



The State Bar *of California*

Legal Services Trust Fund Commission Rules Committee Meeting Teleconference

Open Session Minutes
August 4, 2022
12:00 p.m.–3:00 p.m. PT

Time Meeting Commenced: The Rules Committee meeting commenced in open session at 12:02 p.m.

Time Meeting Adjourned: 3:04 p.m.

Chair: Al-Sarraf, Amin

Committee Coordinator: Nguyen, Doan

Members Present: Al-Sarraf, Amin
Bennet, Pamela
Blakemore, Catherine
Boschelli, William
Meeker, Jim

Members Absent: Bayles-Fightmaster, Louise
Connolly, Erica

Liaisons: Copeland, Salena (Legal Aid Association of California)
Hough, Bonnie (Judicial Council)
Snider, Melanie (Judicial Council)

Public Members: Reinis, Richard

Staff: Bundang, Christal
Carroll, Erica
Chung, Corine
Dewar, Brady
Friedman, Meryl

OPEN SESSION

1. Roll Call

Roll Call was taken, and quorum was established.

2. Call for Public Comment

Chair Al-Sarraf invited members of the public to comment on any items on the agenda. No public comment was made.

3. Discussion and Action Items

a. Approval of Recommendations Related to Defining Indigency

Lead Program Analyst Carroll presented about Business and Professions Code section 6213(d). That section applies to qualified legal services projects (QLSPs) that receive the pro bono allocation. She described the following language, in blue, for the pro bono income threshold:

(C) All legal services projects may use the definition of indigent persons as described in 3.XX(B) to establish eligibility as a qualified legal services project and to calculate their expenditures on free civil legal services for indigent persons. Only qualified legal services projects that the Legal Services Trust Fund Commission has deemed eligible for a pro bono allocation under Business and Professions Code section 6216(b)(1)(B) may use the definition of “indigent person” available “to a project that provides free services of attorneys in private practice without compensation” under Business and Professions Code section 6213(d);

Staff also presented about demonstrating indigency. Grantees that perform impact litigation and advocacy work (ILAW) must show that they are working on behalf of a group/class of persons that is indigent. Each year, programs must calculate and explain the percent of ILAW clients and persons who would benefit from ILAW services that are indigent. This calculation can be onerous for grantees to perform and justify.

Staff suggested ways to decrease the burden on grantees. One is to report up to just ten activities per year and only for those that took 50 or more hours. Another is to report on up to 25 activities every three years. The report could also require a less onerous way of demonstrating the benefit to indigent persons.

The committee expressed concern that a three-year cycle would miss nonqualifying work. It also asked whether organizations would have to return funds if they performed non-qualifying work over three years. The committee would prefer to reduce the burden while keeping annual reporting.

Staff then described recommendations for these topics from the working group’s July 29, 2022, memo to the committee.¹ Following staff’s presentation, the committee voted on the changes as discussed.

RESOLVED, that the Legal Services Trust Fund Commission Rules Committee approve the proposed language to define and demonstrate indigency as discussed and recorded at this meeting.

(Boschelli moved, Blakemore seconded). Motion passed.

¹ The working group’s memo is available at <https://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000029481.pdf>.

Ayes – (4) Al-Sarraf, Blakemore, Boschelli, Meeker
Noes – (0)
Abstain – (1) Bennet
Absent – (2) Bayles-Fightmaster, Connolly

b. Approval of Recommendations Related to the Primary Purpose Requirement

Lead Program Analyst Bundang provided an overview of the Commission working group’s recommendation for the primary purpose requirement in the IOLTA and EAF application. The working group included Corey Friedman, Richard Reinis, and Judge Brad Seligman. State Bar staff explained the primary purpose and function definitions and the three main codification issues identified.

The first issue was whether the Commission should codify the current practice of using QLSPs’ expenditures from the last fiscal year to determine primary purpose. The second was whether the 75 percent of qualified expenditures (QEs) presumption for satisfying primary purpose under State Bar Rule 3.671 should change. The last issue was whether the Commission should retain discretion to find QLSPs eligible by “any other means” under State Bar Rule 3.671(C).

To address these issues, the working group recommended removing reference to budget information as a factor in determining primary purpose, lowering the primary purpose threshold to 60 percent and establishing a minimum threshold of 50 percent, and maintain Commission discretion regarding the “any other means” test and include language noting reasons why and when this test would be used.

While the committee agreed with the recommendations to delete reference to budget information and maintain Commission discretion under the “any other means test,” the committee expressed concern about lowering the percentage threshold before knowing how the recent legislative changes would impact applications and QEs. Instead of making a recommendation at the meeting, the committee suggested gathering data over the next few years to determine if such a change would be needed in the future, and moved forward with the following rule updates:

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 percent or more of its expenditures for the most recent reporting year were incurred for such

services providing free civil legal services to indigents. The calculation of 75 percent of expenditures may include a reasonable share of administrative and overhead expenses.

RESOLVED, that the Legal Services Trust Fund Commission Rules Committee adopt the change proposed to Rule 3.671 Primary purpose and function (A) in the memo and revisit the rest of the proposals at the next meeting.

(Chair Al-Sarraf moved, Blakemore seconded). Motion passed.

Ayes – (5) Al-Sarraf, Bennet, Blakemore, Boschelli, Meeker

Noes – (0)

Abstain – (0)

Absent – (2) Bayles-Fightmaster, Connolly

Staff thanked the committee for its participation and commitment.

ADJOURN