obligation for the organization to assure reasonable supervision and for the practitioner to accept that supervision. Supervision by senior attorneys of the organization is not improper interference with the independent judgment of individual practitioners, but may be mandated by applicable ethical considerations. Indeed, a lawyer with management authority may be responsible for another lawyer's violation of the rules of professional conduct if (1) the lawyer orders, or, with knowledge of the specific conduct, ratifies the conduct involved; or (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of ²³¹ SCEPR Formal Op. 334, p.7 (1974). ²³² See MRPC R. 5.1. the conduct at a time when its consequences can be avoided or mitigated, but fails to take reasonable remedial action.²³³

Supervision of less experienced practitioners is necessary to assure that clients' interests are not jeopardized by inexperience and to facilitate development of proficient practitioners. Such supervision is necessary not only to protect the client's interest, but to also enhance practitioners' skills for more effective representation of future clients. Effective supervision includes the obligation to withdraw legal work assignments from ineffective practitioners and to assign the work elsewhere, if necessary.

The most valuable use of supervision is to teach. Effective supervision by experienced managers can help less experienced practitioners operate in an efficient manner and competently handle increasing levels of work. More experienced practitioners also benefit from supervision to assure the most effective use of their skills and expertise to assist clients. Supervision at all levels promotes staying abreast of legal concepts and skills as laws change. Supervisors can help direct practitioners to appropriate sources of support and training, including training around issues of client-centered representation, application of race equity principles, and institutionalization of race equity and cultural humility training and practices that impact the quality of services and the ability to effectively serve the entire client community.

Supervision should include reviewing case intakes to ensure eligibility, ensuring proper documentation of activities is in the case files, setting standard time periods for completing case activities (subject to exceptions), ensuring regular contact with the client, and the timely closing of completed matters.

The degree to which the provider is responsible for the conduct of representation by an outside attorney to whom it has referred a case is a function of the contractual relationship between the attorney and the provider and with the client. Generally, a provider is not directly responsible for the conduct of the representation, unless it is by agreement part of the attorney-client relationship between the outside attorney and the client and has agreed to be responsible for the representation. Considerations regarding when it is appropriate for a provider to assume such responsibility are discussed in the commentary to Standard 3.7 on Integrating the Resources of the Legal Profession and Involvement of Members of the Bar.

Attachment E: Proposed Changes to Rules of the State Bar, Rules 3.690 and 3.692 (Changes in Red Font)

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 the actual time of receipt when staff or the Commission delivers a document physically by courier or otherwise. **Staff or the Commission may deliver a document electronically with the recipient's consent. When delivered electronically, receipt of a document is deemed to be at the time indicated on the sender's electronic time stamp.**

Rule 3.690 adopted effective March 6, 2009.

Rule 3.691 Denial or termination of funding

[Omitted, no change]

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.¹¹ **The complaint may be submitted by US Mail or by electronic mail to the address posted on the State Bar's website for receipt of such complaints.**
- (B) Staff must provide a copy of a formal written complaint to the grant recipient whom it concerns **within ten days** and attempt to resolve the complaint. **If either complainant or grant recipient objects to staff's proposed resolution, the complaint is not resolved within ninety days after staff receives the complaint, staff must provide the Commission complainant, grant recipient, and an advisory body comprised of two impartial members of the Commission, with a written report of its efforts to resolve the complaint and recommendation of what action, if any, is appropriate. Staff's written report must be submitted within ninety days of staff's receipt of the complaint. The co-chairs of the Commission will designate the members of the advisory body to handle the complaint.**
- (C) Within thirty days of receipt of the staff report, the complainant and grant recipient may **each** provide the **Commission advisory body** with a written response **that may include**

¹¹ Including the grant recipient's obligations under Business and Professions Code sections 6210-6228, these rules, and the recipient's grant agreements

- ~~additional information and may request review by the Commission.~~ Upon a complainant's request, staff may assist in preparing a written response based on complainant's oral statements to staff.
- (D) ~~Within a reasonable time, the Commission or a committee of its members~~ The advisory body appointed by the co-chairs of the Commission must consider the staff report and any response. ~~The Commission or committee must~~ The advisory body may then recommend dismissal of the complaint based on the information provided or schedule an informal conference to determine whether the complaint should be dismissed or whether action should be taken. The recommendation to dismiss the complaint should issue, or the informal conference should take place, within 120 days of submission of the staff report. The complainant and grant recipient ~~are entitled to~~ shall be given written notice of a ~~dismissal~~ recommendation to dismiss, or the date, time, and place of the informal 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~~ advisory body must issue a written recommendation that the Commission should: (1) ~~dismissing~~ the complaint; (2) ~~requiring~~ corrective action; or (3) further consider the complaint under the provisions of Rule 3.691. The advisory body may also offer recommendations for general improvements to the complaint process as part of its report. The complainant and recipient ~~are entitled to~~ shall be given written notice of the recommendation within sixty days of the informal conference.
- (F) If both the grant recipient and complainant notify State Bar staff that they accept the advisory body's recommendation, then no Commission action is required. Otherwise, absent good cause, the matter must be reviewed and decided by the Commission at its next scheduled meeting that occurs more than ten days after the issuance of the advisory body's recommendation.
- ~~(F)~~G) If the Commission ~~or committee~~ decides to dismiss the complaint, the decision is final.
- (H) If the Commission determines that corrective action is appropriate, the decision is final.
- (I) If the Commission considers the complaint under Rule 3.691, the provisions of that rule control.
- ~~(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.

Attachment F: Proposed Changes to Rules of the State Bar, Rules 3.690 and 3.692 (Clean Version)

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 the actual time of receipt when staff or the Commission delivers a document physically by courier or otherwise. Staff or the Commission may deliver a document electronically with the recipient's consent. When delivered electronically, receipt of a document is deemed to be at the time indicated on the sender's electronic time stamp.

Rule 3.690 adopted effective March 6, 2009, amended effective XX.

Rule 3.691 Denial or termination of funding

[Omitted, no change]

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.¹² The complaint may be submitted by US Mail or by electronic mail to the address posted on the State Bar's website for receipt of such complaints.
- (B) Staff must provide a copy of a formal written complaint to the grant recipient whom it concerns within ten days and attempt to resolve the complaint. If either complainant or grant recipient objects to staff's proposed resolution, staff must provide the complainant, grant recipient, and an advisory body comprised of two impartial members of the Commission, with a written report of its efforts to resolve the complaint and recommendation of what action, if any, is appropriate. Staff's written report must be submitted within ninety days of staff's receipt of the complaint. The co-chairs of the Commission will designate the members of the advisory body to handle the complaint.
- (C) Within thirty days of receipt of the staff report, the complainant and grant recipient may each provide the advisory body with a written response. Upon a complainant's request,

¹² Including the grant recipient's obligations under Business and Professions Code sections 6210-6228, these rules, and the recipient's grant agreements.

staff may assist in preparing a written response based on complainants' oral statements to staff.

- (D) The advisory body appointed by the co-chairs of the Commission must consider the staff report and any response. The advisory body may then recommend dismissal of the complaint based on the information provided or schedule an informal conference to determine whether the complaint should be dismissed or whether action should be taken. The recommendation to dismiss the complaint should issue, or the informal conference should take place, within 120 days of submission of the staff report. The complainant and grant recipient shall be given written notice of a recommendation to dismiss, or the date, time, and place of the informal 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 advisory body must issue a written recommendation that the Commission should: (1) dismiss the complaint; (2) require corrective action; or (3) further consider the complaint under the provisions of Rule 3.691. The advisory body may also offer recommendations for general improvements to the complaint process as part of its report. The complainant and recipient shall be given written notice of the recommendation within sixty days of the informal conference.
- (F) If both the grant recipient and complainant notify State Bar staff that they accept the advisory body's recommendation, then no Commission action is required. Otherwise, absent good cause, the matter must be reviewed and decided by the Commission at its next scheduled meeting that occurs more than ten days after the issuance of the advisory body's recommendation.
- (G) If the Commission decides to dismiss the complaint, the decision is final.
- (H) If the Commission determines that corrective action is appropriate, the decision is final.
- (I) If the Commission considers the complaint under Rule 3.691, the provisions of that rule control.

Rule 3.692 adopted effective March 6, 2009, amended effective XX.

Legal Aid Fights for Justice. We Fight for Them.



May 10, 2022

Legal Services Trust Fund Commission Rules Committee
The State Bar of California, San Francisco Office
180 Howard Street
San Francisco, CA 94105

Re: Addressing Complaints from the Public Against State Bar-Funded Grant Recipients

Dear Legal Services Trust Fund Commission Rules Committee:

We are writing on behalf of the Legal Aid Association of California regarding the Legal Services Trust Fund Commission's (LSTFC) policies pertaining to addressing complaints from the public against State Bar-funded grant recipients. Since receiving the memo on April 26, 2022 regarding the complaint process, we have engaged our member organizations in dialogue to understand their perceptions of complaints against their attorneys and organizations as well as any prospective changes to the complaint process.

For the benefit of new members of this committee, **LAAC is a statewide membership association of over 100 public interest law nonprofits that provide free civil legal services to low-income people and communities throughout California. We were founded to serve, coordinate, and advocate for the IOLTA community.**

While we understand there to be few complaints against organizations, we recognize the current system has challenges, that the proposed changes are largely centered around ensuring that State Bar staff are able to "resolve" a complaint within the timeline provided, and that the goal is to increase clarity around the process and the efficient resolution of issues. **Overall, we largely support the ideas as proposed regarding the amendments to the rules to clarify staff timelines, confirm when a complaint is resolved, and allow an advisory body of the LSTFC to perform the initial review of most complaints elevated by staff with a recommendation to the LSTFC as to how to resolve.** Below, we will detail the feedback we received from legal aid organizations, which primarily focuses on key aspects regarding the lodging of complaints via an online system.

Our members were supportive of an advisory body of two commissioners to help resolve "unresolved" complaints before the deadline. There were some concerns that this not slow down the process further, as some organization may need to report to funders when there is an "active complaint" against them, and holding a complaint open for too

long would likely mean that it must be reported to funders, even if, as in most cases, the complaint will be resolved.

Of the recommendations described under “Conclusion,” the central aspect of the system that LAAC and members are concerned about is the online complaint system.¹

Broadly, we are concerned about the prospect of creating an online portal—which may show up in Google searches—that allows anonymous complaints, including from opposing parties who may illegitimately allege misconduct just because they do not like the work of the organization. Anonymous reporting, without requiring the person to disclose their name and contact information to State Bar staff, could be unhelpful in finding a remedy to a situation in which a client may have faced discrimination or in which they are alleging the organization violated certain State Bar requirements. For example, the Legal Services Corporation has an online portal for complaints, but they do not take anonymous complaints through the portal.²

There is virtually unanimous feedback that the community opposes anonymous complaints. If the premise of anonymous complaints is to encourage engagement with the complaint process, the trade-off between receiving more complaints and the likelihood of illegitimacy weighs heavily on the side of disallowing them. Further, it inhibits organizations from being able to investigate the particular claim without knowing the case or circumstances. This, in turn, prevents them from being able to defend themselves from such anonymous complaints, at least initially, and from taking corrective action within their organization. It makes it more difficult for the organization to engage in conversation, conduct interviews, corroborate facts, collect additional data, and ultimately review applicable policies and change part of the organization’s culture. It would appear that sorting through more complaints like these would also add significant work for the Commission staff.

Members described issues with illegitimate and threatening “complaints,” including expressing concern regarding discriminatory or otherwise biased complaints. If the complaints are public and searchable, they feel they could be targeted by groups or individuals who disagree with their work. For instance, those who provide domestic violence services face abusers who may blame the service provider regarding a restraining order and complain to the Bar via an anonymous system, along with leaving bad reviews on Google or other websites. This is a specific example we heard from one organization, though several organizations referenced the risk. Similarly, others described opposing parties, such as in unlawful detainer cases, lodging frivolous complaints, including to the Better Business Bureau and Yelp. One organization told us they have received hate voicemails from unknown callers threatening to get their funding taken away because of the clients they serve. Another organization described threats to have them defunded because they serve undocumented clients.

¹ Memo, Pg. 8: “State Bar staff consider developing a reporting page or site to facilitate lodging online complaints. This could also allow filing of anonymous complaints.”

² See, e.g., <https://www.lsc.gov/submit-complaint>.

With all of these stories, we see that they are worried that giving the public a venue to allege or report complaints anonymously could facilitate or enable these kinds of illegitimate “complaints,” ultimately giving the Bar more work to do. Altogether, we believe the Bar should, and will, put into place procedural safeguards to ensure that the Bar can contact the complainant, receive all of the facts to engage in a thorough investigation, and give the legal services organization an opportunity to respond. This is impossible, or at least much harder, when the complaint is anonymous. **We prefer that the State Bar follow the LSC practice of not allowing anonymous complaints against programs.**

Otherwise, organizations expressed the need for clear delineations between attorney complaints and discipline and regulatory complaints about legal aid organizations themselves. It would be helpful to clarify the link between representation by the attorney and “deficiencies in the grantee’s governance or administration” that would bring the matter back within the purview of the LSTFC.³

There was also a comment, which we passed on to staff for clarification, that Bar staff, in communicating with complainants, be especially clear about the danger of waiving attorney client privilege in making a complaint and only sharing enough details to explain the complaint, not details of conversations which are privileged.

In sum, while our community is concerned about the possibility of anonymous complaints, we believe the memo includes ideas that could help resolve a complaint before it is heard in a full, open public meeting of the LSTFC, including the guidance on what is needed to resolve the complaint and appointing a two-person team of commissioners to review “unresolved” complaints.

Thank you for giving us the opportunity to review this memo and please contact us with any questions.

Sincerely,

Salena Copeland, *Executive Director*, **Legal Aid Association of California**

Zach Newman, *Senior Attorney*, **Legal Aid Association of California**

³ Memo Pg. 3.