



The State Bar of California

OPEN SESSION AGENDA ITEM 704 MAY 2023

DATE: May 18, 2023

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 Related to Legal Services Trust Fund Program (Rules 3.671, 3.672, 3.680, 3.690, 3.692; Proposed New State Bar Rule 3.674, and Appendix A): Return from Public Comment and Request for Approval

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. The LSTFC has undertaken a codification process to recommend updates to the existing rules. 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.

In November 2022, the Board of Trustees (BOT) approved circulating the LSTFC's proposed new and revised rules for a 60-day comment period. The comment period closed on March 1, 2023, and the State Bar received four comments in response to the proposed changes. Under Business and Professions Code section 6210.5, subsections (e)(1) and (e)(3), the BOT shall approve the LSTFC's recommended changes unless "a recommendation conflicts with a statutory, fiduciary, or legal obligation of the State Bar." None of the comments received raise any of these issues. Moreover, the State Bar's Office of General Counsel reviewed the proposed rules and identified no such conflicts. The rules are recommended for approval.

BACKGROUND

The rule changes addressed in this agenda item include the definition of civil legal services, defining and demonstrating indigency, treatment of late submissions, audits and in-kind donated services, complaints from the public against grantee organizations, and other minor technical revisions to conform the rules to practice. (For additional details regarding the specific rule changes, see the November 2022 BOT memorandum in Attachment A.) The LSTFC has discussed and approved each of the recommendations in this memorandum.

DISCUSSION

The public comment period closed on March 1, 2023, and the State Bar received four comments in response to the proposed rule changes. Two comments were in favor, and two were opposed. Of the two comments in favor, one indicated support without additional comment; the other was from Legal Aid Association of California (LAAC), which submitted a letter of strong support for the proposed changes, detailing the extent to which LAAC and the legal aid community had participated throughout the rule revision process.

Of the two comments that opposed the proposed rule changes, one was critical of the structure of legal aid grants generally, voicing a desire to expand eligibility beyond nonprofit programs to private practitioners who provide pro bono services.¹ Another provided general commentary that appeared to indicate frustration with court wait times and changes to licensure requirements. Neither of these comments addressed or suggested changes to the specific proposed rule changes at issue. (The text of the public comment received appears in Attachment B.)

The LSTFC was provided an update at its March 2023 meeting regarding the public comment received and made no changes to its prior recommendations regarding these rules. (Redline and clean versions of the proposed rule changes appear in Attachments C and D, respectively.) Addressing the issues presented through these proposed rule changes will improve efficiency and fairness in the grantmaking process.

The LSTFC must obtain BOT approval for certain decisions, including these proposed rule changes, but such approval must be given unless the LSTFC's recommendations conflict 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 such requirements. The Office of General Counsel has been involved in all stages of the codification process and agrees that the proposed rule changes do not conflict with any statutory, fiduciary, or legal obligations of the State Bar. The rules are recommended for approval.

¹ Even if the LSTFC wanted to expand eligibility requirements beyond nonprofit organizations, this would not be within its power to accomplish through a rule change. This requirement is embedded in the structure established by the IOLTA statute. (See Bus. & Prof. Code, section 6213.)

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, hereby approves and adopts the proposed amendments to the Rules of the State Bar relating to the Legal Services Trust Fund Program—Rules 3.671, 3.672, 3.674 (new rule), 3.680, 3.690, 3.692, and Appendix A of the Schedule of Charges and Deadlines regarding 3.680(E)(1)—as set forth in Attachment D.

ATTACHMENTS LIST

- A.** November 17, 2022, Memorandum to BOT Requesting Release of Proposed Rules for Public Comment (Memorandum Only; No Attachments)
- B.** Text of Public Comments Received
- C.** Proposed Revisions to Rules of the State Bar Regarding the Legal Services Trust Fund Program—Redline
- D.** Proposed Revisions to Rules of the State Bar Regarding the Legal Services Trust Fund Program—Clean Version



The State Bar of California

ATTACHMENT A

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.¹

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

¹ 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

Legal Aid Fights for Justice. We Fight for Them.



ATTACHMENT B

January 27, 2023

Board of Trustees
The State Bar of California, San Francisco Office
180 Howard Street
San Francisco, CA 94105

Re: Proposed Amendments to State Bar Rules Related to Grants Administration

To the Board of Trustees,

We are writing on behalf of the Legal Aid Association of California (LAAC) regarding the proposed amendments to State Bar Rules related to grants administration.

LAAC is the 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.

LAAC has worked extensively with the Bar's Legal Services Trust Fund Commission (LSTFC) and Bar staff to help coordinate comments and feedback on the proposed amendments to the rules related to grants administration from the organizations who will be directly impacted by these changes. We applaud the Bar's efforts—including their efforts to convene focus groups—to understand what the legal aid community thinks about the proposals. Here, we collect all our comments to provide the Board of Trustees with the feedback and opinions we synthesized and produced throughout the duration of the Rules Revision process, thus far. Again, it was a positive experience working closely with the Bar to make sure legal aid's voice was heard.

Thank you for giving us the opportunity to provide comment. Please contact us with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Zach Newman", is written over a horizontal line.

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

Legal Aid Fights for Justice. We Fight for Them.



May 10, 2022

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

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

Dear Legal Services Trust Fund Commission Rules Committee:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

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

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

³ Memo Pg. 3.

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**

“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

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**

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**

ATTACHMENT B

PUBLIC COMMENTS FROM INDIVIDUALS/ENTITIES REGARDING PROPOSED CHANGES TO RULES OF THE STATE BAR RELATED TO LEGAL SERVICES TRUST FUND PROGRAM GRANTS ADMINISTRATION

1. Barbara Beard

Comment: Our Courts are allegedly over-burdened at every turn. The County of San Bernardino is running short of judges, has been for many years, and Probate is consistently a 4-6 month wait for hearings. Without the tightest possible hold on these funds, you are now letting more in to further burden the system. You have reduced the need for people to study law prior to licensing. Make sure and assign those new attorneys to these alleged indigent cases. See what a really big mess we will have to deal with. I am sure the Bench will be pleased. The licenses we who worked so hard to obtain are becoming an embarrassment to the profession.

2. Nancy E. Carlson

Comment: (No additional comment.)

3. Mary K. Jones

Comment: The whole grant process established by these rules is the biggest block to equal access to justice and affordable legal services. This rule ignores the individual attorneys who routinely and collectively out in more hours of actual legal service at pro Bono and sliding fee scales than these "legal services corporations.". There is no room for the non-profits to work with the private attorneys, many who sacrifice financial gain for their commitment to access to justice.

The current Rules related to grant funding need an overhaul with all the stake holders that means the private attorneys who provide legal services to indigent and working poor.

There are areas in CA where the legal 'aid' is so stretched thing there are no services.

We attorneys who have provided free legal services and sliding scale can no longer afford to carry these clients.

Creating even more of an access to justice problem. Solo and smaller firms should be able to submit grant proposals showing the lack of services in there area, clients served and be able to have a part of the pot to keep doing the work.

4. Zach Newman/Legal Aid Association of California

Comment: (See attached letter.)

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.¹ 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.² A qualified legal services project that

¹ Business & Professions Code § 6213(d).

² 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.³

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.⁴ 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.⁵ 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

³ Business & Professions Code § 6213(b).

⁴ Business & Professions Code § 6213(a)(1).

⁵ 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.⁶

~~(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

⁶ 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.⁷

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.⁸ 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,⁹ 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.¹⁰ 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;

⁷ Business & Professions Code § 6213(b).

⁸ Business & Professions Code §§ 6216 and 6223.

⁹ Business & Professions Code § 6213(e)(1).

¹⁰ 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.¹¹

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

¹¹ 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.¹² 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.

¹² 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.¹ 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.² A qualified legal services project that

¹ Business & Professions Code § 6213(d).

² 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.³

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.⁴ 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.⁵ 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

³ Business & Professions Code § 6213(b).

⁴ Business & Professions Code § 6213(a)(1).

⁵ 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.⁶
- (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.⁷

Rule 3.672 adopted effective March 6, 2009; amended effective January 25, 2019; amended effective _____.

⁶ Business & Professions Code § 6213(a).

⁷ 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.⁸ 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,⁹ 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.¹⁰ 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.

⁸ Business & Professions Code §§ 6216 and 6223.

⁹ Business & Professions Code § 6213(e)(1).

¹⁰ 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.¹¹

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.¹² 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.

¹¹ Business & Professions Code § 6217(d).

¹² 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>