



The State Bar of California

DATE: August 4, 2022

TO: Members, LSTFC Rules Committee

FROM: Corey Friedman, Member, LSTFC Rules Committee
Richard Reinis, Member, LSTFC Rules Committee
Judge Brad Seligman, Member, LSTFC Rules Committee

SUBJECT: Codification of Grant Administration Practices: Primary Purpose Requirements for Qualified Legal Services Projects

EXECUTIVE SUMMARY

The Legal Services Trust Fund Commission Rules Committee (Rules Committee) is working to gather, codify and revise, as necessary and appropriate, all of the decision points and considerations related to the grants administration process. The purpose of the codification process is to ensure transparency, ease of administration, and clarity for grantee applicants, the Legal Services Trust Fund Commission (Commission), and State Bar staff.

This memo presents the working group's recommendations on the following issues regarding the primary purpose requirement for Qualified Legal Services Projects (QLSPs):

- Whether the Commission should codify current office practice of using a QLSP's expenditures from its prior fiscal year to determine primary purpose;
- Whether the 75 percent of qualified expenditures presumption for satisfying primary purpose requirement under State Bar 3.671 should be changed; and
- Whether the Commission should retain discretion to find QLSPs eligible by "any other means" under State Bar Rule 3.671(C).

These issues were previewed at the Rules Committee meeting on March 6, 2020, and the working group met to develop preliminary recommendations. On September 23, 2020, the working group shared the preliminary recommendations with the Legal Aid Association of California (LAAC) for purposes of gathering feedback from the legal aid community. LAAC convened with QLSPs and Support Centers and shared a summary of the feedback with the working group on October 4, 2020 (Attachment C).

While the legal aid community was in support of all recommendations, the working group did not recommend voting on its recommendations until the Rules Committee discusses the topic

of civil legal services, which is now planned for July 29, 2022. Primary purpose regarding Support Centers and Law School Legal Clinics will be discussed separately.

This memo presents working group's final recommendations and provides relevant grant administration updates for the Rules Committee's consideration at its August 4, 2022, meeting.

BACKGROUND

CODIFICATION PROCESS

In 2019, at the recommendation of the Board of Trustees, State Bar staff (staff) and the Commission agreed to engage in a multi-phase process of revising and/or codifying all decision points employed in the grant-making process for IOLTA and Equal Access Fund (EAF) grants. The intent was to provide more transparency about the process and to ensure consistency in administering the grants.

The Commission established a Rules Committee to lead this effort. Given the breadth of this work and the multiple governing authorities, it is anticipated that it would take at least 18 months to complete review of all topics; the process was delayed due to the COVID-19 pandemic. As the Rules Committee progresses through its work plan, there are multiple opportunities for input, including an explicit request for feedback from the legal aid community, which is the group of organizations most likely to be impacted by any proposed changes. This feedback is shared with the Rules Committee to determine if any modifications to the proposed recommendations are appropriate before making a final recommendation to the Commission, and in turn, the Board of Trustees.

GOVERNING AUTHORITIES

Grantee applicants must comply with criteria set forth in Business & Professions Code sections 6210-6228, State Bar Rules and Appendices, Eligibility Guidelines for Legal Services Projects and Support Centers, General Grant Provisions, and Standards for Financial Management Systems and Audits. Applicants that qualify for IOLTA and EAF funds may also apply for other funding opportunities available through the State Bar, such as Homelessness Prevention grants and EAF Partnership grants.

Pursuant to Business & Professions Code section 6213(a)(1), all QLSPs must be "[a] nonprofit project incorporated and operated exclusively in California that provides as its primary purpose and function legal services without charge to indigent persons and has quality control procedures approved by the State Bar of California." "Primary purpose" is not statutorily defined. The State Bar adopted a quantitative method for establishing primary purpose which is reflected in State Bar Rule 3.671(A): An organization is presumed to meet primary purpose if 75 percent 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 percent or more of its expenditures for the most

recent reporting year were incurred for such services. State Bar Rule 3.671(C) also provides discretionary authority to find organizations eligible that do not pass this quantitative test. The quantitative test is based on the calculation of a QLSP's qualified expenditures, or expenditures used to provide free civil legal services to indigent persons. As part of the application process, applicants are required to submit an audit or financial review to verify such expenditures. While the audit or financial review provides an objective basis for verifying expenditures, the classification of particular expenditures as qualified expenditures can be subjective. As part of determining what activities are considered qualifying, QLSPs necessarily must determine appropriate deduction amounts for non-qualifying activities.

Depending on how strictly a QLSP interprets the rules, and its mechanisms for identifying such deductions, this impacts the resulting primary purpose percentage. One category where there may be varying interpretations is "civil legal services¹." To illustrate with a hypothetical, consider QLSPs "A" and "B," which both report total expenditures of \$500,000 and employ several social workers. QLSP "A" interprets its social workers' activities as qualifying since the activities are tied to its clients' legal outcomes and does not make any deductions on its application. QLSP "B" interprets the definition differently and deducts \$125,000 for its social workers' expenses as non-qualifying services. Assuming that no other deductions are made, QLSP "A" would have a primary purpose percentage of 100 percent and QLSP "B" would have a primary purpose percentage of 75 percent.

Primary purpose has been identified for the codification process because governing authorities do not reflect current office practice. In determining whether or not the current practices should be codified, the working group identified two recommendation options. Feedback from the legal aid community was first garnered in September 2020. The legal aid community was in support of the working group's preliminary recommendations to delete reference to the organization's budget for the upcoming grant year, lower the presumption threshold to somewhere in the range of 51-60 percent, and to update governing authorities to maintain Commission discretion and to include further guidance regarding the "any other means" test. However, the legal aid community raised concerns that defining primary purpose overlaps with both the definition of civil legal services and ongoing discussions regarding utilizing paraprofessionals to increase access to justice, as decisions on those issues could impact qualified expenditures and the resulting primary purpose percentage.

Following the October 16, 2020, Rules Committee meeting, there were three significant updates impacting the State Bar's grants administration process:

Update 1: Expanded Income Eligibility for Legal Services Projects

SB 498 changed the client income eligibility threshold requirement under Business and Professions Code section 6213(d) from 125 percent of the federal poverty level to 200 percent. It also added a provision indicating that veteran disability compensation paid from the United States Veteran Administration to a client with a service-related disability should be deducted

¹ Civil Legal Services has been identified as a separate codification issue.

from the client's income prior to determining whether the client meets the income eligibility threshold. These provisions went into effect January 1, 2022, and grantees are now using the higher income threshold.

Update 2: IOLTA Statute Updated to Include Expungement Work

SB 211 addressed the treatment of expungements, infractions, and similar work under the IOLTA statute. For purposes of the IOLTA statute, the definition of "civil legal services" under Business and Professions Code section 6213(l) now includes "expungements, record sealing or clearance proceedings not requiring a finding of factual innocence, and infractions." A corresponding change was made to Business and Professions Code section 6223, which explicitly excludes "expungements, record sealing or clearance proceedings not requiring a finding of factual innocence, [and] proceedings concerning infractions" from the definition of "criminal proceeding."

Previously, many civil legal aid providers assisted with expungements and infractions, but those matters were considered criminal proceedings. Beginning with grant funds distributed in 2022, IOLTA/EAF funds may be used to provide the services described above to indigent persons.

Update 3: Proposed Updates to Definition of "Civil Legal Services"

The Rules Committee is slated to discuss the codification topic of civil legal services on July 29, 2022. Under this topic, the designated working group is considering the issues of how to define "civil" and "legal services" in the rules. While specific recommendations will be discussed at the meeting, the designated working group is in favor of codifying current office practice of distinguishing between civil and criminal matters and expanding the codified definition of legal services to explicitly include the array of complementary services and professionals to meet legal client's civil legal needs. Notably, the community has expressed full support of the working group's proposed definition of civil legal services. Therefore, in finalizing its recommendations regarding primary purpose, the working group assumes that the definition under consideration by the civil legal services working group will be largely adopted by the Rules Committee.

During the primary purpose working group's initial discussion and presentation of preliminary recommendations on October 16, 2020, the working group emphasized the significant relationship between primary purpose and the definition of civil legal services. The more restrictive definition of civil legal services in effect at that time would result in many applicants having a lower primary purpose percentage than they would under the broader definition of civil legal services resulting from both the recent inclusion of expungement and related activities as civil legal services and the anticipated express inclusion of more complementary services.

Additional feedback from the legal aid community was gathered in July 2022 so that the feedback could be informed by the broader definition of civil legal services.

DISCUSSION

FISCAL YEAR FOR QUALIFIED EXPENDITURES CALCULATIONS

State Bar Rule 3.671 requires an organization's proposed budget for the coming grant year, as well as the organization's expenditures in its most recent fiscal year, to demonstrate a primary purpose of providing legal services to indigent Californians without charge.

Current office practice as reflected in the instructions for completion of the IOLTA/EAF application provides that the primary purpose is to be calculated by looking to the percentage of expenditures from the most recent reporting year (which is also the year of the QLSP's most recent audit) that are made for the provision of civil legal services to the indigent without charge. For example, a legal services project applying in 2020 for funding in 2021 would need to submit its audit from 2019 to confirm qualified expenditures. However, notwithstanding the current text of State Bar Rule 3.671, the budget for the year for which it an applicant is seeking funds is not examined for these purposes. Organizations are not asked to submit budget information for the upcoming grant year until after they are found eligible by the Commission. Although the working group is unable to ascertain precisely when this practice began, it presumes that it was after the rules were last amended in 2009. Staff believes the current practice to be the most practicable approach because the expenditure information is verified through an organization's submitted audit or financial review, and budgets for the coming grant year are not finalized at the time of application.

Option 1: Delete Reference to Budget for Upcoming Grant Year

Should office practice be codified, the working group anticipates minimal or no impact on organizations and the grants administration process, since it will not result in additional requirements. This would also make office process consistent with governing authorities.

Option 2: No Change to Existing Governing Authorities

If governing authorities remain the same, the current grants administration process would need to be updated to be brought into compliance. It is not known what the budget adoption cycle is for all the grantee applicants. Requiring QLSPs to submit their proposed grant year budget by the application deadline for IOLTA/EAF funding may impose significant administrative burdens on them if this is not consistent with the current budgeting process. Staff research revealed no background on why the process adopted required review of the budget in addition to the past expenditures. Staff can only guess that there was a concern that past practice (level of expenditures) did not reflect future plans (grant year budget) and did not want to risk providing funding to an organization that no longer had the provision of legal services to the indigent as its primary purpose.

75 PERCENT QUALIFIED EXPENDITURE THRESHOLD FOR PRIMARY PURPOSE PRESUMPTION

Under State Bar Rule 3.671(A) and Eligibility Guidelines 2.3.5, QLSPs are presumed to meet primary purpose if 75 percent or more of its budget and expenditures is designated to provide free legal services. The rule and guidelines allow programs to allocate a reasonable share of administrative and overhead expenses in determining the share of expenditures dedicated to the provision of legal services to the indigent. QLSPs must also identify and deduct for activities such as non-legal work, fee-generating cases, and criminal matters as non-qualifying. QLSPs that do not pass the 75 percent test are instructed to provide additional information in a narrative form to demonstrate that they satisfy primary purpose and function by other means.

Current office practice has been for staff to elevate all QLSPs with less than 75 percent of qualified expenditures to the Eligibility & Budget Review Committee². The chart below provides the number of QLSPs that were elevated to the Commission in recent years³:

Grant Year	Number of QLSPs	QE Percentage Range
2022	3	13 percent – 65 percent ⁴
2021	7	53 percent – 72 percent
2020	5	51 percent – 72 percent
2019	3	56 percent – 74 percent

The Commission has found QLSPs with qualified expenditures between 50 and 75 percent of total expenditures as satisfying primary purpose, typically for the following reasons:

- The QLSP experienced an anomalous yet significant event resulting in a one-time dip in qualified expenditures but has consistently reported at least 75 percent in prior grant years.
- The QLSP offers an integrated service delivery model and falls below the presumption threshold because it has deducted for work and/or staff positions that do not fall under the current definition of legal services.
- The QLSP has non-State Bar funding that requires that it provide civil legal services to non-indigent clients.

The Commission's practice has generally been to accept applicants' explanations and find applicants to have satisfied the primary purpose requirement if the applicant has qualified expenditures of more than 50 percent and a reasonable explanation. The Committee also adopted an informal guideline that QLSPs who report below 50 percent do not meet primary purpose. Applicants are advised of this and typically do not continue with the application process if their qualified expenditures are below 50 percent.

² The Eligibility & Budget Review Committee makes recommendations during the eligibility process and the Commission is responsible for all final eligibility determinations.

³ While the 2023 IOLTA/EAF application process is still ongoing, the tentative QE percentage range for QLSPs with less than 75 percent is 62-70 percent.

⁴ The applicant who had 13 percent of qualified expenditures was found ineligible for 2022 IOLTA/EAF funding.

In some cases, there is concern that a QLSP's qualified expenditure calculations are incorrect, or that a QLSP's percentages are inconclusive due to missing documentation. These issues are raised to the Committee and those grantees are usually recommended for an Eligibility Review Conference for further clarification.

Option 1: Lower the Presumption Percentage and Establish a Minimum Threshold Percentage

Lowering the presumption percentage and establishing a minimum threshold percentage would ease administrative burden and help streamline the grants administration process, since the Committee has rarely found that organizations with qualified expenditures above 50 percent do not satisfy the primary purpose test. QLSPs in the 50 to 74 percent range that previously had to submit a narrative for Committee each year, only to be found eligible each year, would no longer need to submit a narrative under this change. This change would also allow more QLSPs to offer integrated or holistic services that are not legal services but are still beneficial to indigent clients without requiring the additional burden of providing narratives.

The working group also recognized the likelihood that there may not be widespread knowledge about the current Committee practice of approving QLSPs with qualified expenditures of less than 75 percent. Potential applicants who may not be aware of this threshold could be deterred if they do not meet the 75 percent presumption, as specified in the governing authorities. Codifying office practices would ensure transparency in the community and potentially encourage additional organizations to apply for grant funding.

In October 2020, the working group tentatively proposed a threshold somewhere in the range of 51 to 60 percent. One potential concern with the lower-end threshold is that it would allow funding of applicants that do not truly have a primary purpose of providing civil legal services to the indigent. A threshold of 50 percent or less was not considered, since the working group believed it would contradict the statutory requirement of demonstrating primary purpose.

In considering current office practice, historical QE percentage ranges, recent legislative updates and the anticipated expansion of the definition of civil legal services, the working group felt that the proposed range was still appropriate but proposes some modifications to how it is used for grants administration. First, the working group recommends lowering the 75 qualified expenditure percentage to 60 percent. Given the recent updates, the working group expects that applicants will report higher QE percentages and that by lowering to 60 percent, almost all current grantees would fulfill the primary purpose presumption. In addition, lowering the presumption percentage might create an opportunity for more legal service providers to qualify for IOLTA/EAF funding. For applicants or grantees who may not meet the new 60 percent test, the working group recommends establishing a minimum threshold of 50 percent to be considered for IOLTA/EAF eligibility. Since a threshold of 50 percent or less was not considered by either the working group or community, the working group wanted to formalize and specify a minimum threshold.

If the recommendation is approved, applicants with at least 60 percent would be presumed to meet primary purpose, and applicants with less than 50 percent would be considered ineligible

for IOLTA/EAF funding for the requested grant year. Applicants within the 50-59⁵ percent range would be elevated to the Commission under the “any other means” test described in the next section.

The working group also recommends maintaining Commission discretion to make the presumption rebuttable if any substantive issues are raised, such as an applicant’s 1) historic and/or subsequent expenditures and 2) accounting issues. For example, a QLSP initially reports a primary purpose of less than 60 percent, but during the application review process, it is discovered that the QLSP erroneously deducted too much for non-qualified expenditures. As a result, after making accounting adjustments, the QLPS reports 60 percent, thus meeting the presumption threshold.

Option 2: No Change to Existing Governing Authorities

Since only a few QLSPs fall below the 75 percent threshold, it could be argued that no change is needed. However, keeping the presumption threshold could discourage a QLSP from considering a holistic service delivery model, or services to a broader clientele due to the risk of lowering its overall qualified expenditures. It may also deter potential applicants from applying for IOLTA/EAF grants. As the IOLTA statute also seeks to improve the quality of free legal services, the current threshold could be an unintentional barrier to innovation and access to justice.

COMMISSION DISCRETION REGARDING “ANY OTHER MEANS” TEST

In tandem with State Bar Rule 3.671(A), Rule 3.671(C)⁶ and Eligibility Guideline 2.3.5 gives the Commission discretion to find organizations that do not meet the 75 percent test as eligible if they demonstrate by other means that their primary purpose is to provide legal services without charge to indigent persons. In the past, “other means” has included providing historical expenditure information and having a demonstrated track record in meeting primary purpose in prior grant years. The working group considered whether discretion would still be needed if the presumption percentage was lowered.

Option 1: Update Governing Authorities to Include Further Guidance

The working group maintained that discretion is important, as it both allows flexibility and provides a mechanism for the Commission to address unanticipated eligibility issues related to primary purpose. However, consistent with its recommendation above, the working group believes discretion would only apply to applicants who have established the minimum threshold of 50 percent.

Discretion would allow an applicant that does not meet the proposed new 60 percent threshold (but at least 50 percent) solely on its prior year’s expenditures to nonetheless demonstrate that

⁵ For administration purposes QLSPs with qualified expenditures of 59.9 percent would be elevated to the Commission.

⁶ State Bar Rule 3.671(C) also references Commission discretion regarding support centers.

it does have a primary purpose of providing free civil legal services to indigent persons. For example, if a QLSP falls below 60 percent due to a one-time event but has historic practices and stated plans to meet the primary purpose test in the coming grant year, discretion would allow the Commission to find that the QLSP has met primary purpose through other means.

The working group also agreed that the current governing authorities do not provide clear guidance as to the reasons the Commission may determine that an applicant has sufficiently passed the test through use of “any other means”. The working group also felt that it was important to include language that Commission determinations in one grant year do not bind the Commission for future grant years.

Option 2: No Longer Provide Commission Discretion for the “Any Other Means” Test

Presuming that all current QLSPs would meet primary purpose under the new threshold, applicants would no longer be required to submit a narrative, and Commission discretion would no longer be needed. However, considering that there may be unanticipated eligibility issues as described above, the working group did not consider entirely removing Commission discretion a feasible option.

WORKING GROUP RECOMMENDATIONS

The working group’s recommendations are as follows:

- Codify office practice by deleting reference to calculating primary purpose based on budget information for the coming grant year.
- Codify Commission practice by lowering the primary purpose threshold to 60 percent and establishing a minimum threshold of 50 percent.
- Maintain Commission discretion regarding the “Any Other Means” test and include language noting reasons why and when this test would be used.

RESPONSE FROM THE LEGAL AID COMMUNITY AND RELEVANT CONSIDERATIONS

In its most recent response regarding the working group’s initial recommendation to lower the primary purpose threshold to 55 percent (Attachment D), the community had concerns that dropping the threshold too low would inadvertently qualify organizations that do not focus their services on free legal aid. Instead, the community felt that a threshold of 60 percent would be more prudent, in consideration of statutory changes that qualify previously non-qualifying work and the anticipated expansion of the definition of civil legal services. The community did not provide any additional feedback regarding the working group’s other recommendations to delete reference to calculating primary purpose based on budget information for the coming grant year and maintaining Commission discretion regarding the “Any Other Means” test.

WORKING GROUP'S RESPONSE TO THE COMMUNITY'S FEEDBACK

The working group's initial recommendation was to lower primary purpose threshold to 55 percent. However, this recommendation did not reach consensus with all working group members, as there were concerns that 55 percent was too low. Some working group members felt that this would allow certain organizations to bypass a closer review by the Commission, and could potentially dilute grant funds, as more organizations and presumptively meet primary purpose. In reviewing the community's feedback, the working group agrees with the community recommendation to instead lower the threshold to 60 percent. Notably, the considerations raised by the community are congruent with the working group's own considerations.

FISCAL/PERSONNEL IMPACT

None.

RECOMMENDATIONS

Should the committee agree with the working group's proposal, passage of the following resolution is recommended:

RESOLVED, that Legal Services Trust Fund Commission Rules Committee recommends that the Commission adopt the proposed amendments to the Governing Authorities regarding the primary purpose requirement for Qualified Legal Services Projects, as set forth in Attachment A.

ATTACHMENT(S) LIST

- A.** Proposed Revision to State Bar Rule – Title 3, Division 5, Chapter 2 and Eligibility Guidelines for Qualified Legal Services Projects
- B.** IOLTA statute – Business and Professions Code section 6210-6228
- C.** October 4, 2020, LAAC Comments on Proposed Changes to the Primary Purpose Requirement for QLSPs
- D.** July 26, 2022, LAAC Comments on Proposed Changes to the Primary Purpose Requirement for QLSPs

ATTACHMENT A: PROPOSED AMENDED GOVERNING AUTHORITIES

TITLE 3. PROGRAMS AND SERVICES

DIVISION 5. PROVIDERS OF PROGRAMS AND SERVICES

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. 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~~ 60% or more of its budget for the fiscal year for which it is seeking funds is designated to provide free legal services to indigents, and 60% or more of its expenditures for the most recent reporting year were incurred for such services. The calculation of 60% of expenditures may include a reasonable share of administrative and overhead expenses.
- (B) A qualified support center¹ 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. 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.

¹ As indicated in the corresponding memo, primary purpose regarding ~~-~~support centers will be discussed separately during the codification process.

ATTACHMENT A: PROPOSED AMENDED GOVERNING AUTHORITIES

LEGAL SERVICES TRUST FUND PROGRAM ELIGIBILITY GUIDELINES LEGAL SERVICES PROJECTS ONLY

2.3. The application must demonstrate through objective information that the organization:

2.3.5. as the primary purpose and function of the corporation.

Commentary:

~~Your~~ An application must state the net percentage of the corporation's overall expenses that were incurred in the previous calendar year to provide civil legal services without charge to persons who are indigent. You are required to demonstrate the corporation's primary purpose, and not simply the primary purpose of a part of the corporation. (~~If your~~ For projects is operated by a law school, see the last section of this Commentary on Guideline 2.3.5.)

If ~~more than 75-60-percent of the corporation's expenditure budget for the fiscal year for which it is seeking an allocation is designated for the provision of civil legal services without charge to persons who are indigent, and if 75~~ percent or more of its expenditures for the most recent reporting year were incurred for ~~such the provision of civil~~ legal services without charge to persons who are indigent, the corporation will be presumed to meet the primary purpose and function test. In demonstrating ~~your~~ compliance with this ~~75-~~ percent test, ~~you cannot include~~ the value of donated services cannot be included. [Rule 3.671(A)]

An applicant not qualifying for the ~~75-60~~ —percent presumption may nevertheless apply for an allocation, demonstrating its purpose and function by other means. An applicant not qualifying for the presumption shall state separately each purpose and function of the corporation, and state what percentage of the expenditures in the most recent calendar year, ~~and what percentage of the budget in the upcoming year~~, are allocated to each of these separate purposes and functions. The application shall further state the basis for these allocations. [Rule 3.671(C)]

In addition to this submission of expenditure ~~and of budget~~ information, primary purpose and function can be additionally supported by historic expenditure information, by the organization's stated purpose in articles, bylaws or policy statements or case priority guidelines, ~~or~~ by the demonstrated track record of the applicant in providing legal services without charge to indigent persons, and by the budgeted or intended expenditures for the coming grant year. However, applicants who that qualify under this test may be asked to make specific changes showings before they can qualify for a second year under this test. Regardless of whether conditions are imposed or followed, approval under this test in a given year does not necessarily guarantee funding under this test in subsequent years.

An applicant that operated in previous years as a project within an organization providing substantial services other than legal services to indigent persons, or as an entity other than a corporation, but which has since become a separate California nonprofit corporation whose primary purpose and function is the provision of legal services without charge to indigent persons, may establish its status as a qualified legal services project and its proportionate

ATTACHMENT A: PROPOSED AMENDED GOVERNING AUTHORITIES

entitlement to funds based upon financial statements ~~which~~that strictly segregate that portion of the organization's expenditures in prior years which were devoted to civil legal services for indigents. Thus, if ~~you~~an applicant was ~~are~~ recently incorporated and previously operated as a part of an umbrella organization, ~~you~~it may utilize the expenditures of your predecessor organization so long as financial statements strictly segregate the expenditures for such legal services.

If ~~your~~a legal services program is operated by an accredited nonprofit law school, ~~you are~~it is required only to demonstrate the program's primary purpose, and not the corporation's primary purpose. ~~Your~~Such a program must be operated exclusively in California and the law school must be accredited by the State Bar of California. The program must have operated for at least two years at a cost of at least \$20,000 per year, as an identifiable law school unit with the primary purpose and function of providing civil legal services without charge to indigent persons. The program may meet the primary purpose test according to the 75 percent test described above or by demonstrating its purpose and function through other means described above. [B&P Code §6213(a)(2)]



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BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 3. PROFESSIONS AND VOCATIONS GENERALLY [5000 - 9998.11] (*Heading of Division 3 added by Stats. 1939, Ch. 30.*)

CHAPTER 4. Attorneys [6000 - 6243] (*Chapter 4 added by Stats. 1939, Ch. 34.*)

ARTICLE 14. Funds for the Provision of Legal Services to Indigent Persons [6210 - 6228] (*Article 14 added by Stats. 1981, Ch. 789, Sec. 1.*)

6210. The Legislature finds that, due to insufficient funding, existing programs providing free legal services in civil matters to indigent persons, especially underserved client groups, such as the elderly, the disabled, juveniles, and non-English-speaking persons, do not adequately meet the needs of these persons. It is the purpose of this article to expand the availability and improve the quality of existing free legal services in civil matters to indigent persons, and to initiate new programs that will provide services to them. The Legislature finds that the use of funds collected by the State Bar pursuant to this article for these purposes is in the public interest, is a proper use of the funds, and is consistent with essential public and governmental purposes in the judicial branch of government. The Legislature further finds that the expansion, improvement, and initiation of legal services to indigent persons will aid in the advancement of the science of jurisprudence and the improvement of the administration of justice.

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

6211. (a) An attorney or law firm that, in the course of the practice of law, receives or disburses trust funds shall establish and maintain an IOLTA account in which the attorney or law firm shall deposit or invest all client deposits or funds that are nominal in amount or are on deposit or invested for a short period of time. All such client funds

may be deposited or invested in a single unsegregated account. The interest and dividends earned on all those accounts shall be paid to the State Bar of California to be used for the purposes set forth in this article.

(b) Nothing in this article shall be construed to prohibit an attorney or law firm from establishing one or more interest bearing bank trust deposit accounts or dividend-paying trust investment accounts as may be permitted by the Supreme Court, with the interest or dividends earned on the accounts payable to clients for trust funds not deposited or invested in accordance with subdivision (a).

(c) With the approval of the Supreme Court, the State Bar may formulate and enforce rules of professional conduct pertaining to the use by attorneys or law firms of an IOLTA account for unsegregated client funds pursuant to this article.

(d) Nothing in this article shall be construed as affecting or impairing the disciplinary powers and authority of the Supreme Court or of the State Bar or as modifying the statutes and rules governing the conduct of members of the State Bar.

(Amended by Stats. 2007, Ch. 422, Sec. 2. Effective January 1, 2008.)

6212. An attorney who, or a law firm that, establishes an IOLTA account pursuant to subdivision (a) of Section 6211 shall comply with all of the following provisions:

(a) The IOLTA account shall be established and maintained with an eligible institution offering or making available an IOLTA account that meets the requirements of this article. The IOLTA account shall be established and maintained consistent with the attorney's or law firm's duties of professional responsibility. An eligible financial institution shall have no responsibility for selecting the deposit or investment product chosen for the IOLTA account.

(b) Except as provided in subdivision (f), the rate of interest or dividends payable on any IOLTA account shall not be less than the interest rate or dividends generally paid by the eligible institution to nonattorney customers on accounts of the same type meeting the same minimum balance and other eligibility requirements as the IOLTA account. In determining the interest rate or dividend payable on any IOLTA account, an eligible institution may consider, in addition to the balance in the IOLTA account, risk or other factors customarily considered by the eligible institution when setting the interest rate or dividends for its non-IOLTA accounts, provided that the factors do not discriminate between IOLTA customers and non-IOLTA customers and that these factors do not include the fact that the account is an IOLTA account. The eligible institution shall calculate interest and dividends in accordance with its standard practice for non-IOLTA customers. Nothing in this article shall preclude an eligible

institution from paying a higher interest rate or dividend on an IOLTA account or from electing to waive any fees and service charges on an IOLTA account.

(c) Reasonable fees may be deducted from the interest or dividends remitted on an IOLTA account only at the rates and in accordance with the customary practices of the eligible institution for non-IOLTA customers. No other fees or service charges may be deducted from the interest or dividends earned on an IOLTA account. Unless and until the State Bar enacts regulations exempting from compliance with subdivision (a) of Section 6211 those accounts for which maintenance fees exceed the interest or dividends paid, an eligible institution may deduct the fees and service charges in excess of the interest or dividends paid on an IOLTA account from the aggregate interest and dividends remitted to the State Bar. Fees and service charges other than reasonable fees shall be the sole responsibility of, and may only be charged to, the attorney or law firm maintaining the IOLTA account. Fees and charges shall not be assessed against or deducted from the principal of any IOLTA account. It is the intent of the Legislature that the State Bar develop policies so that eligible institutions do not incur uncompensated administrative costs in adapting their systems to comply with the provisions of Chapter 422 of the Statutes of 2007 or in making investment products available to IOLTA members.

(d) The attorney or law firm shall report IOLTA account compliance and all other IOLTA account information required by the State Bar in the manner specified by the State Bar.

(e) The eligible institution shall be directed to do all of the following:

(1) To remit interest or dividends on the IOLTA account, less reasonable fees, to the State Bar, at least quarterly.

(2) To transmit to the State Bar with each remittance a statement showing the name of the attorney or law firm for which the remittance is sent, for each account the rate of interest applied or dividend paid, the amount and type of fees deducted, if any, and the average balance for each account for each month of the period for which the report is made.

(3) To transmit to the attorney or law firm customer at the same time a report showing the amount paid to the State Bar for that period, the rate of interest or dividend applied, the amount of fees and service charges deducted, if any, and the average daily account balance for each month of the period for which the report is made.

(f) An eligible institution has no affirmative duty to offer or make investment products available to IOLTA customers. However, if an eligible institution offers or makes investment products available to non-IOLTA customers, in order to remain an IOLTA-eligible institution, it shall make those products available to IOLTA customers or pay an interest rate on the IOLTA deposit account that is comparable to the rate of return or the dividends generally paid on that investment product for similar customers meeting the same minimum balance and other requirements applicable to the investment product. If the eligible institution elects to pay that higher interest

rate, the eligible institution may subject the IOLTA deposit account to equivalent fees and charges assessable against the investment product.

(Amended by Stats. 2009, Ch. 129, Sec. 1. Effective January 1, 2010.)

6213. As used in this article:

(a) "Qualified legal services project" means either of the following:

(1) A nonprofit project incorporated and operated exclusively in California that provides as its primary purpose and function legal services without charge to indigent persons and that has quality control procedures approved by the State Bar of California.

(2) A program operated exclusively in California by a nonprofit law school accredited by the State Bar of California that meets the requirements of subparagraphs (A) and (B).

(A) The program shall have operated for at least two years at a cost of at least twenty thousand dollars (\$20,000) per year as an identifiable law school unit with a primary purpose and function of providing legal services without charge to indigent persons.

(B) The program shall have quality control procedures approved by the State Bar of California.

(b) "Qualified support center" means an incorporated nonprofit legal services center that has as its primary purpose and function the provision of legal training, legal technical assistance, or advocacy support without charge and which actually provides through an office in California a significant level of legal training, legal technical assistance, or advocacy support without charge to qualified legal services projects on a statewide basis in California.

(c) "Recipient" means a qualified legal services project or support center receiving financial assistance under this article.

(d) "Indigent person" means a person whose income is (1) 125 percent or less of the current poverty threshold established by the United States Office of Management and Budget, or (2) who is eligible for Supplemental Security Income or free services under the Older Americans Act or Developmentally Disabled Assistance Act. With regard to a project that provides free services of attorneys in private practice without compensation, "indigent person" also means a person whose income is 75 percent or less of the maximum levels of income for lower income households as defined in Section 50079.5 of the Health and Safety Code. For the purpose of this subdivision, the income of a person who is disabled shall be determined after deducting the costs of medical and other disability-related special expenses.

(e) "Fee generating case" means a case or matter that, if undertaken on behalf of an indigent person by an attorney in private practice, reasonably may be expected to result in payment of a fee for legal services from an award to a client, from public funds, or from the opposing party. A case shall not be considered fee generating if adequate representation is unavailable and any of the following circumstances exist:

(1) The recipient has determined that free referral is not possible because of any of the following reasons:

(A) The case has been rejected by the local lawyer referral service, or if there is no such service, by two attorneys in private practice who have experience in the subject matter of the case.

(B) Neither the referral service nor any attorney will consider the case without payment of a consultation fee.

(C) The case is of the type that attorneys in private practice in the area ordinarily do not accept, or do not accept without prepayment of a fee.

(D) Emergency circumstances compel immediate action before referral can be made, but the client is advised that, if appropriate and consistent with professional responsibility, referral will be attempted at a later time.

(2) Recovery of damages is not the principal object of the case and a request for damages is merely ancillary to an action for equitable or other nonpecuniary relief, or inclusion of a counterclaim requesting damages is necessary for effective defense or because of applicable rules governing joinder of counterclaims.

(3) A court has appointed a recipient or an employee of a recipient pursuant to a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction.

(4) The case involves the rights of a claimant under a publicly supported benefit program for which entitlement to benefit is based on need.

(f) "Legal Services Corporation" means the Legal Services Corporation established under the Legal Services Corporation Act of 1974 (P.L. 93-355; 42 U.S.C. Sec. 2996 et seq.).

(g) "Older Americans Act" means the Older Americans Act of 1965, as amended (P.L. 89-73; 42 U.S.C. Sec. 3001 et seq.).

(h) "Developmentally Disabled Assistance Act" means the Developmentally Disabled Assistance and Bill of Rights Act, as amended (P.L. 94-103; 42 U.S.C. Sec. 6001 et seq.).

(i) "Supplemental security income recipient" means an individual receiving or eligible to receive payments under Title XVI of the federal Social Security Act, or payments under Chapter 3 (commencing with Section 12000) of Part 3 of Division 9 of the Welfare and Institutions Code.

(j) "IOLTA account" means an account or investment product established and maintained pursuant to subdivision (a) of Section 6211 that is any of the following:

- (1) An interest-bearing checking account.
- (2) An investment sweep product that is a daily (overnight) financial institution repurchase agreement or an open-end money market fund.
- (3) An investment product authorized by California Supreme Court rule or order.

A daily financial institution repurchase agreement shall be fully collateralized by United States Government Securities or other comparably conservative debt securities, and may be established only with any eligible institution that is "well-capitalized" or "adequately capitalized" as those terms are defined by applicable federal statutes and regulations. An open-end money market fund shall be invested solely in United States Government Securities or repurchase agreements fully collateralized by United States Government Securities or other comparably conservative debt securities, shall hold itself out as a "money market fund" as that term is defined by federal statutes and regulations under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.), and, at the time of the investment, shall have total assets of at least two hundred fifty million dollars (\$250,000,000).

(k) "Eligible institution" means either of the following:

- (1) A bank, savings and loan, or other financial institution regulated by a federal or state agency that pays interest or dividends in the IOLTA account and carries deposit insurance from an agency of the federal government.
- (2) Any other type of financial institution authorized by the California Supreme Court.

(Amended by Stats. 2010, Ch. 328, Sec. 14. Effective January 1, 2011.)

6214. (a) Projects meeting the requirements of subdivision (a) of Section 6213 which are funded either in whole or part by the Legal Services Corporation or with Older American Act funds shall be presumed qualified legal services projects for the purpose of this article.

(b) Projects meeting the requirements of subdivision (a) of Section 6213 but not qualifying under the presumption specified in subdivision (a) shall qualify for funds under this article if they meet all of the following additional criteria:

- (1) They receive cash funds from other sources in the amount of at least twenty thousand dollars (\$20,000) per year to support free legal representation to indigent persons.
- (2) They have demonstrated community support for the operation of a viable ongoing program.

(3) They provide one or both of the following special services:

(A) The coordination of the recruitment of substantial numbers of attorneys in private practice to provide free legal representation to indigent persons or to qualified legal services projects in California.

(B) The provision of legal representation, training, or technical assistance on matters concerning special client groups, including the elderly, the disabled, juveniles, and non-English-speaking groups, or on matters of specialized substantive law important to the special client groups.

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

6214.5. A law school program that meets the definition of a "qualified legal services project" as defined in paragraph (2) of subdivision (a) of Section 6213, and that applied to the State Bar for funding under this article not later than February 17, 1984, shall be deemed eligible for all distributions of funds made under Section 6216.

(Added by Stats. 1984, Ch. 784, Sec. 2.)

6215. (a) Support centers satisfying the qualifications specified in subdivision (b) of Section 6213 which were operating an office and providing services in California on December 31, 1980, shall be presumed to be qualified support centers for the purposes of this article.

(b) Support centers not qualifying under the presumption specified in subdivision (a) may qualify as a support center by meeting both of the following additional criteria:

(1) Meeting quality control standards established by the State Bar.

(2) Being deemed to be of special need by a majority of the qualified legal services projects.

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

6216. The State Bar shall distribute all moneys received under the program established by this article for the provision of civil legal services to indigent persons. The funds first shall be distributed 18 months from the effective date of this article, or upon such a date, as shall be determined by the State Bar, that adequate funds are available to initiate the program. Thereafter, the funds shall be distributed on an annual basis. All distributions of funds shall be made in the following order and in the following manner:

(a) To pay the actual administrative costs of the program, including any costs incurred after the adoption of this article and a reasonable reserve therefor.

(b) Eighty-five percent of the funds remaining after payment of administrative costs allocated pursuant to this article shall be distributed to qualified legal services projects. Distribution shall be by a pro rata county-by-county formula based upon the number of persons whose income is 125 percent or less of the current poverty threshold per county. For the purposes of this section, the source of data identifying the number of persons per county shall be the latest available figures from the United States Department of Commerce, Bureau of the Census. Projects from more than one county may pool their funds to operate a joint, multicounty legal services project serving each of their respective counties.

(1) (A) In any county which is served by more than one qualified legal services project, the State Bar shall distribute funds for the county to those projects which apply on a pro rata basis, based upon the amount of their total budget expended in the prior year for legal services in that county as compared to the total expended in the prior year for legal services by all qualified legal services projects applying therefor in the county. In determining the amount of funds to be allocated to a qualified legal services project specified in paragraph (2) of subdivision (a) of Section 6213, the State Bar shall recognize only expenditures attributable to the representation of indigent persons as constituting the budget of the program.

(B) The State Bar shall reserve 10 percent of the funds allocated to the county for distribution to programs meeting the standards of subparagraph (A) of paragraph (3) and paragraphs (1) and (2) of subdivision (b) of Section 6214 and which perform the services described in subparagraph (A) of paragraph (3) of Section 6214 as their principal means of delivering legal services. The State Bar shall distribute the funds for that county to those programs which apply on a pro rata basis, based upon the amount of their total budget expended for free legal services in that county as compared to the total expended for free legal services by all programs meeting the standards of subparagraph (A) of paragraph (3) and paragraphs (1) and (2) of subdivision (b) of Section 6214 in that county. The State Bar shall distribute any funds for which no program has qualified pursuant hereto, in accordance with the provisions of subparagraph (A) of paragraph (1) of this subdivision.

(2) In any county in which there is no qualified legal services projects providing services, the State Bar shall reserve for the remainder of the fiscal year for distribution the pro rata share of funds as provided for by this article. Upon application of a qualified legal services project proposing to provide legal services to the indigent of the county, the State Bar shall distribute the funds to the project. Any funds not so distributed shall be added to the funds to be distributed the following year.

(c) Fifteen percent of the funds remaining after payment of administrative costs allocated for the purposes of this article shall be distributed equally by the State Bar to qualified support centers which apply for the funds. The funds provided to support centers shall be used only for the provision of legal services within California. Qualified support centers that receive funds to provide services to qualified legal services projects from sources other than this

article, shall submit and shall have approved by the State Bar a plan assuring that the services funded under this article are in addition to those already funded for qualified legal services projects by other sources.

(Amended by Stats. 1984, Ch. 784, Sec. 3.)

6217. With respect to the provision of legal assistance under this article, each recipient shall ensure all of the following:

- (a) The maintenance of quality service and professional standards.
- (b) The expenditure of funds received in accordance with the provisions of this article.
- (c) The preservation of the attorney-client privilege in any case, and the protection of the integrity of the adversary process from any impairment in furnishing legal assistance to indigent persons.
- (d) That no one shall interfere with any attorney funded in whole or in part by this article in carrying out his or her professional responsibility to his or her client as established by the rules of professional responsibility and this chapter.

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

6218. All legal services projects and support centers receiving funds pursuant to this article shall adopt financial eligibility guidelines for indigent persons.

(a) Qualified legal services programs shall ensure that funds appropriated pursuant to this article shall be used solely to defray the costs of providing legal services to indigent persons or for such other purposes as set forth in this article.

(b) Funds received pursuant to this article by support centers shall only be used to provide services to qualified legal services projects as defined in subdivision (a) of Section 6213 which are used pursuant to a plan as required by subdivision (c) of Section 6216, or as permitted by Section 6219.

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

6219. Qualified legal services projects and support centers may use funds provided under this article to provide work opportunities with pay, and where feasible, scholarships for disadvantaged law students to help defray their law school expenses.

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

6220. Attorneys in private practice who are providing legal services without charge to indigent persons shall not be disqualified from receiving the services of the qualified support centers.

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

6221. Qualified legal services projects shall make significant efforts to utilize 20 percent of the funds allocated under this article for increasing the availability of services to the elderly, the disabled, juveniles, or other indigent persons who are members of disadvantaged and underserved groups within their service area.

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

6222. A recipient of funds allocated pursuant to this article annually shall submit a financial statement to the State Bar, including an audit of the funds by a certified public accountant or a fiscal review approved by the State Bar, a report demonstrating the programs on which they were expended, a report on the recipient's compliance with the requirements of Section 6217, and progress in meeting the service expansion requirements of Section 6221.

The Board of Trustees of the State Bar shall include a report of receipts of funds under this article, expenditures for administrative costs, and disbursements of the funds, on a county-by-county basis, in the annual report of State Bar receipts and expenditures required pursuant to Section 6145.

(Amended by Stats. 2011, Ch. 417, Sec. 60. Effective January 1, 2012.)

6223. No funds allocated by the State Bar pursuant to this article shall be used for any of the following purposes:

- (a) The provision of legal assistance with respect to any fee generating case, except in accordance with guidelines which shall be promulgated by the State Bar.
- (b) The provision of legal assistance with respect to any criminal proceeding.
- (c) The provision of legal assistance, except to indigent persons or except to provide support services to qualified legal services projects as defined by this article.

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

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.)

6225. The Board of Trustees of the State Bar shall adopt the regulations and procedures necessary to implement this article and to ensure that the funds allocated herein are utilized to provide civil legal services to indigent persons, especially underserved client groups such as but not limited to the elderly, the disabled, juveniles, and non-English-speaking persons.

In adopting the regulations the Board of Trustees shall comply with the following procedures:

(a) The board shall publish a preliminary draft of the regulations and procedures, which shall be distributed, together with notice of the hearings required by subdivision (b), to commercial banking institutions, to members of the State Bar, and to potential recipients of funds.

(b) The board shall hold at least two public hearings, one in southern California and one in northern California where affected and interested parties shall be afforded an opportunity to present oral and written testimony regarding the proposed regulations and procedures.

(Amended by Stats. 2011, Ch. 417, Sec. 61. Effective January 1, 2012.)

6226. The program authorized by this article shall become operative only upon the adoption of a resolution by the Board of Trustees of the State Bar stating that regulations have been adopted pursuant to Section 6225 which conform the program to all applicable tax and banking statutes, regulations, and rulings.

(Amended by Stats. 2011, Ch. 417, Sec. 62. Effective January 1, 2012.)

6227. Nothing in this article shall create an obligation or pledge of the credit of the State of California or of the State Bar of California. Claims arising by reason of acts done pursuant to this article shall be limited to the moneys generated hereunder.

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

6228. If any provision of this article or the application thereof to any group or circumstances is held invalid, such invalidity shall not affect the other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

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

DATE: October 4, 2020

TO: Amin Al-Sarraf, Chair, LSTFC Rules Committee

CC: Corey Friedman, Member, LSTFC Rules Committee
 Richard Reinis, Member, LSTFC Rules Committee
 Judge Brad Seligman, Member, LSTFC Rules Committee

FROM: Salena Copeland, Executive Director, Legal Aid Association of California

SUBJECT: LAAC Comments on Proposed Changes to the Primary Purpose Requirements for QLSPs

Thank you so much for the opportunity to comment on these proposals prior to the Rules Committee discussion. LAAC convened legal services leaders from both QLSPs and Support Centers on Wednesday, September 30 and Friday, October 2 in an effort to hear concerns from the community and understand if there was consensus or disagreement about the proposed changes.

The community consensus is in support of the three proposals to:

- Codify office practice by deleting reference to calculating primary purpose based on budget information for the coming grant year.
- Codify Commission practice by lowering the primary purpose threshold. Although the working group could not determine the specific percentage, they tentatively propose lowering presumption somewhere in the range of 51-60 percent. The working group is seeking additional community feedback regarding this recommendation.
- Maintain Commission discretion regarding the “Any Other Means” test, and include language noting reasons why and when this test would be used.

For the second proposed change, most appreciated that adding language clarifying that percentages under 75% could still meet the primary purpose threshold would add greater transparency for potential new IOLTA grantees. They agreed that some amount less than 75% should still qualify, but many organizations felt that 52% would be too low. They did not think that a published amount that low would be appropriate, but thought that the Commission could still have flexibility, as you do now, in the 52-60% range, especially considering the activities that brought the qualified expenditure expenses down. There was significant discussion about organizations’ HICAP programs and how similar work may or may not count, depending on the organization’s ability to add attorneys to the HICAP team.

For the third proposed change, organizations appreciated the plan to add more language about when the test would be used.

Overall, these proposals did not seem controversial, but what organizations did note was that this work seemed to overlap with the Bar's discussion about paraprofessionals potentially practicing law. Because the primary purpose test currently requires that the civil legal services be performed by an attorney or under the supervision of an attorney, they noted that this definition may be in conflict with the Bar's expressed efforts to add more legal helpers, not under the supervision of an attorney. There also was some discussion about how organizations currently incorporate social workers and other similar advocates (like parent advocates) into their delivery of services and how that would impact qualified expenditures (and future IOLTA grant size) dependent upon how the organization structured that help. It may help to put in writing for future rules revision committee discussion how an organization is able or unable to count this work as qualifying work.

Thank you so much, and I look forward to the discussion.

Legal Aid Fights for Justice. We Fight for Them.



July 26, 2022

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

Re: Codifying Grant Administration Practices: Primary Purpose

Dear Legal Services Trust Fund Commission (LSTFC) Rules Committee:

We are writing on behalf of the Legal Aid Association of California regarding the LSTFC rules revision process pertaining to amending rules related to primary purpose. We thank the Bar for engaging LAAC in the ongoing revision and codification 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.**

In regard to our process, LAAC utilized our Director of Litigation and Advocacy ("DOLA") email list to gather comments, which includes Executive Directors, Directors of Litigation, Directors of Advocacy, and managing attorneys. Additionally, though the majority represent IOLTA-funded organizations, a small number come from non-IOLTA-funded nonprofits. We also emailed all EDs of 2022 IOLTA-funded nonprofits. As usual, we provided our initial take on the proposed changes. We did not receive any comments in response to our email, which could be in part thanks to the advocacy and coordination efforts conducted last year that resulted in our comment at that point. Also, we generally understand that, when we receive no comments back, this tends to mean our community finds LAAC's position acceptable as stated. This position is articulated below.

In our past letter, we recommended lowering the presumptive threshold from 75 percent to between 52 to 60 percent. **As of now, with the increased activities that qualify with recent statutory changes, we think 60 percent would be most prudent.**

First, some members of our community had concerns about dropping the threshold too low and having nonprofits qualify for IOLTA services that did not really focus their services on free legal aid. Even under existing rules, the Commission has always approved IOLTA funding for organizations that were 51 percent or more in their "primary purpose" of providing free legal services to indigent Californians. In effect, the new lower presumptive

threshold would simply mean that Bar staff can approve organizations above the threshold, while they can still “elevate” those organizations with qualified expenditures just over 50 percent to the full LSTFC. Consequently, organizations between 50 percent and 59.9 percent can still make their case via a short narrative about their primary purpose and the Bar can approve them if deemed valid. For this reason, 60 percent would work well.

Second, with many related changes to the rules, more organizations are able to count previously non-qualifying expenditures. By counting (a) clients between 125 and 200 percent of the FPL (which they previously had to deduct) and (b) veterans who would have been “over-income” if organizations had to count their veteran’s disability benefits, nonprofits can include more qualifying expenditures. Further, as is being discussed by the Rules Revision Committee, organizations may be able to count more “complementary services” (e.g., social workers) and other services provided by advocates working with a lawyer, expenses that were sometimes deducted in the past erroneously. Again, these developments contribute to our understanding that 60 percent would be most prudent.

In sum, we currently recommend changing the threshold from 75 percent to 60 percent, as opposed to something lower. 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**