



# The State Bar of California

---

## OPEN SESSION AGENDA ITEM 708 NOVEMBER 2022

**DATE:** November 17, 2022

**TO:** Members, Board of Trustees

**FROM:** Doan Nguyen, Program Director, Office of Access & Inclusion  
Erica Carroll, Lead Program Analyst, Office of Access & Inclusion

**SUBJECT:** Proposed Amendments to State Bar Rules 3.671 (Primary Purpose), 3.672 (Civil Legal Services), 3.680 and Appendix A (Audit and Late Submissions), and 3.690 and 3.692 (Complaints); and Proposed New State Bar Rule 3.674 (Income and Indigent Persons): Request to Circulate for Public Comment

---

### EXECUTIVE SUMMARY

The Legal Services Trust Fund Commission (LSTFC) administers civil legal aid grants to nonprofit organizations serving indigent persons throughout California with the support of the State Bar's Office of Access & Inclusion. The work of the LSTFC is governed by California Business and Professions Code sections 6210–6228 and the Rules of the State Bar of California under Title 3, Division 5, Chapter 2. Since 2020, the LSTFC has undertaken an extensive codification process to recommend updates to the existing rules. The goals of this process include, but are not limited to, clarifying grant eligibility and compliance parameters; improving efficiency and fairness in grants administration; and ensuring all grant requirements are contained in the governing authorities.

The LSTFC created a Rules Committee to explore these issues in depth. In order to ensure the codification process is collaborative and inclusive, the Rules Committee established working groups with LSTFC members and State Bar staff to engage in initial discussion around the topics presented here. Then, as a major stakeholder in this process, the legal aid community was consulted for its feedback before the Rules Committee formulated a recommendation to the LSTFC. All new and revised rules in this memorandum have been considered and recommended by the LSTFC for release for a 60-day public comment period.

---

## **BACKGROUND**

### **AUTHORITY OF THE LSTFC**

The LSTFC was established within the State Bar in 1981 as the oversight body to administer funds intended to support the provision of free civil legal services in California to indigent persons. Historically, the State Bar's Board of Trustees (BOT) would appoint several members to the LSTFC and review and approve major decisions by the commission, such as the annual amount of Interest on Lawyers' Trust Account funds to be distributed as grant awards in the following year. However, earlier this year, a statutory change went into effect, providing the LSTFC with more autonomy. Under the new statutory structure, the LSTFC has the power to establish grant eligibility criteria and to recommend new and revised rules to the BOT. Such changes shall be approved by the BOT unless "a recommendation conflicts with a statutory, fiduciary, or legal obligation of the State Bar." (Bus. & Prof. Code, section 6210.5(e)(1) & (3).)

### **LSTFC CODIFICATION PROCESS**

In 2019, the BOT undertook a review of the functions of all its subentities and advisory bodies. A stakeholder working group was convened to obtain feedback on the work of the LSTFC specifically. As a result of that process, in early 2020, the LSTFC developed a long-term plan to examine the existing Rules of the State Bar pertaining to the Legal Services Trust Fund Program, as well as the accompanying Eligibility Guidelines for the two types of legal aid grantees (legal services projects and support centers). The statute creating the LSTFC, and the Rules of the State Bar, are official, binding authority for the LSTFC and grantees regarding legal aid grant requirements. The Eligibility Guidelines provide further explanation and context for the requirements under the statute and rules. However, the guidelines are not intended to expand or alter existing requirements; in the event of any conflict between the guidelines and the statute and/or State Bar Rules, the statute and rules would control. The codification process intends to harmonize all the governing authorities and examine whether the guidelines are still useful once proposed updates to the Rules of the State Bar become effective.

To consolidate and clarify the governing authorities as much as possible, the LSTFC established its Rules Committee to review the existing authorities and suggest updates and revisions to the Rules of the State Bar. Since the inception of the Rules Committee, several working groups comprised of State Bar staff and LSTFC members have convened to identify and discuss gaps or areas for improvement within the governing authorities. In collaboration with the Legal Aid Association of California, these working groups have disseminated preliminary recommendations to existing legal aid grantees, soliciting feedback regarding the impact of the proposed changes. For larger topics, State Bar staff has also convened focus groups of grantees. This approach has yielded a high level of engagement from major stakeholders in the codification process.

After incorporating feedback from the preliminary recommendations, the Rules Committee reviews the final proposed rule changes before formulating a recommendation to the full LSTFC. The LSTFC has discussed and approved each of the recommendations in this memorandum. The topics addressed through these rule changes relate to fundamental grant

eligibility requirements (e.g., client income thresholds, the definition of “civil legal services,” etc.), as well as areas identified as likely to have an immediate impact in increasing efficiency and clarity (e.g., annual audited financial statement requirements, handling of late submissions, and processing complaints against grantee organizations).

The six topics addressed in this memorandum are the initial topics that the LSTFC has reviewed, but at least eight more are anticipated in the coming year, with the possibility of identifying additional topics. The LSTFC’s proposed rule changes related to these additional topics will similarly be presented to the BOT with a request for release for a 60-day public comment period.

## **SUMMARY OF TOPICS ADDRESSED AND PROPOSED CHANGES**

### **Definition of Civil Legal Services**

This topic addresses the definition of “civil” as well as “legal services,” modifying and clarifying the definition to reflect current practice models. Business and Professions Code section 6223(c) contains a prohibition on providing services in criminal proceedings, but “civil” proceedings were previously undefined in the rules. A recent statutory change made it clear that only areas of law traditionally considered civil, or where an exception has been made, will be counted as civil legal services for the purposes of these grants. (Bus. & Prof. Code, section 6213(l).) The proposed rule reflects the statutory change.

“Legal services” were previously defined under State Bar Rule 3.672(A) as, “[A]ll professional services provided by a licensee of the State Bar and similar or complementary services of a law student or paralegal under the supervision and control of a licensee of the State Bar in accordance with law.” However, the LSTFC observed that this definition may be both over-inclusive (an attorney may engage in work that is nonlegal in nature at times) and under-inclusive (many legal aid organizations have adopted a holistic services model that incorporates other disciplines, such as social work, where the services provided are intended to support the client’s legal goals and outcome). Thus, the updated proposed definition takes note of both these realities and refines the rule with an emphasis on the use of legal skills and provision of complementary services that are integral to the legal strategy, demonstrate a nexus with a legal outcome, and occur under legal team supervision. For further discussion of this topic, consult Attachment A.

### **Defining and Demonstrating Indigency**

This topic discusses the definition of “indigent person” and recommends creating a new State Bar Rule to reflect recent statutory changes under Business and Professions Code section 6213(d). These changes include increasing the client income eligibility threshold from 125 to 200 percent of the federal poverty level. Proposed Rule 3.674 interprets the revised statute by clarifying non-means-tested classifications; specifying that only organizations with a pro bono allocation may use the alternate income threshold mentioned in the statute; defining income and determining when income exceptions are appropriate; and demonstrating when work on behalf of an organization, a group, or a class of persons is work for the benefit of “indigent persons.” The creation of this new rule will provide significant additional detail to guide State

Bar staff and grantees in complying with the requirement to provide services to “indigent persons.” For further discussion of this topic, reference Attachment B.

### **Treatment of Late Submissions**

The LSTFC recommends articulating staff and commission roles when responding to late submissions of grant materials (e.g., audits/financial statements, applications and budget proposals, and evaluations or other reporting requirements). The proposed amendments to Rule 3.680 state timeframes and instances where State Bar staff would have discretion to accept late materials, circumstances when the decision would fall to the LSTFC, and factors to consider when reviewing late submissions. These changes would substantially enhance efficiency in grants administration by providing staff with clarity and guidance regarding these decisions. For additional information pertaining to this topic, consult Attachment C.

### **Audits and In-Kind Donated Services**

As part of the grant application process each year, current and prospective grantees must submit their prior fiscal year’s financial statements. Under the current rules, organizations with gross corporate expenditures above \$500,000 in the prior fiscal year must submit an audit conducted by an independent certified public accountant (CPA), and organizations below \$500,000 may submit a reviewed financial statement. The proposed rule changes would clarify under Rule 3.680(E)(1) that even organizations eligible to submit a reviewed financial statement must have that review conducted by an independent CPA. It further recommends allowing organizations to submit reviewed financial statements instead of audits when their corporate expenditures exceed \$500,000 due only to in-kind donated services. These changes will codify longstanding practice. Review Attachment D for additional details pertaining to the audit requirement.<sup>1</sup>

### **Complaints from the Public Against Grantee Organizations**

The LSTFC recommends setting clearer timelines for processing complaints against State Bar grantees alleging violation of the governing authorities and establishing conditions for determining when a complaint is “resolved” under Rules 3.690 and 3.692. It also recommends establishing an advisory body to review complaints that staff is unable to resolve before elevating to the final decisionmaker, which would be the LSTFC’s Executive Committee. Minor updates to allow for electronic service of documents are also included. For further discussion of this topic, refer to Attachment E.

### **Other Minor Technical Revisions (Primary Purpose)**

The topic of a grantee’s “primary purpose and function” has received significant attention by the LSTFC, and some of the larger questions related to this topic have been deferred to a later

---

<sup>1</sup> Because this was the first topic in the codification process and dealt with a fairly minor and technical issue, the recommendations were provided to the Rules Committee by staff, rather than a working group. (All subsequent topics convened a working group.) The attached memorandum is addressed to the Rules Committee; because the Rules Committee meeting for this topic took place earlier on the same day that the LSTFC reviewed and discussed the recommendations, the same memorandum was used, but the LSTFC voted on these recommendations.

date. This proposal simply recommends omitting mention of an organization's proposed budget in calculating its primary purpose under State Bar Rule 3.671(A); a primary purpose determination is made at the time an organization applies for funding, and the budgeting phase comes later. This change will conform to current practice, which does not incorporate the budget into the primary purpose determination. See Attachment F for more details.

## **DISCUSSION**

### **THE PROPOSED CHANGES ARE CONSISTENT WITH THE OVERSIGHT RESPONSIBILITIES OF THE LSTFC**

Under Business and Professions Code section 6210.5, the LSTFC is charged with recommending rules related to grants administration to the BOT. Consequently, the LSTFC is responsible for necessary updates to improve the existing grants administration process.

When the codification process began, all recommended rule changes were anticipated to be presented to the BOT simultaneously. However, the LSTFC has chosen a different approach for a variety of reasons: Codification is a long-term, extensive process, and some of the recommended rule changes are urgently needed. Waiting to present all rule changes together would needlessly postpone significant improvements that will aid the LSTFC and State Bar staff in administering these legal aid grants. Moreover, presenting a smaller selection of rule changes at varying intervals allows for more attention and engagement from the public regarding any particular change, whereas an omnibus package might be unwieldy in that regard.

Addressing the issues presented through these proposed rule changes will improve efficiency and fairness in the grantmaking process. Such improvements are always desirable but given the current level of grantmaking by the State Bar—which will distribute almost \$135 million in legal aid funding in 2022 alone—such changes are imperative to ensure all involved have sufficient guidance to execute the requirements of the grants and administer them with confidence and accuracy.

### **THE BOARD OF TRUSTEES MUST APPROVE THE PROPOSED RULE CHANGES ABSENT ANY CONFLICT WITH STATUTORY, FIDUCIARY, OR LEGAL OBLIGATIONS OF THE STATE BAR**

As noted in the Background section, a recent statutory change increased the LSTFC's authority to make proposed rule changes. Previously, the LSTFC required BOT authorization to resolve questions of eligibility and grant distribution. Now, the LSTFC must obtain BOT approval for certain decisions, including these proposed rule changes, but such approval must be given unless the LSTFC's recommendation conflicts with the statutory, fiduciary, or legal obligations of the State Bar. (Bus. & Prof. Code, section 6210.5(e)(1) & (3).) The LSTFC does not believe that its current proposals create any conflict with State Bar requirements. The Office of General Counsel has been involved in all stages of the codification process and agreed that the proposed rule changes do not conflict with any statutory, fiduciary, or legal obligations of the State Bar. The LSTFC requests that the proposed rule changes be released for public comment for a 60-day comment period before finalizing any possible rule change. See Attachments G and H.

## **FISCAL/PERSONNEL IMPACT**

None

## **AMENDMENTS TO RULES OF THE STATE BAR OF CALIFORNIA**

Title 3, Division 5, Chapter 2, Rules 3.671, 3.672, 3.674 (new proposed rule), 3.680, 3.690, and 3.692; and Appendix A of the Schedule of Charges and Deadlines regarding 3.680(E)(1)

## **AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL**

None

## **STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS**

Goal 2. Protect the Public by Enhancing Access to and Inclusion in the Legal System

## **RECOMMENDATIONS**

**Should the Board of Trustees concur in the proposed action, passage of the following resolution is recommended:**

**RESOLVED**, that the Board of Trustees, upon recommendation of the Legal Services Trust Fund Commission, authorizes staff to make available the proposed revisions to State Bar Rules relating to the Legal Services Trust Fund Program in the forms attached as Attachments G and H, for a public comment period of 60 days; and it is

**FURTHER RESOLVED**, that this authorization for release for public comment is not, and shall not be, construed as a recommendation of approval by the Board of Trustees of the proposal.

## **ATTACHMENTS LIST**

- A.** Codifying Grant Administration Practices: Defining Civil Legal Services (Memo to LSTFC dated August 12, 2022)
- B.** Approval of Rules Committee Recommendations Related to Defining and Demonstrating Indigency for Qualified Legal Services Projects (Memo to LSTFC dated August 12, 2022)
- C.** Codification of Grant Administration Practices: Late Submissions of Grant Materials (Memo to LSTFC dated March 11, 2022)
- D.** Codification of Grant Administration Practices: Audit or Review of Financial Statements Requirement (Memo to LSTFC Rules Committee—and used for LSTFC—dated November 19, 2019)

- E.** Approval of Rules Committee Recommendations for Processing Complaints Regarding Legal Aid Grantees (Memo to LSTFC dated August 12, 2022)
- F.** Approval of Rules Committee Recommendations Related to Primary Purpose Requirements for Qualified Legal Services Projects (Memo to LSTFC dated August 12, 2022)
- G.** Proposed Revisions to Rules of the State Bar Regarding the Legal Services Trust Fund Program – Redline
- H.** Proposed Revisions to Rules of the State Bar Regarding the Legal Services Trust Fund Program – Clean Version



# The State Bar of California

---

## OPEN SESSION

## AGENDA ITEM

AUGUST 2022

## LEGAL SERVICES TRUST FUND COMMISSION V.F.

**DATE:** August 12, 2022

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

**FROM:** Members, Legal Services Trust Fund Commission Rules Committee

**SUBJECT:** Codifying Grant Administration Practices: Defining Civil Legal Services

---

### EXECUTIVE SUMMARY

This memo is part of the continuing work of the Legal Services Trust Fund Commission to revise the State Bar Rules for the Legal Services Trust Fund Program (rules). The overarching goal of these revisions is to ensure accuracy, clarity, transparency, and consistency in grants administration for applicants, grantees, the Commission, and State Bar staff.

The term “civil legal services” appears throughout the Interest on Lawyers’ Trust Accounts (IOLTA) statute, governing who qualifies for commission awards and on what activities they may spend those funds.<sup>1</sup> This memo presents the Rules Committee’s recommendations for defining that phrase in the rules. Specifically, this memo addresses:

- How to define civil in the rules.
- How to define legal services in the rules.

The Committee sought preliminary advice about these topics through four focus groups composed primarily of current grantees and the Legal Aid Association of California (LAAC). It also circulated proposed definitions to the legal aid community via LAAC for three to four weeks. This memo describes the Committee’s recommendations, after considering the community’s feedback, for the Commission meeting on August 12, 2022.

---

<sup>1</sup> In this memo, the “IOLTA statute” refers to California Business and Professions Code sections 6210-6228.



## **BACKGROUND**

### **CODIFICATION PROCESS**

In 2019, at the recommendation of the State Bar Board of Trustees, State Bar staff and the Commission agreed to engage in a multi-phase process to revise and/or codify grantmaking decision points for IOLTA, Equal Access Fund (EAF), and other Legal Services Trust Fund Program awards. The intent is to increase transparency about the process and consistency in administering funds.

Commissioners form working groups to investigate and develop preliminary recommendations on the questions in the Committee's work plan. The working groups' preliminary recommendations circulate to the legal aid community for feedback through LAAC. The working group and Committee consider that feedback before making a final recommendation to the Commission and, in turn, the State Bar Board of Trustees. Pursuant to Business and Professions Code section 6210.5, the Board of Trustees shall approve Commission recommendations for rules related to grant administration and to determine applicants' eligibility for awards unless the Board makes a written finding that the recommendation conflicts with a statutory, fiduciary, or legal obligation of the State Bar.

### **GOVERNING AUTHORITIES**

Applicants and grantees must comply with requirements in the IOLTA statute, 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. In particular, the IOLTA statute and rules govern which applicants qualify for funding, on what work grantees may spend their IOLTA/EAF dollars, and how much funding they will receive.

The term "civil legal services" is fundamental in the IOLTA statute. To be eligible for IOLTA and EAF funding as a qualified legal services project (QLSP), an applicant must provide "as its primary purpose and function civil legal services without charge to indigent persons..."<sup>2</sup> To qualify as a support center, it must have as its "primary purpose and function the provision of legal training, legal technical assistance, or advocacy support for civil legal services without charge..."<sup>3</sup>

Furthermore, eligible grantees must spend their IOLTA and EAF awards on "the provision of civil legal services to indigent persons."<sup>4</sup> The size of each QLSP's award depends in part on the amount of funds it spent to provide civil legal services in the previous year. If multiple QLSPs serve the same county, each one's share of that county's IOLTA and EAF funding will increase or

---

<sup>2</sup> See Business and Professions Code § 6213(a)(1).

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

<sup>4</sup> Business and Professions Code § 6216.

decrease based on its relative share of spending on “civil legal services without charge for indigent persons” in that county.<sup>5</sup>

Effective January 1, 2022, the IOLTA statute was amended to specify that “[c]ivil legal services’ includes, in addition to matters traditionally considered civil, legal services related to expungements, record sealing or clearance proceedings not requiring a finding of factual innocence, and infractions.”<sup>6</sup> The rules currently define legal services broadly and in a way that does not provide much more specificity than if the term were undefined. Rule 3.672(A) defines legal services as including “all professional services provided by a licensee of the State Bar and similar or complementary services of a law student or paralegal under the supervision and control of a licensee of the State Bar in accordance with law.”

## **GUIDANCE**

The Legal Services Trust Fund Program Eligibility Guidelines for Legal Services Projects refer to legal services sparingly. Guideline 2.3.1 requires QLSP applicants for IOLTA and EAF funding to demonstrate that they provide civil legal services. And the commentary to that guideline states that grantees “must provide legal services within the definition of Rule 3.672(A).” The commentary also explains that applicants providing non-legal services must describe and specify the percentage of that work. Ultimately, the Commission excludes each applicant’s spending on non-legal services when calculating its “qualified expenditures.” Qualified expenditures in turn affect each applicant’s eligibility for funding and size of award.<sup>7</sup>

While not governing, the American Bar Association (ABA) defines “legal work” as it uses that term in its 2021 *Standards for the Provision of Civil Legal Aid*. The ABA’s definition captures many of the services that the Commission has authorized for IOLTA and EAF funding and serves as a helpful reference:

“Legal work” refers to all of the work that involves the use of legal skills and knowledge that an organization performs on behalf of the low-income

---

<sup>5</sup> Business and Professions Code section 6216(b)(1)(A) states:

In any county which is served by more than one [QLSP], 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 civil legal services without charge for indigent persons in that county as compared to the total expended in the prior year for civil legal services without charge for indigent persons by all [QLSPs] applying therefor in the county.

<sup>6</sup> Business and Professions Code § 6213(l). When adding this definition to the statute, the Legislature also added the word “civil” before “legal services” in several provisions.

<sup>7</sup> The commentary to guideline 2.7.2 states, e.g.:

The amount of your grant will be based in part on the amount of your expenditures in your previous fiscal year for civil legal services without charge to indigent persons. See Guidelines 2.3.1 through 2.3.4 for the definitions the Commission will use to determine the portion of your expenditures that are qualified to be counted in determining your grant allocation. [B&P Code §6216(b)].

community it serves. It includes legal representation of individuals and groups. It also encompasses nonrepresentational services and forms of assistance, such as community legal education and the provision of legal information, pro se clinics and other forms of self-help assistance, as well as studies and reports on issues of general importance to the low-income communities served by the organization. Finally, it includes advocacy in legislative, administrative, and civic settings, done on behalf of clients and/or their communities.<sup>8</sup>

## FOCUS GROUPS

To collect preliminary input from stakeholders about how to update the definition of civil legal services, State Bar staff convened four focus groups of mostly current grantees and LAAC. Each group included six to eight organizations as well as LAAC. Staff aimed for a geographic and substantive law cross-section of providers in each discussion and generally grouped them as follows:

- Providers with significant grassroots policy advocacy or rental assistance programs.
- Providers with education and counseling programs that could be legal or non-legal depending on the context (e.g. financial literacy and health insurance counseling).
- Providers with staff social workers who assist clients.
- Providers with Health Insurance Counseling & Advocacy Program (HICAP) services.

Areas of community consensus and disagreement emerged from the focus groups. The following themes were particularly helpful in crafting the proposal:

- (Consensus) The current definition's focus on the work of licensees, law students, and paralegals is too exclusive. A new definition should be more inclusive of the actual spectrum of professionals that help to provide legal aid.
- (Consensus) A new definition should mention and have at its core the legal rights of low-income people. At a fundamental level, it is the work of legal aid and support centers to create, advance, and defend those rights.
- (Consensus) If the new definition is too broad, then organizations with only a peripheral connection to legal aid might qualify for funding. This risks thinly spreading the very limited funding available to legal services for indigent Californians. Relatedly, any new definition needs to agree with the Legislature's intention for the IOLTA statute.
- (Consensus) As is the current practice, there should continue to be room for complementary services—e.g. social work services and financial literacy education focused on legal rights—at least when that work advances traditional legal aid services.
- (Differing views) Whether/when grassroots lobbying and mobilization is a legal service. At least one organization observed that this work can serve as an important part of community engagement and education in legal aid. Other providers questioned whether

---

<sup>8</sup> ABA, *Standards for the Provision of Civil Legal Aid* (August 2021), available at [https://www.americanbar.org/groups/legal\\_aid\\_indigent\\_defense/resource\\_center\\_for\\_access\\_to\\_justice/standards-and-policy/updated-standards-for-the-provision-of-civil-legal-aid/](https://www.americanbar.org/groups/legal_aid_indigent_defense/resource_center_for_access_to_justice/standards-and-policy/updated-standards-for-the-provision-of-civil-legal-aid/). (p. 7). While the 2021 standards are not governing here, the Commission previously adopted the ABA's 2006 standards as its guidelines for evaluating grantees' quality control procedures. Rule 3.661(C).

grassroots advocacy is a legal service since attorneys might be unnecessary for that work, and since many non-legal aid organizations perform grassroots mobilization.

- (Differing views) Recognizing that expansively defining complementary services could open the door to non-legal services agencies receiving funding, participants suggested different views about when “complementary services” are legal services. Some programs would require that the service advance a legal aid case to be a “legal service.” Others would not require an underlying legal aid case so that complementary services can be available whenever clients need them.
- (Differing views) Some programs suggested that one way to address the complementary services issue above might be to write two definitions of legal services. One—narrower—definition would govern who qualifies for IOLTA and EAF funding. The other—broader—definition would govern permissible activities that qualified programs provide. Others believed it could become confusing to future commissioners, State Bar staff, and grantees which definition applies when. It also might be inconsistent with what the Legislature intended when using the term legal services in the statute.

## DISCUSSION

### HOW TO DEFINE CIVIL IN THE STATE BAR RULES

State Bar rules do not define “civil” as that word appears in the IOLTA statute. Distinguishing between civil and criminal legal issues, however, has generally been straightforward for programs, commissioners, and staff. The statute’s requirement that legal services be civil has, in practice, mostly excluded criminal defense work.<sup>9</sup> Effective January 1, 2022, the Legislature clarified that civil legal services include, “in addition to matters traditionally considered civil, legal services related to expungements, record sealing or clearance proceedings not requiring a finding of factual innocence, and infractions.”<sup>10</sup>

The Committee recommends codifying the Commission’s current approach to distinguishing between civil and criminal matters. This would make the existing practice express for stakeholders. The following proposed definition, therefore, means to keep the line between civil and criminal work as is:

“Civil” refers to legal issues, questions, or processes that arise under any body of civil law. The provision of legal assistance with respect to criminal proceedings is not civil legal services. Proceedings concerning expungements, record sealing or clearance proceedings not requiring a finding of factual innocence, or infractions are not criminal proceedings, and legal services related thereto are civil legal services. Legal services related to collateral civil issues such as public access, disability accommodations, and language access that arise during criminal

---

<sup>9</sup> Business and Professions Code section 6223(b) precludes IOLTA funding for “[t]he provision of legal assistance with respect to any criminal proceeding. For purposes of this article, ‘criminal proceeding’ does not include expungements, record sealing or clearance proceedings not requiring a finding of factual innocence, or proceedings concerning infractions.”

<sup>10</sup> Business and Professions Code § 6213(l). This change was made at the urging of the State Bar and LAAC.

proceedings are not legal assistance with respect to criminal proceedings, provided the civil issues do not directly affect determination of guilt, sentencing, or other disposition of the criminal proceeding.<sup>11</sup>

Some legal services address civil issues facing those charged with a crime. These include, among others, the conditions of confinement in jails, civil commitments of individuals in treatment facilities after an arrest, and parental rights in dependency proceedings regarding minors in correctional settings. The above definition means to continue treating such traditionally civil law matters as civil.

#### **REVISIONS TO THE DEFINITION OF LEGAL SERVICES IN THE STATE BAR RULES**

Rule 3.672(A)'s current definition does not describe the array of services and professionals that are necessary to meet legal aid clients' civil legal needs. Additionally, it does not address services that are complementary to legal aid, such as social work services. In short, the current definition could be more helpful.

With the purpose of the IOLTA statute and current practices in mind, the Committee recommends the following, revised definition of legal services:

"Legal services" means work that uses legal knowledge and skills to create, advance, protect, or enforce the legal rights of indigent clients or communities. This encompasses legal representation and non-representational services for individuals and groups. Examples of non-representational services include providing legal information, advice, trainings, and self-help resources. Non-representational services can also include studying legal needs and outcomes to inform legal aid delivery, investigating legal violations, and advocating directly to government bodies on issues of importance to the legal rights of indigent clients or communities. Representation and non-representational services must be performed or supervised by an attorney. "Legal services" may also include complementary services provided they advance a legal outcome, serve as an integral part of an attorney's strategy in a legal matter or case, and the attorney directs the work in that matter or case. Complementary services and other services by non-attorneys must uphold the attorney-client relationship and avoid interfering with the attorney carrying out their obligations to the client.

This definition would better describe the current reality of legal aid. Furthermore, it would provide clarity to applicants, grantees, commissioners, and staff. This in turn would promote consistency when evaluating grant applications and funding criteria. The elements in the proposed definition seek to maximize flexibility for programs while upholding the IOLTA statute's overarching goal of increasing access to civil justice through the funding of civil legal aid.<sup>12</sup>

---

<sup>11</sup> To achieve consistency with the IOLTA statute, this definition incorporates the prohibition in section 6223(b). See footnote 9, *supra*.

<sup>12</sup> The statute's legislative findings, in section 6210, speak to purpose:

This memo now discusses various aspects of the proposed definition:

**“‘Legal services’ means work that uses legal knowledge and skills to create, advance, protect, or enforce the legal rights of indigent clients or communities. This encompasses legal representation and non-representational services for individuals and groups. Examples of non-representational services include providing legal information, advice, trainings, and self-help resources. Non-representational services can also include studying legal needs and outcomes to inform legal aid delivery, investigating legal violations...”**

Rule 3.672(A)’s unqualified use of “all professional services provided by a licensee” is detached from the specific interventions of legal aid and by extension the Legislature’s goals in the IOLTA statute. The current phrasing, for instance, declines to describe the particular work that legal aid programs perform. Furthermore, it makes no mention of the unique and essential role of QLSPs and support centers in our legal system, which the IOLTA statute seeks to fund.<sup>13</sup>

The entire statute, with its legislative findings, eligibility requirements, and activity restrictions, funds legal aid to increase access to civil justice for people who are very low-income.<sup>14</sup> As multiple focus groups noted, it is fundamentally through creating, advancing, defending, and enforcing low-income people’s rights that legal aid and support centers provide that access. In referring to the societal role and spectrum of legal aid interventions, rather than to “all professional services provided by a licensee,” the proposed definition follows the ABA’s approach in defining “legal work.”<sup>15</sup>

The refinement also removes the current definition’s emphasis on work by a State Bar “licensee,” “law student,” or “paralegal.” Legal aid programs rely on a diversity of professionals to deliver help effectively, sensitively, and efficiently. These professionals sometimes include law school graduates awaiting bar results, community educators, outreach staff, pro bono professionals, translators, social workers, and others—none of whom must be an attorney, law

---

[D]ue 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 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.

<sup>13</sup> See the definitions of QLSP and support center in the “Governing Authorities” section, *supra*.

<sup>14</sup> See footnote 12, *supra*, on the Legislature’s findings.

<sup>15</sup> Please see the section “Guidance,” *supra*, for the ABA’s definition.



student, or paralegal. Finally, this change is in line with ABA Standard 4.9, which encourages legal aid to integrate the services of other professionals.<sup>16</sup>

**“and advocating directly to government bodies on issues of importance to the legal rights of indigent clients or communities.”**

The Commission has long found that direct public policy advocacy can be a legal service under the IOLTA statute. With direct policy advocacy, grantees apply their legal knowledge and skills to advocate directly to government policymakers in support of their client community’s rights. They do this by researching, evaluating, and making persuasive legal arguments about the law and government practices. Examples of direct policy advocacy are a grantee drafting legislation and commenting during administrative rulemaking. As such, direct policy advocacy would continue to be legal services under the first sentence of the proposed definition.

Direct policy advocacy is different than grassroots policy advocacy, which the Commission has found to be a non-legal service. Unlike direct policy advocacy where the grantees apply their own legal knowledge and skills to engage with policymakers themselves, grassroots advocacy involves motivating or mobilizing members of the community to act.<sup>17</sup> Examples of grassroots advocacy are asking voters to call their legislators, sign government petitions, protest, or take some other action to influence government.

Mobilizing the community to engage policymakers, such as gathering signatures for a letter or organizing a phone campaign, is not itself a legal service. Rather than using legal knowledge or skills, this work uses community organizing skills, a different strategy to persuade community members to take action. If grassroots advocacy includes elements that by themselves would be legal services, such as training indigent communities about their legal rights, those elements would still be legal services even if part of a grassroots campaign. The same would be true for

---

<sup>16</sup> ABA standard 4.9 states, “A legal aid organization should consider using paraprofessionals, tribal advocates, lay advocates, law students, social workers, and other professionals when authorized by state, federal, or tribal law, and appropriate court rules, rules of professional conduct, and professional regulatory rules.” ABA, *Standards for the Provision of Civil Legal Aid* (August 2021), available at [https://www.americanbar.org/groups/legal\\_aid\\_indigent\\_defense/resource\\_center\\_for\\_access\\_to\\_justice/standards-and-policy/updated-standards-for-the-provision-of-civil-legal-aid/](https://www.americanbar.org/groups/legal_aid_indigent_defense/resource_center_for_access_to_justice/standards-and-policy/updated-standards-for-the-provision-of-civil-legal-aid/). (p. 151.).

<sup>17</sup> See, e.g., the definition of “grassroots lobbying” in 45 CFR section 1612.2(a)(1). That example applies to the work of Legal Services Corporation basic field grantees:

Grassroots lobbying means any oral, written or electronically transmitted communication or any advertisement, telegram, letter, article, newsletter, or other printed or written matter or device which contains a direct suggestion to the public to contact public officials in support of or in opposition to pending or proposed legislation, regulations, executive decisions, or any decision by the electorate on a measure submitted to it for a vote...

The distinction between direct and grassroots lobbying is familiar and navigable to most nonprofits. This is in part because the Internal Revenue Service (IRS) requires 501(c)(3) nonprofits to itemize their spending on direct versus grassroots lobbying when filing their annual informational return, the Form 990. For more information, see the IRS’s “Instructions for Schedule C (Form 990)” available at [https://www.irs.gov/instructions/i990sc#en\\_US\\_2021\\_publink20374ld0e367](https://www.irs.gov/instructions/i990sc#en_US_2021_publink20374ld0e367).

using legal knowledge and skills to advise or consult with other organizations to create, advance, protect, or enforce the rights of indigent communities.

The IOLTA statute's legislative findings, with their emphases on funding legal aid to individuals who cannot afford a lawyer, support continuing to exclude grassroots policy advocacy.<sup>18</sup> Broadening the definition of legal services to include grassroots advocacy would also open the door for IOLTA and EAF funding to nonprofits that focus mostly or exclusively on grassroots work. Those organizations might not offer traditional legal aid at all.

**“Representation and non-representational services must be performed or supervised by an attorney.”**

This language is consistent with the current definition's focus on licensee-provided or supervised work. It also aligns with the policies and norms that guard against the unauthorized practice of law in the California Business and Professions Code, California Rules of Professional Conduct, and ABA standards.<sup>19</sup> The comment to Rule of Professional Conduct 5.3 states, for instance, that “Lawyers often utilize nonlawyer personnel, including secretaries, investigators, law student interns, and paraprofessionals...A lawyer must give such assistants appropriate instruction and supervision concerning all ethical aspects of their employment.”<sup>20</sup>

Whether and how closely an attorney must supervise the work of a non-lawyer in a particular instance depends on many factors. These considerations include, *inter alia*, whether the activity is the practice of law, the client's legal needs, and the non-attorney's abilities. Since the analysis depends so much on the facts of the service in question, this memo refrains from discussing how often and in what way an attorney must supervise any particular activity. All programs, however, must comply with Rule of Professional Conduct 5.3's requirement that, “a lawyer having direct supervisory authority over [a] nonlawyer...shall make reasonable\* efforts to ensure that the person's\* conduct is compatible with the professional obligations of the lawyer.”<sup>21</sup> To understand how programs fulfill this ethical responsibility and to screen for potential gaps in meeting it, those seeking IOLTA and EAF funding must describe on their annual application how they supervise legal services.

**“‘Legal services’ may also include complementary services provided they advance a legal outcome, serve as an integral part of an attorney's strategy in a legal matter or case, and the attorney directs the work in that matter or case. Complementary services and other services by non-attorneys must uphold the attorney-client relationship and avoid interfering with the attorney carrying out their obligations to the client.”**

Effective legal aid often combines traditional legal strategies—e.g. legal advice, negotiation, and litigation—with complementary interventions such as social work. These complementary

---

<sup>18</sup> See footnote 12, *supra*, on the Legislature's findings.

<sup>19</sup> See, e.g., Business and Professions Code section 6125: “No person shall practice law in California unless the person is an active licensee of the State Bar.”

<sup>20</sup> Cal. Rules of Professional Conduct, comment to rule 5.3.

<sup>21</sup> Cal. Rules of Professional Conduct, rule 5.3. (original asterisks).



services are ones that by themselves do not require legal knowledge or skills to perform. The proposed rule seeks to continue the practice of counting such other services when they significantly promote a legal outcome in ongoing legal aid representation. To fund such complementary services more generally, however, risks conflicting with the IOLTA statute's intentions and diverting limited funding away from traditional legal aid and support center work.

Complementary services can be legal services to the extent that they form part of an attorney's strategy in a legal aid case. While the attorney need not supervise the individual providing a complementary service, the attorney must still authorize/direct that work. If these services come into conflict with the attorney's representation of the client, they cease to be legal services. In other words, complementary services may not undermine the legal aid case from which they derive their legal services nature and still maintain that nature. This could happen, for instance, if a social worker advises a client to act against the attorney's directions in a case or breaks the attorney-client privilege.

A "legal outcome" generally refers to the client's rights, obligations, options, relief, etc. under the law. It is different than a health, educational, or other outcome even if the outcomes are interconnected. Improving a client's health or English language skills, for instance, might tangentially benefit their ability to participate in a case. That tangential benefit alone, however, would not convert the non-legal (e.g. health) outcome to a legal one. The proposed definition means to continue excluding services that are not focused primarily on advancing a legal—as opposed to health, educational, or other—outcome for the client.

"[I]ntegral part of an attorney's strategy" does not mean strictly necessary, but rather so helpful that it comprises a core component of the strategy. If the complementary service ceases to help the underlying legal aid case, or when that underlying case ends, the complementary service would thereby lose its legal nature.<sup>22</sup> It is the existence of the underlying legal case or matter and the complementary service's importance to advancing it that justifies the expenditure of legal aid dollars on what might otherwise be non-legal work. The proposed definition endeavors to maintain this requirement.

"[T]he attorney directs the work in that matter or case" refers to authorizing the use of the complementary service in the underlying legal aid case. Here, directing the service is different than providing or supervising it. Directing the service entails the authority to integrate the complementary service with more traditional legal strategies towards an end goal in the case. Providing or supervising the complementary service, by contrast, entails professional expertise in the complementary service's delivery strategy and standards. So an attorney might authorize the integration of social work services, including identifying outcomes that would be helpful, in a specific legal case while deferring to the social worker about what strategies to deploy.

---

<sup>22</sup> The current practice of looking for an underlying case yields a secondary benefit: It is easy to apply. Grantees and staff know that once the underlying case has ended, whether it has resolved, the client withdrew, or for any other reason, the complementary service ceases to count. While not dispositive of the end of legal services, sending a closing letter is often an observable sign that a case has ended.

To illustrate: A client who experienced significant trauma in a domestic violence case might have difficulty testifying about the abuse. A social worker could help the client talk about the abuse and identify ways to describe it in a judicial proceeding while minimizing additional trauma. The social worker might also accompany the client to court to support them during the proceedings. Here, the client's attorney must authorize the social worker's role and activities in the legal case but may defer to the social worker on how to perform that role responsibly.

### **Applying the definition**

This memo now illustrates how the proposed definition would apply in scenarios common to legal aid:

#### *Social work services*

Social work services are a service that many legal aid providers offer. According to a 2021 report by LAAC and OneJustice, at least 20—about 26 percent—of the QLSPs in 2020 incorporated social workers into their delivery model.<sup>23</sup> It is well-accepted by the Commission, State Bar, and legal services community that social workers can directly improve legal aid outcomes. According to the LAAC and OneJustice report, for example:

Social workers also support clients with advocacy in proceedings with social services/other agencies (80% [of respondents]) and accompaniment to court and other settings (73% [of respondents]). In some instances, the advocacy/accompaniment may be directly related to their legal case, and in other instances it may be related to an adjacent need in the client's life. Social workers stress that these settings can be both traumatizing and/or retraumatizing for clients and their role is to provide clients with support and techniques for handling these situations. Examples include immigration clients who are required to describe traumatic experiences in declarations supporting their immigration petitions or clients in family law/domestic violence who are required to come face-to-face with their abusers in court.<sup>24</sup>

---

<sup>23</sup> OneJustice and LAAC, *Social Work Practices in California Legal Aid Organizations* (2021), available at [https://www.dropbox.com/s/1x6b5zn0uk9v1mm/Social%20Work%20Practices%20in%20California%20Legal%20Aid%20Organizations\\_LAAC%20and%20OneJustice\\_April%202021.pdf?dl=0](https://www.dropbox.com/s/1x6b5zn0uk9v1mm/Social%20Work%20Practices%20in%20California%20Legal%20Aid%20Organizations_LAAC%20and%20OneJustice_April%202021.pdf?dl=0). (p. 6).

<sup>24</sup> *Id.* (p. 30). See also the commentary to ABA Standard 4.9, on the use of other practitioners:

There are many ways in which social workers can effectively assist in the delivery of legal services. Among the most basic of those is that social workers can be useful with interviews, evaluation, crisis intervention, short-term casework, negotiation, and referrals. As a result of social workers' training and education, they are better equipped than lawyers are to provide services such as crisis intervention, the evaluation of clients' needs, referrals to appropriate agencies, and direct casework. With respect to evaluation, a social worker's training in assessing personality and mental status contributes significantly to the lawyer's appraisal of the facts...

ABA, *Standards for the Provision of Civil Legal Aid* (August 2021), available at [https://www.americanbar.org/groups/legal\\_aid\\_indigent\\_defense/resource\\_center\\_for\\_access\\_to\\_justice/standards-and-policy/updated-standards-for-the-provision-of-civil-legal-aid/](https://www.americanbar.org/groups/legal_aid_indigent_defense/resource_center_for_access_to_justice/standards-and-policy/updated-standards-for-the-provision-of-civil-legal-aid/). (pp. 152-53).

Social work services are not always legal in nature, however. Many organizations provide these services without ever practicing law. What makes some social work services legal services is that an attorney incorporates them as a core aspect of their case strategy—such that they advance a legal outcome in that case.

So, for instance, when a family or youth law provider uses social work services to navigate their legal aid client’s potential trauma and/or gather facts about their legal case, those would be legal services. If the underlying case ends, the social work services infringe on the attorney-client relationship, or they simply stop serving as an integral part of the attorney’s legal strategy, then the social work services would cease to be legal services.

#### *Rental assistance programs*

Some grantees have rental assistance programs that provide cash assistance, landlord negotiation, and other support to tenants facing evictions. While cash assistance cannot be a legal service, some of the project’s other support for renters might be. The provider’s rental assistance and litigation teams might consult, train, and partner with one another in the organization’s provision of legal representation, for example.

The Commission has found that where rental assistance and litigation teams collaborate on a specific case, the rental assistance team’s work might be legal services. Specifically, it found that “activities related to consultations with attorneys and assisting the legal clinic with intakes, as well as cross-trainings between [the rental assistance project] and legal staff to be qualifying legal service.”<sup>25</sup> The proposed definition leads to a similar outcome: To the extent that an attorney supervised the rental assistance team’s use of legal knowledge and skills to advance indigent tenants’ rights, the rental assistance team’s work was legal services. As with all projects where some work qualifies as legal services but other work disqualifies, the program must track its qualifying and non-qualifying costs separately to calculate its qualified expenditures.<sup>26</sup>

#### *Health Insurance Counseling & Advocacy Program (HICAP) services*

The California Department of Aging (CDA) administers HICAP via local providers including some legal aid organizations. HICAP provides information and advice about Medicare to help clients navigate their health insurance options. HICAP counselors advise clients on whether/how to enroll in Medicare Parts A and B, Medicare supplemental insurance plans, Medicare Health Plan, and Medicare Savings Programs, among other decisions. The program also provides legal advice “to assist individuals with legal questions related to their Medicare benefits.”<sup>27</sup>

---

<sup>25</sup> See the Commission Eligibility and Budget Review Committee’s August 13, 2021, meeting minutes, available at <https://board.calbar.ca.gov/docs/agendaItem/Public/agendaitem1000028235.pdf>.

<sup>26</sup> See the “Guidance” section’s description of the commentary to Guideline 2.3.1, *supra*.

<sup>27</sup> For more information about HICAP, see CDA’s website at [https://aging.ca.gov/Providers\\_and\\_Partners/Health\\_Insurance\\_Counseling\\_and\\_Advocacy\\_Program/Program\\_Narrative\\_and\\_Fact\\_Sheets/](https://aging.ca.gov/Providers_and_Partners/Health_Insurance_Counseling_and_Advocacy_Program/Program_Narrative_and_Fact_Sheets/).

The Commission’s practice has been to find that HICAP work to advise and exercise consumer choice—e.g. to help consumers select the insurance coverage that meets their health care goals and complete their application for insurance—are non-legal services. This type of counseling does not use “legal knowledge and skills.” If, on the other hand, a HICAP provider were to advise a client about their legal rights (e.g. to appeal a denial) and/or represent them in a Medicare appeal, that would be a legal service. This work would apply legal knowledge and skills. One factor to consider in assessing whether particular HICAP services are legal services is whether an attorney supervises or should supervise the work. If a lawyer need never participate in the work, then that suggests that the services are not using legal knowledge and skills. Indeed, most of CDA’s HICAP providers are not current IOLTA/EAF grantees and it is unclear when—if ever—an attorney must oversee their work.

### *Housing counseling*

Housing counselors help clients locate and access affordable housing, among other services. The U.S. Department of Housing and Urban Development’s (HUD) housing counseling program, for instance, helps individuals decide where to rent and how much to budget for housing costs. It also helps renters understand their leases and whether they have experienced discrimination.<sup>28</sup>

Similar to HICAP counseling, housing counseling could be a legal or non-legal service. The test is whether the service “uses legal knowledge and skills...to create, advance, protect, or enforce the legal rights of indigent clients or communities.” Helping a client decide where to rent or to create a budget does not use legal knowledge and skills. Helping a client to understand their lease or rights to be free from housing discrimination would use legal knowledge and skills and therefore could be a legal service.

### *Financial literacy and education services*

The U.S. Financial Literacy and Education Commission defines “financial literacy” as “the skills, knowledge and tools that equip people to make individual financial decisions and actions to attain their goals...”<sup>29</sup> Examples are trainings on how to create budgets and increase credit scores. Unlike HICAP and housing counseling which can use legal knowledge and skills depending on the client’s facts, these types of financial education are unlikely to use “legal knowledge and skills” by themselves. On the other hand, when financial literacy and education directly supports a training about consumers’ legal rights (e.g. the right to discharge debt or live free from creditor harassment), that part of the training would be legal services.

### *Grassroots mobilization*

Like grassroots lobbying, the Commission has found that other work to spur community action—such as organizing a march or encouraging participation in censuses—are not legal

---

<sup>28</sup> For more information about HUD housing counseling for renters, see HUD’s website at [https://www.hud.gov/program\\_offices/housing/sfh/hcc/rental](https://www.hud.gov/program_offices/housing/sfh/hcc/rental).

<sup>29</sup> U.S. Financial Literacy and Education Commission, “U.S. National Strategy for Financial Literacy 2020” (2020) available at <https://home.treasury.gov/system/files/136/US-National-Strategy-Financial-Literacy-2020.pdf>. (p. 2).

services.<sup>30</sup> Although they might aim to change the law, the mobilizing activities themselves do not use “legal knowledge and skills” as contemplated by the proposed definition.<sup>31</sup> Rather, they entail knocking on doors, collecting signatures, handing out government forms, etc. Additionally, such work—directed at the community—would not serve to advance a legal outcome in a particular case under the proposed definition’s complementary services prong.

Furthermore, there are many organizations that specialize in mobilizing communities to vote, march, sign letters, or otherwise engage policymakers and the public. These organizations need not employ attorneys or even see themselves as legal aid providers or support centers. Broadening the definition of legal services to include this work would open the door to these nonprofits qualifying for California’s limited funding for legal aid at the expense of traditional legal aid providers and support centers.

### *Research/Studies*

The proposed definition specifies that “[n]on-representational services can also include studying legal needs and outcomes to inform legal aid delivery.” The proposed definition intends to cover data gathering to identify a provider’s client community—such as its size, locations, languages, and civil legal needs—and services results. This research can be a critical part of identifying and refining the representation, non-representational, and complementary services that are most important to provide. To become part of the organization’s legal services, it must conduct the research for the purpose of identifying, enabling, or improving those in-house services.

While potentially supportive of legal aid’s goals, social science research is generally not a legal service. Rather than using “legal knowledge and skills...to create, advance, protect, or enforce the legal rights,” that work likely calls for academic research skills to ensure representative data sets with which to perform statistical analyses. Unlike gathering data to target or refine services, a research study on the impact of certain laws, for instance, would not be a legal service as much as an academic one.

### **Summary chart**

The following chart summarizes some of the above conclusions. This reference table is non-exhaustive and subject to the explanations above:

<b>Activity</b>	<b>Included in legal services</b>	<b>Excluded from legal services</b>
<b>Social work services</b>	When services advance a legal outcome, serve as an integral part of an attorney’s case strategy, and	When services advance non-legal outcomes, are separate from case strategy (e.g. continue after a case

<sup>30</sup> For a discussion of grassroots policy advocacy, see the section “...and advocating directly to government bodies on issues of importance to the legal rights of indigent clients or communities,” *infra*.

<sup>31</sup> The same caveat applies here as in the discussion of grassroots policy advocacy, above. To the extent that grassroots mobilization incorporates other work that by itself would be a legal service, such as training indigent communities about their legal rights, that other work would still be a legal service even if part of a grassroots campaign.

<b>Activity</b>	<b>Included in legal services</b>	<b>Excluded from legal services</b>
	are at the direction of the attorney.	ends), or conflict with the attorney-client relationship or attorney's responsibilities to the client.
<b>Rental assistance programs</b>	When services use legal knowledge and skills—subject to attorney supervision—to create, advance, protect, or enforce legal rights. E.g. Staffing legal aid clinics or assisting with legal representation.	When services do not use legal knowledge and skills and are not otherwise complementary services that an attorney has directed as part of a particular legal aid case.
<b>HICAP services</b>	When services use legal knowledge and skills—subject to attorney supervision—to create, advance, protect, or enforce legal rights. E.g. Assessing whether to appeal a Medicare denial.	Work to advise and exercise consumer choice (e.g. to help consumers select the insurance coverage that meets their health care goals and complete an application for insurance).
<b>Housing counseling</b>	When services use legal knowledge and skills—subject to attorney supervision—to create, advance, protect, or enforce legal rights. E.g. Explaining a lease or right to be free from discrimination.	Help deciding where to live, budgeting for living costs, and other services not requiring legal knowledge or skills.
<b>Financial literacy and education</b>	Financial literacy and education that supports legal rights trainings for consumers.	Information that does not support know-your-rights trainings (e.g. information about how to create budgets and increase credit scores).
<b>Grassroots mobilization and grassroots lobbying</b>	Educating indigent communities about their legal rights; advising or consulting with other organizations to create, advance, protect, or enforce the rights of indigent communities.	Work to mobilize/recruit communities to lobby, vote, march, participate in censuses, etc.
<b>Research/Studies</b>	Collecting data to inform in-house legal aid delivery.	All other social science research, such as academic studies and publications.

### **FEEDBACK FROM THE LEGAL AID COMMUNITY**

The Committee sought the legal services community's feedback on the proposed definitions during June 2-28, 2022. The Committee is thankful to LAAC for its time and care in circulating a draft of this memo, meeting with its members, and writing a letter to the Committee (Attachment B). LAAC's letter expresses overall support for the Committee's grantee-inclusive process and proposed definitions:

In sum, our community appears to have reached consensus that this proposed definition will sufficiently allow for the legal aid community to engage in this kind of thoughtful, client-centered approaches to achieving outcomes, while ensuring that this core funding remains dedicated to organizations whose primary purpose and mission is to provide legal aid.

(Attachment B, p. 2). Please see Attachment B for LAAC’s full comments.

The Committee also received a letter by Disability Rights Education and Defense Fund (DREDF) (Attachment C). DREDF observed that a conservative reading of the circulated definition of civil might exclude some civil rights work that can arise in the course of a criminal case. This includes, for example, seeking reasonable accommodations in criminal proceedings. Please see Attachment C for DREDF’s full comments.

### **RESPONSE TO THE COMMUNITY’S FEEDBACK**

The Committee agrees with DREDF that the previously circulated definition of civil could be clearer. That definition did mean to categorize as civil—rather than criminal—collateral civil issues such as public access, disability accommodations, and language access that might arise during a criminal proceeding. That civil rights/access work can be separate from the criminal defense legal services in the underlying case. The revised definition clarifies this.<sup>32</sup>

### **CONCLUSION**

Attachment A shows the proposed revision to the rules. Adding “civil” before “legal services” reflects 2022 updates to the IOLTA statute. Adding a definition for civil would fill a gap in the rules. Redefining legal services would bring rule 3.672 in line with the reality of effective legal aid and the spirit of the IOLTA statute. The latter definition would provide welcome clarity to programs, commissioners, and State Bar staff, promoting interpretive consistency and statutory compliance. The elements and delicate word choices in the proposed definition seek to maximize flexibility for programs while upholding the IOLTA statute’s intentions—to increase access to civil justice through the funding of civil legal aid.

### **FISCAL/PERSONNEL IMPACT**

None

### **RECOMMENDATIONS**

Should the Commission agree with the Committee’s proposal, passage of the following resolution is recommended:

---

<sup>32</sup> When LAAC circulated the Committee working group’s memo, the proposed definition of civil read:

“Civil” refers to legal issues, questions, or processes that arise under any body of civil law and includes legal services related to expungements, record sealing or clearance proceedings not requiring a finding of factual innocence, and infractions. A general feature of civil matters is that courts typically handle them outside of their criminal dockets. “Civil” excludes legal services related to criminal proceedings except as described in this paragraph.



**RESOLVED**, that the **Legal Services Trust Fund Commission** adopts the definitions of “civil” and “legal services,” amending State Bar Rule 3.672 as set forth in the Commission Rules Committee’s August 12, 2022, memo, including Attachment A.

**ATTACHMENT(S) LIST**

- A. Proposed Revision to State Bar Rule 3.672.
- B. Letter from LAAC.
- C. Letter from DREDF.



## Article 2. Construction of certain statutory provisions

...

### Rule 3.672 Delivery of civil legal services

(A) “Civil” refers to legal issues, questions, or processes that arise under any body of civil law. The provision of legal assistance with respect to criminal proceedings is not civil legal services. Proceedings concerning expungements, record sealing or clearance proceedings not requiring a finding of factual innocence, or infractions are not criminal proceedings, and legal services related thereto are civil legal services. Legal services related to collateral civil issues such as public access, disability accommodations, and language access that arise during criminal proceedings are not legal assistance with respect to criminal proceedings, provided the civil issues do not directly affect determination of guilt, sentencing, or other disposition of the criminal proceeding.

~~(A)~~(B) “Legal services” means work that uses legal knowledge and skills to create, advance, protect, or enforce the legal rights of indigent clients or communities. This encompasses legal representation and non-representational services for individuals and groups. Examples of non-representational services include providing legal information, advice, trainings, and self-help resources. Non-representational services can also include studying legal needs and outcomes to inform legal aid delivery, investigating legal violations, and advocating directly to government bodies on issues of importance to the legal rights of indigent clients or communities. Representation and non-representational services must be performed or supervised by an attorney. “Legal services” may also include complementary services provided they advance a legal outcome, serve as an integral part of an attorney’s strategy in a legal matter or case, and the attorney directs the work in that matter or case. Complementary services and other services by non-attorneys must uphold the attorney-client relationship and avoid interfering with the attorney carrying out their obligations to the client.~~“Legal services” include all professional services provided by a licensee of the State Bar and similar or complementary services of a law student or paralegal under the supervision and control of a licensee of the State Bar in accordance with law.~~

~~(B)~~(C) “Legal support services” required by statute to be provided by a qualified support center include but are not limited to

(1) professional services to qualified legal services projects; and

(2) the direct provision of civil legal services to an indigent client of a qualified legal services project, provided the services are provided directly to the client

- (a) as co-counsel with an attorney employed or recruited by a qualified legal services project; or
- (b) at the request of an attorney employed or recruited by a qualified legal services project that is unable to assist the client.

*Legal Aid Fights for Justice. We Fight for Them.*



**June 28, 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: Defining Civil Legal Services**

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) rules revision process pertaining to the definition of "legal services." 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.**

LAAC has gathered comments on the memo and the redlined rule provided to us by the Bar via email as well as at two meetings with around 20 total participants. We emailed all Executive Directors of IOLTA funded organizations and our "Director of Litigation and Advocacy" email list, which includes Executive Directors, Directors of Litigation, Directors of Advocacy, and managing attorneys. **To start, we want to convey our impression that the Bar's focus group strategy was highly successful.** It worked both in terms of ensuring maximum engagement from the legal aid community as well as the receipt of as much feedback and information upfront as possible. This meant that, prior to releasing the official memo for us to circulate, the Bar already had an informed decision-making process in regard to how the definition would likely be received.

Specifically, we found that staff successfully channeled that preliminary engagement into the memo. We believe this process fostered transparency, procedural legitimacy, and a more fine-tuned memo that we could share with the community. Of course, while we understand this likely took resources and time, it was worth it, in our opinion, due to the fact that, as we will describe, there was largely consensus around the proposed definition after having gone through this process.

**In the two meetings we convened, we largely heard much of what was discussed at the focus group meetings and what is expressed in the memo.** The singular overarching concern we heard is—as we all are aware—around diluting Bar-distributed legal aid funding to non-legal aid organizations. As discussed in our meetings with organizations, the balance, within this, is between enabling the important, legal outcome-connected, holistic services that the IOLTA-funded legal aid community currently provides while also ensuring that this funding goes to organizations that actually, as their primary purpose, provide legal aid. Providing funding for complementary aspects of a legal case, such as social work or other advocate help, inspires innovation, efficiency, and whole-person, outcomes-based approaches that drives our community to engage in transformative legal assistance.

With that, this funding is solely for organizations that provide legal services, and it is critical that these complementary aspects be tied to the legal rights, matter, or case at hand. This was the singularly major theme in our discussions. Of course, the Bar has conveyed, repeatedly, that this is their concern as well. However, we wanted to make sure to relay this sentiment that IOLTA-funded legal aid organizations are also concerned about other organizations that do not primarily provide legal services taking a portion of this funding from organizations that generally experience under-funding to begin with. The funding was created by the legislature specifically to meet the unmet *legal* needs of indigent Californians.

**Overall, it appears the Bar’s concerns and the legal aid community’s concerns are one and the same, and the participants from the community did not have any major issues with the definition of civil legal services as presented.** Meeting participants found that this definition, in tandem with Business and Professions Code § 6213(a)(1), should sufficiently exclude organizations that should not be included. Additionally, we wanted to note appreciation for the “create, advance, protect, or enforce the legal rights” grounding was well-received, and appears to function, within the rule, to successfully allow for but also sufficiently delimit this dynamic between legal work and other services that are connected to that legal work that help the client.

One concern raised was a desire to have clarification that current work qualifies. We heard several examples of projects that were currently funded by IOLTA grants, that, with the limited definition of civil vs. criminal, some organizations were worried might be interpreted to no longer count. (For an example, see the letter from Disability Rights Education and Defense Fund.) Other examples included advocacy with local governments to change practices and the use of advocates who are not lawyers, which was addressed in the memo.

**In sum, our community appears to have reached consensus that this proposed definition will sufficiently allow for the legal aid community to engage in this kind of thoughtful, client-centered approaches to achieving outcomes, while ensuring that this core funding remains dedicated to organizations whose primary purpose and mission is to provide legal aid.** We appreciate the work of the working group and Bar staff to bring such a thorough and consensus-based definition to our members.

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**

July 1, 2022

Via Email [amin.alsarraf@lockelord.com](mailto:amin.alsarraf@lockelord.com)

Amin Al-Sarraf

Legal Services Trust Fund Commission Rules Committee

Via Email [catherine.blakemore@gmail.com](mailto:catherine.blakemore@gmail.com)

Catherine Blakemore

Legal Services Trust Fund Commission Rules Committee

Dear Colleagues:

I am writing to share a concern about the draft language that is being proposed to the Members of Legal Services Trust Fund Commission Rules Committee to define the word “civil” in “civil legal services.”

In its role as a support center, Disability Rights Education and Defense Fund (DREDF) has a mission to enforce state and federal disability rights laws such as Section 504, the Americans with Disabilities Act, and Government Code section 11135 in the California state courts on behalf of court users with disabilities. These civil rights laws are “civil,” and their enforcement through various forms of advocacy has been “traditionally considered civil.” See Cal. Bus. & Prof. Code § 6213(l) (“‘Civil legal services’ includes, in addition to matters traditionally considered civil, legal services related to expungements, record sealing or clearance proceedings not requiring a finding of factual innocence, and infractions.”).

Such disability rights are afforded to state court users who are the subjects of criminal proceedings. These rights, including the right to reasonable modifications, effective communication (such as through sign language interpreting), and other forms of nondiscrimination, are civil rather than criminal. This is so even if the underlying proceeding is criminal. See, e.g., *Updike v. Multnomah Cty.*, 870 F.3d 939 (9th Cir. 2017) (litigation brought by deaf criminal defendant who was denied sign language interpreting at arraignment on criminal charges and while in pretrial detainment and under pretrial supervision); *Lacy v. Cook Cty.*, 897 F.3d 847, 854 (7th Cir. 2018) (litigation brought by criminal detainees who used wheelchairs and who contended that defendants failed to provide reasonable modifications or to remove structural barriers at the courthouses); *Prakel v. Indiana*, 100 F. Supp. 3d 661, 666 (S.D. Ind. 2015) (litigation brought by deaf spectator who interpreting services to attend various court proceedings in which his mother was a criminal defendant).<sup>1</sup>

Caselaw shows the efforts of disabled courts users who were in criminal proceedings to seek any available remedies after the fact. But it is far more consistent with the purposes of the ADA and related laws for disabled individuals to enjoy their disability civil rights during their criminal proceeding. Communication access, wheelchair access, reasonable modifications, and other

<sup>1</sup> There may be other, analogous civil laws that apply to court users who are the subject of criminal proceedings, such as the rights of immigrant defendants under Title VI or California state laws to language interpreters.

forms of disability nondiscrimination are disability civil rights that allow criminal defendants an equal opportunity to communicate with their lawyers, the judge, and court staff, and participate equally in the activities of state court.

The language proposed to the Legal Services Trust Fund Commission Rules Committee for defining the word “civil” in the State Bar Rules may cause unintentional problems that disrupt the longstanding understanding that legal services to help enforce rights under the ADA and similar disability access laws in state court proceedings (including criminal proceedings) is a form of civil legal services.

Proposed Rule 3.672(A) provides as follows:

“Civil” refers to legal issues, questions, or processes that arise under any body of civil law and includes legal services related to expungements, record sealing or clearance proceedings not requiring a finding of factual innocence, and infractions. A general feature of civil matters is that courts typically handle them outside of their criminal dockets. “Civil” excludes legal services related to criminal proceedings except as described in this paragraph.

The first sentence, by itself, would include the civil legal services described in this letter, as disability civil rights within state court proceedings are “legal issues, questions, or processes that arise under any body of civil law.” However, the next two sentences – focusing on “civil matters” versus “criminal proceedings” as opposed to the source of the law – create ambivalence.

Regarding the second sentence, the association of “civil” with matters “outside” of criminal dockets may cause confusion. For disabled individuals with criminal law matters, implementing civil disability rights – such as effective communication (e.g. sign language interpreting, real-time captioning, assistive listening device), wheelchair access, and other affirmative access requirements – are necessarily implemented “inside” the criminal case or docket. Contrary to our understanding of the Legislature’s intent, the second sentence suggests that the civil legal services that are the topic of this letter are excluded.

Regarding the third sentence: The first phrase of the third sentence, stating that the word “civil” “excludes legal services related to criminal proceedings” would eliminate the civil legal services described in this letter. The second phrase of the third sentence, “except as described in this paragraph,” could and should reserve the civil legal services about which DREDF is concerned; that is the proper and best reading. But the last phrase could also be read or misread to mean except as to criminal proceedings such as those set out in the first sentence, that is, expungements, record sealing or clearance proceedings not requiring a finding of factual innocence, and infractions.

Given the unintentional ambiguity created by the second and third sentences, DREDF recommends that the proposal be changed to include only the first sentence. This would be the simplest solution:

“Civil” refers to legal issues, questions, or processes that arise under any body of civil law and includes legal services related to expungements, record sealing or clearance proceedings not requiring a finding of factual innocence, and infractions.

Another alternative would be to edit the language to address the concerns raised herein. One option is as follows:

“Civil” refers to legal issues, questions, or processes that arise under any body of civil law and includes legal services related to expungements, record sealing or clearance proceedings not requiring a finding of factual innocence, and infractions. **Civil law and civil legal services include those associated with** ~~A general feature of~~ civil matters ~~is~~ that courts typically handle them outside of their criminal dockets. “Civil” excludes legal services related to criminal proceedings **unless the services involve legal issues, questions, or processes that arise under civil law or are related to expungements, record sealing or clearance proceedings not requiring a finding of factual innocence, and infractions** ~~except as described in this paragraph.~~

Civil legal services should include legal services focus on legal issues, questions, or processes that arise under any body of civil law. Such civil legal services can apply in various contexts and do not depend upon whether there is a court proceeding at all, or whether any proceeding is civil or criminal.

Thank you for your consideration and attention to this matter. I am available to speak about this letter and can be reached at [ccenter@dredf.org](mailto:ccenter@dredf.org) or 415-531-2874 (cell).

Sincerely,



Claudia Center

Via Email [Christopher.McConkey@calbar.ca.gov](mailto:Christopher.McConkey@calbar.ca.gov)  
Christopher McConkey  
California State Bar





# The State Bar of California

---

**DATE:** August 12, 2022

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

**FROM:** Members, LSTFC Rules Committee

**SUBJECT:** Approval of Rules Committee Recommendations Related to Defining and Demonstrating Indigency 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 (LSTFC), and State Bar staff.

On August 4, 2022, the Rules Committee met to discuss recommendations regarding the definition of indigency and ways for qualified legal services projects (QLSPs) to demonstrate indigency when working on behalf of an organization or a group or class of people. Topics discussed at this meeting and prior meetings included:

- Whether to increase the standard client eligibility income threshold, how to apply the pro bono income threshold, and whether to further define “income” and provide guidance on income exceptions;
- How to clarify other eligibility classifications that do not require means testing;
- Ways to ensure consistent and comprehensive reporting on impact litigation and advocacy work without overburdening QLSPs or staff, with the ultimate goal of demonstrating that the majority of those impacted are indigent, or that indigent persons are disproportionately impacted, and to do so with objective evidence.

This memo presents the Rules Committee’s final recommendations for the LSTFC’s consideration at its August 12, 2022, meeting.

---

## **BACKGROUND**

Attachment A provides comprehensive background information on the codification process, governing authorities, and relevant updates to the issues identified above.

## **DISCUSSION**

On August 4, 2022, the Rules Committee discussed recommendations regarding the definition of indigency and ways for QLSPs to demonstrate indigency. This was the third time the Rules Committee addressed this topic in the past two years.

Prior recommendations from the committee focused on creating a State Bar Rule to clarify the definition of “indigent person” found under Business and Professions Code section 6213(d). This included conforming to a recent statutory change which increased the income level for indigent persons from 125 percent to 200 percent of the federal poverty level. It also elaborated on other classifications, such as eligibility for older adults or how to factor in disability-related expenses. The prior recommendations adopted a definition of income that conforms to the definition in the Code of Federal Regulations and specified instances where income exceptions may be appropriate in order to provide better guidance to QLSPs in developing their income guidelines under Business and Professions Code section 6218(a).

Given the considerations outlined in Attachment A and prior Rules Committee decisions, the recommendations at the most recent meeting were as follows:

- Clarify that the pro bono income threshold is only for QLSPs receiving a pro bono allocation;
- Modify current reporting requirements regarding impact litigation and advocacy work to ease the reporting burden while still capturing significant activity. This includes reducing the number of yearly reports from a maximum of 25 to 10 individual activities and setting a minimum threshold of 50 staff hours devoted to an individual activity before reporting is required for that activity; and
- Require that work by a QLSP on behalf of an organization or group of persons demonstrate that the majority impacted are indigent, or that those who are indigent are disproportionately impacted by the activity, supported by evidence.

The Rules Committee made some modifications to the proposed rule during the August 4 meeting by choosing a yearly reporting requirement for the impact litigation and advocacy work reports but reducing the number of activities reported as compared with current practice. It also inserted flexibility into the proposed rule to allow for adjustments to this requirement in the future if the LSTFC deems them appropriate.

## **RECOMMENDATIONS**

Should the Legal Services Trust Fund Commission agree with the Rules Committee's proposal, passage of the following resolution is recommended:

**RESOLVED**, that Legal Services Trust Fund Commission adopt the proposed amendments to the Governing Authorities regarding the definition of indigency and methods for demonstrating indigency for Qualified Legal Services Projects, as set forth in Attachment B.

## **ATTACHMENT(S) LIST**

- A. Memo and Attachments from August 4, 2022 Rules Committee Meeting
- B. Proposed New State Bar Rule – Title 3, Division 5, Chapter 2



Date: July 29, 2022

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

From: Christian Schreiber, Co-Vice Chair, LSTFC  
Banafsheh Akhlaghi, Member, LSTFC  
Jim Meeker, Member, LSTFC

Subject: Update Regarding Proposed Rules Related to Defining and Demonstrating Indigency

---

## EXECUTIVE SUMMARY

At its meeting on October 16, 2020, the Rules Committee of the Legal Services Trust Fund Commission (LSTFC) first considered proposed changes to the Rules of the State Bar and Legal Services Trust Fund Program Eligibility Guidelines regarding the definition of indigency and ways for qualified legal services projects (QLSPs) to demonstrate their clients' indigency in grant applications and reporting. After feedback from the civil legal aid community, the committee voted to recommend amending Business and Professions Code section 6213(d) to increase the client income eligibility threshold from 125 percent of the federal poverty level to 200 percent. The committee also discussed other points of clarification or improvement in the rules and guidelines, but no further action was taken pending the recommended statutory change to the income eligibility threshold.<sup>1</sup>

The next time the topic of defining and demonstrating indigency was addressed, in October 2021, the committee approved a recommendation to define "income" for purposes of applying the statute, as well as provide more guidance regarding the various classifications for the definition of "indigent person." At that meeting, the Rules Committee directed staff to draft additional language to address the income eligibility standards used by organizations that receive a pro bono allocation, as well as provide further analysis regarding the effect of proposed language for QLSPs to demonstrate indigency in instances where they engage in impact litigation and/or advocacy work (otherwise known as ILAW reports). This memorandum addresses those specific changes.

---

<sup>1</sup> The proposed statutory change was approved and went into effect on January 1, 2022.

## **BACKGROUND**

### **CODIFICATION PROCESS**

In 2019, at the recommendation of the Board of Trustees, State Bar staff and the LSTFC 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 in the process and to ensure consistency in administering the grants.

LSTFC members have formed working groups to investigate the questions raised in the Rules Committee's work plan and develop preliminary recommendations. The working groups develop preliminary recommendations, which are circulated by the committee to the legal aid community through the Legal Aid Association of California (LAAC) to obtain feedback. The committee considers the feedback and discusses before making a final recommendation to the LSTFC, and in turn, the Board of Trustees.

As part of the codification process, this memorandum seeks to further clarify the definition of "indigent person" under Business and Professions Code section 6213(d) for Income on Lawyers' Trust Account (IOLTA) grant recipients. It will also provide options under consideration for QLSPs to demonstrate that they are providing services to indigent persons when working on behalf of a group or class of persons. This relates to the work reported in QLSP ILAW reports.

This topic has already gone through one round of community feedback and committee discussion. This memorandum presents a restatement of prior identified issues that remain unresolved, as well as any new or additional information obtained in the interim.

### **GOVERNING AUTHORITIES<sup>2</sup>**

IOLTA and EAF grants are awarded to approximately 100 nonprofit legal services organizations each year to provide free civil legal aid in California to indigent persons, or legal training, legal technical assistance, or advocacy support without charge to the organizations providing services to indigent persons. Grantees must comply with criteria set forth in Business and Professions Code sections 6210-6228 (otherwise known as the "IOLTA Statute"), State Bar Rules and Appendices, and Legal Services Trust Fund Program Eligibility Guidelines (for Legal Services Projects or Support Centers, as applicable).<sup>3</sup>

---

<sup>2</sup> Prior review of the legislative history for any information or references relevant to the interpretation of these governing authorities yielded no additional guidance.

<sup>3</sup> Additional governing authorities include the Legal Services Trust Fund General Grant Provisions, and Standards for Financial Management Systems and Audits. However, they are not pertinent to the issues raised in this discussion.

State Bar Staff (staff) and the indigency working group reviewed these governing authorities for direction regarding the definition of “indigent person” and methods for demonstrating indigency when working on behalf of a group. Specifically, Business and Professions Code section 6213(d), which provides definitions of “indigent person,” and Guidelines 2.3.3 and 2.3.4. of the Eligibility Guidelines for Legal Services Projects, which describes the methods for demonstrating indigency when performing work on behalf of a group, are relevant to the issues raised in this memorandum.

## **DISCUSSION**

### **DEFINING INDIGENCY**

Under Business and Professions Code section 6213(d), an individual may qualify for legal services offered by QLSPs as an “indigent person” in a variety of ways, some means tested, some not. The new recommended State Bar Rule would not change the underlying categories identified in the Business and Professions Code, but rather provide further information to ensure the definitions are applied consistently across all QLSPs.<sup>4</sup>

At the October 2021 meeting, the Rules Committee approved recommendations regarding the definition of “income” (and guidance for applying income exceptions), as well as the definition of “indigent person.”<sup>5</sup> It also discussed the income threshold used by organizations that receive a pro bono allocation.

Grant recipients that meet certain criteria may receive additional funding (a “pro bono allocation”), and are permitted to use different income thresholds, when their principal means of service delivery is through pro bono attorneys. Eligibility for the pro bono allocation is determined on a yearly basis through the IOLTA/EAF application process. If a program receives this allocation, it may use the additional income threshold cited in Business and Professions Code section 6213(d) (“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”).<sup>6</sup>

Prior feedback from the legal aid community detailed three main points: (1) Concern about fairness when a QLSP receiving a pro bono allocation might use the (historically) higher income threshold, even when no pro bono attorney is actively involved in the case, compared with another QLSP needing to deduct such services from its qualifying expenditures; (2) difficulty

---

<sup>4</sup> Support Centers generally provide services to QLSPs rather than to direct service clients, unless co-counseling or taking a case at a QLSP’s request, so the focus of this discussion is QLSP income-screening practices.

<sup>5</sup> The approved recommendations are part of the proposed rule in Attachment A in black font. Underlined entries are new additions since the last meeting.

<sup>6</sup> This threshold varies from county to county as it is based, in part, on a calculation of area median income.

tracking qualified expenditures when organizations that use different income thresholds partner with each other; and (3) a desire to expand the historical interpretation of the phrase “a project that provides free services of attorneys in private practice without compensation” under Business and Professions Code section 6213(d) to include projects within a grantee organization that utilize pro bonos, rather than applying it only to QLSPs that qualify for the pro bono allocation.

The committee discussed this feedback and its counterpoints, including the plain language of the statute and the way it has been interpreted and applied historically, at its October 2021 meeting. Moreover, there was acknowledgement that the increase of the standard income eligibility threshold from 125 to 200 percent of the federal poverty threshold would effectively eliminate the distinction between the standard income threshold and the pro bono income threshold in some counties and reduce the disparity in others, thus addressing most concerns about fairness.

After discussion the committee approved a resolution instructing staff to draft language to clarify and codify the current practice that the alternate income threshold is only applicable to QLSPs that receive a pro bono allocation. The proposed language appears in Attachment A.

### **Response from the Legal Aid Community and Relevant Considerations**

In its most recent response regarding these updates and a draft version of this memorandum, LAAC reiterated that there is still some opposition in the legal aid community regarding the Rules Committee’s prior recommendation to limit the pro bono income threshold only to organizations eligible for the pro bono allocation. (See page 2 of Attachment E.)

Given that this topic was discussed previously, and no new considerations have arisen, the working group recommends proceeding to approve the language in the proposed rule.

### **DEMONSTRATING INDIGENCY**

Business and Professions Code section 6213(d) provides guidance to QLSPs on identifying individual clients who are eligible for services as “indigent persons,” but the statute and the State Bar Rules are silent regarding services provided for the benefit of indigent persons generally, or as a group. The impact litigation and advocacy work (ILAW) process is intended to allow grant recipients to engage in broad, impactful work while ensuring that these services primarily benefit indigent persons.<sup>7</sup> QLSPs must have a primary purpose and function of providing free civil legal services to indigent persons;<sup>8</sup> the ILAW activities are reviewed to

---

<sup>7</sup> Legal Services Trust Fund Program Eligibility Guidelines for Legal Services Projects, Guideline 2.3.4.

<sup>8</sup> Business and Professions Code section 6213(a)

determine whether expenditures on such activities should be considered qualifying—and thus count towards the organization’s primary purpose—in its annual IOLTA/EAF application.

The only guidance for demonstrating indigency in ILAW reports is provided by the Eligibility Guidelines for Legal Services Projects, Guideline 2.3.4. This includes consideration of the following factors: (1) forum, (2) whether named plaintiff is indigent, (3) the definition of the class if impact litigation, (4) a description of the group of individuals who would benefit, **(5) whether a majority of those who would benefit are indigent**, (6) relation of the issues raised in the matter to the legal needs of indigent persons, and (7) whether indigent persons are disproportionately affected by the legal issues raised. The Commentary to the Guideline goes on to state:

For each of the matters so identified in your application, describe who would benefit from the services, state whether the matter is primarily for the benefit of indigent persons and, if so, explain the reasons you reached that conclusion. For any such matter that is primarily for the benefit of indigent persons, your description should include the information listed as items (1) through (7) in the preceding paragraph; **you must quantify** the percentage of your clients who are indigent persons (or organizations qualifying under Commentary 2.3.3 above) and **the percentage of the persons who would benefit from the services who are indigent persons. Explain the basis of this information.** (Emphasis added.)

Several grant recipients reported difficulty demonstrating they satisfy all of the requirements that would define their services as “primarily for the benefit of indigent persons” under Guideline 2.3.4., even though their ILAW services are intended for the benefit of indigent persons. The biggest hurdle has been in quantifying whether a majority of those who would benefit from the work are indigent. Current office practice is to find an activity qualifying if over 50 percent of the population that would benefit is indigent, but reliable data is not always available to demonstrate that this is the case.

The ILAW reporting requirements can be onerous, both from a reporting and administrative perspective, with over 900 individual activities from 2021 reported and reviewed. Nonetheless, it is an important part of the annual application process; if these activities are found to be nonqualifying, the expenses would need to be deducted from an organization’s qualified expenditures in its IOLTA/EAF application. This would impact the organization’s grant award and could impact the organization’s eligibility.<sup>9</sup>

The commentary to Eligibility Guideline 2.3.4. states that if ten percent or more of an organization’s legal services are devoted to ILAW activities, the report must be completed with

---

<sup>9</sup> QLSP grant awards are calculated based on a formula that, in part, depends on an organization’s qualified expenditures (i.e., funds spent to provide free civil legal services to indigent persons).



the organization's top 10 activities. However, current office practice is to have all organizations complete the report with their top 15 impact litigation cases, top 10 advocacy activities, and a summary of any additional ILAW activities.<sup>10</sup> This practice was adopted to ensure that significant nonqualifying expenditures are not overlooked, as that might result in a larger IOLTA/EAF grant award for an organization than is warranted.

With these issues in the mind, the working group recommended creating a State Bar Rule that is consistent with the intent of the IOLTA statute to ensure that funding is limited to those providing civil legal services to indigent persons, while at the same time promoting efficient and accurate reporting.

The working group previously made the following suggestions to address some of the challenges with ILAW:

1. Only requiring completion of the ILAW report if the amount of time devoted to these activities exceeds the lesser of the following: 10 percent of the organization's legal services in a given year, or 100 hours (cumulatively), as determined by the organization; and
2. Allowing the use of internal data, or data from other direct legal services providers or community-based organizations, to provide justification that the activity will primarily benefit indigent persons if independent data is not available; and/or<sup>11</sup>
3. Demonstrating disproportionate impact to indigent persons based on the nature of the activity and the specific anticipated outcomes for indigent persons if the activity succeeds.<sup>12</sup>

Both LAAC and one of the IOLTA/EAF grantees, Public Advocates, provided separate comments on these questions. Their comments reiterated how difficult the reporting process can be, which may have the effect of impeding rather than enabling this type of work. Feedback regarding the second and third points above was largely supportive, though there was some discussion of whether certain types of work, such as homelessness prevention and intimate partner violence prevention/intervention, should be presumptively qualifying. (For reference, the prior feedback from LAAC and Public Advocates are included as Attachments C and D.)

---

<sup>10</sup> There is a discrepancy between the guideline and office practice in that the guideline provides for the top activities to be determined by the largest amount of funds spent, whereas office practice requires determining the top activities based on staff hours devoted to the work. In many instances, these figures may correlate, but for organizations that also supervise volunteers participating in these activities, for example, there may be a difference.

<sup>11</sup> We received a request for clarification around the "and/or" language between these options. Number 1 above relates to the reporting process itself; it is intended to alleviate some of the burden of the current reporting requirements by setting a threshold. The second and third options relate to demonstrating indigency and are under consideration either as exclusive options or, more likely, as two alternatives.

<sup>12</sup> The LSTFC Eligibility & Budget Review Committee, which is responsible for approving ILAW reports, has approved the disproportionate impact approach on a case-by-case basis in recent years.

Most prior discussion of this topic centered on the first point above, regarding the appropriate means of limiting the need for reporting while still capturing significant nonqualifying work. Feedback from LAAC and the legal aid community on that point requested that the committee consider using the *greater* of the two options rather than the *lesser*, partially out of concern that using the lesser of the two could disproportionately impact smaller programs, while the committee questioned whether using the *greater* amount would be problematic. Staff noted that 10 percent of a very large organization's qualified expenditures could amount to hundreds of thousands of dollars in work that would potentially go unreported. This is relevant to both the determination of primary purpose and grant allocation amounts.<sup>13</sup>

At the October 2021 meeting, the committee requested that staff provide further analysis of the impact of the proposed change to require reporting in instances where the ILAW activities exceeded 10 percent of legal services or 100 hours, from the standpoint of both the greater and lesser options.

Staff's review of the most recent ILAW reports revealed the following:

- 448 impact litigation activities and 453 advocacy activities were reported; of those, 29 impact litigation and 11 advocacy activities were considered nonqualifying. (The vast majority of nonqualifying activities were voluntarily reported as such either at the outset by the grantee or after discussion with State Bar staff. Two required committee action.)
- Approximately 30 percent of current grantees reported no ILAW activities in the prior evaluation year.
- Another 30 percent reported 10 or fewer activities in the prior year.
- The average number of reported activities (for those organizations with any to report) was 12.5.
- The median number of grant recipient staff hours reported per impact litigation case was 100, and the average number was 308 hours.
- The median number of grant recipient staff hours reported per advocacy activity was 60, and the average number was 495 hours.
- Some cases and activities reported as few as one or two hours, and others amounted to thousands of hours.<sup>14</sup> There is high variability among organizations as to how much of

---

<sup>13</sup> To be clear, whether or not they are submitting reports related to the work, grant recipients are always under an obligation to report and deduct expenditures that would be considered nonqualifying; many grant recipients submit ILAW reports each year in which they already recognize and agree to deduct expenditures related to nonqualifying work on their IOLTA/EAF applications. Only a handful of activities—usually fewer than five—each year require committee review because the grant recipient believes the work is qualifying and staff disagrees or believes that the qualifying nature of the work is not sufficiently supported by the evidence provided.

<sup>14</sup> This is inclusive of support center activities, for which advocacy support may comprise a significant amount of their services.

their services are comprised of these ILAW activities, yet the reporting requirement is currently the same for all.

Some conclusions/considerations in light of the above:

- For organizations required to report, asking them to report their top 10 ILAW activities (instead of the current 25), would still capture most, if the average is 12.5 activities.
- Under the original proposal of requiring QLSPs to submit ILAW reports if those activities comprise 10 percent of their services or 100 hours cumulatively, whichever is *lesser* (and it will almost always be the case that 100 hours is less than 10 percent of total legal services), it seems clear most current grantees would still need to report. Only a handful of organizations that engage in this work (fewer than 10) fell below 100 hours total.
- It is difficult to estimate how many organizations would need to report if the alternative suggestion to report when the ILAW activities comprise 10 percent of services or 100 hours cumulatively, whichever is *greater*, were adopted. Current QLSP grantees have qualified expenditures ranging from approximately \$30 million to \$30,000 (after deducting nonqualifying work, such as serving over-income individual clients).
  - Assuming an organization values its work at \$100/hour, the largest organization could complete 30,000 hours of ILAW activities before needing to report. Using that same valuation, only organizations that spend \$100,000 or less on legal services would likely correspond to the 100-hour threshold being the greater of the two.
- Another approach might be to require reporting if an *individual activity* exceeds 50 or 100 hours, up to 10 activities. Based on 2021 numbers, this would reduce the number of required reports by approximately 40-60 percent, depending on the cutoff point.
- Staff has also suggested the possibility of keeping the practice the same as it is now, reporting up to 25 activities, but only requiring reporting every three years as part of the organization's regular monitoring visit schedule, and for first-time applicant eligibility determinations. As many of these activities are ongoing from year to year, this would hopefully capture most, if not all ILAW activities, but would break up the work for both staff and the grantees.
- Given that there is an intention to reduce the overall need for reporting, creating presumptively qualifying categories may not be necessary.

### **Response from the Legal Aid Community and Relevant Considerations**

In its most recent response to these updated suggestions, LAAC supported and recommended the approach of having grantees report every three years on their ILAW activities from the prior year. (See Attachment E.) This would coincide with the year the grantee has its triennial monitoring visit. Such an approach would break up the work for staff, as only approximately one third of grantees would report in a given year, and it would break up the work for the grantees preparing the activity reports once every three years instead of every year.

The legal aid community also seemed in favor of the other alternative: Reducing the number of required reports to 10, instead of 25, and setting a threshold or floor of 50 hours on a given activity before triggering a reporting requirement for the individual activity. The response reiterated that some grantees still support the establishment of presumptively qualifying categories.

The working group recognizes that neither alternative is perfect: Maintaining annual reporting requirements while reducing the number of required reports is helpful but may still require significant time from grantees and staff. (Based on staff's estimate, it could reduce reporting by approximately 40 percent.) On the other hand, reporting every three years on activities from only the prior year leaves open the possibility of nonqualifying work going unreported, and thus being included in qualified expenditures and contributing to a QLSP's primary purpose determination and allocation amount. What does seem clear is that the proposal in prior memoranda to use the lesser/greater of 10 percent or 100 hours is perhaps not the most efficient basis for establishing reporting requirements, and the working group recommends eliminating those options from consideration.

Moreover, regarding the question of presumptively qualifying categories: LAAC's letter summarizing legal aid community feedback had a comment from an organization that drew a distinction between the reporting requirement and work that is qualifying. Staff notes that the ILAW reports serve an additional purpose beyond simply making qualifying/nonqualifying determinations (of which very few activities are found nonqualifying that the organization did not already recognize as such). ILAW reports also serve to provide context for, and examples of, the systemic advocacy in which grantees engage. These reports are used in both evaluation and application processes. Thus, if presumptively qualifying categories were established, it would not reduce the reporting requirement, given these other considerations, though perhaps it would reduce the need to support the activity with objective evidence of indigency. If the issue stems more from concern over lack of guidance to determine what is qualifying and what is not, the working group encourages sharing more details on that point but is not sure of the basis on which to draw distinctions to create presumptively qualifying categories at this juncture. (The organization that submitted this feedback is also invited to clarify if there is a misunderstanding of the comment.)

Finally, there was a comment in the feedback from the legal aid community regarding the examples provided in subsections (F)(2) and (F)(3) of the proposed rule in Attachment A that list possible sources of information for demonstrating that the group benefited is primarily indigent or that those who are indigent are disproportionately impacted. The list was initially provided because there had been prior feedback from both the community and staff indicating confusion about appropriate sources of data to use to demonstrate indigency when working on behalf of a group; the list was further expanded based on earlier requests to broaden the scope of

possible sources of information. The working group believes that the current list would cover most formal and informal ways of demonstrating indigency or disproportionate impact on indigent persons. Leaving it completely open-ended would perpetuate the prior confusion and possibly contribute to a lack of transparency about what types of evidence/justification are deemed acceptable or sufficient from one organization to another.

The proposed rule in Attachment A removes the language of the original proposal and replaces it with the two alternatives above (reporting fewer activities every year or reporting every three years. and as a first-time applicant, on the prior year's activities). The updated rule in Attachment A also includes suggested language for defining when an organizational client may meet the definition of indigency, which is not currently addressed in the statute or State Bar Rules but is permitted based on the commentary to Eligibility Guideline 2.3.3. (Attachment B.) This has not been addressed in a prior memorandum or meeting but largely follows the commentary to Guideline 2.3.3., which requires the services to primarily benefit indigent persons.

## **RECOMMENDATIONS**

Summary of the recommendations for defining indigency:

1. Adopt the proposed language in Attachment A to codify the historical interpretation of the income threshold for pro bono programs (i.e., only QLSPs that receive the pro bono allocation will be permitted to use a higher income threshold).

Summary of recommendations for demonstrating indigency:

1. Adopt the proposed language in Attachment A regarding legal services to organizational clients.
2. Determine viable options to ease reporting requirements and prove benefit to indigent persons as part of impact litigation and advocacy work reports, using the proposed language in Attachment A as a starting point while considering the alternatives discussed above.

## **ATTACHMENTS**

- A. Proposed State Bar Rule Clarifying the Definition of "Indigent Person" and Demonstrating Indigency (updated with track changes since October 2021 meeting)
- B. Other Governing Authorities
  - a. Business and Professions Code sections 6210-6228
  - b. Eligibility Guidelines for Legal Services Projects, Guidelines 2.3.3. and 2.3.4.

- C.** Prior Comments from Legal Aid Association of California
- D.** Prior Comments from Public Advocates
- E.** Most Recent Comments from LAAC (dated July 26, 2022)

## Proposed State Bar Rule

Rule 3.XX Qualified legal services projects; income classifications and exceptions

For purposes of Business and Professions Code section 6213(d),

(A) “Income” means income as defined in section 1611.2(i) of Title 45 of the Code of Federal Regulations. If an applicant for services identifies as having a disability, income eligibility is calculated only after deducting the costs of medical and other disability-related special expenses, and in the case of veterans with a service-related disability, any disability compensation from the United States Veterans Administration;

(B) Any of the following are considered “indigent persons”:

(1) Persons whose income is 200 percent or less of the current poverty threshold established by the United States Office of Management and Budget;

(2) Persons eligible for Supplemental Security Income;

(3) Persons who are 60 years or older; or

(4) Persons who identify as having a developmental disability as defined in section 15002 of Title 42 of the United States Code;

(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);

(D) Pursuant to Business and Professions Code section 6218, qualified legal services projects shall establish financial eligibility guidelines consistent with this Rule and other applicable law and regulations. Such guidelines may include provisions allowing qualified legal services projects to disregard income—or make income exceptions—in certain extenuating circumstances, including, but not limited to, the income of resident household members where intimate partner violence has occurred. The Legal Services Trust Fund Commission may reject such eligibility guidelines if it determines they are inconsistent with Business and Professions Code sections 6218(a) or 6213(d);

(E) Civil legal services provided by legal services projects to organizational clients will be considered services to “indigent persons” if the services provided to the organizational client will primarily benefit persons who are indigent under Business and Professions Code section



6213(d). The following factors will be considered in determining whether the organizational client provides services primarily to indigent persons:

- (1) Whether the organization is a tax-exempt nonprofit corporation;
- (2) The organization's primary purpose as stated in its articles of incorporation or by-laws;
- (3) The number and percentage of indigent persons on the board of directors or principal advisory body of the organization; and
- (4) The percentage of the organizational client's members who are indigent;

(F) A legal services project providing civil legal services for the benefit of a group or class of persons beyond the legal services project's individual or organizational clients may consider the services as "civil legal services provided to indigent persons" only if the legal matter is primarily for the benefit of indigent persons or disproportionately impacts indigent persons;

- (1) If a legal services project provided services to a group or class of persons in the prior year, the legal services project must complete a report describing the 10 activities that received the most support, as determined by the staff hours spent on each activity, limited to activities that met or exceeded 50 hours. This report will be submitted for Legal Services Trust Fund Commission review as part of the application process under State Bar Rule 3.680;

OR

- (1) Prior to being deemed eligible for funding as a qualified legal services project and then every three years thereafter, if a legal services project provided services to a group or class of persons, it must report on its activities from the prior year. The legal services project must complete a report describing the 25 activities that received the most support, as determined by the staff hours spent on each activity. The timing of the reporting requirement for each legal services project will coincide with the year of its scheduled monitoring visit;
- (2) If a legal services project must complete a report under Rule 3.XX(F)(1), it should demonstrate through objective information that a majority of persons impacted by the activity are indigent. A legal services project may meet this requirement by providing quantitative data based on independent research, internal organizational data, or data provided by other legal service providers or community-based organizations in the area where the legal services project operates, to demonstrate that a majority of those impacted by the activity are indigent;

(3) If a legal services project cannot demonstrate that a majority of those impacted by the activity are indigent, it must demonstrate that the activity has a disproportionate impact on indigent persons based on the nature of the activity and the specific anticipated outcomes for indigent persons if the activity succeeds. It must use independent research, its own internal data, or data from other legal service providers or community-based organizations to demonstrate a nexus between the legal issue addressed through the activity and the identified needs of the legal services project's client constituency.

DRAFT

## **Business and Professions Code Section 6210-6228 (IOLTA Statute)**

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 licensees of the State Bar.

(Amended by Stats. 2018, Ch. 659, Sec. 140. (AB 3249) Effective January 1, 2019.)

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. (AB 940) 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. (SB 1330) 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. (SB 163) 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 licensees 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. 2018, Ch. 659, Sec. 141. (AB 3249) Effective January 1, 2019.)

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. (SB 163) 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.)

## **Legal Services Trust Fund Program Eligibility Guidelines for Legal Services Projects, Guidelines 2.3.3., 2.3.4., and Commentary**

### **2.3.3. to persons**

#### ***Commentary:***

You may consider legal services provided to an organization (e.g., an unincorporated association, partnership, or corporation) as services to indigent persons if the organization provides benefits primarily to persons who are indigent as described below in the Commentary on Guideline 2.3.4. In determining whether an organization so qualifies, the Commission will consider at least the following factors: (a) whether the organization is tax exempt under I.R.C. §501(c)(3); (b) the organization's primary purpose as stated in its bylaws or articles; (c) the number and percentage of indigent persons on the board of directors or principal advisory body of the organization; and (d) the percentage of its members who are indigent persons. 7 If you provide more than ten percent of your services to organizations (whether qualifying or non-qualifying), your application must identify the five organizations that received the most legal services during the prior calendar year and, for each such organization, supply the information identified above. You need not disclose information protected by the attorney-client privilege. If you provide some portion of your legal services to organizations that do not so qualify, identify the percentage of overall services provided to such nonqualifying organizations, and explain the basis of your computation.

### **2.3.4. who are indigent**

#### ***Commentary:***

An indigent person is defined by the Business and Professions Code §§6213(d), 6213(g), 6213(h), and 6213(i) as follows:

“‘Indigent person’ means a person whose income is (1) 125% 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 which provides free services of attorneys in private practice without compensation, ‘indigent person’ also means a person whose income is 75% or less of the maximum levels of income for lower income households as defined in §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.”

Your application must state the percentage of your organization's services that were provided during the previous calendar year to clients who did not fall within this definition. You must adopt written financial eligibility guidelines and submit them with your application. If your eligibility criteria include persons who are not indigent within the definition of §6213(d) above, explain how you determined the percentage of clients served that falls outside the definition. If you did not have written financial eligibility guidelines in the prior year, your application must explain the basis of your computation of percentage and supply objective support for the

computation. [B&P Code §§6213(d) and 6218.] 8 If you provide legal services for the benefit of a group or class of persons beyond the specific individuals or organizations who are your clients, you may consider the services as “legal services provided to indigent persons” only if the legal matter is primarily for the benefit of indigent persons.

In determining whether a legal matter is primarily for the benefit of indigent persons, the Commission may consider the following factors and any others that aid in making that determination: (1) the forum in which the matter is being pursued, e.g., courts, administrative agency, legislature, etc.; (2) whether named clients are indigent persons or qualifying organizations (under Commentary 2.3.3 above); (3) in the case of a class action, the definition of the class contained in the complaint and proposed or actual class certification orders; (4) a description of the group of individuals that would benefit from a favorable resolution of the legal matter; (5) whether a majority of those who would benefit are indigent persons; (6) the relation of the legal issues raised by the matter to the needs of indigent persons; and (7) whether indigent persons are disproportionately impacted by the legal issues raised by the matter.

If legal services for the benefit of a group or class of persons beyond the specific individuals or organizations who are your clients constitute more than 10% of your legal services, your application must identify the ten such legal matters on which you expended the largest amount of funds in the prior calendar year. For each of the matters so identified in your application, describe who would benefit from the services, state whether the matter is primarily for the benefit of indigent persons and, if so, explain the reasons you reached that conclusion. For any such matter that is primarily for the benefit of indigent persons, your description should include the information listed as items (1) through (7) in the preceding paragraph; you must quantify the percentage of your clients who are indigent persons (or organizations qualifying under Commentary 2.3.3 above) and the percentage of the persons who would benefit from the services who are indigent persons. Explain the basis of this information. You need not disclose information protected by the attorney-client privilege.

If some portion of your legal services are for the benefit of a group or class of persons beyond your specific clients and are not primarily for the benefit of indigent persons, identify the percentage of overall services provided in such matters and explain the basis of your computation.



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 Rules of the State Bar to Define and Demonstrate Indigency

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.

In contrast to the relatively uncontroversial proposed changes in the primary purpose memo, this discussion raised issues that reflected somewhat of a split in the opinions of our community members. Below, I will try to summarize what seemed to be consensus agreement and what seemed to be more of a split. Additionally, I encouraged organizations to submit short comments directly to Doan when their organization had a deeper understanding of how the proposed changes might impact their organization (especially with the proposed changes to ILAW reporting).

### **Definition of Income and Indigency**

There was unanimous agreement that the current income threshold of 125% is far too low for organizations. Everyone gave specific examples of other sources of funding, including government grants, which allow for 200% or even higher thresholds. It seems the community would strongly support a change in the rules revision process that would allow a higher threshold (knowing, of course, that a more radical shift would need legislative approval).

One suggestion, which many LSC-funded organizations supported, is to more clearly follow the LSC guidelines for income exceptions under Section 1611.5 of Title 45 of the Code of Federal Regulations: <https://www.law.cornell.edu/cfr/text/45/1611.5>. In practice, this allows a new absolute ceiling of 200%, rather than 125%, when income exceptions are accounted for. All organizations supported clarity around income exceptions, as it seems like there is some gray area in what can and cannot be excluded now.

There also were many organizations that would support increasing the income level to HUD income limits by county (Alameda 2020 example here: <https://www.huduser.gov/portal/datasets/il/il2020/2020summary.odn>) Because many legal aid organizations have grants or contracts that are tied to HUD income levels, they stated that this might make record-keeping easier.

Another alternative, but similar to HUD, would be to tie it again to county comparisons to Area Median Income, but instead of the 80% AMI for HUD, another amount, such as 50 or 60%, which is still significantly higher than the 125% of poverty level currently used. It also takes into account regional differences income and expenses.

Yet another alternative, which our community has discussed for over a decade (at least as long as my legal aid career) is just changing the threshold through legislative action to 200% of poverty. I note, though, that this does not take into account regional differences, and it is lower than 50% of AMI (and therefore lower than “very low income limits” under HUD).

There was some discussion, as well, about the difference between the threshold allowed by pro bono organizations and by those that do not receive the pro bono allocation. If a client at 150% of poverty is served by Organization A without a pro bono allocation, services to the client do not count as a qualifying expense. But if the client received the same services at Organization B (with a pro bono allocation) the services count. Organizations understand this is a statutory definition, but wanted to point out the practical implications.

It may help to create charts for the Rules Revision Committee discussion to show what these various income levels would mean for a family of 4. It may also help to add the data point of the average cost of a 2 bedroom apartment by region, if you are highlighting AMI based on a couple of regions.

I think this is a discussion that deserves longer input and legislative involvement, but it is clear that the community *does* support an increase to recognize that there are people who are very low income that the organizations are already serving, but the organizations cannot count services to those people for the purpose of IOLTA.

## **Indigency and Children**

One issue that came up briefly, but for which we could not establish a clear recommendation, is that the community would like a little more guidance on establishing indigency for youth clients. Some QLSPs represent youth with zero income, but they would appreciate more guidance that that determination is appropriate.

## **Definition of Project for the Purposes of Pro Bono Work**

One issue that came up in this discussion, and I hope to have a longer comment prepared by the meeting, is on the definition of “project” for the purposes of counting a higher income level for eligible clients. Although this is related to the discussion above, I am separating it out because it is an issue of statutory interpretation.

This came up in the context of a support center that constantly has to figure out when they are co-counseling with multiple QLSPs whether a client at a given income level is coming from a pro bono allocation organization or a non-pro bono allocation organization to see if the work would count as qualifying. Because there is some fluidity to the pro bono allocation (not all organizations get it year after year, and some may newly be awarded the allocation), it just becomes a tracking challenge.

In the statute, it states, “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.”

We understand that State Bar staff has interpreted “project” in this section to mean “an organization that receives the pro bono allocation” rather than a more broader definition of either a subproject of a larger organization or any nonprofit project (including those who do not receive the pro bono allocation) that is using pro bono services to serve that client. Although there was not broad consensus on this topic, it did seem that many organizations believed that if the client is being served by the pro bono “project” of a larger legal aid organization, even if they do not receive the pro bono allocation, perhaps the client should count as indigent for the purposes of qualified expenditures.

## **ILAW recommendations**

The community was in strong support of all three of the proposed changes, with minor modifications.

1. Only requiring completion of the ILAW report if the amount of time devoted to these activities exceeds the lesser of the following: 10 percent of the organization’s legal services in a given year, or 100 hours (cumulatively), as determined by the organization; and
2. Allowing the use of internal data to provide justification for the activity if independent data is not available. One example would be for the organization to quantify the percentage of its indigent clients who experienced a particular problem in the past few years (as reported in its State Bar Case Summary Report) to demonstrate a nexus with the legal issue now being addressed through an impact litigation case or advocacy activity; and/or
3. Demonstrating disproportionate impact to indigent persons based on the nature of the activity, and—assuming the activity is successful in achieving its aims—the specific anticipated outcomes as they relate to the needs of indigent persons. While the intent behind the activity is certainly important, the working group believes that it needs to be anchored by relevant and current

information regarding the needs of indigent persons in the community served by the activity, even if these activities are not conducive to quantifying the percentage served who are indigent.

As to #1, we suggest changing to the “greater” of the following rather than the lesser. Some speakers on our call were concerned that leaving it as the “lesser” would make it unfair to smaller organizations that might have to report a larger number of activities than larger organizations that had many projects below both thresholds, due to the total number of activities. Interestingly, what some complained of was the mis-match between some organizations reporting a coalition activity as rising to the ILAW threshold, but other organizations within that coalition not reporting the activity, so guidance on how to report or not for coalitions would be helpful. One attorney stated that she likely spent 100 hours on the ILAW report alone, ensuring that their coalition activities matched with others on top of the organization’s reporting on their individual activities. I am certain this is not what State Bar staff intended!

Generally, as to #1, it seems like organizations understand the need to have some way to make sure that State Bar staff know this work is qualifying work and for qualifying clients, but they all felt it would be easier if they reported fewer activities – and easier on State Bar staff.

As to #2, there was broad support. I believe, from my past attendance at LSTFC meetings, that this is frequently allowed, but it is not clearly defined for all programs.

As to #3, again, there was broad support. They suggested a revision to include activities intended to prevent homelessness – for example, impact litigation or policy work that would help keep people in their homes or help open up access to government benefits, even if many of those who would be helped might be over the current 125% of poverty level (but if the organization failed in the litigation or advocacy work, the intended beneficiaries of the work would fall below the threshold). There was also a brief discussion of disproportionate impact in the area of addressing domestic violence. Although intimate partner violence happens at all income levels, the economic impact of the violence disproportionately impacts those at the lowest income level and who are eligible for IOLTA services.

-----

I suspect that you will receive a few more comments prior to the October 16 meeting. Additionally, once the final memo is posted on the meeting portal, we may have updated comments.

Thank you so much for the opportunity to review this draft memo and for all your work to try to make this reporting easier on both State Bar staff and legal aid staff. I look forward to the discussion.

October 2, 2020

TO: Doan T. Nguyen, Acting Program Manager, Office of Access & Inclusion

RE: Public Advocates Comments on September 23, 2020 Indigency Codification Memo

Thank you for the opportunity to provide feedback on the September 23 memo on “Proposed Changes to Rules of the State Bar to Define and Demonstrate Indigency.” We particularly appreciate staff’s thoughtful attention to clarifying the guidance related to qualified Impact Litigation and Advocacy Work (ILAW).

We believe the framework articulated at the beginning of the memo is the right approach — that is, to provide a menu of options for qualified legal services projects (QLSPs) to demonstrate that they are providing services to indigent persons when working on behalf of a group or class of persons. This approach recognizes the different ways in which QLSPs provide free civil legal services to indigent persons, from direct services to impact litigation and legal advocacy, and combinations of these approaches.

We would like to comment on the three options proposed for ILAW reporting on page 7. We agree with staff’s statement of the underlying rationale to allow grant recipients to engage in broad, impactful work while ensuring that these services primarily benefit indigent persons, as well as the intent to overcome the hurdle of quantification that current guidance presents.

We are in general support of the three options presented on page 7. Our specific comments are as follows:

1. The three options on page 7 are related to one another with “and/or.” The context makes it clear that you chose that language to ensure that a program may utilize any one of these options alone, but also that a program may rely on two, or all three, as applicable. We support this approach and ask that it be made more explicit in the final guidance, due to the potential ambiguity of “and/or.”
2. Option 2 (use of internal data) gives one example, which is an appropriate one. However, we believe there are other related scenarios which would also fit the category. For example, many non-legal community-based organizations have access to data about the needs of their indigent members or indigent community members more broadly (e.g., through a renter helpline or clinic or a survey of member/community needs). Data shared with legal services organizations from such groups should also be a recognized basis for satisfying this option. We also recommend explicitly allowing legal organizations that focus on impact litigation and legal advocacy but do not provide direct services to rely on data from direct-services legal organizations within their service area.
3. Under Option 3 (disproportionate impact to indigent persons), the proposal calls for “relevant and current information” that need not be quantified. We support this provision. As we noted in our previous comments, many matters that we and other IOLTA attorneys take on address urgent needs of indigent people, and while they may also confer some benefit on others they disproportionately benefit indigent residents precisely because of the conditions associated with their poverty. For instance, law-reform litigation or advocacy aimed at protecting indigent

renters from eviction provides an enormous benefit to indigent renters, who are far more likely than other renters to be rendered homeless by eviction; therefore, even if this work may provide some benefit to non-indigent renters, who would experience much less severe harms as a result of eviction, it is properly understood as providing a disproportionate benefit to indigent renters, even if a majority of renters are non-indigent.

*Legal Aid Fights for Justice. We Fight for Them.*



**July 26, 2022**

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

**Re: Codifying Grant Administration Practices: Definition of Indigency**

Dear Legal Services Trust Fund Commission Rules Committee:

We are writing on behalf of the Legal Aid Association of California regarding the LSTFC rules revision process pertaining to amending the definition of indigency. 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 receive a few comments in response to our email. We generally understand that, when we receive no or only a few comments back, this tends to mean our community finds LAAC's position acceptable as stated. This position is articulated below.

First, regarding ILAW reporting, we understand that the Bar staff is recommending either (a) trying to figure out a way to have programs report fewer items in their ILAW report every year or (b) reporting only in years in which there is a monitoring visit (every three years). **LAAC's recommendation is that the latter is more ideal because it will be a lower burden**, not only on legal aid organizations, but also on State Bar staff who have to read through the hundreds of reports and ask follow-up questions. It can be challenging for organizations to succinctly describe all of their advocacy work each year, and answer so many questions about each activity. Because of this, organizations were wholeheartedly in favor of lowering the burden of ILAW reporting. Less reporting may be better in this case, especially given that the new EAF mid-year reports due in July. For these reasons, we believe that the best process would be for organizations to only report in years in which there is a monitoring



visit—every three years—and only for activities in the prior year, not for the prior three years.

Second, a few additional points about the ILAW report recommendations from the memo. Those we heard from were in favor of the 50-hour floor for the number of hours worked on a matter before triggering the need for an ILAW report. Specifically, there could be significant time savings by allowing for this because it would mean they would not need to independently report on separate advocacy activities where they do not spend more than 50 staff hours on a given bill. Additionally, we heard agreement regarding capping at top ten activities, not 25.

Third, there were other issues that came up in responses to our request for comment. Other perspectives we heard included:

- A disagreement with the idea stated on Page 8 that, “[g]iven that there is an intention to reduce the overall need for reporting, creating presumptively qualifying categories may not be necessary.” The uncomfortableness with this statement centered on the ways in which the reporting burden is separate from whether the work they are doing is qualifying. We heard that intimate partner violence could be presumptively qualifying.
- Opposition to the idea in (3) on Page 4 that the alternate income threshold should only apply to QLSPs that receive the pro bono allocation. The contention is that it should cover any program (QLSP or Support Center) that uses pro bono services because, as stated in (3), this rule would undercut encouraging more pro bono work from the private sector to provide legal services to low-income Californians.
- Regarding (F): We heard that the list of sources of information that can be used to show primarily indigent benefit or disproportionate impact may be unnecessary; they could be able to show one or the other in a way that they determine themselves to prove it. Specifically, for domestic violence service providers, it may be difficult, or impossible, to prove (F)(2) and, even if able to do so, it may counter their policy goals around ending domestic violence, which impacts all regardless of class. For (F)(3), it may be possible but challenging for domestic violence services providers to comply, given that they may have to locate social science studies demonstrating that economic status is a risk factor for domestic violence and/or that domestic violence disproportionately impacts low-income communities. They acknowledge they could use internal data to show disproportionate impact, but are concerned around exactly how to do this in their case.

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**

## **Proposed State Bar Rule**

### **Rule 3.XX Qualified legal services projects; income classifications and exceptions**

(A) “Income” means income as defined in section 1611.2(i) of Title 45 of the Code of Federal Regulations. If an applicant for services identifies as having a disability, income eligibility is calculated only after deducting the costs of medical and other disability-related special expenses, and in the case of veterans with a service-related disability, any disability compensation from the United States Veterans Administration;

(B) Any of the following are considered “indigent persons”:

(1) Persons whose income is 200 percent or less of the current poverty threshold established by the United States Office of Management and Budget;

(2) Persons eligible for Supplemental Security Income;

(3) Persons who are 60 years or older; or

(4) Persons who identify as having a developmental disability as defined in section 15002 of Title 42 of the United States Code;

(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);

(D) Pursuant to Business and Professions Code section 6218, qualified legal services projects shall establish financial eligibility guidelines consistent with this Rule and other applicable law and regulations. Such guidelines may include provisions allowing qualified legal services projects to disregard income—or make income exceptions—in certain extenuating circumstances, including, but not limited to, the income of resident household members where intimate partner violence has occurred. The Legal Services Trust Fund Commission may reject such eligibility guidelines if it determines they are inconsistent with Business and Professions Code sections 6218(a) or 6213(d);

(E) Civil legal services provided by legal services projects to organizational clients will be considered services to “indigent persons” if the services provided to the organizational client will primarily benefit persons who are indigent under Business and Professions Code section 6213(d). Factors to be considered in determining whether the organizational client provides services primarily to indigent persons include, but are not limited to:

- (1) Whether the organization is a tax-exempt nonprofit corporation;
- (2) The organization's primary purpose as stated in its articles of incorporation or by-laws;
- (3) The number and percentage of indigent persons on the board of directors or principal advisory body of the organization; and
- (4) The percentage of the organizational client's members who are indigent;

(F) A legal services project providing civil legal services for the benefit of a group or class of persons beyond the legal services project's individual or organizational clients may consider the services as civil legal services provided to indigent persons only if the legal matter is primarily for the benefit of indigent persons or disproportionately impacts indigent persons;

- (1) If a legal services project provided services to a group or class of persons in the prior year, the legal services project must complete a report describing the 10 activities that received the most support, as determined by the staff hours spent on each activity, limited to activities that met or exceeded 50 hours, unless the Legal Services Trust Fund Commission establishes a different reporting requirement. This report will be submitted for Legal Services Trust Fund Commission review as part of the application process under State Bar Rule 3.680;
- (2) If a legal services project must complete a report under Rule 3.XX(F)(1), it should demonstrate through objective information that a majority of persons impacted by the activity are indigent. A legal services project may meet this requirement by providing quantitative data based on independent research, internal organizational data, or data provided by other legal service providers or community-based organizations in the area where the legal services project operates, to demonstrate that a majority of those impacted by the activity are indigent;
- (3) If a legal services project cannot demonstrate that a majority of those impacted by the activity are indigent, it must demonstrate that the activity has a disproportionate impact on indigent persons based on the nature of the activity and the specific anticipated outcomes for indigent persons if the activity succeeds. It must use independent research, its own internal data, or data from other legal service providers or community-based organizations to demonstrate a nexus between the legal issue addressed through the activity and the identified needs of the legal services project's client constituency.



# The State Bar *of California*

---

**DATE:** March 11, 2022

**TO:** Legal Services Trust Fund Commission

**FROM:** Legal Services Trust Fund Commission Rules Committee

**SUBJECT:** Codification of Grant Administration Practices: Late Submissions of Grant Materials

---

## EXECUTIVE SUMMARY

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

This memo presents the Rules Committee's recommendations on the following issues regarding late submissions of grant materials:

- Whether and when the commission should accept late grant materials;
- Whether late application materials for discretionary and non-discretionary grants should be treated the same or differently;
- Whether late application materials and late reporting materials should be treated the same or differently; and
- What, if any, penalty should be applied to applicants and grantees that submit late materials.

The working group sought and received feedback regarding the proposed recommendations from the legal aid community through the Legal Aid Association of California (LAAC). The legal aid community requested several changes to the working group's recommendations. The working group presented its recommendations, the legal aid community's feedback, and the working group's responses to community feedback to the Rules Committee on February 24, 2022. The Rules Committee approved a resolution to adopt the working group's recommendations and will present them to the Legal Services Trust Fund Commission (commission) for consideration on March 11, 2022.

---

## BACKGROUND

### CODIFICATION PROCESS

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

Commission members form working groups to investigate the questions raised in the Rules Committee's work plan and develop preliminary recommendations. The working groups develop preliminary recommendations, which are circulated to the legal aid community through the Legal Aid Association of California (LAAC) to obtain feedback. The working group and committee consider the feedback before making a final recommendation to the commission, and in turn, the Board of Trustees. The Board of Trustees must approve any recommendation made by the commission unless it makes a finding in writing that a recommendation conflicts with a statutory, fiduciary, or legal obligation of the State Bar.

### GOVERNING AUTHORITIES

Applicants and grantees must comply with requirements 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.

State Bar Rules require timely submissions of grant application and reporting materials. Pursuant to State Bar Rule 3.680, "[t]o be considered for a Trust Fund Program grant, a qualified legal services project or qualified support center seeking a Trust Fund Program grant must submit a **timely and complete application** for funding in the manner prescribed by the Commission," (emphasis added). State Bar Rule 3.680 also requires a budget and budget narrative be "submitted within thirty days of receipt of notice of tentative allocation."

Similarly, State Bar Rule 3.681 provides that "[t]he recipient of a Trust Fund Program grant **must...** (D) annually submit information that describes, in the manner required by the Commission, the grant recipient's maintenance of quality service and professional standards and compliance with program requirements," and "(F) **submit timely quarterly financial reports and any other information** reasonably required by the Commission," (emphasis added).<sup>1</sup>

State Bar staff's review of the governing authorities found just one instance in which statute or State Bar Rules give clear direction on processing late submissions. State Bar Rules Appendix A:

---

<sup>1</sup> State Bar Rules include deadlines for: organizations' appeals for reconsideration when denied funding, commission decisions regarding appeals for reconsideration of denied funding, State Bar staff investigations into complaints against grantees, and grantee and complainant responses to State Bar staff investigations into complaints against grantees. These deadlines, though clear in the governing authorities, are not relevant to the handling of late grant application and reporting materials.

Schedule of Charges and Deadlines includes a deadline for audited or reviewed financial statements, which are due on May 1 of each year. The schedule reads “[u]pon written request, an extension up to the [IOLTA/EAF] application deadline may be granted by the State Bar staff. Upon a showing of extraordinary circumstances<sup>2</sup>, the Commission may grant an extension beyond the application deadline. Under no circumstances shall such extension be granted beyond the date upon which grant allocations are determined.”

To promote compliance with Trust Fund Program requirements, State Bar Rule 3.681(G) allows the commission to charge grant recipients noncompliance fees set forth in the Schedule of Charges and Deadlines “for processing documents that are substantially noncompliant with Trust Fund Requirements or that are late without permission.” However, no language has been added to the Schedule of Charges and Deadlines to include such noncompliance fees for any Trust Fund Program materials.

## **CURRENT PRACTICE**

In the absence of clear guidance on what is considered a “timely and complete” submission, State Bar currently staff defer to the commission and its committees to determine whether late applications will be accepted for review. Late application submissions—regardless of how late they are received after the deadline—are reported to the commission or a committee of its members for discussion and approval. The commission and committees may choose not to accept late application materials but have historically voted to accept them, particularly for IOLTA/EAF grants. The commission has not applied a penalty for late submissions.

For example, State Bar staff reported six late 2022 IOLTA/EAF applications to the Eligibility and Budget Review (EBR) Committee at its June 25, 2021, meeting.<sup>3</sup> Five of the late submissions were submitted within one hour of the deadline; the sixth was submitted during the following business day.<sup>4</sup> Some members of the EBR committee expressed hesitation to deny applicants funding because of a late application while others expressed frustration with applicants failing to meet the deadline without consequence. After discussion, the committee voted 7-3 to accept the six late submissions for consideration. At the November 4, 2021, EBR committee meeting, State Bar staff reported seven late IOLTA/EAF budget proposals which the committee also voted to accept.<sup>5,6</sup>

---

<sup>2</sup> State Bar Rules do not define “extraordinary circumstances.” In 2019, a qualified legal services project (QLSP) was found ineligible for 2020 IOLTA/EAF funding after submitting several late documents including a late audit. The QLSP appealed the determination to the commission and the commission found that health concerns faced by the executive director were the cause of the delays and qualified as “extraordinary circumstances.” In 2020, several organizations were granted extensions because of delays related to the COVID-19 pandemic.

<sup>3</sup> The EBR committee is responsible for discussing and approving IOLTA/EAF grant application and reporting materials and making recommendations to the commission.

<sup>4</sup> See agenda item VI.A, “Action on Acceptance or Rejection of Late Submitted Applications” from the June 25, 2021, EBR committee meeting: <https://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000027640.pdf>

<sup>5</sup> See agenda item V.A, “Discussion and Potential Action on Budget-Related Issues: Late Submissions, Purchase of Real Property/Capital Additions, Deviations from Standard Program/Administrative Expense Ratios, Possible Non-Qualifying Activities” from the November 4, 2021, EBR committee meeting: <https://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000028243.pdf>

<sup>6</sup> The committee did not discuss State Bar Rule 3.680 requiring budgets and budget narratives to be submitted within 30 days of notice of a tentative allocation. Current office practice is to set budget and budget narrative deadlines approximately 30 days after the release of tentative allocations; however, if the 30-day mark falls on a



Some organizations have repeatedly submitted IOLTA/EAF application materials after the posted deadline. In the 2022 IOLTA/EAF application cycle, two of the six late applications and four of the seven late budgets were submitted by organizations that had submitted late IOLTA/EAF materials in the prior two application cycles (see table). All late applications and budgets were accepted, and the organizations received IOLTA/EAF funding.

<b>Late IOLTA/EAF Application Materials (2020-2022)</b>		
<b>Application Cycle</b>	<b>Late Application Submissions</b>	<b>Late Budget Submissions</b>
2022	6 (2 applicants with previous late submission)	7 (4 applicants with previous late submission)
2021	3 (1 applicant with previous late submission)	3 (1 applicant with previous late submission)
2020	1	6 (1 applicant with previous late submission)

Because State Bar staff have the authority to grant extensions for audited and reviewed financial statements, late financial statements go to the EBR committee for approval only if an extension is requested beyond the IOLTA/EAF application deadline. State Bar Rules state that applicants must request these extensions in writing. Since the 2020 application cycle, the EBR committee has granted approximately 25 extensions. Most extensions were granted in response to the COVID-19 pandemic.<sup>7</sup>

After they receive grant funds, grantees are required to submit a series of evaluations and reports detailing their grant spending and activities. State Bar staff have greater discretion in accepting late reporting materials. State Bar staff, the commission, and its committees do not typically reject late evaluations and reports because State Bar staff need to collect and share the data and information provided. State Bar staff occasionally report late submissions to the commission and committees, but office practice varies by grant and reporting item.

## **DISCUSSION**

### **IMPORTANCE OF TIMELY SUBMISSIONS IN GRANT ADMINISTRATION AND OVERSIGHT**

State Bar Rules and commission processes require timely and complete submissions of grant materials for efficient grant-making. Late and incomplete applications create delays for State Bar staff, commissioners, and grantees. They hinder the State Bar and the commission's ability to efficiently process applications and make timely award decisions, calculations, and disbursements. State Bar staff cannot accurately calculate formula grant amounts without a complete list of approved applicants. Delays in calculating award amounts may then delay

---

weekend or holiday, State Bar staff may set the posted deadline 31-33 days after tentative allocations are released. In 2021, the deadline for budget and budget narratives was set 32 days after tentative allocations were shared with applicants.

<sup>7</sup> During the 2021 IOLTA/EAF application cycle, in response to the COVID-19 pandemic, State Bar staff and the committee were more flexible when granting extensions. In consultation with the commission, State Bar staff moved the deadline for audited and reviewed financial statements to the IOLTA/EAF application deadline. In effect, all applicants received an automatic "extension" during the 2021 application cycle. The committee granted further extensions beyond the application deadline for 17 organizations.



drafting grant agreements and disbursing grant funds, which affects even applicants that submitted their materials on time.

In addition to application materials, grantee evaluations and reports are an important tool for the commission to ensure grant expenditures and deliverables meet statutory requirements. State Bar staff and the commission engage in thoughtful discussions to identify submission timelines that aim to give grantees sufficient opportunity to compile and report the required information. Timely submission of reporting materials is important to ensuring timely and effective oversight of grant funds.

Finally, a grantee's ability to comply with application and reporting deadlines is one indicator of its administrative capacity. There are concerns that if an organization cannot consistently comply with Trust Fund Program deadlines, it may be a sign of governance and organizational deficiencies. Tracking late submissions and obtaining information about the reasons for those late submissions is therefore a tool for the commission to evaluate and support organizations' administrative capacity.

Despite the importance of timely and complete submissions, the working group recognizes that legitimate reasons for delays may occasionally exist. For example, the State Bar's grant administration platform, SmartSimple, has on occasion had technical issues that prohibited or significantly hindered applicants and grantees from submitting materials right before a deadline. During the COVID-19 pandemic, some qualified legal service projects and support centers also faced unexpected staffing absences that led to difficulties preparing and submitting timely applications and reports.

## **PROMOTING COMPLIANCE WITH APPLICATION DEADLINES**

To promote compliance with State Bar Rules and to provide increased transparency, predictability, and fairness for grantees, the working group recommends codifying a model for reviewing and approving late application materials. For an application to be considered a timely and complete submission, it must be submitted at or before the posted deadline and must be substantially complete; that is, each required question must be answered. Submissions that are not substantially complete by the deadline will be considered late.

The working group recommends providing State Bar staff the discretion—but not the obligation—to **accept** late application, budget, and budget narrative ("application materials") submissions up to one business day after the posted deadline, upon written request by the applicant or grantee.<sup>8,9</sup> The written request must include an explanation for why the organization failed to submit timely and complete materials. If State Bar staff decline to accept

---

<sup>8</sup> A business day would exclude weekends and judicial holidays, as defined by the California Code of Civil Procedure section 135. The time limit for staff's discretionary authority for submissions on the following business day shall be the same as the posted deadline, i.e., if the materials were due at 5:00 p.m. on a Friday, staff's discretionary authority extends until 5:00 p.m. on the following Monday.

<sup>9</sup> Current office practice is to set budget and budget narrative deadlines approximately 30 days after the release of tentative allocations, in an effort to conform to State Bar Rule 3.680(E); however, if the 30-day mark falls on a weekend or holiday, State Bar staff may set the posted deadline 31-33 days after tentative allocations are released. The review and approval process proposed in this memo would allow State Bar staff authority to accept submissions up to one business day after the posted deadline.

late application materials, staff would refer it to the relevant committee for review and a decision.<sup>10</sup> Application materials submitted later than one business day would also be referred to the relevant committee. State Bar staff would report all late submissions, including those accepted by State Bar staff, to the committee to track compliance with deadlines.

The working group recommends that committees have the authority to **accept, accept with conditions, or reject** a late submission.<sup>11</sup> Under the proposed model, when determining whether to accept a late submission, and any conditions for late acceptance, State Bar staff and the relevant committee would be tasked with considering the following factors:

- How late after the deadline the submission was received;
- The completeness of the applicant's submission;
- The reasonableness of the applicant's explanation for the late submission;
- Any mitigating factors that the applicant provides to the committee;
- The number of late submissions—of both application and reporting materials—made by the applicant in the preceding three years; and
- Other similar factors State Bar staff and the committee determine are relevant.

Conditional acceptance might include one or more of the following: the committee sending a letter to the organization's governing body to notify them of the late submission; requiring a corrective action plan; requiring additional monitoring; or any other action the committee deems appropriate. The working group believes these types of conditions are tools with which committees can promote compliance with grant requirements, support organizations' administrative and governance capacities, and satisfy the commission's oversight duties.

For audited and reviewed financial statements, the working group recommends maintaining State Bar staff's authority to grant extensions up to the IOLTA/EAF application deadline, as outlined in the State Bar Rules Schedule of Charges and Deadlines. The working group recommends that the committee maintain authority to grant extensions beyond the IOLTA/EAF application deadline upon a showing of "extraordinary circumstances." When "extraordinary circumstances" are not present, the working group recommends the committee have authority to grant an extension with conditions or deny the extension. Conditional extensions might include the committee sending a letter to the organization's governing body to notify them of the late submission, requiring a corrective action plan, requiring additional monitoring, and/or any other similar action the committee deems appropriate.

## **CONSIDERATION OF DISCRETIONARY VERSUS NON-DISCRETIONARY GRANTS**

In addition to IOLTA/EAF grants where awards are allocated based on a statutory formula, several Trust Fund Program grants are discretionary. For discretionary funds, State Bar staff, the commission, and its committees review the merits of submitted applications to determine which applicants receive funding and in what amounts. A common selection criterion in

---

<sup>10</sup> For IOLTA/EAF applications, the relevant committee is the Eligibility and Budget Review Committee. For discretionary grant funds, the Bank Grants Committee, Homelessness Prevention Funds Committee, and Partnership Grants Committee are the relevant committees that review application materials and determine grant awards.

<sup>11</sup> An applicant that is denied IOLTA/EAF funding is entitled to written notice of the denial and may request reconsideration by the commission, per State Bar Rule 3.691.

discretionary grant scoring rubrics is “administration” or “organizational capacity,” a measure of the applicant’s staffing, leadership, and resources. An applicant’s history of compliance with grant requirements is a relevant factor in scoring administrative or organizational capacity; therefore, a history of late submissions may also be considered when evaluating this rubric category.

To maintain consistency across grants, the working group recommends a similar review and approval process for late discretionary grant application materials (applications, budgets, and budget narratives). The working group recommends that staff have the authority to accept late application materials up to one business day after the posted deadline; it also recommends committees have the authority to accept, accept with conditions, or reject a late submission. It is worth noting that committees may be less willing to accept late discretionary grant applications, given the competitive nature of those funding opportunities.<sup>12</sup>

The difference between discretionary and non-discretionary grants, however, would be the applicant’s mechanism for appeal if a late application is rejected. If the commission rejects a late IOLTA/EAF application or otherwise finds an applicant ineligible for IOLTA/EAF funding, the applicant is entitled to a written notice of denial and may request reconsideration by the commission, per State Bar Rule 3.691. By contrast, committees overseeing discretionary grant funds—the Bank Grants Committee, the Homelessness Prevention Funds Committee, and the Partnership Grants Committee—have authority to reject a late application without a formal appeals process.

## PROMOTING COMPLIANCE WITH REPORTING DEADLINES

The effects of a late **application** submission are clear; delays in identifying eligible grant recipients create delays in calculating and disbursing funds to applicants. The impact of rejecting a late application is also clear; the applicant is ineligible for funding. On the other hand, the effects of a late **reporting** submission vary by grant.

The reports created by State Bar staff with data from grantee evaluations and financial reports vary in length, content, and audience. Grantee evaluations prior to 2022 were largely used to develop reports to the Judicial Council and the commission to assist those entities in grant oversight. The content and due dates of reports were largely determined by State Bar staff, the Judicial Council, and the commission. Beginning in 2022, the State Bar and Judicial Council must annually report EAF and federally funded grant expenditures and outcomes to the California Department of Finance (DOF). Also beginning in 2022, the State Bar and Judicial Council must provide quarterly reports to DOF on federally funded grants, including the 2021/2022-2024 homelessness prevention (HP III) grants. These new annual and quarterly reporting requirements have firm, non-negotiable deadlines that the State Bar and Judicial Council must adhere to.

Regardless of the audience and time-sensitivity of evaluations and reports, Trust Fund Program requirements direct grantees to timely submit **all** required materials. Grant agreements—

---

<sup>12</sup> Committees overseeing discretionary grant funds may wish to include on future Requests for Proposals and scoring rubrics that the timeliness of an application may be relevant in the scoring of that application.

contracts signed by State Bar staff and the chief executive and board chair of the organization before grant funds are dispersed—require grantees to submit required evaluations and reports and allow the State Bar to terminate and recover funding if grantees fail to comply.

Because of the importance of timely reporting submissions, the working group considered recommending the same process for handling late evaluations and reports as is recommended for late application materials. However, requiring committee approval to accept reporting materials submitted beyond one business day after the deadline would be particularly onerous for staff and committee members. Committee meeting schedules do not necessarily align with the reporting deadlines for all grants.

Instead, the working group recommends that State Bar staff maintain authority to accept late reporting submissions. State Bar staff should notify the committee of late reporting submissions so they can be considered when evaluating the organization's administrative and organizational capacity and when determining whether to accept any future late applications from the organization. That is, while the committees would not need to vote to accept late reports and evaluations, committees may be less likely to accept (or accept with conditions) future late application materials from an organization with a demonstrated history of late reports and evaluations. The committee would also have the authority to send a letter to an organization's governing body, request a corrective action plan, require additional monitoring, or take other action as deemed appropriate by the committee to evaluate the organization's administrative capacity and support future compliance with Trust Fund Program requirements.

## **CONSIDERATION OF FINANCIAL PENALTIES**

While State Bar Rule 3.681(F) allows the commission to charge fees for documents that are "late without permission," the working group does not recommend the commission do so. The working group aims to create accountability for late submissions while continuing to maintain a positive relationship between the commission and grantees. Enforcing a financial penalty on grantees, which would negatively impact both the legal services provider and its clients, seems counter to that goal.

## **LEGAL AID COMMUNITY FEEDBACK**

The legal aid community provided several points of feedback which were summarized by LAAC and shared with the working group on February 10, 2022.<sup>13</sup> LAAC staff indicated that approximately 10 legal aid organizations participated in a feedback call or provided comment to LAAC via email. In addition, LAAC staff solicited feedback from the 11 Legal Services Corporation-funded providers (that also receive IOLTA/EAF funds) in a separate call and they generally concurred.

### **Extension of State Bar Staff Approval Authority**

The legal aid community requested the working group increase the length in which State Bar staff have the authority to accept late submissions from one business day after the posted

---

<sup>13</sup> See Attachment B for the preliminary recommendations provided to LAAC on January 28, 2021, and Attachment C for LAAC's summary of the legal aid community's feedback provided to the working group on February 10, 2021.

deadline to two business days. LAAC writes “[w]e would like for staff to have discretion for two business days because it gives them more time to seek a remedy (i.e., get an organization to submit late materials). Most applications were merely hours or a day late, and this would facilitate more capacity for [State] Bar staff to communicate with organizations. It could remediate panic and scrambling by the organization, resulting in better applications and more compliance with this new rule.”

The working group is not strongly opposed to extending the length of State Bar staff’s authority to two business days but does not feel additional time is necessary. The working group recommends granting State Bar staff authority to accept late submissions up to one business day after the posted deadline because most late application materials are submitted within that timeframe. In addition, most deadlines are scheduled on Fridays, so under this proposal, State Bar staff would have discretion to accept most application submissions up to three days after the deadline (the weekend, plus the following Monday). Given the amount of time that organizations are typically given to complete application materials (approximately one month), the working group does not believe that the period of State Bar staff discretion needs to be extended an additional business day.

The working group also wishes to clarify that application materials submitted after the posted deadline—whether submitted hours after the deadline, in one business day after the deadline, or in two business days after the deadline—are, and would continue to be, considered late and therefore out of compliance with State Bar Rule 3.680’s requirement of a “timely and complete application.” Thus, the length of State Bar staff’s authority to accept late submissions would not impact a program’s compliance with the rule.

### **State Bar Staff Reminders and Notifications of Missed Deadlines**

The legal aid community requested the working group provide more detail about specific actions taken by State Bar staff to communicate deadlines to organizations. Specifically, “[t]he legal aid community articulated a need for maintaining or creating one-week and day-of reminders as well as immediate communication when they have missed a deadline, within the proposed one- or two-day time period.” The legal aid community did not request such reminders be codified in the language of the proposed rule but asked that they be documented in the memo.

State Bar staff’s current practice is to post the administrative calendar of grant application and reporting deadlines to SmartSimple and share it with organizations via email. Any changes to the administrative calendar or deadlines are posted on SmartSimple and emailed to all organizations. State Bar staff also often include reminders of upcoming application and reporting deadlines in emails to all organizations. After a deadline has passed, State Bar staff’s current practice is to contact organizations that do not submit timely application materials after indicating an intent to apply or do not submit timely required reports. For example, organizations that do not submit an IOLTA/EAF application after submitting an audited or reviewed financial statement are contacted. State Bar staff contact organizations in an effort to assist them with submitting materials as quickly as possible, and State Bar staff intend to continue to send such reminders. However, the working group notes that it is the obligation of applicants and grantees to meet posted deadlines. State Bar staff have no duty to send

reminders, nor should the fact that State Bar staff extends this courtesy to organizations be construed as State Bar staff assuming such a duty. Accordingly, the working group will advise that committees should not view the lack of a State Bar staff reminder as a reasonable explanation for a late submission.

### **Communication with Organization's Governing Bodies**

The legal aid community recommended striking mention of contacting an organization's governing body in response to a late submission, or alternatively requested additional language to indicate that "communication with an organization's board would likely only be used for egregious late applications or when an organization is a repeat late-applicant." The community indicated that "organizations that have multiple late applications should be assisted, not punished, in fixing any repetitive non-compliance. Additional monitoring or other corrective action plans (technical or other support) could avoid punitive steps and ensure that communication between the [State] Bar and those organizations facilitates on-time submission."

The working group included an option for committees to accept late materials with conditions (including contacting an organization's governing body) in an effort to support, not punish, organizations that submit late materials. The working group's recommendation is also an attempt to avoid the draconian consequence of denying untimely applications, potentially resulting in a significant loss of funding. Instead, the working group aims to provide committees with options to promote compliance with deadlines and increase transparency of expectations for organizations.

Conditions imposed by the committee on organizations would be dependent on the circumstances surrounding the late submission, including the length of the delay, the reason for the delay, and the organization's history of late submissions. For example, technical assistance may be preferred for a grantee who has rarely missed a deadline and whose materials are complete. Alternatively, contact with an organization's governing body may be preferred in instances of repeated late submissions or substantially incomplete materials. Such contact with the governing body would aim to ensure sufficient oversight of the organization's administrative functions and improve future compliance with Trust Fund Program requirements.

### **Relationship Between Late Submissions and the Provision of Legal Services**

The legal aid community took issue with an implied connection—stated in the original draft of the working group's memorandum—between late submissions and the quality of legal services provided. While the working group does not necessarily agree with the legal aid community's position that there is no connection between the two, it removed suggestions of a connection from this memorandum. However, the working group notes that a pattern of lateness can be a relevant factor in judging an organization's administrative capacity. Requests for Proposals and scoring rubrics for discretionary grants allow committees and State Bar staff to consider an organization's history of Trust Fund Program compliance when assessing "administration" or "organizational capacity." Similarly, State Bar Rule 3.661(A) requires that the "[c]ommission must monitor and evaluate a recipient's compliance with Trust Fund Requirements and grant terms." A pattern of late submissions would be directly relevant in assessing an organization's



administrative capacity for the purposes of scoring discretionary grants, and to the commission's oversight activities for non-discretionary funds.

### Consideration of Mitigating Circumstances

The legal aid community requested that mitigating factors be considered when State Bar staff and the committee evaluate whether to accept, accept with conditions, or reject late application materials. The working group incorporated this request. Examples of mitigating factors that a program might wish to bring to State Bar staff or the committee might include (but are not limited to) SmartSimple glitches, internet outages, or other considerations outside of the organization's control.

The legal aid community also indicated that mitigating factors outside of the organization's control might impact their ability to submit timely audited and reviewed financial statements. The community suggested "automatic extensions (to the extent the rule allows) when a third party (auditor) is contributing to the lateness..." The working group does not recommend incorporating automatic extensions. If difficulties with a third party constitute extraordinary circumstances, the committee has the authority to grant extensions beyond the IOLTA/EAF application deadline. If difficulties with a third party do not constitute extraordinary circumstances, the committee would have the authority to grant an extension with conditions. Conditions might include (but are not limited to) requesting that the organization submit an audit schedule or a confirmation letter when the organization secures a new auditor, if necessary.

### Rejection of Particularly Late Submissions

The working group considered recommending State Bar staff be given authority to reject particularly late submissions—for example, those submitted over 15 business days (3 weeks) after the posted deadline and solicited community feedback on the idea. The legal aid community was not immediately opposed, but the working group ultimately decided this authority was not necessary. The working group notes, however, that if an application is submitted so late that it would be impracticable to administer funding on time, that application would likely be very disfavored by the relevant committee.

## RECOMMENDATIONS

The working group's recommendations, as approved by the Rules Committee on February 24, 2022, are summarized below:

- A submission that is not substantially complete by the posted deadline is late.
- For late **audited and reviewed financial statements**...
  - State Bar staff maintain the authority to grant extensions up to the IOLTA/EAF application deadline.
  - The committee maintains the authority to grant extensions beyond the IOLTA/EAF application deadline upon a showing of extraordinary circumstances. In cases without extraordinary circumstances, the committee may grant an extension with conditions or deny an extension.
- For late **application materials** (applications, budgets, and budget narratives)...
  - State Bar staff may—but are not obligated to—accept late submissions up to one



business day after the posted deadline, upon written request and an explanation of the delay. State Bar staff must report late submissions, including those accepted, to the committee. If State Bar staff do not accept the late submission, State Bar staff must provide its recommendation to the relevant committee for consideration.

- The committee may accept, accept with conditions, or reject submissions that are submitted beyond one business day after the posted deadline or that are submitted up to one business day after the posted deadline but not accepted by State Bar staff, upon written request and an explanation of the delay.
- When evaluating whether to accept the submission, State Bar staff and the committee should consider how late after the deadline the submission was received, the completeness of the submitted application, the reasonableness of the applicant's explanation for the delay, any mitigating factors that the applicant provides to the committee, the number of late submissions—of both application and reporting materials—made by the applicant in the last three years, and other similar factors State Bar staff and the committee determine are relevant to their decision.
- For late submissions of **reporting materials** (reports and evaluations)...
  - State Bar staff maintain authority to accept late submissions, upon written request and an explanation of the delay. State Bar staff must report late submissions, including those accepted, to the committee.
  - Upon a report of late submissions, the relevant committee has the authority to take action it deems appropriate to evaluate the organization's administrative capacity and support future compliance with Trust Fund Program requirements. Such action may include sending a letter to the organization's governing body, requesting a corrective action plan, requiring additional monitoring, or any other action the committee deems appropriate.
- A history of late submissions—of both application and reporting materials—may be a relevant factor in determining an organization's administrative or organizational capacity for the purposes of evaluating discretionary grant applications, and in assessing overall compliance with Trust Fund Program requirements.

See Attachment A for proposed rule revisions. This is not the final recommended rule language but rather a reference point for discussing specific modifications.

Should the commission concur in the proposed action, passage of the following resolution is recommended:

**RESOLVED**, that the Legal Services Trust Fund Commission approves the recommendations of the Rules Committee regarding late submissions of grant materials as set forth in the March 11, 2022, memorandum and request that the State Bar Board of Trustees release this proposed rule for a 45-day public comment period.

## ATTACHMENT LIST

- A.** Proposed Revisions to State Bar Rules
- B.** Working Group Preliminary Recommendations Memorandum to the Legal Aid Association of California, January 28, 2022
- C.** Legal Aid Association of California Community Feedback Regarding Working Group Preliminary Recommendations, February 10, 2022

### Article 3. Applications and distributions

#### Rule 3.680 Application for Trust Fund Program grants

To be considered for a Trust Fund Program grant, a qualified legal services project or qualified support center seeking a Trust Fund Program grant must submit a timely and complete application for funding in the manner prescribed by the Commission. The applicant must agree to use any grant in accordance with grant terms and legal requirements.

(A) A qualified legal services project must meet statutory criteria.

(B) A qualified support center must agree to offer support services in two or more of the following ways: consultation, representation, information services, and training. The board of directors of the support center must establish priorities for providing such services after consulting with legal services attorneys and other relevant stakeholders.

(C) A support center not in existence prior to December 31, 1980 must demonstrate that it is deemed to be of special need by a majority of qualified legal services projects in accordance with Trust Fund Program procedures. Upon request, the Commission must make available to the applicant a list of all the names and addresses of qualified legal services projects.

(D) A nonprofit corporation that believes it meets the criteria for a qualified legal services project and qualified support center may submit two applications, one as a project and one as a support center, indicating in each application whether it is to be considered the primary or secondary application. The Commission will consider the secondary application only if the primary application is not approved. No applicant may receive a grant as a qualified legal services project and as a qualified support center.

(E) An application must include

(1) an audited financial statement by an independent certified public accountant for the fiscal year that concluded during the prior calendar year. A financial review in lieu of an audited financial statement may be submitted by an applicant whose gross corporate expenditures were less than the amount specified in the Schedule of Charges and Deadlines;

(2) information about the maintenance of quality service and professional standards and how the applicant maintains standards, such as internal quality control and review procedures; experience and educational requirements of attorneys and paralegals; supervisory structure, procedures, and responsibilities; job descriptions and current salaries for all filled and unfilled professional and management positions; and fiscal controls and procedures.

(3) a budget and budget narrative, which must be submitted within thirty days of receipt of a notice of tentative allocation, explaining how funds will be used to provide civil legal services to indigent persons, especially underserved client groups such as, the elderly, the disabled, juveniles, and non-English-speaking persons within the applicant's service area; and

(4) information about program activities, such as substantive practice areas, extent and complexity of services, a summary of litigation, and populations served.

(F) State Bar staff may accept application materials, except for audited financial statements or financial reviews, which are addressed in Appendix A of these Rules, submitted up to one business day after the posted deadline. The Commission or a committee of its members may accept, accept with conditions, or reject application materials that are submitted beyond one business day after the posted deadline or that are submitted up to one business day after the posted deadline but not accepted by State Bar staff. Factors that the Commission or committee may consider when determining whether to accept a late application include, but are not limited to,

(1) How late after the deadline the submission was received;

(2) The completeness of the submission;

(3) The reasonableness of the applicant's explanation for the delay;

(4) Any mitigating factors that the applicant provides to the committee; and

(5) The number of late application or reporting submissions made by the grantee applicant in the preceding three years.

## Appendix A: Schedule of Charges and Deadlines

<i>Rule</i>	<i>Description</i>	<i>Amount</i>	<i>Deadline</i>
3.680(E)(1)	<p>Threshold amount of gross corporate expenditures requiring submission of an audited financial statement.</p> <p>Deadline for applicant to submit an audited or reviewed financial statement for the fiscal year that concluded during the prior calendar year.</p>	\$500,000	<p>Not applicable</p> <p>Promptly when available, and no later than May 1. Upon written request, an extension up to the application deadline may be granted by the State Bar staff. Upon a showing of extraordinary circumstances, the Commission may grant an extension beyond the application deadline. <u>If no extraordinary circumstances exist, the Commission may grant an extension with conditions.</u> Under no circumstances shall such extension be granted beyond the date upon which grant allocations are determined.</p>



# The State Bar of California

---

**DATE:** January 28, 2022

**TO:** Salena Copeland, Executive Director, The Legal Aid Association of California

**FROM:** Catherine Blakemore, Legal Services Trust Fund Commission Rules Committee  
Erica Connolly, Legal Services Trust Fund Commission Rules Committee

**SUBJECT:** Codification of Grant Administration Practices: Accountability for Late Submissions of Grant Materials

---

## EXECUTIVE SUMMARY

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

This memo presents a working group of the committee's preliminary recommendations on the following issues regarding accountability for late submissions of grant materials:

- Whether and when the commission should accept late grant materials;
- Whether late application materials for discretionary and non-discretionary grants should be treated differently;
- Whether late application materials and late reporting materials should be treated differently; and
- What, if any, penalty should be applied to applicants and grantees that submit late materials.

The working group is seeking feedback regarding the proposed recommendations from the legal aid community through the Legal Aid Association of California (LAAC). The working group will present the recommendations and the legal aid community's feedback to the Rules Committee on February 24, 2022.

---

## BACKGROUND

### CODIFICATION PROCESS

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

Commission members form working groups to investigate the questions raised in the Rules Committee's work plan and develop preliminary recommendations. The working groups develop preliminary recommendations, which are circulated by the committee to the legal aid community through the Legal Aid Association of California (LAAC) to obtain feedback. The committee considers the feedback before making a final recommendation to the commission, and in turn, the Board of Trustees. The Board of Trustees must approve any recommendation made by the commission unless it makes a finding in writing that a recommendation conflicts with a statutory, fiduciary, or legal obligation of the State Bar.

## GOVERNING AUTHORITIES

Applicants and grantees must comply with requirements 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.

State Bar Rules require timely submissions of grant application and reporting materials. Pursuant to State Bar Rule 3.680, "[t]o be considered for a Trust Fund Program grant, a qualified legal services project or qualified support center seeking a Trust Fund Program grant must submit a **timely and complete application** for funding in the manner prescribed by the Commission," (emphasis added). State Bar Rule 3.680 also requires a budget and budget narrative be "submitted within thirty days of receipt of notice of tentative allocation."

Similarly, State Bar Rule 3.681 provides that "[t]he recipient of a Trust Fund Program grant **must...** (D) annually submit information that describes, in the manner required by the Commission, the grant recipient's maintenance of quality service and professional standards and compliance with program requirements," and "(F) **submit timely quarterly financial reports and any other information** reasonably required by the Commission," (emphasis added).<sup>1</sup>

State Bar staff's review of the governing authorities found just one instance in which statute or State Bar Rules give clear direction on processing late submissions. State Bar Rules Appendix A: Schedule of Charges and Deadlines includes a deadline for audited or reviewed financial

---

<sup>1</sup> State Bar Rules include deadlines for: organizations' appeals for reconsideration when denied funding, commission decisions regarding appeals for reconsideration of denied funding, State Bar staff investigations into complaints against grantees, and grantee and complainant responses to State Bar staff investigations into complaints against grantees. These deadlines, though clear in the governing authorities, are not relevant to the handling of late grant application and reporting materials.



statements, which are due on May 1 of each year. The schedule reads “[u]pon written request, an extension up to the [IOLTA/EAF] application deadline may be granted by the State Bar staff. Upon a showing of extraordinary circumstances<sup>2</sup>, the Commission may grant an extension beyond the application deadline. Under no circumstances shall such extension be granted beyond the date upon which grant allocations are determined.”

To promote compliance with Trust Fund Program requirements, State Bar Rule 3.681(G) allows the commission to charge grant recipients noncompliance fees set forth in the Schedule of Charges and Deadlines “for processing documents that are substantially noncompliant with Trust Fund Requirements or that are late without permission.” However, no language was ever added to the Schedule of Charges and Deadlines to include such noncompliance fees for any Trust Fund Program materials.

## **CURRENT PRACTICE**

In the absence of clear guidance on what is considered a “timely and complete” submission, State Bar staff defer to the commission and its committees to determine whether late applications will be accepted for review. Late application submissions—regardless of how late they are received after the deadline—are reported to the commission or a committee of its members for discussion and approval. The commission and committees may choose not to accept late application materials but have historically voted to accept them, particularly for IOLTA/EAF grants. The commission does not apply a penalty for late submissions.

For example, State Bar staff reported six late 2022 IOLTA/EAF applications to the Eligibility and Budget Review (EBR) Committee at its June 25, 2021, meeting.<sup>3</sup> Five of the late submissions were submitted within one hour of the deadline; the sixth was submitted during the following business day.<sup>4</sup> Some members of the EBR committee expressed hesitation to deny applicants funding because of a late application while others expressed frustration with applicants failing to meet the deadline without consequence. After discussion, the committee voted 7-3 to accept the six late submissions for consideration. At the November 4, 2021, EBR committee meeting, State Bar staff reported seven late IOLTA/EAF budget proposals which the committee also voted to accept.<sup>5,6</sup>

---

<sup>2</sup> State Bar rules do not define “extraordinary circumstances.” In 2019, a qualified legal services project (QLSP) was found ineligible for 2020 IOLTA/EAF funding after submitting several late documents including a late audit. The QLSP appealed the determination to the commission and the commission found that health concerns faced by the executive director were the cause of the delays and qualified as “extraordinary circumstances.” In 2020, several organizations were granted extensions because of delays related to the COVID-19 pandemic.

<sup>3</sup> The EBR committee is responsible for discussing and approving IOLTA/EAF grant application and reporting materials and making recommendations to the commission.

<sup>4</sup> See agenda item VI.A, “Action on Acceptance or Rejection of Late Submitted Applications” from the June 25, 2021, EBR committee meeting: <https://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000027640.pdf>

<sup>5</sup> See agenda item V.A, “Discussion and Potential Action on Budget-Related Issues: Late Submissions, Purchase of Real Property/Capital Additions, Deviations from Standard Program/Administrative Expense Ratios, Possible Non-Qualifying Activities” from the November 4, 2021, EBR committee meeting: <https://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000028243.pdf>

<sup>6</sup> The committee did not discuss State Bar Rule 3.680 requiring budgets and budget narratives to be submitted within 30 days of notice of a tentative allocation. Current office practice is to set budget and budget narrative

Some organizations have repeatedly submitted IOLTA/EAF application materials after the posted deadline. In the 2022 IOLTA/EAF application cycle, two of the six late applications and four of the seven late budgets were submitted by organizations that had submitted late IOLTA/EAF materials in the prior two application cycles (see table). All late applications and budgets were accepted, and the organizations received IOLTA/EAF funding.

<b>Late IOLTA/EAF Application Materials (2020-2022)</b>		
<b>Application Cycle</b>	<b>Late Application Submissions</b>	<b>Late Budget Submissions</b>
2022	6 (2 applicants with previous late submission)	7 (4 applicants with previous late submission)
2021	3 (1 applicant with previous late submission)	3 (1 applicant with previous late submission)
2020	1	6 (1 applicant with previous late submission)

Because State Bar staff have the authority to grant extensions for audited and reviewed financial statements, late financial statements only go to the EBR committee for approval if an extension is requested beyond the IOLTA/EAF application deadline. State Bar Rules state applicants must request these extensions in writing. Since the 2020 application cycle, the EBR committee has granted approximately 25 extensions. Most extensions were granted in response to the COVID-19 pandemic.<sup>7</sup>

After they receive grant funds, grantees are required to submit a series of evaluations and reports detailing their grant spending and activities. State Bar staff have greater discretion in accepting late reporting materials. State Bar staff, the commission, and its committees do not typically reject late evaluations and reports, because State Bar staff need to collect and share the data and information provided. State Bar staff occasionally report late submissions to the commission and committees, but office practice varies by grant and reporting item.

## **DISCUSSION**

### **IMPORTANCE OF TIMELY SUBMISSIONS IN GRANT ADMINISTRATION AND OVERSIGHT**

State Bar Rules and commission processes require timely and complete submissions of grant materials for efficient grant-making. Late and incomplete applications create delays for State Bar staff, committee and commission members, and the grantees. They hinder the State Bar

---

deadlines approximately 30 days after the release of tentative allocations; however, if the 30-day mark falls on a weekend or holiday, State Bar staff may set the posted deadline 31-33 days after tentative allocations are released. In 2021, the deadline for budget and budget narratives was set 32 days after tentative allocations were shared with applicants.

<sup>7</sup> During the 2021 IOLTA/EAF application cycle, in response to the COVID-19 pandemic, State Bar staff and the committee were more flexible when granting extensions. In consultation with the commission, State Bar staff moved the deadline for audited and reviewed financial statements to the IOLTA/EAF application deadline. In effect, all applicants received an automatic “extension” during the 2021 application cycle. The committee granted further extensions beyond the application deadline for 17 organizations.

and the commission's ability to efficiently process applications and make timely award decisions, calculations, and disbursements. State Bar staff cannot accurately calculate formula grant amounts without a complete list of approved applicants. Delays in calculating award amounts may then delay drafting grant agreements and disbursing grant funds, which affects even applicants that submitted their materials on time.

In addition to application materials, grantee evaluations and reports are an important tool for the commission to ensure grant expenditures and deliverables meet statutory requirements. State Bar staff and the commission engage in thoughtful discussions to identify submission timelines that aim to give grantees sufficient opportunity to compile and report the required information. Timely submission of reporting materials is important to ensuring timely and effective oversight of grant funds.

Finally, a grantee's ability to comply with application and reporting deadlines is one indicator of its administrative and organizational capacity as a civil legal services provider. There are concerns that if an organization cannot consistently comply with Trust Fund Program deadlines, it may be sign of other governance and organizational deficiencies which may impact the quality of legal services provided. A process to track and evaluate late submissions could then also be a tool to evaluate broader organizational health.

Despite the importance of timely and complete submissions, the working group recognizes that legitimate delays may occasionally occur. For example, the State Bar's grant administration platform, SmartSimple, has on occasion suffered technical issues that prohibited or significantly hindered applicants and grantees from submitting materials right before a deadline. During the COVID-19 pandemic, some qualified legal service projects and support centers also faced unexpected staffing absences that led to difficulties preparing and submitting timely applications and reports.

## **PROMOTING COMPLIANCE WITH APPLICATION DEADLINES**

To promote compliance with State Bar Rules and to provide increased transparency, predictability, and fairness for grantees, the working group recommends codifying a model for reviewing and approving late application materials. For an application to be considered a timely and complete submission, it must be submitted at or before the posted deadline and must be substantially complete; that is, each required question must be answered. Submissions that are not substantially complete by the posted deadline will be considered late.

The working group recommends providing State Bar staff the discretion to **accept** late application, budget, and budget narrative submissions up to one business day after the posted deadline, upon written request by the applicant or grantee.<sup>8,9</sup> The written request must include

---

<sup>8</sup> The time limit for staff's discretionary authority for submissions on the following business day shall be the same as the posted deadline, i.e., if the materials were due at 5:00 p.m. on a Friday, staff's discretionary authority extends until 5:00 p.m. on the following Monday.

<sup>9</sup> Current office practice is to set budget and budget narrative deadlines approximately 30 days after the release of tentative allocations, in an effort to conform to State Bar Rule 3.680(E); however, if the 30-day mark falls on a weekend or holiday, State Bar staff may set the posted deadline 31-33 days after tentative allocations are

an explanation why the organization failed to submit a timely and complete application, budget, or budget narrative. If State Bar staff believe a late application should be **rejected** or **conditionally accepted**, staff would refer it to the relevant committee.<sup>10</sup> Materials submitted later than one business day would also be referred to the relevant committee for review and a decision. State Bar staff would report all late submissions, including those accepted by State Bar staff, to the committee to track compliance with deadlines.

The working group recommends that committees have the authority to **accept**, **accept with conditions**, or **reject** a late submission.<sup>11</sup> Conditional acceptance might include one or more of the following: the committee sending a letter to the organization's governing board to notify them of the late submission; requiring a corrective action plan; requiring additional monitoring; or any other action the committee deems appropriate. Under the proposed model, when determining whether to accept a late application, State Bar staff and the committee would be tasked with considering the following factors:

- How late after the deadline the submission was received;
- The completeness of the applicant's submission;
- The reasonableness of the applicant's explanation for the late submission;
- The number of late submissions—of both application and reporting materials—made by the applicant in the preceding three years; and
- Other similar factors State Bar staff and the committee determine are relevant to its decision.

The working group is considering recommending that State Bar staff also have the authority to **reject** applications, budgets, and budget narratives that are submitted particularly late – for example, over 15 business days (3 weeks) after the posted deadline. However, the working group has not yet decided on a firm recommendation and invites community feedback on this idea in particular. Allowing staff to reject particularly late materials would disincentivize organizations from submitting applications, budgets, and budget narratives at a time that would substantially delay the grant-making process. If the working group were to recommend this staff authority, organizations that have materials rejected by staff would be able to appeal the rejection to the relevant committee for reconsideration.

For audited and reviewed financial statements, the working group recommends maintaining State Bar staff authority to grant extensions up to the IOLTA/EAF application deadline, as outlined in the State Bar Rules Schedule of Charges and Deadlines. The working group recommends that the committee maintain authority to grant extensions beyond the IOLTA/EAF application deadline upon a showing of “extraordinary circumstances.” When “extraordinary

---

released. The review and approval process proposed in this memo would allow State Bar staff authority to accept submissions up to one business day after the posted deadline.

<sup>10</sup> For IOLTA/EAF applications, the relevant committee is the Eligibility and Budget Review Committee. For discretionary grant funds, the Bank Grants Committee, Homelessness Prevention Grants Committee, and Partnership Grants Committee are the relevant committees that review application materials and determine grant awards.

<sup>11</sup> An applicant who is denied IOLTA/EAF funding is entitled to written notice of the denial and may request reconsideration by the commission, per State Bar Rule 3.691.

circumstances” are not present, the working group recommends the committee have authority to grant an extension with conditions or deny the extension. Conditional extensions might include the committee sending a letter to the organization’s governing board to notify them of the late submission, requiring a corrective action plan, requiring additional monitoring, and/or any other similar action the committee deems appropriate.

## **CONSIDERATION OF DISCRETIONARY VERSUS NON-DISCRETIONARY GRANTS**

In addition to IOLTA/EAF grants where awards are allocated based on a statutory formula, several Trust Fund Program grants are discretionary. For discretionary funds, State Bar staff, the commission, and its committees review the merits of submitted applications to determine which applicants receive funding and in what amounts. A common selection criterion in discretionary grant scoring rubrics is “administration” or “organizational capacity,” a measure of the applicant’s staffing, leadership, and resources. An applicant’s history of compliance with grant requirements is a relevant factor in scoring administrative or organizational capacity; therefore, a history of late submissions may also be considered when evaluating this rubric category.

To maintain consistency across grants, the working group recommends a similar review and approval process for late discretionary grant application materials (applications, budgets, and budget narratives). The working group recommends staff have the authority to accept late application materials up to one business day after the posted deadline<sup>12</sup>; it also recommends committees have the authority to accept, accept with conditions, or reject a late submission. It is worth noting that committees may be less willing to accept late discretionary grant applications, given the competitive nature of those funding opportunities.

The difference between discretionary and non-discretionary grants, however, would be the applicant’s mechanism for appeal if a late application is rejected. If the commission rejects a late IOLTA/EAF application or otherwise finds an applicant ineligible for IOLTA/EAF funding, the applicant is entitled to a written notice of denial and may request reconsideration by the commission, per State Bar Rule 3.691. However, the committees overseeing discretionary grant funds—the Bank Grants Committee, the Homelessness Prevention Grants Fund Committee, and the Partnership Grants Committee—have authority to reject a late application without a formal appeals process.

## **PROMOTING COMPLIANCE WITH REPORTING DEADLINES**

The effects of a late **application** submission are clear; delays in identifying eligible grant recipients create delays in calculating and dispersing funds to applicants. The impact of rejecting a late application is also clear; the applicant is ineligible for funding. The effects of a late **reporting** submission vary by grant.

---

<sup>12</sup> Like with non-discretionary grants, the working group is considering recommending State Bar staff have the authority to reject discretionary grant applications, budgets, and budget narratives that are submitted particularly late – for example, over 15 business days after the posted deadline. However, the working group has not decided on a firm recommendation and invites community feedback.

The reports created by State Bar staff with data from grantee evaluations and financial reports vary in length, content, and audience. Grantee evaluations prior to 2022 were largely used to develop reports to the Judicial Council and the commission to assist those entities in grant oversight. The content and due dates of reports were largely determined by State Bar staff, the Judicial Council, and the commission. Beginning in 2022, the State Bar and Judicial Council must annually report EAF and federally funded grant expenditures and outcomes to the California Department of Finance (DOF). Also beginning in 2022, the State Bar and Judicial Council must provide quarterly reports to DOF on federally funded grants, including the 2021/2022-2024 homelessness prevention (HP III) grants. These new annual and quarterly reporting requirements have firm, non-negotiable deadlines that the State Bar and Judicial Council must adhere to.

Regardless of the audience and time-sensitivity of evaluations and reports, Trust Fund Program requirements direct grantees to timely submit **all** required materials. Grant agreements—contracts signed by State Bar staff and the organization before grant funds are dispersed—require grantees to submit required evaluations and reports and allow the State Bar to terminate and recover funding if grantees fail to comply.

Because of the importance of timely reporting submissions, the working group considered recommending the same process for handling late evaluations and reports as is recommended for late applications. However, requiring committee approval to accept reporting materials submitted beyond one business day after the deadline would be particularly onerous on committee members. Committee meeting schedules do not necessarily align with the reporting deadlines for all grants.

Instead, the working group recommends that State Bar staff maintain authority to accept late reporting submissions. State Bar staff should notify the committee of late reporting submissions so they can be considered when evaluating the organization's administrative and organizational capacity and when determining whether to accept any future late applications from the organization. That is, while the committees would not need to vote to accept late reports and evaluations, an organization with a demonstrated history of late reports and evaluations may be less likely to receive grant funds in the future. The committee would also have the authority to send a letter to an organization's board, request a corrective action plan, require additional monitoring, or take other action as deemed appropriate by the committee to evaluate the organization's administrative capacity and ensure compliance with Trust Fund Program requirements.

## **CONSIDERATION OF FINANCIAL PENALTIES**

While State Bar Rule 3.681(F) allows the commission to charge fees for documents that are "late without permission," the working group does not recommend the commission do so. The working group aims to create accountability for late submissions while continuing to maintain a positive relationship between the commission and grantees. Enforcing a financial penalty on grantees, which would negatively impact both the legal services provider and its clients, seems counter to that goal.



## WORKING GROUP PRELIMINARY RECOMMENDATIONS

The working group's preliminary recommendations are summarized below:

- A submission that is not substantially complete by the posted deadline is late.
- For late **audited and reviewed financial statements**...
  - State Bar staff maintain the authority to grant extensions up to the IOLTA/EAF application deadline.
  - The committee maintains the authority to grant extensions beyond the IOLTA/EAF application deadline upon a showing of extraordinary circumstances. In cases without extraordinary circumstances, the committee may grant an extension with conditions or deny an extension.
- For late **applications, budgets, and budget narratives**...
  - State Bar staff may accept late submissions up to one business day after the posted deadline, upon written request and an explanation of the delay. State Bar staff must report late submissions, even those accepted, to the committee.
  - The committee may accept, accept with conditions, or reject late submissions beyond one business day after the posted deadline, upon written request and an explanation of the delay.
  - When evaluating whether to accept the submission, State Bar staff and the committee should consider how late after the deadline the submission was received, the completeness of the submitted application, the reasonableness of the applicant's explanation for the delay, the number of late submissions—of both application and reporting materials—made by the applicant in the last three years, and other similar factors State Bar staff and the committee determine are relevant to their decision.
  - The working group is considering recommending State Bar staff have authority to reject particularly late submissions – for example, those submitted over 15 business days (3 weeks) after the posted deadline. Organizations whose materials are rejected by staff would be able to appeal the rejection to the relevant committee for reconsideration.
- For late submissions of **reporting materials** (reports and evaluations)...
  - State Bar staff maintain authority to accept late submissions, upon written request and an explanation of the delay. State Bar staff must report late submissions, even those accepted, to the committee.
  - Upon a report of late submissions, the relevant committee has the authority to take action it deems appropriate to evaluate the organization's administrative capacity and ensure compliance with Trust Fund Program requirements. Such action may include sending a letter to the organization's board, requesting a corrective action plan, requiring additional monitoring, or any other action the committee deems appropriate.
- A history of late submissions—of both application and reporting materials—may be a relevant factor in determining an organization's administrative or organizational capacity for the purposes of evaluating discretionary grant applications, and in assessing

overall compliance with Trust Fund Program requirements.

See Attachment A for proposed rule revisions. This is not the final recommended rule language but rather a reference point for discussing specific modifications.

## **NEXT STEPS**

Comments regarding the working group's preliminary recommendations should be sent to Senior Program Analyst Danielle MacRae at [Danielle.MacRae@calbar.ca.gov](mailto:Danielle.MacRae@calbar.ca.gov). The working group will receive and review community feedback from LAAC through February 11, 2022, and present its final recommendations at the Rules Committee meeting on February 24, 2022.

## **ATTACHMENT LIST**

- A.** Proposed Revisions to State Bar Rules



### Article 3. Applications and distributions

#### Rule 3.680 Application for Trust Fund Program grants

To be considered for a Trust Fund Program grant, a qualified legal services project or qualified support center seeking a Trust Fund Program grant must submit a timely and complete application for funding in the manner prescribed by the Commission. The applicant must agree to use any grant in accordance with grant terms and legal requirements.

(A) A qualified legal services project must meet statutory criteria.

(B) A qualified support center must agree to offer support services in two or more of the following ways: consultation, representation, information services, and training. The board of directors of the support center must establish priorities for providing such services after consulting with legal services attorneys and other relevant stakeholders.

(C) A support center not in existence prior to December 31, 1980 must demonstrate that it is deemed to be of special need by a majority of qualified legal services projects in accordance with Trust Fund Program procedures. Upon request, the Commission must make available to the applicant a list of all the names and addresses of qualified legal services projects.

(D) A nonprofit corporation that believes it meets the criteria for a qualified legal services project and qualified support center may submit two applications, one as a project and one as a support center, indicating in each application whether it is to be considered the primary or secondary application. The Commission will consider the secondary application only if the primary application is not approved. No applicant may receive a grant as a qualified legal services project and as a qualified support center.

(E) An application must include

(1) an audited financial statement by an independent certified public accountant for the fiscal year that concluded during the prior calendar year. A financial review in lieu of an audited financial statement may be submitted by an applicant whose gross corporate expenditures were less than the amount specified in the Schedule of Charges and Deadlines;

(2) information about the maintenance of quality service and professional standards and how the applicant maintains standards, such as internal quality control and review procedures; experience and educational requirements of attorneys and paralegals; supervisory structure, procedures, and responsibilities; job descriptions and current salaries for all filled and unfilled professional and management positions; and fiscal controls and procedures.

(3) a budget and budget narrative, which must be submitted within thirty days of receipt of a notice of tentative allocation, explaining how funds will be used to provide civil legal services to indigent persons, especially underserved client groups such as, the elderly, the disabled, juveniles, and non-English-speaking persons within the applicant's service area; and

(4) information about program activities, such as substantive practice areas, extent and complexity of services, a summary of litigation, and populations served.

(F) State Bar staff may accept application materials, except for audited financial statements or financial reviews, which are addressed in Appendix A of these Rules, submitted up to one business day after the posted deadline. The Commission or a committee of its members may accept, accept with conditions, or reject application materials that are submitted beyond one business day after the posted deadline or that are submitted up to one business day after the posted deadline but not accepted by State Bar staff. Factors that the Commission or committee may consider when determining whether to accept a late application include, but are not limited to,

(1) How late after the deadline the submission was received;

(2) The completeness of the submission;

(3) The reasonableness of the delay; and

(4) The number of late application or reporting submissions made by the grantee applicant in the preceding three years.

## Appendix A: Schedule of Charges and Deadlines

<i>Rule</i>	<i>Description</i>	<i>Amount</i>	<i>Deadline</i>
3.680(E)(1)	<p>Threshold amount of gross corporate expenditures requiring submission of an audited financial statement.</p> <p>Deadline for applicant to submit an audited or reviewed financial statement for the fiscal year that concluded during the prior calendar year.</p>	\$500,000	<p>Not applicable</p> <p>Promptly when available, and no later than May 1. Upon written request, an extension up to the application deadline may be granted by the State Bar staff. Upon a showing of extraordinary circumstances, the Commission may grant an extension beyond the application deadline. <u>If no extraordinary circumstances exist, the Commission may grant an extension with conditions.</u> Under no circumstances shall such extension be granted beyond the date upon which grant allocations are determined.</p>

*“The Unified Voice of Legal Services”*



**February 10, 2022**

Legal Services Trust Fund Commission Rules Committee (Rules Committee)  
State Bar of California  
180 Howard St.  
San Francisco, CA 94105

**Re: Codification of Grant Administration Practices: Accountability for Late Submissions of Grant Materials**

To the Legal Services Trust Fund Commission Rules Committee,

I am writing on behalf of the Legal Aid Association of California (LAAC) to provide feedback gathered from our community via email as well as a call on February 4 regarding the January 28 memo pertaining to late submissions of grant materials. We appreciate your invitation to provide this feedback and to hear our community's thoughts and concerns.

**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.** LAAC member organizations provide legal assistance on a broad array of substantive issues, ranging from general poverty law to civil rights to immigration, and also serve a wide range of low-income and vulnerable populations. LAAC serves as California's unified voice for legal services and is a zealous advocate advancing the needs of the clients of legal services on a statewide level regarding funding and access to justice.

**Legal Aid Community's Response to Codification of Grant Administration Practices: Accountability for Late Submissions of Grant Materials Memo**

**(1) Request:** Increase the number of days for acceptance by State Bar staff for late submissions from one to two days.

- **Current proposal:** "State Bar staff may accept late submissions up to one business day after the posted deadline, upon written request and an explanation of the delay."
- **Rationale:** We would like for staff to have discretion for two business days because it gives them more time to seek a remedy (i.e., get an organization to submit late materials). Most applicants were merely hours or a day late, and this would help facilitate more capacity for Bar staff to communicate with organizations. It could remediate panic and scrambling by the organization, resulting in better applications and more compliance with this new rule.

- **Other issues with this rule:** We also recommend amending the language to make it clearer in regard to the distinction between this bullet point and the one following it, in terms of the precise timeline. Specifically, does this rule constitute automatic acceptance or staff discretion despite an application being one (or two, as we propose) day(s) late? It reads this way in connection with the bullet point that follows (i.e., after one (or two) day(s) late). Greater clarity on scope of staff authority during the first couple days versus beyond would be helpful.

**(2) Request:** In connection with (1) above, we would like to see more specific articulation of reminders and grace periods. We note that this does not need to be in the rule, but it is relevant in the discussion of late applications. We understand that this is the current practice of State Bar staff. Most prominently, there should be a generalized and/or personalized notice provided to organizations within a specific amount of time of missing a deadline. We believe this post-deadline notice is akin to many notice requirements in a variety of laws.

- **Current Proposal:** Same section as (1) above.
- **Rationale:** Legal aid community members would like to have more language around specific actions taken by Bar staff to communicate with organizations—this does not need to be in the rule, but can be part of the report that staff give to commissioners when staff reports on late applicants. The legal aid community articulated a need for maintaining or creating one-week and day-of reminders as well as immediate communication when they have missed a deadline, within the proposed one- or two-day time period. LAAC understands that State Bar staff members already do this. Namely, we heard about how important it is for organizations to receive communication that the deadline had passed and that immediate submission was needed. They reported greatly appreciating when Bar staff reached out to them individually in the past. Thus, maintaining the current practice or creating (where necessary) automatic reminder emails at these intervals, sent to multiple organizational contacts, would be positive. Again, we heard that State Bar staff already sends emails, and the problem may likely be with a need to have more “secondary contacts” on Smart Simple. Organizations that shared with LAAC that they were late explained that it tended to have to do with staffing changes and clerical, scheduling, or other communication issues, primarily during the pandemic—issues that could be resolved, at least in part, through continuing a practice of automated reminders.
- **Other issues with this rule:** Connected to this, a major theme is that they want to be seen as acting in good faith and that there should be a presumption that there is a legitimate reason for the delay (which would, of course, be provided in writing as described in the proposal).

**(3) Request:** First, any specific discussion of an organization's board could be removed. Second, while not in the actual rule as proposed but discussed elsewhere in the memo, we do not believe there is a connection between the fact that an organization is one or two days late in submitting their materials and the quality of the legal services provided by the attorneys and other staff at that legal aid nonprofit, and one should not be intimidated (i.e., references to “organizational health”). Our recommendation is to strike mentioning the board as well as

refrain from connecting service quality with lateness. In the alternative, the Bar could create language to say that communication with the organization's board would likely only be used for egregious late applications or when an organization is a repeat late-applicant. Additionally, programs seemed to view lateness as being directly connected to not receiving funding and, as a result, it may be helpful to include more clarity around this, such as language indicating that the Commission should take reasonable or proportional action in response to late submissions, as it sees fit, to clarify to organizations that this kind of mistake does not equal all of their funding being pulled.

- **Current Proposal:** “Upon a report of late submissions, the relevant committee has the authority to take action it deems appropriate to evaluate the organization’s administrative capacity and ensure compliance with Trust Fund Program requirements. Such action may include sending a letter to the organization’s board, requesting a corrective action plan, requiring additional monitoring, or any other action the committee deems appropriate.” Similar discussion: “There are concerns that if an organization cannot consistently comply with Trust Fund Program deadlines, it may be a sign of other governance and organizational deficiencies which may impact the quality of legal services provided. A process to track and evaluate late submissions could then also be a tool to evaluate broader organizational health” (Pg. 5).
- **Rationale:** As described elsewhere, we feel that organizations that have multiple late applications should be assisted, not punished, in fixing any repetitive non-compliance. Additional monitoring or other corrective action plans (technical and other support) could avoid punitive steps and ensure that communication between the Bar and those organizations facilitates on-time submission. Essentially, organizations engaged in a long discussion during our call regarding the relationship between the “punishment” and the problem of late submissions. In one sense, they felt that if they were to not receive funding for a clerical or scheduling error, as discussed above, this would not just harm the organization but the clients who depend on their services. So, while the current set of proposals does not include a discussion of non-funding an organization, some of the memo reads as though lateness could go to “organizational health” and thereby a loss of funding. They felt that lateness, especially of the one-to-two-day variety, should not be something that makes an organization lose this critical funding.

**(4) Request:** In the list of factors in evaluating the lateness of materials, we would like one of those factors to articulate mitigating factors, such as a problem with SmartSimple or communications challenges between the applicant and the Bar. Essentially, what reasonable steps did Bar staff take, potentially as described in (2)'s request for codified communication steps by the Bar?

- **Current Proposal:** “When evaluating whether to accept the submission, State Bar staff and the committee should consider how late after the deadline the submission was received, the completeness of the submitted application, the reasonableness of the applicant’s explanation for the delay, the number of late submissions—of both application and reporting materials—made by the applicant in the last three years, and other similar factors State Bar staff and the committee determine are relevant to their decision.”

- **Rationale:** While it gives space for the applicant to explain the delay, we would request more specific articulation, perhaps within that clause, of whether or not the discussion could involve communication challenges.
- **Other issues with this rule:** This pertains specifically to audits. In the past, organizations articulated problems with getting their audit to the Bar on time because the auditors have been late, which is somewhat out of the organization's control. Perhaps this could be a factor as well, involving automatic extensions (to the extent the rule allows) when a third party (auditor) is contributing to the lateness, as well as being part of the Bar's calculus regarding this set of factors.

**(5) Request:** This pertains to the issue of the Bar staff having authority to reject “particularly” late submissions. Part of the issue here is that, generally, organizations have not run up against this kind of lateness timeline, as they're most frequently just a day or two late. Nonetheless, organizations were not immediately opposed to this, but did request that it be reframed in the positive, in the sense that it could be seen as an extension of up to the 15 days described in the proposal.

- **Current Proposal:** “The working group is considering recommending State Bar staff have authority to reject particularly late submissions – for example, those submitted over 15 business days (3 weeks) after the posted deadline. Organizations whose materials are rejected by staff would be able to appeal the rejection to the relevant committee for reconsideration.”
- **Rationale:** Again, organizations were not opposed to this per se, but this proposal could be read in concert with our recommendations above, which describe more codified communication guidelines (e.g., working with organizations that are repeatedly late, ensuring more communication of deadlines to multiple organization representatives).

Thank you again for this opportunity to comment. Please do not hesitate to reach out to us with questions or comments.

Sincerely,



**Salena Copeland**

Executive Director, Legal Aid Association of California (LAAC)

**Zach Newman**

Senior Attorney, LAAC





# The State Bar of California

ATTACHMENT D

Date: November 15, 2019

To: Legal Services Trust Fund Commission Rules Committee

CC: The Legal Aid Association of California

From: Christine Holmes, Senior Program Analyst, Office of Access & Inclusion

Subject: Codification of Grant Administration Practices:  
Audit or Review of Financial Statements Requirement

---

## EXECUTIVE SUMMARY

The Legal Services Trust Fund Commission (LSTFC) Rules Committee is working to gather, codify, and revise, as necessary and appropriate, all of the decision points and considerations that are used as part of the grant administration and determination processes and procedures. The end product of the codification process is to devise and revise practices, procedures and protocols and ensure transparency, consistency, and accountability in grant administration. LSTFC's effort follows the recommendation of the Legal Services Trust Fund Stakeholder Working Group, which was adopted by the State Bar Board of Trustees in January 2019, to provide equity into the day-to-day administration of funding through the Office of Access & Inclusion.

This memo seeks to clarify the audit requirement for IOLTA and EAF funded organizations that report annual gross corporate expenses over \$500,000. Staff recommend that in-kind donated services, like pro bono, not count toward an organization's gross corporate expenditures for the purpose of determining whether the organization's expenditures exceed the \$500,000 threshold. This will allow those with a smaller budget to conduct a less onerous and less expensive review of its financial statements to submit as part of its IOLTA/EAF application.

In addition, the memo also seeks to clarify the necessary credentials for the preparer of a financial review if an organization reports gross corporate expenditures below the \$500,000 threshold and chooses to submit a financial review rather than an audit. Staff recommend that financial reviews must be prepared by independent certified public accountants who follow a standard for this type of review.

On October 18, 2019, the State Bar shared a draft of this codification memo with the Legal Aid Association of California (LAAC) for the purpose of gathering feedback from the legal aid community on the recommendations. LAAC shared the draft memo with the Executive

Directors of IOLTA funded programs requesting feedback. On October 24, 2019 LAAC submitted the feedback to the State Bar indicating it supported staff's recommendations without significant opposition. However, the IOLTA funded programs requested clarification on why the threshold was set at \$500,000 and a few programs requested the threshold be raised to \$1 million or \$1.5 million. Staff recommends maintaining the \$500,000 threshold. Undergoing an audit can promote better internal controls and help programs, especially those that are smaller, govern and operate more effectively and efficiently.

## **BACKGROUND**

IOLTA and EAF grants are awarded to approximately 100 nonprofit legal services organizations each year to provide free civil legal aid in California to indigent persons. The grantees/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 apply for other funding opportunities<sup>1</sup> as available through the Office of Access & Inclusion.

State Bar Staff (staff) reviewed the six governing authorities for direction regarding the audit requirement for applicants. In addition, staff reviewed the IOLTA and EAF grant agreements between the State Bar and grantees that list the contractual obligations of the grantee as stated in the governing authorities. Staff also reviewed the American Bar Association Standards For the Provision of Civil Legal Aid (ABA Standards) which serves as guidance for organizational best practices for legal services providers.

No authority references an existing policy regarding whether in-kind donated services should be included in the calculation of the organization's gross corporate expenditures. The authorities are also silent on the credentials of the preparer of a financial review. A brief review of all the governing authorities, contractual documents, and guidance are listed as follows:

1. Business and Professions Code: Section 6222 requires recipients to 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."
2. State Bar Rules: Rule 3.680(E)(1) mirrors the statutory requirement, requiring an applicant to provide "an audited financial statement by an independent certified public accountant for the fiscal year that concluded during the prior calendar year. A financial review in lieu of an audited financial statement may be submitted by an applicant

---

<sup>1</sup> Other funding opportunities include Partnership Grants, Bank Community Stabilization and Reinvestment Grants, and Equal Access Fund Homelessness Prevention Grants.

whose gross corporate expenditures were less than the amount specified in the Schedule of Charges and Deadlines.”

3. The Schedule of Charges and Deadlines (Appendix A to the State Bar Rules) sets that threshold amount of gross corporate expenditures requiring the submission of a full audit at \$500,000.
4. Eligibility Guidelines for Qualified Legal Services Projects:<sup>2</sup> Guideline 2.7 states that the application must include a financial statement that includes the total gross corporate expenditures of the applicant. The commentary to Guideline 2.7.1 specifically references the \$500,000 threshold.<sup>3</sup>
5. General Grant Provisions: Provision 4.04 and 4.05 reference the requirement of a timely audit or review of financial statements conducted by an independent certified public accountant, but do not discuss how to calculate total gross corporate expenditures.
6. Standards for Financial Management Systems and Audits: There is no reference to the requirement of an audit or review of financial statements.

IOLTA and EAF Grant Agreements specifically require that the grant recipient abide by the terms of the grant including Rule 3.680(E)(1) and Business and Professions Code section 6222.

And lastly, the American Bar Association’s (ABA) Standards For the Provision of Civil Legal Aid identifies that one way to measure compliance with sound accounting principles and funder requirements is to undergo an annual independent financial audit.

## DISCUSSION

Depending on a nonprofit’s funding source(s), an independent audit may be required. While the Internal Revenue Service (IRS) does not require nonprofits to obtain audits, other government agencies, like the federal Office of Management and Budget (OMB) requires any nonprofit that spends \$750,000<sup>4</sup> or more in federal funds in a year (whether directly or by passing the money on to other nonprofits) to obtain a “single audit” to test for compliance with federal grants management standards. In addition, states may require nonprofits having a certain annual income to be audited if they solicit funds from their state’s residents. California requires annual audits for nonprofits registered with the State that have gross incomes of \$2 million or more.<sup>5</sup>

---

<sup>2</sup> The Eligibility Guidelines for Qualified Support Centers do not reference the requirement of an audit or review of financial statements.

<sup>3</sup> 3.680(E)(1) was revised, effective January 25, 2019, to change the timeline for when the audits and financial reviews need to be submitted. The Guideline was not similarly updated, and thus is now inconsistent.

<sup>4</sup> 2 CFR part 200, subpart F. OMB Guidance § 200.501. superseded OMB Circular A-133 which set the audit threshold amount at \$500,000.

<sup>5</sup> Government Code section 12586(e).

## **CURRENT AUTHORITIES**

State Bar Rule 3.680(E)(1) and Business and Professions Code section 6222 require a grantee to provide either an audited financial statement by an independent certified public accountant or a financial review in lieu of an audited financial statement if the grantee's gross corporate expenditures for the fiscal year that concluded in the prior calendar year were less than the \$500,000<sup>6</sup> threshold. Both an audit and a review conducted by an independent CPA ensure consistency with generally accepted accounting principles and involve review of an organization's financial statements. The key difference between an audit and a review is the auditor is required to test and verify the financial information examined. A financial audit is an examination of the financial records, accounts, accounting practices and internal controls of an entity culminating in an opinion. An audit is only one component of confirming good internal controls, it does not always prevent or catch fraud. An audit also "does not provide an opinion on financial strategy or organizational sustainability." A financial review is a lower standard of examination and does not review an organization's internal controls.

In addition, staff conduct program and fiscal monitoring visits to all grantees every three years, in part, to insure that basic financial controls and procedures are in place. In preparation for these visits and as part of the application process, staff review the audits and reviews as its baseline financial controls and information.

## **GROSS CORPORATE EXPENDITURES**

### **Financial Burdens**

Audits expenses may be significant for nonprofit organizations. In addition, audits often require substantial staff and board member time. The price for the kind of financial statement audit required by the rules varies by region and the complexity of the organization's finances. The professional fees for an audit of a nonprofit is generally between \$5,000 and \$20,000.<sup>7</sup> A financial review tends to be a more affordable option for smaller organizations because it is not conducted with the same level of investigation or analysis as an audit.<sup>8</sup>

### **Determining Gross Corporate Expenditures**

---

<sup>6</sup> The \$500,000 gross corporate expenditures threshold has been included in the Schedule of Charges and Deadlines (Appendix A to the State Bar Rules) since it was adopted in 2007.

<sup>7</sup> <https://www.councilofnonprofits.org/nonprofit-audit-guide/why-audit-when-not-required>.

<sup>8</sup> <https://www.councilofnonprofits.org/nonprofit-audit-guide/what-is-a-review>.

For the purposes of determining whether to submit an audit or financial review, a legal services organization looks at its total expenditures in its financial statements or Form 990.<sup>9</sup> A dollar value is attributed to in-kind donated services and this value is listed both as income and as an expense on an organization's financial statements. Therefore, the recording of contributed services offset each other.<sup>10</sup>

### **Historical Questions Brought Before The Legal Services Trust Fund Commission**

The Office of Access & Inclusion received four 2020 IOLTA/EAF applications with financial reviews even though their gross corporate expenditures exceeded \$500,000. Two of the organizations were over the \$500,000 threshold because of in-kind donated services. Staff noted to the Eligibility and Budget Committee in a memo for the July 19, 2019 meeting, that State Bar Rule 3.80(E)(1) and related authorities are silent on whether gross corporate expenditures should include in-kind donated services. Absent a policy on in-kind donated services, staff recommended and the committee accepted the reviewed financial statements for the 2020 grant applications.

Of the other two applicants, one applicant that submitted a financial review did not anticipate that the organization would exceed the \$500,000 threshold and engaged an auditor too late to meet the deadline. The other applicant was unaware of the audit requirement. Over the past five years, only a few applicants that submitted financial reviews instead of audits were discussed at LSTFC meetings. The issue of whether it was in-kind donated services that brought the organization over the \$500,000 had not been elevated to the level of the LSTFC, but had been discussed within the Eligibility and Budget Committee. In prior years, some organizations submitted reviewed financial statements that were accepted even though their gross corporate expenditures were over the \$500,000 threshold. Those organizations were below the threshold if their in-kind donated services were subtracted from the gross corporate expenditures.

### **Staff Recommendation**

In absence of existing policy to provide further guidance, staff recommend amending the Schedule of Charges and Deadlines to indicate that in-kind donated services be excluded in calculating the amount of gross corporate expenditures for the purpose of determining whether the organization's expenditures exceed the \$500,000 threshold. This recommendation will allow smaller organizations which primarily deliver legal services through pro bono

---

<sup>9</sup> Tax-exempt organizations, nonexempt charitable trusts, and section 527 political organizations file Form 990 to provide the IRS with the information required by section 6033.

<sup>10</sup> Malvern J. Gross, Jr., John H. McCarthy, & Nancy E. Shelmon, *Financial and Accounting Guide for Not-for-Profit Organizations*, 7<sup>th</sup> ed. (John Wiley & Sons, Inc., 2005), 111-112.

attorneys to decide whether an audit or review will best meet their current organizational needs.

### **CREDENTIALS OF THE PREPARER OF THE FINANCIAL REVIEW**

As noted above, Business and Professions Code section 6222 requires a grant recipient to provide the State Bar a financial statement, including an audit of funds, or a fiscal review. While the statute specifies that an audit is to be performed by a CPA, it only notes that the fiscal review must be approved by the State Bar, and does not otherwise specify the credentials of the preparer. Neither State Bar Rule 3.680(E)(1) nor the Eligibility Guidelines provide any clarification on this point. The General Grant Provisions, another governing authority which was developed by the LSTFC to clarify the requirements of the LSTFP on grant recipients, and the IOLTA and EAF grant agreements state more explicitly the financial statement must be audited or reviewed by an independent certified public accountant.

Applicants have submitted reviews of their financial statements that were not conducted by independent CPAs. Most recently, a 2020 IOLTA/EAF applicant submitted a review not conducted by an independent CPA and while the applicant was not rejected solely because of this, it was a factor in the decision. As noted previously, financial reviews are seen as a more affordable financial accountability measure than an audit; however, in general, both are conducted by Certified Public Accountants. CPAs are licensed by the state after passing a rigorous examination and meeting certain educational requirements.<sup>11</sup>

### **Staff Recommendation**

Staff recommend amending State Bar Rule 3.680(E)(1) to explicitly state that financial reviews must be conducted by Certified Public Accountants. This recommendation will ensure better financial accountability of grantees and applicants not only to the LSTFC, but also to the organizations' staff and board and to its clients.

### **CODIFICATION RECOMMENDATIONS**

The proposed changes to State Bar Rule 3.680(E)(1) and the Schedule of Charges and Deadlines will provide clarity for the public, grant applicants, staff and the LSTFC as to how to account for in-kind donated services in determining whether the grant applicant needs an audit or a review of its financial statement and will ensure consistency in the application of the rule.

---

<sup>11</sup> Gross, Jr., John H. McCarthy, & Nancy E. Shelmon, *Financial and Accounting Guide for Not-for-Profit Organizations*, 7<sup>th</sup> ed. (John Wiley & Sons, Inc., 2005), 492.

In the interest of consolidating the governing authorities to the greatest extent possible, staff recommend eliminating references to the audit and financial statement requirement from the Eligibility Guidelines for Qualified Legal Services Projects and General Grant Provisions and revising the Grant Agreement to refer only to the Schedule of Charges and Deadlines on this issue. This recommendation will remove discrepancies regarding the audit requirement in the governing authorities and eliminate the need to update multiple authorities whenever changes are made.

Lastly, staff recommend that guidance regarding the format and content of the audit or review of financial statements be incorporated into the Standards for Financial Management Systems and Audits, a document which was developed to instruct grant recipients regarding accounting policies related to the grant funds. Approving this recommendation will provide further direction in the codification process regarding the topics of fiscal administration and quality control.

## **COMMUNITY FEEDBACK**

On October 18, 2019, a draft version of this memo, which included everything except the final paragraph in the Executive Summary and this section, was shared with LAAC for the purpose of gathering feedback from the legal aid community on the recommendations. LAAC then shared the draft memo with the Executive Directors of the IOLTA funded programs to review and provide feedback. On October 24, 2019, LAAC submitted the feedback to the State Bar indicating it supported staff's recommendation without significant opposition. However, the IOLTA funded programs requested clarification on why the threshold was set at \$500,000 and a minority of programs requested the threshold be raised to \$1 million or \$1.5 million.

## **RESPONSE TO COMMUNITY FEEDBACK**

### **History of the \$500,000 Threshold**

The LSTFC meeting minutes from 2001 provide context for how the \$500,000 threshold was determined.

During the April 20, 2001, meeting of the LSTFC, Judy Garlow, Director of the State Bar's Legal Services Trust Fund Program (LSTFP) at the time, stated that the Administrative Office of the Courts (AOC) asked the LSTFP to consider changing the threshold used to distinguish between programs that must submit audited financial statements and those that can submit reviewed financial statements. The AOC suggested the threshold be reduced to \$300,000 from \$750,000. Ms. Garlow indicated that 12 programs would be affected by the proposed change. A motion was adopted to ask the State Bar's Board of Governors (later renamed Board of Trustees) to delegate to the Commission authority to conduct public hearings on the subject.



Bonnie Hough from the Judicial Council, provided a report on the public hearings at the September 7, 2001, LSTFC meeting. It was noted that although there were no presenters at the hearings, comments were received from two programs and the LAAC intended to offer an alternative proposal.

Discussion of the issue concluded during the LSTFC meeting on December 14, 2001. LAAC proposed using \$500,000 and a grant amount of over \$750,000 as the threshold that would trigger the requirement for an audited financial statement. Bonnie Hough and Ms. Garlow recommended the threshold be \$500,000 and that there be no reference to a grant amount. A motion was passed to recommend the Board of Governors amend Rule 4.2 to lower the threshold for submission of audited financial statements from \$750,000 to \$500,000.

### **Raising the \$500,000 Threshold**

As mentioned above, the State Bar recognizes that audit expenses may be significant for programs and often require substantial staff and board member time. However, in 2018, the average amount of funding to IOLTA/EAF grantees was \$408,000 and the mean was \$253,000. Spending between \$5,000 and \$20,000 for an audit to provide reasonable confidence that the program's financial statements are materially correct is a sound investment in the program's financial health.

It is the State Bar's experience that smaller programs often operate with less financial infrastructure and internal controls and therefore could benefit more from an audit. An audit, in addition to ensuring that financial statements are materially correct, can also provide information to help programs govern and operate more effectively and efficiently. A program's willingness to submit its finances to independent scrutiny demonstrates creditability, transparency, and accountability to donors and prospective donors alike.

According to the American Institute of Certified Public Accountants,<sup>3</sup> programs that receive audits tend to add more "self-imposed discipline" to their financial infrastructure and internal controls, including "requiring adequate backup for routine cash disbursement and preparing bank reconciliations; designing and implementing effective accounting systems; properly reporting the results of fundraising campaigns; compliance with donor restrictions; and avoiding inappropriate conflicts of interest, private inurement, and prohibited transactions."

Finally, the American Bar Association Standards For the Provision of Civil Legal Aid indicates all legal aid providers should undergo an annual independent financial audit as a best practice.

---

<sup>3</sup> AICPA. Do I Want or Need a Financial Statement Audit? Not-for-Profit Section.

It further states, the program’s “governing body should adopt procedures that assure the highest level of service from its auditors.” And the program “should establish an active audit committee and should periodically solicit bids from auditing firms to perform the annual financial audit.”

### **Staff Recommendation**

Staff recommend keeping the threshold used to distinguish between programs that must submit audited financial statements and those that can submit reviewed financial statements at \$500,000.

### **ATTACHMENT LIST**

- A. September 16, 2019 memo outlining the Codification process to the LSTFC, 2019 Interest on Lawyers’ Trust Accounts and Equal Access Fund Grantees, and the Legal Aid Association of California
- B. Proposed Amended Governing Authorities
  - 1. State Bar Rules - Title 3 Division 5, Chapter 2
  - 2. Eligibility Guidelines for Qualified Legal Services Projects
  - 3. General Grant Provisions
  - 4. Grant Agreement (template)
- C. Other Governing Authorities
  - 1. IOLTA statute – Business and Professions Code sections 6210-6228
  - 2. Eligibility Guidelines for Qualified Support Centers
  - 3. Standards for Financial Management Systems and Audits



# The State Bar of California

Date: September 16, 2019

To: Legal Services Trust Fund Commission  
2019 IOLTA and EAF Grantees

CC: Legal Aid Association of California

From: Hellen Hong, Director, Office of Access & Inclusion

Subject: Process to Codify Grant Administration Practices

---

Following the recommendation of the Legal Services Trust Fund Stakeholder Working Group, adopted by the State Bar Board of Trustees, the State Bar, through the Legal Services Trust Fund Commission (LSTFC), will be undertaking a process to gather and codify all of the decision points and considerations that are used as part of the grant determination processes and procedures. This effort will provide greater transparency into the grant making process and ensure consistency in the thoughtful decisions made by the LSTFC and State Bar staff in the day-to-day administration of IOLTA/EAF and other grants.

Currently, there are six governing authorities that guide the LSTFC and State Bar staff in making decisions about eligibility, budgeting, allocation amounts, and other factors governing the award of grants under IOLTA and EAF. They are listed as follows:

1. IOLTA Statute – Business and Professions Code Sections 6210-6228
2. State Bar Rules - Title 3 Division 5, Chapter 2
3. Eligibility Guidelines for Qualified Legal Services Projects (LSP)
4. Eligibility Guidelines for Support Centers (SC)
5. General Grant Provisions
6. Standards for Financial Management Systems and Audits

In addition, grant agreements between the State Bar and grantees list the contractual obligations of the grantee as stated in the Act, Rules, the Eligibility Guidelines, General Grant Provisions and application materials provided by the recipient.

Lastly, the American Bar Association Standards For the Provision of Civil Legal Aid provides guidance for legal service providers as organizations and for their staff who represent low income clients.

The State Bar recognizes that many issues are complex; some may not lend themselves to being incorporated into a rule and certain questions require flexibility and interpretation based on specific fact patterns. There are many decision points in the IOLTA funding process including: assessing qualified expenditures, addressing pass through funds, etc., that should be memorialized in a State Bar rule to provide grantees clear information as to how these issues will be treated and to ensure consistent application by staff or the LSTFC.

As discussed with the LSTFC at its May 10, 2019 meeting, the process to develop recommendations for revisions to the rules and guidelines to address the above will use staff led working groups consisting of staff, up to two LSTFC members (based on expertise, availability, and complexity) and LAAC staff. It is anticipated that LAAC will be representing the input of the legal services community. The working groups would present their recommendations to a Committee on Process to Codify Grant Administration Practices of the LSTFC (“Rules Committee”) that will meet quarterly. This will provide a venue for public feedback, comments and input on the recommendations.

The State Bar suggests bundling the topics to be addressed in the chart, below. Specific questions that would need clarity are:

1. What is the current practice or issue?
2. Is there a current document that would need to be revised?
3. Is the recommendation for a proposed new rule or guideline?

The chart below discusses the work groups and common questions that would need consideration under each area. The work groups do not have to address the issues in the order presented below. The State Bar expects the timeline to take approximately a year, assuming the work groups can address multiple issues at a time and present its findings and recommendations to the subcommittee. Until the process is complete, the current practices would continue as to not adversely impact grantees.

---

Each of the work groups will be led by a OAI staff member who will draft a recommended process, rule or guideline change. This draft will be submitted to LAAC for input (which is intended to reflect input of the community). LAAC and their stakeholders will then review

and provide suggested amendments, additions, or deletions to the proposal in writing back to OAI. We anticipate that LAAC will represent the interest of the legal aid community but with nearly 100 diverse organizations, there may not always be consensus. Based on the feedback from LAAC and their stakeholders, we can amend the recommendations as a joint proposal or provide recommendations and include the issues raised by LAAC to the publicly noticed bi-monthly Rules Committee. This provides multiple avenues for organizations and grantees to provide input - through LAAC, in the publically noticed Rules Committee meetings, the full LSTFC Commission meeting, the Board of Trustees meeting, and finally during the public comment period for any State Bar rule changes.<sup>1</sup>

I anticipate at each meeting the Committee will address at least two issues but not certain what may change based on complexity and feedback from LAAC and community stakeholders. The State Bar will calendar these meetings beginning in November for a total of seven meetings until December 2020.

After the Rules Committee votes on recommendations, they will be brought to the full LSTFC for a vote. Unless it is determined that moving some of the rule proposals forward earlier makes sense, in November 2020, all the recommendations will be brought to the Board of Trustees, or a committee thereof, for approval to circulate for a formal public comment period.

Rule Committee Meeting	Issue Topic
November	Audit and RFP
January	Law School Clinics Deeming
March	Primary Purpose Impact and Legal Advocacy Pro Bono Allocation
May	Fiscal Administration + Quality Control
July	Any follow up items
September	Support Centers (any follow up items)
November	Other Issues (if necessary)

---

<sup>1</sup> Anyone can sign up to receive the agendas and respective materials for the Legal Services Trust Fund Meetings at <http://board.calbar.ca.gov/Committees.aspx>

	SUBJECT MATTER	ITEMS TO COVER/EXAMPLES/INCONSISTENCIES	EXISTING STATUTE, RULE, OR GUIDELINE? (INITIAL SWEEP AND NOT INCLUSIVE)	LEAD STAFF
1	Quality Control	<ul style="list-style-type: none"> <li>- What should be the standards for governance, leadership and administration of an organization?</li> <li>- What should be the consequences of findings from monitoring visits or other events that raise questions of quality control?</li> <li>- Should the standards be updated to refer to best practices for nonprofit organizations?</li> <li>- Are there ways to streamline some of the processes with other County/State/Federal audits?</li> </ul>	<ul style="list-style-type: none"> <li>- Rule 3.661C cite the Standards for Provision of Legal Aid adopted by the ABA in Aug 2006</li> <li>- Standards for Financial Management Systems and Audits (from May 2006) is listed in the General Grant Provisions (from Jan 2004) under Appendix A, Assurances</li> <li>- LSPs Guidelines 2.4 Commentary cite B&amp;P §6123(a) and 6217 (a) which don't exist anymore</li> </ul>	Christine Holmes
2	RFP Review Process for Discretionary Grants	<ul style="list-style-type: none"> <li>- Process for reviewing applications, especially discretionary grants not connected to formula distributions like partnership, bank grants, and EAF Homelessness Prevention funds.</li> <li>- Inclusion of a scoring rubric in RFP, understanding there are subjective factors.</li> <li>- Assessment of funding request</li> <li>- Assessment of past performance</li> </ul>	<ul style="list-style-type: none"> <li>- May not need to be in a rule but in guidelines of an RFP.</li> <li>- See issues like 5-Year Rule Policy for Partnership Grants</li> </ul>	Greg Shin
3	Administration	<ul style="list-style-type: none"> <li>- Process for accountability on late submissions or failure to submit documents, noncompliance with reporting requirements and repeated failure to abide by deadlines</li> <li>- Unapproved budget variances and/or unused grant funds</li> </ul>	<ul style="list-style-type: none"> <li>- Could include SB Rule 3.681 which dictate fines and penalties</li> </ul>	Erica Carroll

4	Law School Clinics	<ul style="list-style-type: none"> <li>- What is the definition of an “identifiable law school unit” from Statute?</li> <li>- Standards of a financial audit which is normally from the entire institution which is not aligned with the statutory requirement</li> <li>- Clarity on application of indirect costs</li> </ul>	<ul style="list-style-type: none"> <li>- “Identifiable Law school unit” § 6213(a)</li> <li>- General definition of law school as a law school accredited by SB under Rule 3.670(A) and 3.80(A)</li> <li>- LSP 2.6.1 Commentary for law schools</li> <li>- LSP 2.3.5 Commentary for law schools</li> <li>- No language on indirect costs in rules or guidelines except for indirect cost allocation under Standards 100.32</li> <li>- Audit requirement under LSP 2.71 with no exception for law schools</li> </ul>	Dan Passamaneck
5	Fiscal	<p><u>Out of County Determination</u></p> <ul style="list-style-type: none"> <li>- Process or analysis to determine counting work and allocation for multiple counties (currently inconsistent)</li> </ul> <p><u>Pass through Funds</u></p> <ul style="list-style-type: none"> <li>- Defining what is qualified expenditures (QE) and impact on primary purpose analysis. (ex. DOJ funding)</li> <li>- Process for analyzing pass through funds and impact on primary purpose of legal services.</li> </ul> <p><u>Exchange Funds</u></p> <ul style="list-style-type: none"> <li>- When one grantee subgrants to other IOLTA grantee, who counts the QE? And which eligibility standards apply (LSP vs. Pro Bono)?</li> <li>- Inconsistent reporting requirements of who counts the QE.</li> </ul> <p><u>Audit</u></p> <ul style="list-style-type: none"> <li>- Standards for requirement of a financial audit for expense over \$500,000 when</li> </ul>	<ul style="list-style-type: none"> <li>- B&amp;P Code §6216(b)</li> <li>- LSP Guidelines 2.8 Commentary</li> <li>- General Grant Provisions 3.03</li> <li>- LSP Guidelines 2.7.2 + Commentary on QEs</li> <li>- LSP Guidelines 2.8 + Commentary on application of out of county work as applied to statewide/impact cases</li> <li>- General Grant Provisions 3.05 Subcontracting</li> <li>- LSP Guidelines 2.7 state “gross expenditures in excess of \$500K” must submit an audited financial statement</li> </ul>	Frank Bittner and Doan Nguyen



	that includes in-kind value of pro bono services	<ul style="list-style-type: none"> <li>- <u>Carry over, budget, and cost reporting</u></li> <li>- What should be the standards for financial management? Should IRS standards be used? And review of 990s included?</li> <li>- Should financial &amp; program performance be integrated?</li> <li>- Review of current reports. Why quarterly reports? Why have detailed budgets? Why have 25% non-personnel and Administrative cost limits?</li> <li>- Process and clarity of who approves at what point of time. With current funding distributions does budget variances of 10% or does \$1,000/\$10,000 still make sense?</li> <li>- Inconsistent application of 25% director approval.</li> <li>- Carry Over Processes</li> <li>- There is no rule or guideline on how indirect costs are considered for QE.</li> </ul>	<ul style="list-style-type: none"> <li>- General Grant Provisions 4.04/4.05</li> <li>- LSP Guidelines 2.7.1</li> <li>- General Grant provisions 7.01</li> <li>- General Grant provisions 7.01</li> <li>- General Grant provisions 7.01</li> <li>- General Grant provisions 7.01</li> <li>- General Grant provisions 7.01</li> <li>- General Grant provisions 4.02 (B) speaks to administrative methodology</li> </ul>	
6	Support Centers	<ul style="list-style-type: none"> <li>- How to measure income screening for support centers?</li> <li>- Defining “significant support service?”</li> <li>- Can SCs charge the LSPs that attend trainings (for food, or rental, no minimum or %)?</li> <li>-</li> </ul>	<ul style="list-style-type: none"> <li>- SC guidelines 2.2.1 commentary</li> <li>- SC guidelines 2.2.4 commentary</li> </ul>	Rocio Avalos

7	Primary Purpose	<ul style="list-style-type: none"> <li>- Currently staff reviews previous year budget to determine if the qualified expenditures are at 75% to qualify as primary purpose not the future budget</li> </ul>	<ul style="list-style-type: none"> <li>- Inconsistent with 3.671a, which directs review of future budget</li> <li>- LSP Guidelines 2.3.5 commentary</li> <li>- SC Guidelines 2.3 Commentary</li> </ul>	Doan Nguyen
8	Pro bono allocation	<ul style="list-style-type: none"> <li>- Defining if applicant's principal means of delivery of legal services is through recruitment of attorneys in private practice</li> <li>- Is there urban bias built in to threshold pro bono test?</li> <li>- Simplification of pro bono test</li> </ul>	<ul style="list-style-type: none"> <li>- B&amp;P Code §6216(b)(1)(B)</li> <li>- LSPs Guidelines 2.9.2 Commentary</li> </ul>	Christine Holmes
9	Deeming	<ul style="list-style-type: none"> <li>- What are the rules on deeming every 3 years?</li> <li>- Commission has authority to deem support center even if they were not deemed to be of special need by the majority of the LSPs</li> <li>- Should entire deeming process be reviewed?</li> <li>- Lack of clarity on if/when the Commission can "deem" a SC as special need if not voted by a majority of LSP.</li> </ul>	<ul style="list-style-type: none"> <li>- SC Guidelines 2.91 Commentary</li> </ul>	Christal Bundang
10	Impact and Litigation/Advocacy <ul style="list-style-type: none"> <li>- Defining civil legal services and indigency</li> </ul>	<ul style="list-style-type: none"> <li>- Defining civil legal services – including advocacy, counseling, mediation, policy work, social work and related services.</li> <li>- Defining indigency and standards to demonstrate indigency (e.g, no specific age for AAA funding based on Statute) and indigency standards for impact litigation and advocacy.</li> <li>- Application of definition under B&amp;P6213(d) re: receipt SSI or receipt of free services under OAA</li> <li>- What activities are so negligible as not needed to report (such as just signing on letters of support) ?</li> </ul>	<ul style="list-style-type: none"> <li>- Need to update Rule 3.671 on definition of civil legal services</li> <li>- Rule defining B&amp;P 6213 (d)</li> <li>- SC Guidelines 2.2.1 Commentary</li> <li>- For example, we currently require deduction for mediation services for QE but allow mediation as a type of legal services for Partnership Grants.</li> </ul>	Elizabeth Hom

11	Other Issues	<ul style="list-style-type: none"> <li>- What are the rebuttal factors for AAA and LSC for 6214(a) on the presumption for qualifications?</li> <li>- What does having a presumption and what factors could rebut or should be conclusive presumption? Currently, we aren't applying the presumption.</li> </ul>	<ul style="list-style-type: none"> <li>- Statute Section 6414(a)</li> </ul>	Doan Nguyen
----	--------------	---	---	-------------

## Attachment B. Proposed Amended Governing Authorities

### 1. STATE BAR RULES - TITLE 3 DIVISION 5, CHAPTER 2

#### Article 3. Applications and distributions

##### Rule 3.680 Application for Trust Fund Program grants

To be considered for a Trust Fund Program grant, a qualified legal services project or qualified support center seeking a Trust Fund Program grant must submit a timely and complete application for funding in the manner prescribed by the Commission. The applicant must agree to use any grant in accordance with grant terms and legal requirements.

- (A) A qualified legal services project must meet statutory criteria.
- (B) A qualified support center must agree to offer support services in two or more of the following ways: consultation, representation, information services, and training. The board of directors of the support center must establish priorities for providing such services after consulting with legal services attorneys and other relevant stakeholders.
- (C) A support center not in existence prior to December 31, 1980 must demonstrate that it is deemed to be of special need by a majority of qualified legal services projects in accordance with Trust Fund Program procedures. Upon request, the Commission must make available to the applicant a list of all the names and addresses of qualified legal services projects.
- (D) A nonprofit corporation that believes it meets the criteria for a qualified legal services project and qualified support center may submit two applications, one as a project and one as a support center, indicating in each application whether it is to be considered the primary or secondary application. The Commission will consider the secondary application only if the primary application is not approved. No applicant may receive a grant as a qualified legal services project and as a qualified support center.
- (E) An application must include
  - (1) an audited financial statement by an independent certified public accountant for the fiscal year that concluded during the prior calendar year. A financial review [by an independent certified public accountant](#) in lieu of an audited financial statement may be submitted by an applicant whose gross corporate expenditures, [excluding in-kind donated services](#), were less than the amount specified in the Schedule of Charges and Deadlines;
  - (2) information about the maintenance of quality service and professional standards and how the applicant maintains standards, such as internal

quality control and review procedures; experience and educational requirements of attorneys and paralegals; supervisory structure, procedures, and responsibilities; job descriptions and current salaries for all filled and unfilled professional and management positions; and fiscal controls and procedures.

- (3) a budget and budget narrative, which must be submitted within thirty days of receipt of a notice of tentative allocation, explaining how funds will be used to provide civil legal services to indigent persons, especially underserved client groups such as, the elderly, the disabled, juveniles, and non-English-speaking persons within the applicant's service area; and
- (4) information about program activities, such as substantive practice areas, extent and complexity of services, a summary of litigation, and populations served.

*Rule 3.680 adopted effective March 6, 2009.*

## 2. RULES OF THE STATE BAR OF CALIFORNIA APPENDIX A: SCHEDULE OF CHARGES AND DEADLINES FOR 2019

	<i>Description</i>	<i>Amount</i>	<i>Deadline</i>
3.680(E)(1)	<p>Threshold amount of gross corporate expenditures, <u>excluding in-kind donated services</u>, requiring submission of an audited financial statement.</p> <p>Deadline for applicant to submit an audited or reviewed financial statement for the fiscal year that concluded during the prior calendar year.</p>	\$500,000	<p>Not applicable</p> <p>Promptly when available, and no later than May 1. Upon written request, an extension up to the application deadline may be granted by the State Bar staff. Upon a showing of extraordinary circumstances, the Commission may grant an extension beyond the application deadline. Under no circumstances shall</p>

			such extension be granted beyond the date upon which grant allocations are determined.
--	--	--	--

### 3. Eligibility Guidelines for Qualified Legal Services Projects

- 2.7. The application must include financial information and records, as necessary and supported by the applicant's submitted audit or review of financial statements. ~~include a financial statement that includes the total expenditures of the applicant. The financial statement must meet the requirements of Guideline 2.7.1 below.~~

~~2.7.1.—The statement must show expenditures for the completed fiscal year ended most recently before the application deadline, and must be audited or reviewed by an independent certified public accountant. A financial review, in lieu of an audited financial statement, may be submitted by an applicant whose gross corporate expenditures were less than the amount specified in the Schedule of Charges and Deadlines. Applicants must submit a financial statement no later than 90 days after the end of their fiscal year. The required financial statement must be received prior to the disbursement of any funds from the Legal Services Trust Fund Program.~~

*Commentary:*

~~Independent CPA audited or reviewed statements are required of organizations with gross expenditures of less than \$500,000. Organizations with gross expenditures in excess of \$500,000 must submit audited statements. If such a statement is unavailable at the time of the application, you may substitute an approximated financial statement, but you must submit an audited or reviewed statement no more than 90 days after the end of their fiscal year. [B&P Code §6222; Rule 3.680(E)(1); Schedule of Charges and Deadlines]~~

### 4. GENERAL GRANT PROVISIONS

#### 4.04. AUDIT RESOLUTION

The Commission may require Recipients to follow a systematic method to assure timely and appropriate resolution of annual audit findings and recommendations and to report progress in such manner and at such times as the Commission shall deem appropriate.

#### ~~4.05.—FINANCIAL STATEMENTS~~

~~Recipients shall submit a financial statement for the fiscal year ended most recently within 90 days of the close of their fiscal year. The financial statement shall be audited or reviewed by an independent certified public accountant. Any recipient whose gross expenditures exceeded \$500,000 during the fiscal year shall be required to submit an audited statement. Submission of a financial statement as required in this section shall constitute compliance with the requirement in Rule 4.2 of the Regulating Rules that an applicant for funding must submit such a statement within 60 days after the application deadline.~~

## 5. GRANT AGREEMENT TEMPLATE<sup>1</sup>

### GRANT AGREEMENT THE STATE BAR OF CALIFORNIA OFFICE OF ACCESS & INCLUSION – IOLTA/EAF FUND GRANT

This Grant Agreement (“Agreement”) is made as of January 1, «GrantYear», (“Effective Date”) between The State Bar of California, a California public corporation, with a principal place of business at 180 Howard Street, San Francisco, CA 94105 (“State Bar”), and «ProgramLegalName», a California nonprofit corporation, with a principal place of business at «ProgramPPBaddress» (“Recipient”).

#### RECITALS

Pursuant to California Business and Professions Code Section 6210-6228 (“Act”) and Title 3, Division 5, Chapter 2 of the Rules of the State Bar of California, (“Rules”), a Legal Services Trust Fund Program (“Program”) has been established in the State of California. The Office of Access & Inclusion administers the Program.

Recipient has completed, executed, and submitted to the State Bar an Application for Funding under the Program. As part of the Application for Funding, Recipient has completed, executed, and submitted to the State Bar Certifications, Assurances, Attachments, and a Proposed Budget (collectively, including the Application for Funding, “Application Materials”).

In reliance upon the representations and agreements made in the Application Materials, State Bar has determined that Recipient is eligible for an IOLTA/EAF grant under the Program for the period commencing on January 1, «GrantYear» and ending on December 31, «GrantYear» (“Grant Period”).

---

<sup>1</sup> There are separate grant agreements for IOLTA and EAF grants. The templates are the same for the portion discussed in this memo and therefore have been combined above for simplicity.



The governing board, the officers, and similarly empowered staff of Recipient have read and understand the Act, the Rules, the Application Materials, the Legal Services Trust Fund Program General Grant Provisions (“Grant Provisions”), and the Legal Services Trust Fund Program Eligibility Guidelines (“Eligibility Guidelines”). Recipient has familiarized appropriate staff with the requirements of the Act, the Rules, the Grant Provisions, and the Application Materials.

#### AGREEMENTS

1. Pursuant to the Act and Rules, and in reliance upon the promises and representations made by Recipient, the State Bar grants to Recipient «Final IOLTA/EAF grant Allocation» (“Grant Amount”).
2. The Act, Rules, Grant Provisions, Eligibility Guidelines, and Application Materials, including any additions or amendments made to the Application Materials by agreement between the State Bar and Recipient, are incorporated into this Agreement as if set forth in their entirety in this Agreement. Recipient agrees to comply with the Act, Rules, Grant Provisions, Eligibility Guidelines, Assurances, and other agreements made in the Application Materials. Recipient agrees to comply with all lawful statutes, rules, regulations, guidelines, policies, instructions, and similar directives pertaining to the Program (collectively, “Directives”) issued by the State of California, the Supreme Court of the State of California, or the State Bar, including without limitation, any Directive adopted after the Effective Date.
3. Recipient acknowledges that the terms of this grant, including ~~Grant Provision Article 4.05, Regulating Rule 3.680(E)(1), and Business and Professions Code Section 6222,~~ require Recipient to submit to the State Bar a financial statement that has been audited or reviewed by a certified public accountant as specified in the Schedule of Charges and Deadlines ~~within ninety (90) days of the close of Recipient’s fiscal year.~~



Home

Bill Information

California Law

Publications

Other Resources

My Subscriptions

My Favorites



Code:

Select Code ▼

Section:

Search

[Up^](#)
[Add To My Favorites](#)

## 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.)*



# **Legal Services Trust Fund Program**

## **Eligibility Guidelines**

### **SUPPORT CENTERS ONLY**

**The State Bar of California  
180 Howard Street  
San Francisco, CA 94105-1617**



# Legal Services Trust Fund Program Eligibility Guidelines

## Table of Contents

<b>1. Requirements for All Applicants</b>	<b>1</b>
1.1 Agreement Limiting Use of Funds	1
1.2 Budget and Budget Narrative	2
1.3 Required Assurance	2
1.4 Requests for Further Information	2
<b>2. Requirements for Support Centers</b>	<b>2</b>
<b>A. Mandatory Requirements for All Support Centers</b>	
2.1 Nonprofit Corporation	3
2.2 Current Provision of Significant Level of Services	3
2.3 Primary Purpose and Function	7
2.4 Plan for Added Services	8
2.5 Agreement Limiting Use of Funds	8
2.6 Resolution Establishing Priorities	8
2.7 Range of Services	8
<b>B. Further Elective Requirements</b>	
2.8 Centers Existing December 31, 1980 Presumed Eligible	8
2.9 Non-Presumption Support Centers	9
2.9.1 Deemed of Special Need	9
2.9.2 Quality Control	10
<b>3. State Bar of California Districts Prior to July 1, 2010</b>	<b>11</b>

# Legal Services Trust Fund Program Eligibility Guidelines

The Legal Services Trust Fund Program Eligibility Guidelines were designed as a brief statement of factors governing eligibility for an allocation under the Legal Services Trust Fund Program. The Guidelines, together with their Commentary, are intended to incorporate provisions found in the statute (Business and Professions Code §6210, et seq.) and at Title 3, Rules 3.660-3.692 of the Rules of the State Bar of California.

Commentary follows each guideline and is designed to further assist you in seeking an allocation under the Legal Services Trust Fund Program. Bracketed references are to the Business and Professions Code (B&P Code) and Rules of the State Bar.

## Requirements for All Applicants

1. **To be considered for a Legal Services Trust Fund Program grant, an applicant must submit a timely and complete application for funding in the manner prescribed by the Legal Services Trust Fund Commission (the Commission). To qualify for an allocation under the Legal Services Trust Fund Program, an applicant must be either:**
  - a. **a qualified legal services project (Legal Services Projects Guidelines 2-2.9); or**
  - b. **a qualified support center (Support Centers Guidelines 2-2.9).**

**A single applicant may not qualify as both a legal services project and a support center. [Rule 3.680(D)]**

***Commentary:***

The main distinction between a legal services project and a support center is found in the primary purpose of the organization. Compare Legal Services Projects Guideline 2.3 with Support Centers Guideline 2.3. You must indicate on your application the status under which you wish to be considered. You may complete the applications for both a legal services project and a support center. If you qualify in the category of first preference, you will not be considered in the second category. If you do not qualify in the category of your first choice, you will be considered for eligibility under the category of your second choice, if your primary purpose and function qualifies you for that category. [Rule 3.671(A)-(C)]

- 1.1. **All applicants must include with their applications an assurance that the applicant will use the funds allocated from the Legal Services Trust Fund Program for the purposes set forth in §§6210-6228 of the Business and Professions Code.**

***Commentary:***

The application includes an Assurances form. Execution of that form will satisfy the requirements of Guidelines 1.1-1.3.

- 1.2. Within 30 days after notice of a tentative allocation from the Commission, the applicant must submit a budget and budget narrative for the expenditure of the allocation.
  - 1.2.1. For support centers, the budget and budget narrative must show that all funds allocated from the Legal Services Trust Fund Program will be used in support of qualified legal services projects providing free legal services in California.
- 1.3. All applications must include an assurance that the applicant:
  - 1.3.1. at all times will honor the attorney-client privilege and will uphold the integrity of the adversary process; and
  - 1.3.2. will not impose restrictions unrelated to statutes and rules of professional conduct on attorneys who provide representation to indigent clients with funds provided in whole or in part from the Legal Services Trust Fund Program; and
  - 1.3.3. does not discriminate on the basis of race, color, national origin, religion, sex, handicap, or age.

**Commentary:**  
See Commentary 1.1 above. [B&P Code §§6210, 6217, 6221; Rule 3.682]
- 1.4. If the Commission or staff requests any further information relating to an applicant's eligibility, or related to the amount of the allocation under the Legal Services Trust Fund Program, the applicant must supply that information. However, the Commission is not required to notify applicants if their initial application fails to include information sufficient to demonstrate eligibility. Failure to provide information necessary to the Commission's decisions on eligibility or eligible expenditures (or failure to supply requested information relevant to those decisions) will be grounds for denial of eligibility, or for refusal to recognize part of the applicant's expenditures within the allocation formula. [Rules 3.680(E) and 3.691(A)]

## **Requirements for Support Centers**

2. To be a qualified support center, the applicant must meet (a) each of the requirements of Guidelines 1.1-1.3 above, and (b) each of the following Guidelines 2.1-2.7, and (c) the requirements of either Guideline 2.8 or 2.9.

**Commentary:**

The qualified support center must meet: (1) the requirements applicable to all applicants (see Guidelines 1.1-1.3); (2) the mandatory requirements of Guidelines 2.1-2.7 applicable to all support centers; and (3) either the eligibility presumption established by Guideline 2.8, or the requirements for quality control and "special need" set forth in Guideline 2.9.

The mandatory requirements applicable to all support centers (Guidelines 2.1-2.7) contain two separate requirements. A support center must demonstrate that it provides a significant level of legal support services to qualified legal services projects in California (the “significant level” test). Additionally, a support center must demonstrate that its primary purpose and function is the provision of legal support services (the “primary purpose and function” test). [Rule 3.680(A)]

**2.1. The applicant must be a nonprofit corporation (in California or another state).**

***Commentary:***

In order to demonstrate your status as a California corporation, copies of the Articles of Incorporation certified by the California Secretary of State and a current Certificate of Status from the California Secretary of State showing that the corporation is in good legal standing must be filed with the Legal Services Trust Fund Program. To demonstrate your nonprofit status, copies of (1) the determination letter from the Internal Revenue Service granting your application for exemption from the appropriate provisions of subchapter (f) of Chapter 1 of the Internal Revenue Code of 1954, as amended and (2) the determination letter from the State Franchise Tax Board granting your application for exemption from the appropriate section of the California Revenue and Taxation Code must be filed with the Legal Services Trust Fund Program. If you have not received such determination letter(s), attach copy(ies) of your application(s) for exemption together with an explanation of its/their status. [B&P Code §6213(a)(1); Rules 3.670(A), 3.680(A)]

**2.2. The application must demonstrate through objective information that the organization currently:**

***Commentary:***

The statute requires that applicants must **currently** be providing the services described in Guidelines 2.2.1-2.2.4.

The regulations require that you demonstrate with “objective information” that you provide the required services. Objective information that can be used to demonstrate your services is described in Guidelines 2.2.1-2.2.3. See also Commentary 2.3. [B&P Code §6213(b); Rule 3.670(B), 3.671(B), 3.680(E)(2), 3.680(E)(4)]

**2.2.1. provides a significant level of legal training, legal technical assistance, or advocacy support to qualified legal services projects**

***Commentary:***

You must demonstrate that you are currently providing **a significant level** of legal training, legal technical assistance, or advocacy support to programs that are qualified for Legal Services Trust Fund Program allocations as legal services projects. In order to meet this test, the services provided must be offered on a regular and consistent basis.

Such training, assistance or support include, but are not limited to, the direct provision of civil legal services to an indigent person, either as co-counsel with

an attorney employed or recruited by a qualified legal services project, or at the request of an attorney employed or recruited by a qualified legal services project that is unable to assist the client [see Rule 3.672(B)(2)], provided that:

- a. you keep written records to demonstrate that the direct provision of services was either as co-counsel with an attorney employed or recruited by a qualified legal services project, or at the request of such an attorney [Rules 3.672(B), 3.682]; and
- b. you establish and use policies and procedures that encourage qualified legal services projects to participate in the organization's representation of persons referred by them.

Support services provided to organizations that are not qualified legal services projects, or to attorneys in private practice who were not recruited by a qualified legal services project, will not be taken into consideration for purposes of demonstrating that a support center provides a significant level of services to qualified legal services projects.

In deciding whether you meet the "significant level" test, the Legal Services Trust Fund Commission will consider several factors. At a minimum, you must demonstrate that in the last year you have provided legal training, legal technical assistance, or advocacy support to at least ten qualified legal services projects. For purposes of this test, services provided to more than one office of a multi-office legal services project shall only count as services to one project. In addition, for purposes of this test, you **cannot** count the distribution of newsletters, general mailings, or the provision of other materials of general distribution. You must maintain written records of requests for services to demonstrate the number of projects to which you provided services.

You must provide services to at least ten projects to qualify as a support center. Applicants that fail to meet this test will be found not to have provided a significant level of services to qualified legal services projects.

Provided you meet this minimum test, you must also demonstrate through objective information that the nature and content of the services you provided were significant. In determining whether a support center's services were significant, the Commission may consider the following factors and any others that aid in making that determination:

- a. The provision of legal training, legal technical assistance, and advocacy support to a large number of projects is relevant data for demonstrating a significant level of support. However, numbers alone will not be the sole test.
- b. Services must be substantial in nature, not merely simple or intermittent responses to requests for assistance. For example, responding to ten simple requests for assistance will not itself demonstrate a significant level of support services. One large-scale complex lawsuit that takes a substantial amount of attorney time to complete will demonstrate a more significant level of services than a simple individual action. However,

handling a substantial number of individual actions may also demonstrate a significant level of work. Distribution of newsletters or other educational material will not itself meet the “significant level” test, but development of useful resources for qualified legal services projects is relevant data for demonstrating a significant level of support.

**2.2.2. and such training, assistance, or support is not only actually available statewide**

***Commentary:***

Your services must actually be available statewide. You must hold your services available on request on a statewide basis to all qualified legal services projects irrespective of where they are located within the state and publicize the availability of such services on a statewide basis. This publicity should ordinarily include at least two written communications during each calendar year, directed to every qualified legal services project in California, in which you describe the availability of your services. These written communications may be included in newsletters or other regular publications. You should send a copy of the communications to the Legal Services Trust Fund Program when you send them to the legal services projects.

Second, you must also demonstrate through objective information that your services are actually available and publicized throughout the state. In determining whether this requirement is met, the Commission may consider such factors as your staff's participation in task forces and other training forums, your distribution of newsletters and general mailings, and any other efforts you make to give notice of the availability of services.

**2.2.3. but is also actually provided statewide**

***Commentary:***

You must also demonstrate that you provide services on a statewide basis. Your services must have actually been utilized within the last year in a majority of the nine State Bar Districts that existed prior to July 1, 2010, and in at least two Northern California counties and two Southern California counties. Southern California counties shall include the counties of San Luis Obispo, Kern, San Bernardino and counties further south. At the end of these Guidelines, is a list of the counties assigned to each of the nine State Bar Districts.

In determining whether a support center's services were statewide, the Commission may consider the following factors and any other objective information that aids in making the determination:

- a. The provision of support services to a number of State Bar Districts or counties larger than the minimum stated above would be relevant data for demonstrating a geographic distribution of service. However, numbers alone will not be the sole test.
- b. Statewide services must be substantial in nature, not merely simple or intermittent responses to requests for assistance. For example, providing

most services in one or a few counties but occasionally responding to inquiries from other parts of the state will not itself demonstrate a statewide distribution of services.

For purposes of determining whether your services were actually provided on a statewide basis, the Commission will consider only the provision of legal training, legal technical assistance, and advocacy support. Other services provided, such as general information, the distribution of newsletters, and general mailings, will not be sufficient to demonstrate that an applicant is not local but statewide, or that an applicant has provided services in a majority of the State Bar Districts.

#### **2.2.4. without charge**

***Commentary:***

The “without charge” standard is fully met when services are provided without imposing any fee or requiring any payment. However, training services may still be considered “without charge” when the fee imposed is directly tied to the actual additional expense incurred in training an individual and does not include general expenses that are incurred in providing the training to the community at large. To illustrate:

- a. Direct expenses that can be charged to individuals participating in training events include the actual cost of their own refreshments, lodging, materials distributed (including manuals, workbooks, and binders), per participant webinar fees, and similar costs associated with individual participation.
- b. Training expenses that should not be charged to participants include the costs of facilities rental for the training event; general costs of materials, equipment, and services necessary to conduct trainings (such as visual aids, projectors, IT services, licensing fees, and delivery charges); expenses associated with travel, food, or lodging for staff or outside trainers; costs of developing materials (including staff salaries and consultant fees/expenses); and organizational expenses, including but not limited to insurance, audit costs, library costs, overhead, or telecommunications expenses.

Under Business and Professions Code §6213(b), the “without charge” standard applies to assistance provided to qualified legal services projects. It would be consistent with the spirit of the Legal Services Trust Fund statute, whenever possible, to also extend this consideration to fellow qualified support centers.

#### **2.2.5. through an office in California.**

***Commentary:***

You must actually have a regularly functioning office physically located in California and provide these services through that office. The office must have been in existence and operating prior to your application for a Legal Services Trust Fund Program grant.



**2.3. The provision of legal training, legal technical assistance, or advocacy support without charge must be the primary purpose and function of the corporation.**

***Commentary:***

You must demonstrate that it is the primary purpose and function of the **corporation** viewed as a whole, and not simply that of part of the corporation, to provide free legal training, legal technical assistance, or advocacy support. You may consider the provision of similar services in other states when determining the primary purpose and function of the corporation.

To be considered legal training, legal technical assistance, and advocacy support, the services must meet the following criteria:

- a. Services must be provided (1) to attorneys or lay advocates or others involved in the direction or operation of legal services projects that provide legal services to indigent persons; or (2) to attorneys in private practice who are providing legal services without charge to indigent persons; or (3) directly to indigent persons when requested to do so by a qualified legal services project.
- b. The content of the training and technical assistance must be directed toward meeting the legal needs of indigent persons or the functioning of the legal services project.
- c. The direct provision of legal services to clients is not a “support service” unless it is delivered (1) as co-counsel with a qualified legal services project; or (2) as co-counsel at the request of a private attorney representing indigent clients without charge; or (3) after a referral from a qualified legal services project.
- d. The provision of similar legal support services in states other than California will be considered in determining the primary purpose and function of the corporation.

A support center shall be presumed to meet the “primary purpose and function” test if the services described above constitute more than 75 percent of the corporation’s expenditure budget in the year for which it is seeking an allocation from the Legal Services Trust Fund Program.

If the organization cannot meet the “primary purpose and function” test by complying with this presumption, you may demonstrate the primary purpose and function by other means. You will need to demonstrate that the primary purpose of the organization is to assist legal services advocates who provide direct civil legal services to indigent clients through the provision of legal training, legal technical assistance, and advocacy support. You must show that the primary purpose is not the direct provision of legal services to clients and that the support services consist of training, technical assistance, and advocacy support. [B&P Code §6213(b); Rule 3.671(B), (C)]

- 2.4. If the organization receives funds from sources other than the Legal Services Trust Fund Program, the applicant must submit a plan assuring that the services funded from the Legal Services Trust Fund Program are in addition to those already funded from other sources.**

***Commentary:***

Describe the sources, amounts, and conditions of your funding other than the Legal Services Trust Fund Program and the additional services you intend to provide with the monies allocated by the Legal Services Trust Fund Program. You must also submit a plan to maintain your current level of funding from sources other than the Legal Services Trust Fund Program. [B&P Code §6216(c)]

- 2.5. The application must include an agreement by the organization to use all funds allocated from the Legal Services Trust Fund Program in support of qualified legal services projects providing free legal services in California, and to restrict use of funds allocated from the Legal Services Trust Fund Program to matters directly related to the needs of legal services clients.**

***Commentary:***

You may meet this requirement by signing the Assurances form that is part of the application. [B&P Code §6216(c)]

- 2.6. The application must include a resolution of the board of directors of the corporation establishing the organization's priorities for the provision of legal support services. The adoption of this resolution must have followed consultation with legal services attorneys, members of the private bar, and eligible clients.**

***Commentary:***

You must attach to your application a resolution adopted by your board of directors within the last two years establishing the organization's priorities. In addition, you must describe the manner in which legal services attorneys, members of the private bar, and eligible clients were consulted for purposes of establishing priorities. Those consulted to meet this requirement must include persons who are not members of your board of directors. [Rule 3.680(B)]

- 2.7. The organization must offer a range of services including more than one of the following: consultation, representation, information services, and training.**

***Commentary:***

Describe the manner in which the organization offers services falling under at least two of the headings: consultation, representation, information services, and training. [Rule 3.680(B)]

- 2.8. The organization must meet either the requirements of this Guideline 2.8, or the requirements of Guideline 2.9. To meet the requirements of this Guideline 2.8, the organization must have met the requirements of Guidelines 2.2-2.3 on December 31, 1980.**

***Commentary:***

If the organization has met the general requirements applicable to all applicants, Guidelines 1.1-1.4, and has met the requirements of Guidelines 2.1-2.7, it must also meet either the requirements of this Guideline 2.8, or the requirements of Guideline 2.9.

In order to meet the requirements of Guideline 2.8 (and thus avoid the necessity of complying with Guideline 2.9), the organization must, on December 31, 1980, have been a nonprofit organization which had as its primary purpose and function the provision of legal training, legal technical assistance, or advocacy support without charge, and which was actually providing a significant level of such services to qualified legal services projects, and such training, assistance, or support must have been available statewide without charge through an office in California at that time. [B&P Code §6215(a)]

If the organization has previously been determined by the Commission to meet this requirement, you do not need to reestablish it each grant year.

**2.9. An applicant that does not meet the requirements of Guideline 2.8 must meet the requirements of Guidelines 2.9.1 and 2.9.2 below:**

**2.9.1. The organization must be deemed to be of special need by a majority of the qualified legal services projects. If an applicant was affirmatively deemed of special need for one grant period, the Commission will assume (without need for further information) that it continues to be so deemed for the immediately following two grant periods.**

***Commentary:***

If you do not meet the presumption established by Guideline 2.8, the organization must be deemed of special need by a majority of legal services projects which receive allocations from the Legal Services Trust Fund Program. The statute requires that the organization presently be so deemed.

Evidence of such deeming in prior years, while it may be considered by the Commission as relevant evidence, is not determinative of the issue before the Commission except in the two funding periods after the grant period for which you were so deemed. The Commission itself intends to solicit the views of qualified legal services projects as to whether the organization is presently deemed of special need in every third year, starting with their application for the first funding period. Therefore, you must (for your first, fourth, seventh, etc., funding periods) supply the Commission with a one-page description of the organization.

The Commission will solicit advice from qualified legal services projects whether they presently deem the organization to be of special need. More than one-half of those whose advice is solicited must respond affirmatively in order for the organization to be eligible. Upon request, the Commission will make available to you a list of the names and addresses of the qualified legal services projects from which the Commission will solicit views.

In deciding whether they deem a support center to be of special need, projects will be instructed to consider what support the legal services projects in California need in delivering legal services to indigent persons, and to evaluate how the organization's services meet that need, including such issues as the quality and/or quantity of the organization's work. Project directors will be encouraged to consult with service providers or others associated with the project in making their decision. [B&P Code §6215(b)(2); Rule 3.680(C)]

**2.9.2. The application must include a description of the organization's quality control procedures and standards, including, but not limited to, the matters described below:**

***Commentary:***

The State Bar's Board of Governors adopted the American Bar Association's Standards for the Provision of Civil Legal Aid as the quality control standards for the Legal Services Trust Fund Program, pursuant to Business & Professions Code §6225 and Rule 3.661(C). These standards are the State Bar's guidelines for review and approval of applicant and recipient program practices.

If you are already subject to quality control reviews by any non-Trust Fund Program funding source or entity, describe the quality control review procedures to which you are subject, and attach the most recent comprehensive written quality control review by that entity in lieu of the information requested by Guidelines 2.9.2.1-2.9.2.4. (It is not necessary to explain in detail the review procedures followed.)

If you are not subject to such review procedures, describe your quality control standards and how compliance with each of the subjects listed in Guidelines 2.9.2.1–2.9.2.4 is ensured. The Commission is particularly interested in the standards and procedures regarding supervisory structure, procedures, and responsibilities. [B&P Code §§6123(b) and 6217(a); Rule 3.680(E)(2)]

**2.9.2.1. the minimum experience and education requirements for attorney and paralegal employees;**

**2.9.2.2. the current salaries and job descriptions for all filled and unfilled management and professional positions, including paralegal personnel;**

**2.9.2.3. the minimum experience and educational requirements for attorney supervisors;**

**2.9.2.4. the supervisory structure, procedures, and responsibilities.**

## State Bar of California Districts Prior to July 1, 2010

### District 1

Butte  
Colusa  
Del Norte  
Glenn  
Humboldt  
Lake  
Lassen  
Mendocino  
Modoc  
Nevada  
Placer  
Plumas  
Shasta  
Sierra  
Siskiyou  
Sutter  
Tehama  
Trinity  
Yuba

### District 2

Napa  
Sacramento  
Solano  
Sonoma  
Yolo

### District 3

Alameda  
Contra Costa

### District 4

Marin  
San Francisco  
San Mateo

### District 5

Alpine  
Amador  
Calaveras  
El Dorado  
Fresno  
Inyo  
Kern  
Kings  
Madera  
Mariposa  
Merced  
Mono  
Monterey  
San Benito  
San Joaquin  
San Luis Obispo  
Santa Cruz  
Stanislaus  
Tulare  
Tuolumne

### District 6

Santa Clara

### District 7

Los Angeles

### District 8

Orange  
Santa Barbara  
Ventura

### District 9

Imperial  
Riverside  
San Bernardino  
San Diego

**Revision to Guidelines for Support Centers with respect to determination of whether or not the Support Center is providing services “statewide” in California.**

**Background:** Support Centers must establish that their services are available, and are actually provided, on a “statewide” basis. Since the Program’s inception, the Trust Fund Program has been using State Bar Board of Trustee districts to demonstrate that a Support Center’s breadth of service is “statewide.” For reasons unrelated to Trust Fund Program grants, the Board of Trustees revised its districts in 2012 in a way that did not work for Trust Fund Program purposes. Therefore, the Commission determined to use the old districts (2010 Map attached) pending a resolution adopting a new regional map to define “statewide” for support centers.

At its June 2016 meeting, the Commission defined new regions for viewing “statewide” support, and after vetting the recommendations at LAAC Support Center meetings, and at a State Bar bi-monthly call with Legal Services programs, adopted the resolution at its December meeting. The new map for defining “statewide” better achieves its intended goals than the previous criteria, including assuring services outside the Bay Area and Los Angeles corridors.

Beginning 2017, Support Centers must demonstrate that they provide services in 5 of the 7 attached regions.

**Previous Eligibility Guideline 2.2.3 for Support Centers:**

*Commentary:*

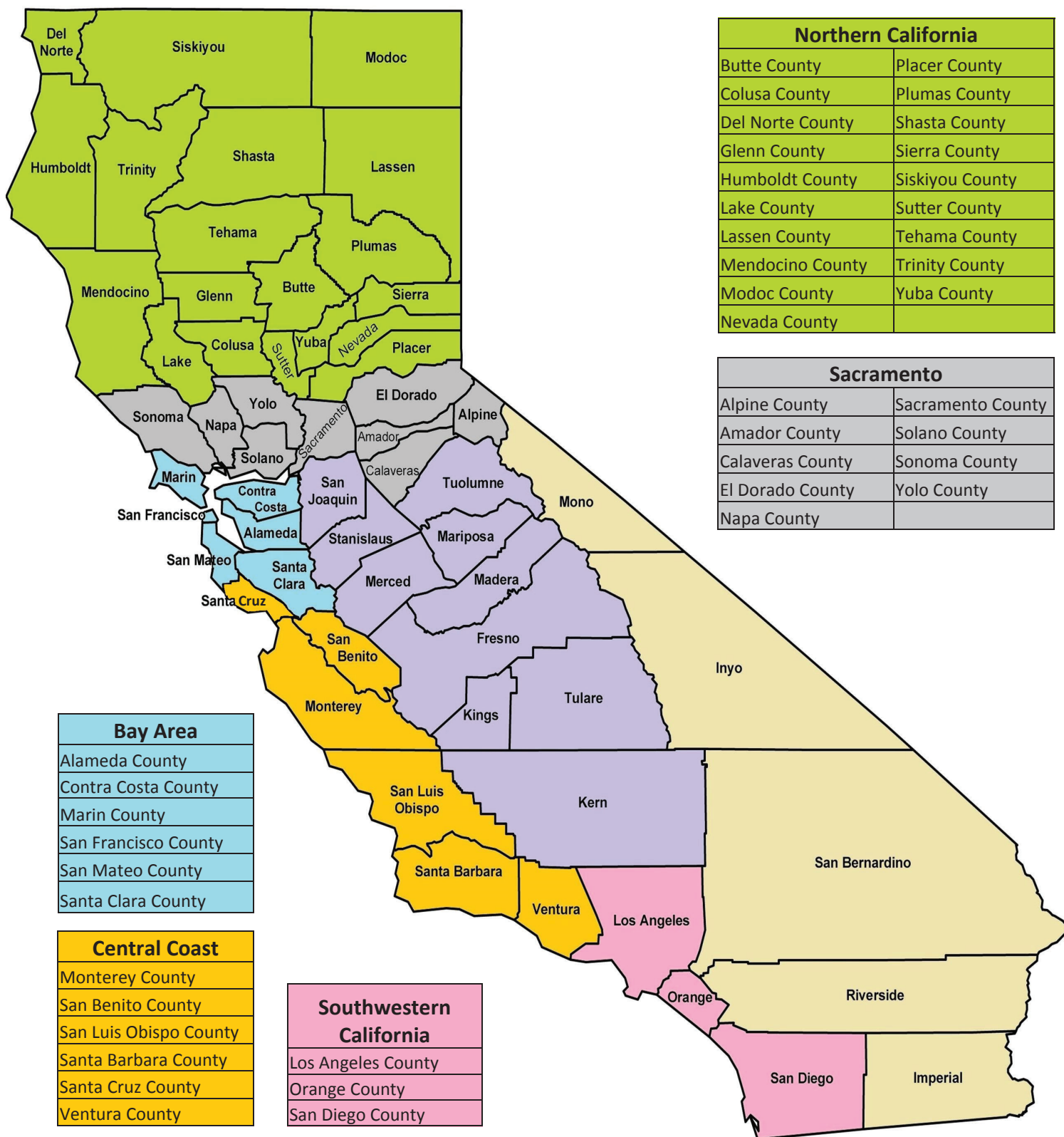
You must also demonstrate that you provide services on a statewide basis. Your services must have actually been utilized within the last year in a majority of the nine State Bar Districts that existed prior to July 1, 2010, and in at least two Northern California counties and two Southern California counties. Southern California counties shall include the counties of San Luis Obispo, Kern, San Bernardino and counties further south. At the end of these Guidelines, is a list of the counties assigned to each of the nine State Bar Districts. . . .

**Approved Revision to Eligibility Guideline 2.2.3 for Support Centers:**

*Commentary:*

You must also demonstrate that you provide services on a statewide basis. Effective January 2017, your services must be utilized in five of the following seven districts: Northern California, Sacramento Area, Bay Area, Central Coast, Central Valley, Eastern California, and Southwestern California. At the end of these guidelines is a list of the counties assigned to each of the regions. (see, Legal Services Trust Fund Program, Support Center – 2017 Regional map)

Note: For services provided in 2016, Support Centers may apply the new regions, or rely on the prior requirement that the services were utilized within the last year in a majority of the nine State Bar Districts that existed prior to July 1, 2010, and in at least two Northern California counties and two Southern California counties. (see State Bar Districts, 2010 map)



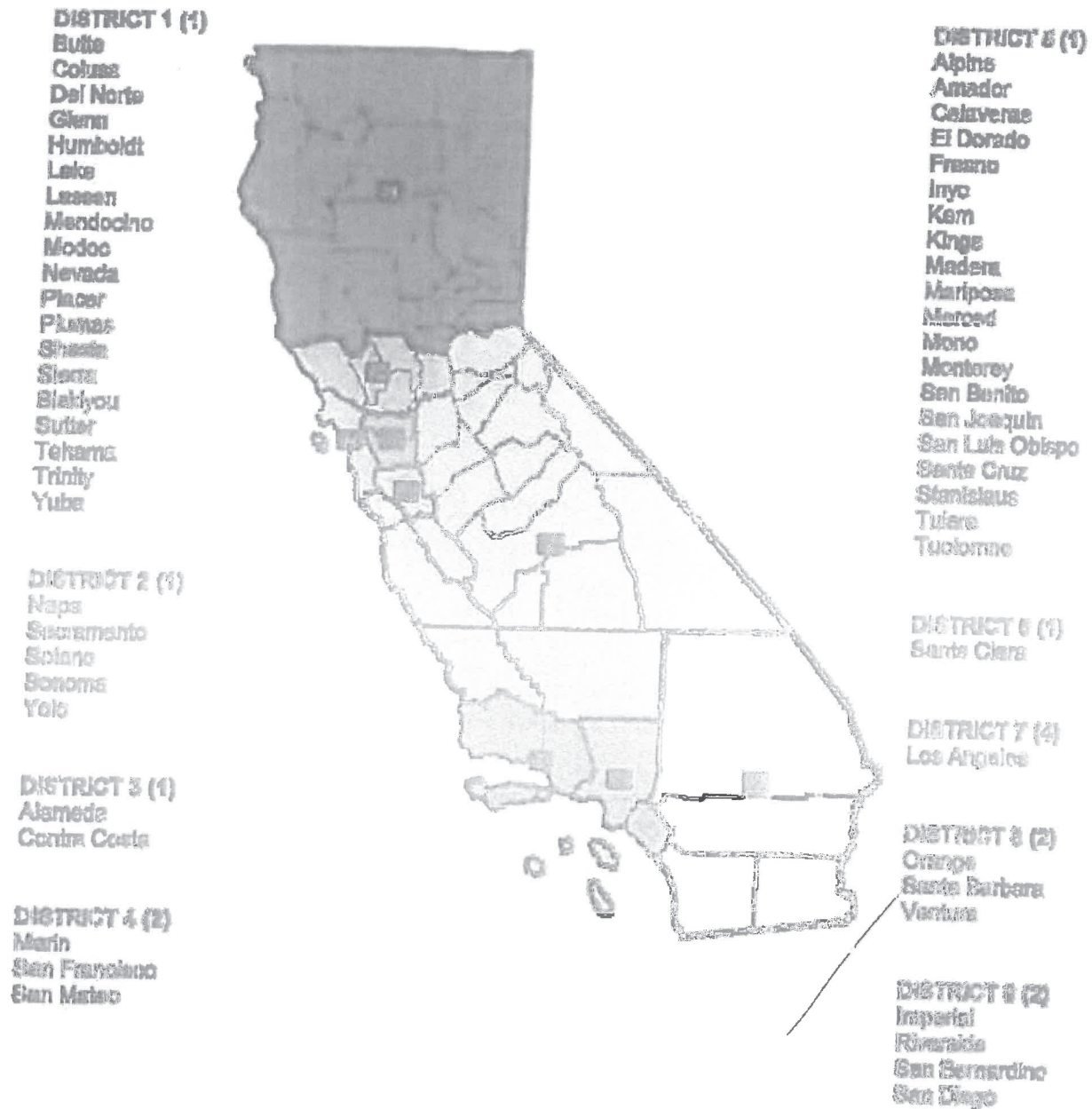
**Legal Services Trust  
Fund Program**

**Support Center — 2017 Regional Map**



## STATE BAR DISTRICTS

The composition of State Bar Districts and the number of elected seats (in parentheses) on the Board of Governors in each District are as follows:



THE STATE BAR OF CALIFORNIA  
LEGAL SERVICES TRUST FUND PROGRAM

**STANDARDS FOR FINANCIAL MANAGEMENT  
SYSTEMS AND AUDITS**

MAY 2006

## TABLE OF CONTENTS

	Page
100.00 GENERAL COMMENT .....	1
100.20 ACCRUAL OR CASH BASIS OF ACCOUNTING .....	2
100.30 COST PRINCIPLES.....	2
100.31 Basic Policy; Scope .....	2
100.32 Costs Allowable with Approval.....	2
100.40 PROPERTY (Reversionary Interest).....	3
100.60 ACCOUNTING RECORDS .....	3
100.61 General Ledger .....	4
100.62 Cash Receipts Journal.....	4
100.63 Cash Disbursements Journal.....	4
100.64 Payroll Records .....	4
100.65 Property Records .....	6
100.66 General Journal/Journal Voucher .....	6
100.70 BASIC CHART OF ACCOUNTS.....	7
100.80 DESCRIPTION OF ACCOUNTS .....	10
100.81 Assets .....	11
100.82 Liabilities (Accrual Basis of Accounting).....	12
100.83 Fund Balance.....	13
100.84 Support and Revenue.....	13
100.85 Expenses .....	13
110.00 INTERNAL CONTROL.....	16
110.10 DEFINITION .....	17
110.20 CHARACTERISTICS .....	17
100.21 Definition of Authority and Responsibility .....	17
100.22 Segregation of Duties .....	18
100.23 Establishment of Independent Checks and Proofs .....	18
110.30 PRIMARY FEATURES.....	19
120.00 FINANCIAL REPORTING.....	21

## STANDARDS FOR FINANCIAL MANAGEMENT SYSTEMS AND AUDITS

### 100.00 GENERAL COMMENT

The State Bar of California (SBC) requires that the accounting principles employed by its Recipients in recording transactions and preparing financial statements be based upon generally accepted accounting principles (GAAP).

When applying these Standards, every Recipient should review the suggested accounting policy in each area in light of its materiality to the program. Items that are not material should be accounted for in the most reasonable and efficient manner. The concept of materiality as used in accounting has been defined as a state of relative importance. The materiality of an item may depend on its size, nature or a combination of both. The working rule in applying the concept of materiality is to ask the question: "Is the item of sufficient importance to influence the conclusions and actions of users of the financial information?" More specifically, if the items were not accounted for in accordance with the standards, would the reader of the financial statements be misled with respect to understanding the nature and extent of assets available for use in program operations; the nature and extent of liabilities incurred by the program; the trust relationships that may exist between the program and clients; and, among other considerations, the nature and scope of the program's operations.

## 100.20 ACCRUAL OR CASH BASIS OF ACCOUNTING

A Recipient's annual financial statements may be prepared on the accrual or cash basis of accounting. Under the accrual basis of accounting, expenses are recorded when incurred as opposed to when they are actually paid. Revenue is recorded when earned instead of when received.

Under the cash basis of accounting, expenses are recorded when actually paid as opposed to when incurred. Revenue is recorded when received instead of when earned.

## 100.30 COST PRINCIPLES

100.31 Basic Policy; Scope. Grant funds may be used only for allowable costs of the activities for which the Grant was awarded. These Standards for Financial Management Systems and Audits identify the principles to be used in determining allowable costs. The principles apply to Grant activities conducted by Recipients.

100.32 Costs Allowable with Approval. Each set of cost principles identifies certain costs that, in order to be allowable, must be approved by the SBC. Other costs do not require approval. The following procedures govern approval of these costs.

- (a) When costs are treated as Administrative costs, acceptance of the costs as part of the indirect cost rate or cost allocation plan shall constitute approval.
- (b) When the costs are treated as Program costs, the SBC must approve them in advance.

Costs contained in the Approved Budget shall be deemed approved.

#### 100.40 PROPERTY (Reversionary Interest)

In many cases, a funding source maintains a reversionary interest in property purchased with its funds. Simply stated, a reversionary interest requires that property, or the proceeds from the sale of such property, must be returned to the appropriate funding source if at some future date such property is disposed of or recipient's funding is terminated, or if the SBC does not fund a recipient immediately following the expiration of a grant period.

Approval for sale of property is required. It shall be in writing and signed by the Director in order to be valid. When requesting a prior approval, Recipients shall address their requests to the Director.

The SBC intends to retain a reversionary interest in property acquired with the Grant. In the event of a cessation of use of such property by the Recipient for uses approved by the SBC, then the Recipient must return the property to the SBC or make arrangements satisfactory to the SBC to insure that the property or its proceeds (if disposition is approved by the SBC) is transferred to an approved provider of civil legal services to the indigent and used for an approved purpose.

#### 100.60 ACCOUNTING RECORDS

The following is a brief description of the accounting records considered necessary for the adequate recording of financial transactions. Accounting records must be maintained on a double-entry accounting system and must be adequate to enable the recipient to prepare its annual financial statements, internal budget and other management reports.

- 100.61 General Ledger. The general ledger is used to summarize and classify all financial transactions from data accumulated in the books of original entry into their proper accounts (i.e., salaries, space, etc.). It is the source for most of the data needed for preparing financial statements. The general ledger is the final and permanent record of all of the Recipient's financial transactions.
- 100.62 Cash Receipts Journal. The cash receipts journal is a book of original entry in which cash receipts (i.e., cash, checks, and money orders) are recorded in chronological sequence when received. Bank deposit slips must contain sufficient information so that all deposits can be identified with their source.
- 100.63 Cash Disbursements Journal. A cash disbursements journal is a book of original entry in which disbursements are recorded in a chronological sequence. All disbursements must be made by pre-numbered checks used in numerical sequence. Each check must be supported by appropriate documentation (i.e., payroll records, invoices, contracts, travel reports, etc.) evidencing the nature and propriety of the expense and documenting the approval by an authorized official.
- 100.64 Payroll Records. Basic payroll records must accumulate payroll data required by federal, state and local laws. Documentation must be maintained to support individual gross earnings. A personnel file



should be established for each employee and should include the following data:

- (1) Employment contract if applicable, wage or salary authorization.
- (2) Current Federal income tax withholding form (W-4).
- (3) Current State income tax withholding form.
- (4) Authorization for all other payroll deductions.
- (5) Authorization for all wage/salary actions.

Each Recipient is required to establish an adequate time-reporting system. This system must be able to identify employee hours worked so that compliance with federal and state laws with respect to overtime and pay rates can be demonstrated. It must also be able to demonstrate accountability for time to the public. A small Recipient with several employees could use a sign-up sheet whereby every employee would record his/her daily hours. A larger Recipient would probably utilize a "time report" system whereby such employee would complete and sign an individual time sheet. Whether a sign-up sheet, a time report or other method is utilized, a supervisor in a position to verify the information should approve the document.

A vacation and sick leave record must be maintained currently for each employee. This record would include information in hours or other reasonable units (i.e., days, fractions of days) for the amount of

vacations and sick leave earned during the period taken during the period, and remaining at the end of the period. As a method of checking the accuracy of this record and providing employees with knowledge of "where they stand," employees should be informed of their vacation and sick leave balances periodically.

100.65 Property Records. Individual property records shall be maintained for each item costing in excess of \$1,000 per unit. The property records to be maintained must include: (1) a description of the item, including model and serial number (if the property has no such number, it must be tagged with an identifying number to ensure the internal records are effective in controlling property); (2) date of acquisition; (3) check number used to pay for item; (4) cost; and (5) useful life.

100.66 General Journal/Journal Voucher. A general journal or journal voucher system is used to process transactions, which are not recorded originally in the cash receipts journal, cash disbursements journal or payroll register. Each journal entry must be supported by a complete explanation and documentation of the transaction being recorded.

The accounting records discussed in these Standards can be maintained by either a manual or an automated system. Each Recipient should establish the system most appropriate to meet its needs and to provide an adequate audit trail of all transactions.

## 100.70 BASIC CHART OF ACCOUNTS

The following is an illustrative basic chart of accounts, which would provide details necessary for the preparation of financial statements in accordance with these Financial Management Systems and Audits Standards. This illustration is not intended to dictate the format or level of detail to be used by individual programs, but is simply one method of achieving the accounting requirements of these Standards. While the account numbering system, account descriptions and level of detail utilized by Recipients should be designed to provide management reporting and financial disclosures specifically related to that program, they must also accommodate the SBC reporting requirements.

The illustrative chart of accounts assigns a three-digit number to every major natural account classification reflected in the financial statements. By changing the last two digits of the three-digit number, Recipients can maintain the greater detail needed to control and monitor operations. For example, the natural account “cash-general” is a broad description. Most organizations would require an individual general ledger account for each bank account. This can be achieved by establishing accounts under a natural account classification as follows:

<u>100 Cash – General</u>	<u>Account No.</u>
General Disbursement Account PDQ Bank	101
Payroll Account - PDQ Bank	102
Petty Cash	103

The total of all 100 series accounts (i.e., 101, 102, and 103) represents the cash amount reported in the financial statements. This procedure can be used to maintain details for any of the natural account classifications reported in the financial statements.

A sample chart of accounts is shown below. Each Recipient's chart of accounts must reflect the degree of detail appropriate under the circumstances.

<u>Natural Classifications</u>	<u>Account No.</u>
<u>Assets (100 Series):</u>	
Cash - General (Title)	100
General Disbursement Account	101
Payroll Account	102
Petty Cash	103
Receivables (Title)	120
Receivable - SBC	121
Prepaid and Travel Advance	130
Travel Advances	131
Prepaid Expenses	132
Furniture, fixtures and equipment (Title)	140
Furniture	141
Fixtures	142
Equipment	143
Leasehold Improvements (Title)	150
Leasehold Improvements	151
Law Library	160

Accumulated Depreciation (Title)	170
Furniture	171
Fixtures	172
Equipment	173

Liabilities (200 Series):

Accounts Payable (Title)	
Employee Withholding Payables	200
(Title) FICA, FIT, SIT, SDI, etc.	210
Accrued Payable (Title)	220
Accounts Payable Disbursement	221
Advance Payable	222
Accrued Payable	223

Fund Balance (300 Series) (Title):

General Fund	310
Property	320

Revenue (400 Series):

Grants Revenue (Title)	400
Revenue - SBC	401
Interest Revenue (Title)	410
Interest	411
Miscellaneous (Title)	420
Miscellaneous	421

Expenses (500 and 600 Series):

Personnel (Title)	500
Lawyers	501
Paralegals	502
Other Staff	503
Employee Benefits	530

Legal Consultants	540
Contract Services	550
Training Expenses	560
Travel	570
Space and Occupancy	580
Insurance Expenses	590
Office Expenses	600
Telephone Expenses	610
Litigation Costs	620
Equipment Rental	630
Miscellaneous Purchases of Property and Library	640
Depreciation and Amortization	650

Property Activity (700 Series):

Acquisition of Property	700
Acquisition of Library	710
Proceeds from Sale of Property	720
Gain or Loss on Sale of Property	730

## 100.80 DESCRIPTION OF ACCOUNTS

The basic chart of accounts described above provides one method of organizing a Recipient's accounting records. Whether the Recipient utilizes this chart of accounts or another, the general ledger must contain the following accounts, which record an acceptable level of detail for full financial disclosure. The following account descriptions are intended to illustrate the nature of the charges that may be made to specific accounts. Particular Recipients may require different designations to accommodate their own information needs.

100.81 Assets.

Cash--General Disbursements - To record funds on deposit in bank accounts for operating purposes as opposed to special purposes such as payroll and escrow accounts discussed below. Separate accounts should be maintained for each bank account.

Cash--Payroll Account - To record the amount on deposit in a separate bank account for payment of payroll and maintained on an imprest basis.

Petty Cash - To record cash held at the Recipient's office for paying minor bills. The account must be maintained on an imprest basis with the balance established at the lowest possible level commensurate with efficient operations. The petty cash account in the general ledger always reflects the total value of the fund, in cash and/or vouchers. The fund should be reimbursed periodically for the exact amount of the petty cash vouchers.

Receivable(s)--Other - To record miscellaneous accounts receivable.

Travel Advances to Employees - To record the amount of travel advances outstanding (i.e., advanced to employees but not accounted for on subsequent expense reports). A subsidiary record or subaccount must be maintained for each employee.

Deposits - To record the amount of refundable deposits made, for example, to the telephone company or landlord.

Prepaid Expenses - To record the amount of expenses paid which



apply to future periods. SBC recommends that a prepaid expense should not be recorded unless the expense applies to a period more than 18 months from the date incurred and the prepaid balance of an individual item is considered material. The Recipient may choose to record additional prepaid items outside this prescribed criteria if management believes the information is needed.

100.82 Liabilities (Accrual Basis of Accounting).

Accounts Payable - To record the amount of unpaid vendor invoices on hand. This account should be used at the close of an accounting period to convert the books to the accrual basis of accounting. If books are maintained on the accrual basis, the account will have a continuous balance.

Employee Withholdings Payable - To record the amount of money that has been withheld from the employees' salaries (i.e., FICA, federal, state and local taxes, pension, health insurance, etc.). Separate accounts should be maintained for each type of withholding.

Accrued Expenses - To record the estimated cost of goods or services received for which an invoice has not yet been received. The accrual is utilized at the close of an accounting period to record salaries, employer's share of FICA taxes, other taxes, etc., which are owed but not paid. Separate accounts should be maintained for accrued salaries and other miscellaneous accruals (e.g., utilities and consultant fees).

100.83 Fund Balance.

Restricted - This account accumulates the balance of support over expenses for grants, contracts and other awards, which have restrictions attached.

Property - This account accumulates the net equity in all furniture, fixtures, equipment and law books purchased.

100.84 Support and Revenue.

Grant and Contracts - To record the amount of funds earned during the accounting period.

Interest Revenue - To record interest earned during the year.

Miscellaneous Revenue - This account records miscellaneous income which cannot be classified in any of the above accounts. Where amounts are significant, separate accounts should be established.

100.85 Expenses.

Salaries and Wages - To record the salaries of all program personnel. Normally, including all salaries and wages in one account would not provide adequate information about program activities. Salaries and wages must be subdivided into those constituting Program Costs and those constituting Administrative Costs. Each program should subdivide the salaries and wages account into the categories, which will be most meaningful for management and evaluation by the SBC.

Employee Benefits - To record the costs of items such as employer FICA taxes, unemployment taxes, employer retirement contributions,

employer health and life insurance payments, workmen's compensation and other payroll related benefit items offered by the program. Individual subaccounts must be maintained for each of these items.

Legal Consultants - To record the payments for legal consultants who are not full-time employees of the program.

Contracted Services - To record the costs of contracted or purchased services. For financial statement purposes contract services should be adequately described as to their nature where material. For example, for proper disclosure, contract services may require classifications into accounting services and other consulting services.

Training Expenses - All non-personnel costs paid for with regular program funds, associated with the training or continuing education of staff members, should be included here. Examples would be: travel to/from training events, per diem, conference registration fees or tuition, purchase of training materials, rent for facilities used in a training event, consultant fees paid to trainers, etc. Materials or equipment purchased for training with a value in excess of \$1,000 should be reported under "Capital Additions." No program personnel costs should be included here.

Travel - To record travel costs (e.g., local transportation, lodging expenses while away and airfare). This account should be subdivided in accordance with the management's needs to control the various

elements of travel costs such as travel relating to legal work, travel relating to administrative work, travel related to training, etc.

Space and Occupancy - To record the costs of rent, utilities (such as electricity, water and gas), janitorial services and hazard insurance. Individual subaccounts should be maintained for these items as is necessary.

Insurance Expenses - This category includes professional liability insurance, bonding, property insurance (fire and theft) and liability insurance for property and automobiles.

Office Expenses - To record the costs of office supplies, printing, reproduction supplies, advertising and publicity, postage, telephone and insurance other than hazard and employee benefit insurance. Recipients should establish separate accounts for any of the above items if the amounts are significant.

Telephone Expenses - This category includes estimates for the rent of telephone equipment and long distance calls. Similar and related expenses such as telegraph or other telecommunications should be included as well.

Litigation Costs - To record costs of depositions and transcripts, service of process, filing fees, expert witnesses and any other litigation costs paid by the program and not the client.

Equipment Rental - To record all costs of renting or leasing furniture and equipment.

Library Maintenance - To record the costs of all publications purchased for the library that are not capitalized.

Note: Adequate financial statement disclosure may require that account descriptions different from the above be used. The above descriptions represent suggestions for grouping similar costs. The level of detail for adequate financial statement reporting and meaningful management reports may be determined by the Recipient and its auditor.

#### 110.00 INTERNAL CONTROL

A financial audit will not prevent defalcations and is not intended for that specific purpose. Every program must rely instead upon its own system of internal accounting controls and procedures to detect promptly and help reduce the likelihood of misappropriation of funds. The objectives of internal controls are not limited to this purpose only. This section discusses minimum internal control procedures Recipients must establish to meet the objectives inherent in the definition of internal control.

## 110.10 DEFINITION

Internal controls encompass the coordinated methods and measures adopted by an organization to safeguard assets, check the accuracy and reliability of accounting data, promote operating efficiency, and encourage adherence to prescribed management policies. Obviously this is a broad definition and extends beyond those matters, which relate directly to accounting and financial reporting. It encompasses controls over all of the paper work in an organization.

This section will emphasize the physical and administrative controls over a program's assets--principally cash. At best, the required and suggested procedures will minimize the likelihood of misappropriation of assets and misstatement of accounts and maximize the likelihood of detection if it occurs.

## 110.20 CHARACTERISTICS

In establishing an adequate system of internal control, certain basic concepts must be considered. Although each organization is unique, and, therefore, any control procedures must likewise be unique and "custom made," the following characteristics are generally applicable.

- 110.21 Definition of Authority and Responsibility. The duties of all program personnel should be defined as to their specific responsibilities. Such a delineation may be flexible and informal in a small program with a few employees, or it may be carefully defined by an administrative manual in a larger program. In the accounting area this means that only certain specified individuals may sign checks, approve invoices

for payment, prepare grant and contract reports and deposit cash receipts.

110.22 Segregation of Duties. Broadly considered, segregation of duties means that program and accounting functions should be separated so that no individual simultaneously has both the physical control and the record keeping responsibility for any asset or categories of assets (e.g., cash, bank reconciliation, supplies, and property). Within the accounting area, duties preferably should be segregated so that no individual can initiate, execute and record a transaction without a second individual being involved in that process. If this level of segregation is not possible because of the program's size, the work of the accountant should be reviewed and approved by the program director or the director's delegate.

110.23 Establishment of Independent Checks and Proofs. Independent checks and proofs consist of regular internal checks on the recording of transactions and the preparation of financial reports. For example, a certain measure of clerical accuracy can be accomplished through the use of a columnar cash disbursements journal that is balanced monthly and posted to the general ledger. Thereafter, the general ledger cash balance would be reconciled to the monthly bank statement.



## 110.30 PRIMARY FEATURES

The following features are considered basic internal control procedures that any program, regardless of size, should establish. It cannot be overemphasized that these features represent only the rudimentary control procedures that must be incorporated by every recipient to demonstrate a minimum level of financial stewardship. Once these features have been successfully implemented, recipients should begin assessing additional procedures to provide greater control assurances.

1. Each Recipient should have adequately trained competent accountant personnel to properly document, record, account for and report on its financial transactions.
2. All bank accounts must be authorized by the Recipient's board of directors. There must be sufficient justification for utilizing more than one bank account. Any account not used must be closed and the bank notified in writing not to process any subsequent transactions. Any remaining blank checks for closed accounts must be destroyed.
3. All cash receipts must be recorded in a journal. Checks received must be restrictively endorsed and deposited intact currently.
4. All disbursements (other than petty cash disbursements) must be made by prenumbered checks signed by two (2) individuals authorized by the board of directors. No checks may be made payable to cash.
5. All disbursements must be supported by vendors' invoices or other supporting documents.

6. Bank statements must be reconciled monthly to the general ledger balance. The reconciliations must be reviewed and approved by a responsible individual and retained.
7. Petty cash funds must be maintained on an imprest basis and recorded in the general ledger.
8. The physical facilities for storing blank checks, general ledger, subsidiary ledgers and other important documents must be adequate.
9. Detailed property records must be maintained and reconciled to the general ledger. Once a year an inventory must be taken of the program's property and the results of that inventory compared to the accounting records. Significant differences should be investigated.
10. There should be fidelity insurance on all individuals who handle cash, sign checks, have purchasing or other financial responsibilities.
11. There must be an organized filing system for all paid invoices, cancelled checks, contracts and agreements, reports to funding sources, tax returns (with supporting work papers and employee files).
12. There must be interim management reports preferably prepared monthly, but at least quarterly, that compare actual expenditures to the Approved Budget. The program director should review the reasons for any significant variations from the budget, and also compare projected future expenditures against the unexpended portion of the budget.
13. General policy with respect to insurance coverage should be defined and procedures instituted to insure that all significant business risks have

been covered. Insurance coverage should periodically be reviewed with a competent insurance agent.

## 120.00 FINANCIAL REPORTING

The report consists of two parts: (1) Forms A and B, and (2) Form C. Forms A and B must be completed by all recipients. Multi-county recipients must also complete Form C of the report.

Each recipient is required to report to the SBC on a calendar quarter basis. Quarterly and year-to-date reports must be mailed to the SBC within thirty days following the end of each calendar quarter. The report format of the quarterly financial statement is illustrated on pages 22 through 24. Electronic forms can be found on-line at <http://www.calbar.ca.gov/ioltaapplicationmaterials>.



# The State Bar of California

---

**DATE:** August 12, 2022

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

**FROM:** Members, LSTFC Rules Committee

**SUBJECT:** Approval of Rules Committee Recommendations for Processing Complaints  
Regarding Legal Aid Grantees

---

## EXECUTIVE SUMMARY

The Legal Services Trust Fund Commission Rules Committee (Rules Committee) is working to gather, codify and revise, as necessary and appropriate, all 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 (LSTFC), and State Bar staff.

On May 19, 2022, the Rules Committee met to discuss recommendations regarding revisions to the Rules of the State Bar related to processing complaints alleging grantee noncompliance with governing authorities. Areas identified for discussion included:

- How and when to determine that a complaint is “resolved”;
- Clarifying the complaint process timeline at each stage;
- Whether to route the process through an advisory body in the initial stages; and
- Administrative updates to conform to current technology by allowing the use of electronic delivery of documents

This memo presents the Rules Committee’s final recommendations for the LSTFC’s consideration at its August 12, 2022, meeting.

---

## BACKGROUND

Attachment A provides comprehensive background information on the codification process, governing authorities, and relevant updates to respond to the issues identified above.

## DISCUSSION

On May 19, 2022, the Rules Committee discussed recommendations regarding changes to the Rules of the State Bar regarding complaints lodged by the public against State Bar grantees. As discussed in further detail in Attachment A, the initial recommendations were to:

- 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 LSTFC (unless all parties agree to the advisory body’s recommendation).
- Move all consideration/discussion of termination of funding to Rule 3.691.
- Encourage staff to create an online complaints portal to coincide with the updates to the rules.

The Rules Committee agreed with all proposed changes but made revisions to the proposal by shortening the initial proposed timelines in order to promote faster resolution of pending complaints, as well as designating the LSTFC’s Executive Committee as the final decision maker in some instances, rather than the full LSTFC. The Rules Committee further instructed staff to make the following edits to the proposed rules before bringing the item to the LSTFC for a vote:

- Incorporate language to allow for confidential complaints.
- Add a provision to expeditiously resolve complaints from individuals who repeatedly submit baseless or harassing complaints through this process (analogized to vexatious litigants in court proceedings).
- Harmonize the proposed rules so that any consideration of termination of funding goes to the full LSTFC under Rule 3.691 and other review for dismissal of a complaint or corrective action may go through the LSTFC’s Executive Committee.

Staff proposes deferring consideration of a “vexatious litigant” rule. Further research into this issue by the Office of General Counsel after the May 19 Rules Committee meeting indicated that there are varying triggers for, effects of, and procedures for challenging vexatious litigant/complainant designations across various fora. *See, e.g.*, State Bar Rule of Procedure 2605, Cal. Civ. Proc. Code §§ 391 – 391.8. Because the need for such a rule in the context of complaints against IOLTA grantees has not yet been established – let alone the scope of the problem or the types of complaints that should be addressed with such a rule – staff

recommends deferring consideration of such a rule until experience suggests the need for such a rule and appropriate contours for the same.

Staff further notes that allowing a final decision to be made by the advisory body if all parties agree (as suggested in original proposed rule) would subject the proceedings to Bagley-Keene Open Meeting Act requirements. Staff's understanding was that there was an intent to maintain an efficient and informal process in the early stages of resolving a complaint. Consequently, staff removed that provision from the proposal, but it can be added back if desired, with the understanding that all advisory body conferences would require a publicly noticed meeting. The proposed rule, with the other required edits from staff, appears in Attachment B.<sup>1</sup>

## **RECOMMENDATIONS**

Should the Legal Services Trust Fund Commission agree with the Rules Committee's proposal, including recent updates from staff, passage of the following resolution is recommended:

**RESOLVED**, that Legal Services Trust Fund Commission adopts the proposed amendments to State Bar Rules 3.690 and 3.692 regarding processing complaints from the public against State Bar grantees, as set forth in Attachment B.

## **ATTACHMENT(S) LIST**

- A.** Memo and Attachments from May 19, 2022 Rules Committee Meeting
- B.** Proposed Edits to State Bar Rules 3.690 and 3.692 – Title 3, Division 5, Chapter 2

---

<sup>1</sup> Note that because these were edits to an existing rule, including revisions and movement of current text, highlighting every change would make it difficult to read. Consequently, major updates that reflect a change to current practice or new requirements are highlighted but may not capture every modification.



Date: May 12, 2022

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

From: Pamela Bennett, LSTFC Rules Committee  
Will Boschelli, LSTFC Rules Committee

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.<sup>1</sup> 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.)

---

<sup>1</sup> 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.<sup>2</sup>

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).<sup>3</sup> In contrast, staff will investigate if it is alleged that the grantee has no formal internal grievance procedure for the client to follow.<sup>4</sup>

---

<sup>2</sup> 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.)

<sup>3</sup> Anecdotally, these are the types of complaints staff most frequently receives.

<sup>4</sup> 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).<sup>5</sup> 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.

---

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

---

<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup> 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.

---

<sup>7</sup> 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.

<sup>8</sup> 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 confidential<sup>9</sup>—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).<sup>10</sup> 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.

---

<sup>9</sup> 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.

<sup>10</sup> 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.

...

## **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.”<sup>231</sup>

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.<sup>232</sup> 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 <sup>231</sup> SCEPR Formal Op. 334, p.7 (1974). <sup>232</sup> 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.<sup>233</sup>

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.<sup>11</sup> **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**

---

<sup>11</sup> 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.<sup>12</sup> 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,

---

<sup>12</sup> 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.<sup>1</sup>**

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.<sup>2</sup>

**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.

---

<sup>1</sup> 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.”

<sup>2</sup> 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.<sup>3</sup>

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**

---

<sup>3</sup> Memo Pg. 3.

### Rule 3.690 Receipt of document

For purposes of this article, receipt of a document transmitted by staff or the Commission is deemed to be the earlier of either five days after the date of mailing when sent by mail or the actual time of receipt when staff or the Commission delivers a document physically by courier or otherwise. Staff or the Commission may transmit a document electronically with the recipient's consent. When transmitted electronically, receipt of a document is deemed to be two days after the time indicated on the sender's electronic time stamp.

### 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. 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. At the request of the complainant, the complainant's identity shall be kept confidential.

(B) Staff must provide a copy of a formal written complaint to the grant recipient whom it concerns within ten days. Staff must attempt to resolve the complaint within ninety days of receipt of the complaint. If the complainant or grant recipient objects to staff's proposed resolution, staff must provide the complainant, grant recipient, and an advisory body comprised of two 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.

(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, 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 sixty 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 Executive Committee dismiss the complaint or require corrective action. In addition, the advisory body may recommend that the Commission terminate or consider terminating, in whole or in part, existing funding or renewal of funding pursuant to 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 thirty 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, t~~he recommendation

must be reviewed and [acted upon](#) by the [Executive Committee or 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~~[Executive Committee](#) decides to dismiss the complaint [or require corrective action](#), the decision is final. [If the Commission considers the complaint under Rule 3.691, the provisions of that rule control.](#)

[\(H\) Complainant or grant recipient may request reasonable extensions of any of the deadlines set forth in this rule for good cause. Staff, the advisory body, the Executive Committee, and the Commission may grant reasonable extensions of the deadlines set forth in this rule that are applicable to their respective obligations or to proceedings before them upon a finding of good cause.](#)



# The State Bar of California

---

**DATE:** August 12, 2022

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

**FROM:** Members, LSTFC Rules Committee

**SUBJECT:** Approval of Rules Committee Recommendations Related to 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.

On August 4, 2022, the Rules Committee met to discuss 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).

This memo presents the Rules Committee's final recommendations for the Commission's consideration at its August 12, 2022, meeting.

---

## BACKGROUND

Attachment A provides comprehensive background information on the codification process, governing authorities, and relevant updates to the issues identified above.

## DISCUSSION

On August 4, 2022, the Rules Committee discussed the working group's recommendations regarding the primary purpose requirement for Qualified Legal Services Projects. Given the considerations outlined in Attachment A, the working group's recommendations were 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.

The Rules Committee agreed with the working group's first recommendation to delete reference to calculating primary purpose based on budget information for the coming grant year. Since organizations are not asked to submit budget information for the upcoming grant year until after they are found eligible by the Commission, the Rules Committee agreed that this change is necessary so that the rules reflect office practice.

However, the Rules Committee did not agree with the working group's remaining recommendations, despite there being full support from the legal aid community. The Committee raised concerns that it did not have sufficient information to determine whether lowering the primary purpose presumption threshold would be appropriate at this time given the recent updates impacting the State Bar's grants administration process: 1) the expanded client income eligibility from 125 percent to 200 percent of the federal poverty level, 2) the IOLTA statutory update to include expungement work as a qualified work, and 3) the anticipated expansion of the definition of "Civil Legal Services."

Although the Rules Committee was provided information about the number of QLSPs who were below the primary purpose threshold in the last five years, the Committee felt that this data was potentially irrelevant given the recent changes. The Rules Committee predicted that the expansive changes would increase the primary purpose percentage for many, if not all organizations, but it would not be able to confirm this until at least the 2024 IOLTA/EAF application cycle. One potential outcome is that there would be no longer be a need to lower the threshold or establish a minimum threshold of 50 percent. Without affirmatively knowing the impact of these recent updates on primary purpose, the Rules Committee opted to maintain the current rules and wait a few years to gather new data and determine if it would be appropriate to move forward with any additional recommendations regarding primary purposes.

## RECOMMENDATIONS

Should the Legal Services Trust Fund Commission agree with the Rules Committee's proposal, passage of the following resolution is recommended:

**RESOLVED**, that Legal Services Trust Fund Commission adopt the proposed amendments to Rule 3.671 (A) and the Eligibility Guidelines regarding the primary purpose requirement for Qualified Legal Services Projects, as set forth in Attachment B.

### **ATTACHMENT(S) LIST**

- A.** Memo and Attachments from August 4, 2022 Rules Committee Meeting
- B.** Proposed Revision to State Bar Rule 3.671(A) and Eligibility Guidelines for Qualified Legal Services Projects



# 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 services<sup>1</sup>." 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

---

<sup>1</sup> 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 Committee<sup>2</sup>. The chart below provides the number of QLSPs that were elevated to the Commission in recent years<sup>3</sup>:

Grant Year	Number of QLSPs	QE Percentage Range
2022	3	13 percent – 65 percent <sup>4</sup>
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.

---

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

<sup>3</sup> 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.

<sup>4</sup> 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 50-59<sup>5</sup> 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)<sup>6</sup> 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

---

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

<sup>6</sup> 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~~<sup>60</sup>providing free civil legal services to indigents. The calculation of ~~60~~<sup>60</sup>~~75~~% of expenditures may include a reasonable share of administrative and overhead expenses.
- (B) A qualified support center<sup>1</sup> 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.

---

<sup>1</sup> 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)]



Home

Bill Information

California Law

Publications

Other Resources

My Subscriptions

My Favorites

Code:  Section:  
[Up^](#)
[Add To My Favorites](#)

## 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**

## ATTACHMENT B: 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~~ providing free civil legal services to indigents. The calculation of 75% of expenditures may include a reasonable share of administrative and overhead expenses.
- (B) A qualified support center<sup>1</sup> 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.

---

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

## ATTACHMENT B: 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 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 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 B: 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)]

**TITLE 3. PROGRAMS AND SERVICES**

Adopted July 2007

**DIVISION 5. PROVIDERS OF PROGRAMS AND SERVICES****Chapter 2. Legal Services Trust Fund Program****Article 1. Administration of the Legal Services Trust Fund Program****Rule 3.660 Legal Services Trust Fund Commission**

The Board of Trustees of the State Bar of California has established a Legal Services Trust Fund Commission (Commission) to administer, in accordance with legal requirements and these rules (Trust Fund Requirements), revenue from IOLTA (Interest on Lawyers' Trust Accounts) and other funds remitted to the Legal Services Trust Fund Program of the State Bar.

*Rule 3.660 adopted effective March 6, 2009; amended effective January 1, 2012.*

**Rule 3.661 Duties of the Legal Services Trust Fund Commission**

- (A) The Commission must determine an applicant's eligibility for grants and notify each grant applicant that its application has been approved or denied. If the Commission tentatively approves an application, it issues a notice of the grant award, including the tentative allocation. If the notice requires submission of additional information, the Commission considers the application incomplete pending receipt of the information.
- (B) The Commission must monitor and evaluate a recipient's compliance with Trust Fund Requirements and grant terms. The evaluation may be based on
  - (1) application information, grant reports, and additional information reasonably necessary to determine compliance with Trust Fund Requirements;
  - (2) reasonable site visits scheduled upon adequate notice;
  - (3) an evaluation of a recipient by an impartial third party designated and funded by the Commission; or
  - (4) information from other sources, such as an evaluation provided by the Legal Services Corporation or other funding entity.
- (C) The Standards for the Provision of Civil Legal Aid adopted by the American Bar Association's House of Delegates on August 7, 2006, as limited by the general introduction to the standards, are the guidelines used by the Commission in approving



the quality control procedures and reviewing and evaluating the maintenance of quality service and professional standards of applicant and recipient programs. With due notice, the Commission may also rely on other standards that are consistent with law and generally accepted access to justice principles in the legal aid community.

- (D) The Commission may terminate a grant for noncompliance or take other action in accordance with Article 4 of this chapter.

*Rule 3.661 adopted effective March 6, 2009.*

### **Rule 3.662 Legal Services Trust Fund Commission membership and terms**

The Commission consists of 21 voting members and three nonvoting judicial advisors. At least two members must be or have been within five years of appointment indigent persons as defined by statute.<sup>1</sup> No employee or independent contractor acting as a consultant to a potential recipient of Trust Fund grants may be appointed to the Commission.

- (A) The Board of Trustees appoints 14 voting members, 10 of whom must be licensees of the State Bar and four of whom must be public members who have never been admitted to the practice of law in any United States jurisdiction. Each member serves at the pleasure of the Board for a term of four years. The Board may extend a term by an additional year to allow a member to serve as chair or vice-chair.
- (B) The chair of the Judicial Council appoints seven voting members, five of whom must be licensees of the State Bar and two of whom must be public members, as well as three nonvoting judges, one of whom must be an appellate justice. Each member serves at the pleasure of the chair of the Judicial Council for a term of three years.
- (C) The Board of Trustees appoints voting members as chair and vice-chair.

*Rule 3.662 adopted effective March 6, 2009; amended effective January 1, 2012; amended effective September 14, 2014; amended effective January 25, 2019.; amended effective May 13, 2021.*

## **Article 2. Construction of certain statutory provisions**

### **Rule 3.670 Operation in California by qualified entities**

- (A) A qualified legal services project is required by statute to be a nonprofit corporation operating exclusively in California or a program operated exclusively in California by a nonprofit law school accredited by the State Bar.<sup>2</sup> A qualified legal services project that

---

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

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

is a California nonprofit corporation with operations outside California may be considered as meeting the statutory requirement if it otherwise meets Trust Fund Requirements and expends Trust Fund Program grant funds only in California.

- (B) A qualified support center is required by statute to be an incorporated nonprofit legal services center that provides through an office in California a significant level of legal support services to qualified legal services projects on a statewide basis.<sup>3</sup>

*Rule 3.670 adopted effective March 6, 2009.*

### **Rule 3.671 Primary purpose and function**

- (A) A qualified legal services project is required by statute to have as its primary purpose and function providing legal services without charge to indigent persons.<sup>4</sup> A qualified legal services project applying for Trust Fund Program funds is presumed to have such a purpose and function if ~~75 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 providing free civil legal services to indigent persons. The calculation of 75 percent of expenditures may include a reasonable share of administrative and overhead expenses.
- (B) A qualified support center is required by statute to have as its primary purpose and function the provision of legal training, legal technical assistance, or advocacy support without charge.<sup>5</sup> A qualified support center applying for funds is presumed to have such a primary purpose and function if 75 percent or more of its budget for the fiscal year for which it is seeking funds is designated to provide such support services, and 75 percent 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 percent 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; amended effective* \_\_\_\_\_.

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

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

<sup>5</sup> Business & Professions Code § 6213(b).

### Rule 3.672 Delivery of civil legal services

(A) “Civil” refers to legal issues, questions, or processes that arise under any body of civil law. The provision of legal assistance with respect to criminal proceedings is not civil legal services. Proceedings concerning expungements, record sealing or clearance proceedings not requiring a finding of factual innocence, or infractions are not criminal proceedings, and legal services related thereto are civil legal services. Legal services related to collateral civil issues such as public access, disability accommodations, and language access that arise during criminal proceedings are not legal assistance with respect to criminal proceedings, provided the civil issues do not directly affect determination of guilt, sentencing, or other disposition of the criminal proceeding.

~~(A)~~(B) “Legal services” means work that uses legal knowledge and skills to create, advance, protect, or enforce the legal rights of clients or communities. This encompasses legal representation and non-representational services for individuals and groups. Examples of non-representational services include providing legal information, advice, trainings, and self-help resources. Non-representational services can also include studying legal needs and outcomes to inform legal aid delivery, investigating legal violations, and advocating directly to government bodies on issues of importance to the legal rights of clients or communities. Representation and non-representational services must be performed or supervised by an attorney. “Legal services” may also include complementary services provided they advance a legal outcome and serve as an integral part of an attorney’s strategy in a legal matter or case, and the attorney directs the work in that matter or case. Complementary services and other services by non-attorneys must uphold the attorney-client relationship and avoid interfering with the attorney carrying out their obligations to the client. “Legal services” include all professional services provided by a licensee of the State Bar and similar or complementary services of a law student or paralegal under the supervision and control of a licensee of the State Bar in accordance with law.<sup>6</sup>

~~(B)~~(C) “Legal support services” required by statute to be provided by a qualified support center include but are not limited to

- (1) professional services to qualified legal services projects; and
- (2) the direct provision of civil legal services to an indigent client of a qualified legal services project, provided the services are provided directly to the client
  - (a) as co-counsel with an attorney employed or recruited by a qualified legal services project; or

---

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

- (b) at the request of an attorney employed or recruited by a qualified legal services project that is unable to assist the client.<sup>7</sup>

*Rule 3.672 adopted effective March 6, 2009; amended effective January 25, 2019; amended effective*.

### **Rule 3.673 Permissible uses of funds**

- (A) A qualified legal services project or qualified support center must use funds received under Business and Professions Code section 6216 to provide legal assistance to indigent persons or qualified legal services projects as defined by statute.<sup>8</sup> Reasonable administrative expenditures and overhead required to deliver such services meet the statutory requirement.
- (B) No recipient may use an allocation made under Business and Professions Code section 6216 to provide services in a fee-generating case, except as described in Business and Professions Code section 6213(e)(1)-(4). If a recipient determines that a case is not fee generating because it qualifies for a statutory exemption,<sup>9</sup> the recipient must maintain records reflecting the facts that led to that conclusion and any action taken to confirm it. Client reimbursements of nominal costs or expenses are not considered fees. If attorney fees are generated in cases funded by Trust Fund Program grants, the fees must be used only for purposes permitted by statute.<sup>10</sup> Recipients must maintain complete records of all such fees.

*Rule 3.673 adopted effective March 6, 2009.*

### **Rule 3.674 Income and indigent persons**

- (A) “Income” means income as defined in section 1611.2(i) of Title 45 of the Code of Federal Regulations. If an applicant for services identifies as having a disability, income eligibility is calculated only after deducting the costs of medical and other disability-related special expenses, and in the case of veterans with a service-related disability, any disability compensation from the United States Veterans Administration.
- (B) Any of the following are considered “indigent persons”
- (1) Persons whose income is 200 percent or less of the current poverty threshold established by the United States Office of Management and Budget;

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

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

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

<sup>10</sup> Business & Professions Code § 6223.

- (2) Persons eligible for Supplemental Security Income;
  - (3) Persons who are 60 years of age or older;
  - (4) Persons who identify as having a developmental disability as defined in section 15002 of Title 42 of the United States Code.
- (C) All legal services projects may use the definition of indigent persons as described Rule 3.674(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).
- (D) Pursuant to Business and Professions Code section 6218, qualified legal services projects shall establish financial eligibility guidelines consistent with this rule and other applicable law and regulations. Such guidelines may include provisions allowing qualified legal services projects to disregard income—or make income exceptions—in certain extenuating circumstances, including, but not limited to, the income of resident household members where intimate partner violence has occurred. The Legal Services Trust Fund Commission may reject such eligibility guidelines if it determines they are inconsistent with Business and Professions Code sections 6218(a) or 6213(d).
- (E) Civil legal services provided by legal services projects to organizational clients will be considered services to “indigent persons” if the services provided to the organizational client will primarily benefit persons who are indigent under Business and Professions Code section 6213(d). Factors to be considered in determining whether the organizational client provides services primarily to indigent persons include, but are not limited to
  - (1) whether the organization is a tax-exempt nonprofit corporation;
  - (2) the organization’s primary purpose as stated in its articles of incorporation or by-laws;
  - (3) the number and percentage of indigent persons on the board of directors or principal advisory body of the organization; and
  - (4) the percentage of the organizational client’s members who are indigent persons.
- (F) A legal services project providing civil legal services for the benefit of a group or class of persons beyond the legal services project’s individual or organizational clients may

consider the services as civil legal services provided to indigent persons only if the legal matter is primarily for the benefit of indigent persons or disproportionately impacts indigent persons.

- (1) If a legal services project provided services to a group or class of persons in the prior year, the legal services project must complete a report describing the 10 activities that received the most support, as determined by the staff hours spent on each activity, limited to activities that met or exceeded 50 hours, unless the Legal Services Trust Fund Commission establishes a different reporting requirement. This report will be submitted for Legal Services Trust Fund Commission review as part of the application process under Rule 3.680.
- (2) If a legal services project must complete a report under Rule 3.674(F)(1), it should demonstrate through objective information that a majority of persons impacted by the activity are indigent. A legal services project may meet this requirement by providing quantitative data based on independent research, internal organizational data, or data provided by other legal service providers or community-based organizations in the area where the legal services project operates, to demonstrate that a majority of those impacted by the activity are indigent.
- (3) If a legal services project cannot demonstrate that a majority of those impacted by the activity are indigent, it must demonstrate that the activity has a disproportionate impact on indigent persons based on the nature of the activity and the specific anticipated outcomes for indigent persons if the activity succeeds. It must use independent research, its own internal data, or data from other legal service providers or community-based organizations to demonstrate a nexus between the legal issue addressed through the activity and the identified needs of the legal services project's client constituency.

Rule 3.674 adopted effective \_\_\_\_\_.

### **Article 3. Applications and distributions**

#### **Rule 3.680 Application for Trust Fund Program grants**

To be considered for a Trust Fund Program grant, a qualified legal services project or qualified support center seeking a Trust Fund Program grant must submit a timely and complete application for funding in the manner prescribed by the Commission. The applicant must agree to use any grant in accordance with grant terms and legal requirements.

- (A) A qualified legal services project must meet statutory criteria.

- (B) A qualified support center must agree to offer support services in two or more of the following ways: consultation, representation, information services, and training. The board of directors of the support center must establish priorities for providing such services after consulting with legal services attorneys and other relevant stakeholders.
- (C) A support center not in existence prior to December 31, 1980 must demonstrate that it is deemed to be of special need by a majority of qualified legal services projects in accordance with Trust Fund Program procedures. Upon request, the Commission must make available to the applicant a list of all the names and addresses of qualified legal services projects.
- (D) A nonprofit corporation that believes it meets the criteria for a qualified legal services project and qualified support center may submit two applications, one as a project and one as a support center, indicating in each application whether it is to be considered the primary or secondary application. The Commission will consider the secondary application only if the primary application is not approved. No applicant may receive a grant as a qualified legal services project and as a qualified support center.
- (E) An application must include
  - (1) an audited financial statement by an independent certified public accountant for the fiscal year that concluded during the prior calendar year. A financial review by an independent certified public accountant in lieu of an audited financial statement may be submitted by an applicant whose gross corporate expenditures, excluding in-kind donated services, were less than the amount specified in the Schedule of Charges and Deadlines;
  - (2) information about the maintenance of quality service and professional standards and how the applicant maintains standards, such as internal quality control and review procedures; experience and educational requirements of attorneys and paralegals; supervisory structure, procedures, and responsibilities; job descriptions and current salaries for all filled and unfilled professional and management positions; and fiscal controls and procedures.
  - (3) a budget and budget narrative, which must be submitted within thirty days of receipt of a notice of tentative allocation, explaining how funds will be used to provide civil legal services to indigent persons, especially underserved client groups such as, the elderly, the disabled, juveniles, and non-English-speaking persons within the applicant's service area; and
  - (4) information about program activities, such as substantive practice areas, extent and complexity of services, a summary of litigation, and populations served.

- (F) State Bar staff may accept application materials, except for audited financial statements or financial reviews, which are addressed in Appendix A of these Rules, submitted up to one business day after the posted deadline. The Commission or a committee of its members may accept, accept with conditions, or reject application materials that are submitted beyond one business day after the posted deadline or that are submitted up to one business day after the posted deadline but not accepted by State Bar staff. Factors that the Commission or committee may consider when determining whether to accept a late application include, but are not limited to
- (1) how late after the deadline the submission was received;
  - (2) the completeness of the submission;
  - (3) the reasonableness of the applicant's explanation for the delay;
  - (4) any mitigating factors that the applicant provides to the committee; and
  - (4)(5) the number of late application or reporting submissions made by the applicant in the preceding three years.

*Rule 3.680 adopted effective March 6, 2009; amended effective January 25, 2019; amended effective*

### **Rule 3.681 Duties of Trust Fund Program grant recipient**

The recipient of a Trust Fund Program grant must

- (A) use the grant in accordance with the terms of the grant agreement and Trust Fund Requirements;
- (B) maintain complete financial records, including budgets, to account for the receipt and expenditure of all grant funds and all income earned by a grant recipient from grant-supported activities, such as income from fees for services (including attorney fee awards and reimbursed costs), training, sales and rentals of real or personal property, and interest earned on grant amounts;
- (C) maintain records for five years after completion of services to a client regarding the eligibility of the client and promptly provide such records to the Commission for inspection upon demand;
- (D) annually submit information that describes, in the manner required by the Commission, the grant recipient's maintenance of quality service and professional standards and compliance with program requirements and, as requested by the Commission,



- (1) information for evaluative purposes about program activities in the prior grant year; and
- (2) information to enhance the delivery system of legal services;
- (E) cooperate regarding any reasonable site visit;
- (F) submit timely quarterly financial reports and any other information reasonably required by the Commission; and
- (G) pay any noncompliance fees set forth in the Schedule of Charges and Deadlines for processing documents that are substantially noncompliant with Trust Fund Requirements or that are late without permission.

*Rule 3.681 adopted effective March 6, 2009.*

#### **Rule 3.682 No abrogation of legal or professional responsibilities**

Nothing in these rules may limit or impair in any way the professional responsibility of an attorney to provide a client with legal services appropriate to the client's needs. Trust Fund Program applicants and recipients and their staffs; volunteers; consultants; and clients and prospective clients are entitled to all rights and privileges under the law. Nothing in these rules may be interpreted to require a grant applicant or recipient to violate the law.<sup>11</sup>

*Rule 3.682 adopted effective March 6, 2009.*

### **Article 4. Requests for review and complaint process**

#### **Rule 3.690 Receipt of document**

For purposes of this article, receipt of a document ~~mailed-transmitted~~ by staff or the Commission is deemed to be the earlier of either five days after the date of mailing when sent by mail or ~~is~~ the actual time of receipt when staff or the Commission delivers a document physically by courier or otherwise. Staff or the Commission may transmit a document electronically with the recipient's consent. When transmitted electronically, receipt of a document is deemed to be two days after the time indicated on the sender's electronic time stamp.

*Rule 3.690 adopted effective March 6, 2009; amended effective \_\_\_\_\_.*

#### **Rule 3.691 Denial or termination of funding**

---

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

- (A) The Commission has the authority to deny an application for initial funding or for renewal of funding, or to terminate existing funding in accordance with law and these rules.<sup>12</sup> The applicant or grant recipient is entitled to written notice of the denial or termination.
- (B) The applicant or grant recipient may request reconsideration by the Commission.
  - (1) The request must be provided to the Commission in writing within 30 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 90 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 60 days of the conference.
- (C) Within 30 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. The complaint may be submitted by US Mail or by electronic mail to the address for receipt of such complaints posted on the State Bar's website. At the request of the complainant, the complainant's identity shall be kept confidential.

---

<sup>12</sup> Business & Professions Code § 6224.

- (B) Staff must provide a copy of a formal written complaint to the grant recipient whom it concerns within ten days. Staff must attempt to resolve the complaint within 90 days of receipt of the complaint. If the complainant or grant recipient objects to staff's proposed resolution, staff must provide the complainant, grant recipient, and an advisory body comprised of two members of the Commission, ~~and attempt to resolve the complaint~~. ~~If the complaint is not resolved within 90 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. Staff's written report must be submitted within 90 days of staff's receipt of the complaint. The co-chairs of the Commission will designate the members of the advisory body.
- (C) Within 30 days of receipt of the staff report, the complainant and grant recipient may ~~provide the Commission~~ each provide the advisory body with a written response. ~~that may include additional information and may request review by the Commission~~ Upon a complainant's request, staff may assist in preparing a written response based on the complainant's oral statements to staff.
- (D) ~~Within a reasonable time, The advisory body appointed by the co-chairs of 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~~ 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 60 days of submission of the staff report. The complainant and grant recipient ~~are entitled to~~ shall be given written notice of a recommendation to dismiss, or a dismissal 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 Executive Committee ~~notice dismissing the complaint or; requiring require corrective action; or terminating funds~~. In addition, the advisory body may recommend that the Commission terminate or consider terminating, in whole or in part, existing funding or renewal of funding pursuant to 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 ~~decision~~ recommendation within 30 days of the informal conference.

(F) The recommendation must be reviewed and acted upon by the Executive Committee or 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~~Executive Committee decides to dismiss the complaint or require corrective action, the decision is final. 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 30 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. Complainant or grant recipient may request reasonable extensions of any of the deadlines set forth in this rule for good cause. Staff, the advisory body, the Executive Committee, and the Commission may grant reasonable extensions of the deadlines set forth in this rule that are applicable to their respective obligations or to proceedings before them upon a finding of good cause.

~~(H)~~ —

~~(H)~~(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; amended effective \_\_\_\_\_.*

## TITLE 3, DIVISION 5, CHAPTER 2

### LEGAL SERVICES TRUST FUND

*Fees previously adopted by the Board of Trustees or mandated by statute.  
Amended effective March 2, 2012; amended effective January 25, 2019; amended effective \_\_\_\_\_.*

<i>Rule</i>	<i>Description</i>	<i>Amount</i>	<i>Deadline</i>
3.680(E)(1)	<p>Threshold amount of gross corporate expenditures, <u>excluding in-kind donated services</u>, requiring submission of an audited financial statement.</p> <p>Deadline for applicant to submit an audited or reviewed financial statement for the fiscal year that concluded during the prior calendar year.</p>	\$500,000	<p>Not applicable</p> <p>Promptly when available, and no later than May 1. Upon written request, an extension up to the application deadline may be granted by the State Bar staff. Upon a showing of extraordinary circumstances, the Commission may grant an extension beyond the application deadline. <u>If no extraordinary circumstances exist, the Commission may grant an extension with conditions.</u> Under no circumstances shall such extension be granted beyond the date upon which grant allocations are determined.</p>

**TITLE 3. PROGRAMS AND SERVICES**

Adopted July 2007

**DIVISION 5. PROVIDERS OF PROGRAMS AND SERVICES****Chapter 2. Legal Services Trust Fund Program****Article 1. Administration of the Legal Services Trust Fund Program****Rule 3.660 Legal Services Trust Fund Commission**

The Board of Trustees of the State Bar of California has established a Legal Services Trust Fund Commission (Commission) to administer, in accordance with legal requirements and these rules (Trust Fund Requirements), revenue from IOLTA (Interest on Lawyers' Trust Accounts) and other funds remitted to the Legal Services Trust Fund Program of the State Bar.

*Rule 3.660 adopted effective March 6, 2009; amended effective January 1, 2012.*

**Rule 3.661 Duties of the Legal Services Trust Fund Commission**

- (A) The Commission must determine an applicant's eligibility for grants and notify each grant applicant that its application has been approved or denied. If the Commission tentatively approves an application, it issues a notice of the grant award, including the tentative allocation. If the notice requires submission of additional information, the Commission considers the application incomplete pending receipt of the information.
- (B) The Commission must monitor and evaluate a recipient's compliance with Trust Fund Requirements and grant terms. The evaluation may be based on
  - (1) application information, grant reports, and additional information reasonably necessary to determine compliance with Trust Fund Requirements;
  - (2) reasonable site visits scheduled upon adequate notice;
  - (3) an evaluation of a recipient by an impartial third party designated and funded by the Commission; or
  - (4) information from other sources, such as an evaluation provided by the Legal Services Corporation or other funding entity.
- (C) The Standards for the Provision of Civil Legal Aid adopted by the American Bar Association's House of Delegates on August 7, 2006, as limited by the general introduction to the standards, are the guidelines used by the Commission in approving

the quality control procedures and reviewing and evaluating the maintenance of quality service and professional standards of applicant and recipient programs. With due notice, the Commission may also rely on other standards that are consistent with law and generally accepted access to justice principles in the legal aid community.

- (D) The Commission may terminate a grant for noncompliance or take other action in accordance with Article 4 of this chapter.

*Rule 3.661 adopted effective March 6, 2009.*

### **Rule 3.662 Legal Services Trust Fund Commission membership and terms**

The Commission consists of 21 voting members and three nonvoting judicial advisors. At least two members must be or have been within five years of appointment indigent persons as defined by statute.<sup>1</sup> No employee or independent contractor acting as a consultant to a potential recipient of Trust Fund grants may be appointed to the Commission.

- (A) The Board of Trustees appoints 14 voting members, 10 of whom must be licensees of the State Bar and four of whom must be public members who have never been admitted to the practice of law in any United States jurisdiction. Each member serves at the pleasure of the Board for a term of four years. The Board may extend a term by an additional year to allow a member to serve as chair or vice-chair.
- (B) The chair of the Judicial Council appoints seven voting members, five of whom must be licensees of the State Bar and two of whom must be public members, as well as three nonvoting judges, one of whom must be an appellate justice. Each member serves at the pleasure of the chair of the Judicial Council for a term of three years.
- (C) The Board of Trustees appoints voting members as chair and vice-chair.

*Rule 3.662 adopted effective March 6, 2009; amended effective January 1, 2012; amended effective September 14, 2014; amended effective January 25, 2019.; amended effective May 13, 2021.*

## **Article 2. Construction of certain statutory provisions**

### **Rule 3.670 Operation in California by qualified entities**

- (A) A qualified legal services project is required by statute to be a nonprofit corporation operating exclusively in California or a program operated exclusively in California by a nonprofit law school accredited by the State Bar.<sup>2</sup> A qualified legal services project that

---

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

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

is a California nonprofit corporation with operations outside California may be considered as meeting the statutory requirement if it otherwise meets Trust Fund Requirements and expends Trust Fund Program grant funds only in California.

- (B) A qualified support center is required by statute to be an incorporated nonprofit legal services center that provides through an office in California a significant level of legal support services to qualified legal services projects on a statewide basis.<sup>3</sup>

*Rule 3.670 adopted effective March 6, 2009.*

### **Rule 3.671 Primary purpose and function**

- (A) A qualified legal services project is required by statute to have as its primary purpose and function providing legal services without charge to indigent persons.<sup>4</sup> A qualified legal services project applying for Trust Fund Program funds is presumed to have such a purpose and function if 75 percent or more of its expenditures for the most recent reporting year were incurred for providing free civil legal services to indigent persons. The calculation of 75 percent of expenditures may include a reasonable share of administrative and overhead expenses.
- (B) A qualified support center is required by statute to have as its primary purpose and function the provision of legal training, legal technical assistance, or advocacy support without charge.<sup>5</sup> A qualified support center applying for funds is presumed to have such a primary purpose and function if 75 percent or more of its budget for the fiscal year for which it is seeking funds is designated to provide such support services, and 75 percent 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 percent 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; amended effective \_\_\_\_\_.*

### **Rule 3.672 Delivery of civil legal services**

- (A) “Civil” refers to legal issues, questions, or processes that arise under any body of civil law. The provision of legal assistance with respect to criminal proceedings is not civil legal services. Proceedings concerning expungements, record sealing or clearance

---

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

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

<sup>5</sup> Business & Professions Code § 6213(b).



proceedings not requiring a finding of factual innocence, or infractions are not criminal proceedings, and legal services related thereto are civil legal services. Legal services related to collateral civil issues such as public access, disability accommodations, and language access that arise during criminal proceedings are not legal assistance with respect to criminal proceedings, provided the civil issues do not directly affect determination of guilt, sentencing, or other disposition of the criminal proceeding.

- (B) “Legal services” means work that uses legal knowledge and skills to create, advance, protect, or enforce the legal rights of clients or communities. This encompasses legal representation and non-representational services for individuals and groups. Examples of non-representational services include providing legal information, advice, trainings, and self-help resources. Non-representational services can also include studying legal needs and outcomes to inform legal aid delivery, investigating legal violations, and advocating directly to government bodies on issues of importance to the legal rights of clients or communities. Representation and non-representational services must be performed or supervised by an attorney. “Legal services” may also include complementary services provided they advance a legal outcome and serve as an integral part of an attorney’s strategy in a legal matter or case, and the attorney directs the work in that matter or case. Complementary services and other services by non-attorneys must uphold the attorney-client relationship and avoid interfering with the attorney carrying out their obligations to the client.<sup>6</sup>
- (C) “Legal support services” required by statute to be provided by a qualified support center include but are not limited to
  - (1) professional services to qualified legal services projects; and
  - (2) the direct provision of civil legal services to an indigent client of a qualified legal services project, provided the services are provided directly to the client
    - (a) as co-counsel with an attorney employed or recruited by a qualified legal services project; or
    - (b) at the request of an attorney employed or recruited by a qualified legal services project that is unable to assist the client.<sup>7</sup>

*Rule 3.672 adopted effective March 6, 2009; amended effective January 25, 2019; amended effective \_\_\_\_\_.*

---

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

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

### **Rule 3.673 Permissible uses of funds**

- (A) A qualified legal services project or qualified support center must use funds received under Business and Professions Code section 6216 to provide legal assistance to indigent persons or qualified legal services projects as defined by statute.<sup>8</sup> Reasonable administrative expenditures and overhead required to deliver such services meet the statutory requirement.
- (B) No recipient may use an allocation made under Business and Professions Code section 6216 to provide services in a fee-generating case, except as described in Business and Professions Code section 6213(e)(1)-(4). If a recipient determines that a case is not fee generating because it qualifies for a statutory exemption,<sup>9</sup> the recipient must maintain records reflecting the facts that led to that conclusion and any action taken to confirm it. Client reimbursements of nominal costs or expenses are not considered fees. If attorney fees are generated in cases funded by Trust Fund Program grants, the fees must be used only for purposes permitted by statute.<sup>10</sup> Recipients must maintain complete records of all such fees.

*Rule 3.673 adopted effective March 6, 2009.*

### **Rule 3.674 Income and indigent persons**

- (A) “Income” means income as defined in section 1611.2(i) of Title 45 of the Code of Federal Regulations. If an applicant for services identifies as having a disability, income eligibility is calculated only after deducting the costs of medical and other disability-related special expenses, and in the case of veterans with a service-related disability, any disability compensation from the United States Veterans Administration.
- (B) Any of the following are considered “indigent persons”
  - (1) Persons whose income is 200 percent or less of the current poverty threshold established by the United States Office of Management and Budget;
  - (2) Persons eligible for Supplemental Security Income;
  - (3) Persons who are 60 years of age or older;
  - (4) Persons who identify as having a developmental disability as defined in section 15002 of Title 42 of the United States Code.

---

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

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

<sup>10</sup> Business & Professions Code § 6223.

- (C) All legal services projects may use the definition of indigent persons as described Rule 3.674(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).
- (D) Pursuant to Business and Professions Code section 6218, qualified legal services projects shall establish financial eligibility guidelines consistent with this rule and other applicable law and regulations. Such guidelines may include provisions allowing qualified legal services projects to disregard income—or make income exceptions—in certain extenuating circumstances, including, but not limited to, the income of resident household members where intimate partner violence has occurred. The Legal Services Trust Fund Commission may reject such eligibility guidelines if it determines they are inconsistent with Business and Professions Code sections 6218(a) or 6213(d).
- (E) Civil legal services provided by legal services projects to organizational clients will be considered services to “indigent persons” if the services provided to the organizational client will primarily benefit persons who are indigent under Business and Professions Code section 6213(d). Factors to be considered in determining whether the organizational client provides services primarily to indigent persons include, but are not limited to
  - (1) whether the organization is a tax-exempt nonprofit corporation;
  - (2) the organization’s primary purpose as stated in its articles of incorporation or by-laws;
  - (3) the number and percentage of indigent persons on the board of directors or principal advisory body of the organization; and
  - (4) the percentage of the organizational client’s members who are indigent persons.
- (F) A legal services project providing civil legal services for the benefit of a group or class of persons beyond the legal services project’s individual or organizational clients may consider the services as civil legal services provided to indigent persons only if the legal matter is primarily for the benefit of indigent persons or disproportionately impacts indigent persons.
  - (1) If a legal services project provided services to a group or class of persons in the prior year, the legal services project must complete a report describing the 10 activities that received the most support, as determined by the staff hours spent

on each activity, limited to activities that met or exceeded 50 hours, unless the Legal Services Trust Fund Commission establishes a different reporting requirement. This report will be submitted for Legal Services Trust Fund Commission review as part of the application process under Rule 3.680.

- (2) If a legal services project must complete a report under Rule 3.674(F)(1), it should demonstrate through objective information that a majority of persons impacted by the activity are indigent. A legal services project may meet this requirement by providing quantitative data based on independent research, internal organizational data, or data provided by other legal service providers or community-based organizations in the area where the legal services project operates, to demonstrate that a majority of those impacted by the activity are indigent.
- (3) If a legal services project cannot demonstrate that a majority of those impacted by the activity are indigent, it must demonstrate that the activity has a disproportionate impact on indigent persons based on the nature of the activity and the specific anticipated outcomes for indigent persons if the activity succeeds. It must use independent research, its own internal data, or data from other legal service providers or community-based organizations to demonstrate a nexus between the legal issue addressed through the activity and the identified needs of the legal services project's client constituency.

*Rule 3.674 adopted effective \_\_\_\_\_.*

### **Article 3. Applications and distributions**

#### **Rule 3.680 Application for Trust Fund Program grants**

To be considered for a Trust Fund Program grant, a qualified legal services project or qualified support center seeking a Trust Fund Program grant must submit a timely and complete application for funding in the manner prescribed by the Commission. The applicant must agree to use any grant in accordance with grant terms and legal requirements.

- (A) A qualified legal services project must meet statutory criteria.
- (B) A qualified support center must agree to offer support services in two or more of the following ways: consultation, representation, information services, and training. The board of directors of the support center must establish priorities for providing such services after consulting with legal services attorneys and other relevant stakeholders.
- (C) A support center not in existence prior to December 31, 1980 must demonstrate that it is deemed to be of special need by a majority of qualified legal services projects in accordance with Trust Fund Program procedures. Upon request, the Commission must

make available to the applicant a list of all the names and addresses of qualified legal services projects.

- (D) A nonprofit corporation that believes it meets the criteria for a qualified legal services project and qualified support center may submit two applications, one as a project and one as a support center, indicating in each application whether it is to be considered the primary or secondary application. The Commission will consider the secondary application only if the primary application is not approved. No applicant may receive a grant as a qualified legal services project and as a qualified support center.
- (E) An application must include
  - (1) an audited financial statement by an independent certified public accountant for the fiscal year that concluded during the prior calendar year. A financial review by an independent certified public accountant in lieu of an audited financial statement may be submitted by an applicant whose gross corporate expenditures, excluding in-kind donated services, were less than the amount specified in the Schedule of Charges and Deadlines;
  - (2) information about the maintenance of quality service and professional standards and how the applicant maintains standards, such as internal quality control and review procedures; experience and educational requirements of attorneys and paralegals; supervisory structure, procedures, and responsibilities; job descriptions and current salaries for all filled and unfilled professional and management positions; and fiscal controls and procedures.
  - (3) a budget and budget narrative, which must be submitted within thirty days of receipt of a notice of tentative allocation, explaining how funds will be used to provide civil legal services to indigent persons, especially underserved client groups such as, the elderly, the disabled, juveniles, and non-English-speaking persons within the applicant's service area; and
  - (4) information about program activities, such as substantive practice areas, extent and complexity of services, a summary of litigation, and populations served.
- (F) State Bar staff may accept application materials, except for audited financial statements or financial reviews, which are addressed in Appendix A of these Rules, submitted up to one business day after the posted deadline. The Commission or a committee of its members may accept, accept with conditions, or reject application materials that are submitted beyond one business day after the posted deadline or that are submitted up to one business day after the posted deadline but not accepted by State Bar staff. Factors that the Commission or committee may consider when determining whether to accept a late application include, but are not limited to

- (1) how late after the deadline the submission was received;
- (2) the completeness of the submission;
- (3) the reasonableness of the applicant's explanation for the delay;
- (4) any mitigating factors that the applicant provides to the committee; and
- (5) the number of late application or reporting submissions made by the applicant in the preceding three years.

*Rule 3.680 adopted effective March 6, 2009; amended effective January 25, 2019; amended effective \_\_\_\_\_.*

**Rule 3.681 Duties of Trust Fund Program grant recipient**

The recipient of a Trust Fund Program grant must

- (A) use the grant in accordance with the terms of the grant agreement and Trust Fund Requirements;
- (B) maintain complete financial records, including budgets, to account for the receipt and expenditure of all grant funds and all income earned by a grant recipient from grant-supported activities, such as income from fees for services (including attorney fee awards and reimbursed costs), training, sales and rentals of real or personal property, and interest earned on grant amounts;
- (C) maintain records for five years after completion of services to a client regarding the eligibility of the client and promptly provide such records to the Commission for inspection upon demand;
- (D) annually submit information that describes, in the manner required by the Commission, the grant recipient's maintenance of quality service and professional standards and compliance with program requirements and, as requested by the Commission,
  - (1) information for evaluative purposes about program activities in the prior grant year; and
  - (2) information to enhance the delivery system of legal services;
- (E) cooperate regarding any reasonable site visit;
- (F) submit timely quarterly financial reports and any other information reasonably required by the Commission; and

- (G) pay any noncompliance fees set forth in the Schedule of Charges and Deadlines for processing documents that are substantially noncompliant with Trust Fund Requirements or that are late without permission.

*Rule 3.681 adopted effective March 6, 2009.*

#### **Rule 3.682 No abrogation of legal or professional responsibilities**

Nothing in these rules may limit or impair in any way the professional responsibility of an attorney to provide a client with legal services appropriate to the client's needs. Trust Fund Program applicants and recipients and their staffs; volunteers; consultants; and clients and prospective clients are entitled to all rights and privileges under the law. Nothing in these rules may be interpreted to require a grant applicant or recipient to violate the law.<sup>11</sup>

*Rule 3.682 adopted effective March 6, 2009.*

#### **Article 4. Requests for review and complaint process**

##### **Rule 3.690 Receipt of document**

For purposes of this article, receipt of a document transmitted by staff or the Commission is deemed to be the earlier of either five days after the date of mailing when sent by mail or the actual time of receipt when staff or the Commission delivers a document physically by courier or otherwise. Staff or the Commission may transmit a document electronically with the recipient's consent. When transmitted electronically, receipt of a document is deemed to be two days after the time indicated on the sender's electronic time stamp.

*Rule 3.690 adopted effective March 6, 2009; amended effective \_\_\_\_\_.*

##### **Rule 3.691 Denial or termination of funding**

- (A) The Commission has the authority to deny an application for initial funding or for renewal of funding, or to terminate existing funding in accordance with law and these rules.<sup>12</sup> The applicant or grant recipient is entitled to written notice of the denial or termination.
- (B) The applicant or grant recipient may request reconsideration by the Commission.

---

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

<sup>12</sup> Business & Professions Code § 6224.

- (1) The request must be provided to the Commission in writing within 30 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 90 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 60 days of the conference.
- (C) Within 30 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. The complaint may be submitted by US Mail or by electronic mail to the address for receipt of such complaints posted on the State Bar's website. At the request of the complainant, the complainant's identity shall be kept confidential.
- (B) Staff must provide a copy of a formal written complaint to the grant recipient whom it concerns within ten days. Staff must attempt to resolve the complaint within 90 days of receipt of the complaint. If the complainant or grant recipient objects to staff's proposed resolution, staff must provide the complainant, grant recipient, and an advisory body comprised of two 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 90 days of staff's receipt of the complaint. The co-chairs of the Commission will designate the members of the advisory body.



- (C) Within 30 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, staff may assist in preparing a written response based on the complainant's 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 60 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 Executive Committee dismiss the complaint or require corrective action. In addition, the advisory body may recommend that the Commission terminate or consider terminating, in whole or in part, existing funding or renewal of funding pursuant to 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 30 days of the informal conference.
- (F) The recommendation must be reviewed and acted upon by the Executive Committee or Commission at its next scheduled meeting that occurs more than ten days after the issuance of the advisory body's recommendation.
- (G) If the Executive Committee decides to dismiss the complaint or require corrective action, the decision is final. If the Commission considers the complaint under Rule 3.691, the provisions of that rule control.
- (H) Complainant or grant recipient may request reasonable extensions of any of the deadlines set forth in this rule for good cause. Staff, the advisory body, the Executive Committee, and the Commission may grant reasonable extensions of the deadlines set forth in this rule that are applicable to their respective obligations or to proceedings before them upon a finding of good cause.

*Rule 3.692 adopted effective March 6, 2009; amended effective \_\_\_\_\_.*

TITLE 3, DIVISION 5, CHAPTER 2

LEGAL SERVICES TRUST FUND

*Fees previously adopted by the Board of Trustees or mandated by statute.  
Amended effective March 2, 2012; amended effective January 25, 2019; amended effective \_\_\_\_\_.*

<i>Rule</i>	<i>Description</i>	<i>Amount</i>	<i>Deadline</i>
3.680(E)(1)	<p>Threshold amount of gross corporate expenditures, excluding in-kind donated services, requiring submission of an audited financial statement.</p> <p>Deadline for applicant to submit an audited or reviewed financial statement for the fiscal year that concluded during the prior calendar year.</p>	\$500,000	<p>Not applicable</p> <p>Promptly when available, and no later than May 1. Upon written request, an extension up to the application deadline may be granted by the State Bar staff. Upon a showing of extraordinary circumstances, the Commission may grant an extension beyond the application deadline. If no extraordinary circumstances exist, the Commission may grant an extension with conditions. Under no circumstances shall such extension be granted beyond the date upon which grant allocations are determined.</p>