



The State Bar of California

Legal Services Trust Fund Commission (LSTFC) Rules Committee Teleconference

Open Session Minutes
Wednesday, June 21, 2023
12:00 p.m.– 3:00 p.m.

Time Meeting Commenced: The LSTFC Rules Committee meeting commenced in open session at 12:00 p.m.
Time Meeting Adjourned: 3:04 p.m.
Chair: Erica Connolly
Committee Coordinator: Doan Nguyen
Members Present: Louise Bayles-Fightmaster, Catherine Blakemore, William Boschelli, Venetta Campbell, Jasmine Meeker, Patience Milrod
Members Absent: Amin Al-Sarraf, Jason Galkin
Liaisons Present: Laura Brown, Lorin Kline, Zach Newman
Liaisons Absent: None

OPEN SESSION

1. Call to Order

Chair Connolly called the meeting to order.

2. Roll Call

Roll call was taken and a quorum was established.

Chair Connolly called for public comment, inquiring whether there were persons who wished to comment on any agenda item. No public comment was made at that time.

3. Approval of Minutes

3.1 Open Session Minutes: April 27, 2023

RESOLVED, that the Legal Services Trust Fund Commission Rules Committee approves the minutes as posted on the agenda.

Moved by Meeker, seconded by Blakemore.

Ayes – (6) Bayles-Fightmaster, Blakemore, Campbell, Meeker, Milrod, Connolly
Noes – (0)
Abstain – (0)
Absent – (2) Al-Sarraf, Galkin

Motion carries.

4. Discussion and Action Items

4.1 Approve Recommendations Regarding IOLTA Reserve Policy

Michelle Kezirian, Executive Director of Central California Legal Services, submitted a written comment supporting the working group's proposal.

Lead Program Analyst Erica Carroll presented the statutory framework regarding the IOLTA reserve policy. The new rule would create an IOLTA reserve starting with \$25 million to address large fluctuations in IOLTA distributions. She also discussed feedback received during the rule revision process. Over 35 grantees and liaisons agreed in principle with the reserve but had different opinions about the amount of funds the State Bar should reserve. The Legal Aid Association of California (LAAC) supported holding funds back to smooth out lower revenue years and supported offering a two-year budgeting option for IOLTA. Discussion centered on the amount of funds the reserve should have. The working group proposed starting with a maximum of \$25 million to balance the need to provide stability to programs.

During agenda item 4.2, below, the Committee requested that the notes include the approved rule changes. The new State Bar Rule 3.683 would read:

State Bar Rule 3.683 Determination of IOLTA Distribution Amounts

- (A) The Legal Services Trust Fund Commission will annually recommend to the Board of Trustees the amount of IOLTA funds to be distributed and the amount to be held in reserve the next year.¹ The Commission will set the current year's projected IOLTA revenue total as the target distribution amount after deducting State Bar administrative costs and any amount set aside for the reserve. Instead of setting aside an amount for reserve, the Commission may increase the distribution with contributions from the reserve.
- (B) The reserve will be established as a restricted fund account that may be accessed to increase planned IOLTA grant distributions or to ensure sufficient funds for the State Bar to fulfill current-year IOLTA grant disbursements.
 - (1) A minimum of 5 percent of current year revenue should added to the reserve each year, subject to the maximum reserve balance set forth below, unless revenue is projected

to fall, in which case the Commission may direct a smaller percentage of revenue, or none, to the reserve for the following year.

- (a) The Commission may increase the amount of revenue directed to the reserve, unless it would exceed the maximum allowable balance.
- (2) The maximum reserve balance will be set at \$25 million.
 - (a) The Commission may periodically choose to increase the maximum allowable reserve balance to account for inflation, as reflected by the overall percentage increase in the Bureau of Labor Statistics' Consumer Price Index in the prior twelve months.
 - (b) If the reserve has reached the maximum allowable balance, all revenue remaining after administrative costs will be distributed as grants. However, if the Commission determines that the grant distribution will be at least double the distribution of the prior year, and the size of the distribution cannot be effectively or efficiently used by grant recipients within the grant period, the Commission may increase the reserve by an amount not to exceed a total of \$40 million.
- (C) The Commission will determine whether to access funds held in reserve as part of the planned IOLTA grant distribution. Factors for consideration include, but are not limited to,
 - (1) Catastrophic events or other emergency circumstances resulting in significantly decreased IOLTA revenue and/or legal aid funding generally;
 - (2) Catastrophic events or other emergency circumstances resulting in significantly increased need for legal aid services;
 - or
 - (3) IOLTA revenue decreases of more than 15 percent.
- (D) If IOLTA revenue yields insufficient funds for the State Bar to disburse quarterly IOLTA grant payments, the Commission will authorize use of the reserve to fulfill existing grant obligations.
- (E) IOLTA funds shall be distributed on an annual basis. However, the Commission may authorize yearly IOLTA grant distributions to be spent over a period of multiple years.

RESOLVED, that the Rules Committee of the Legal Services Trust Fund Commission approves the following working group recommendation:

Adopt new State Bar Rule 3.683, as set forth in Attachment E, for the LSTFC to establish and manage a reserve of IOLTA funds while providing stronger guidance in determining grant distribution and prescribing circumstances for accessing the reserve.

Once the Rules Committee makes its final recommendations, these recommendations will be reviewed subsequently by both the LSTFC and, ultimately, the State Bar's Board of Trustees.

Moved by Boschelli, seconded by Meeker.

Ayes – (6) Bayles-Fightmaster, Blakemore, Campbell, Meeker, Milrod, Connolly

Noes – (0)

Abstain – (0)

Absent – (2) Al-Sarraf, Galkin

Motion carries.

4.2 Approve Recommendations Regarding Law School Clinical Programs

Senior Program Analyst Jennifer Zelnick presented the statutory framework regarding law school clinical programs who are State Bar grantees and applicants for State Bar funding. The working group's proposed rule changes would address the following requirements for law school clinical programs: identifiable law school unit, nonprofit status, duration of operations, community support and cash funding, teaching time, and audits. The Committee clarified that only the teaching time activities outlined in the rule revision may count toward qualifying expenditures for the purposes of the IOLTA application. To address this, the following sentence was added to the memo: "While law school clinical programs may perform other teaching activities, only the teaching activities described in this paragraph may count toward qualifying expenditures for the purposes of the IOLTA application."

The Committee approved the following rule changes:

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. A qualified legal services project that 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.

(1) Law school clinical programs must provide copies of their or their host institution's Articles of Incorporation and determination letters from the Internal Revenue Service and the State Franchise Tax Board to evidence their nonprofit status.

- (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.¹

Rule 3.670 adopted effective March 6, 2009.

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.² Reasonable administrative expenditures and overhead required to deliver such services meet the statutory requirement. For law school clinical programs, clinical classes in which only clinic students can enroll, and in which clinic participation is an expectation of the class, and which advance the clinic's provision of civil legal services to indigent persons pursuant to Business and Professions Code section 6218(a) are assumed to qualify.
- (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,³ 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.⁴ Recipients must maintain complete records of all such fees.

Rule 3.673 adopted effective March 6, 2009.

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.

¹ Business & Professions Code § 6213(b).

² Business & Professions Code § 6216 and 6223.

³ Business & Professions Code § 6213(e)(1).

⁴ Business & Professions Code § 6223.

- (1) A law school clinical program must demonstrate that it meets all of the following criteria: an identifiable and dedicated location designed to provide civil legal services to indigent Californians; dedicated staffing (whether full- or part-time) whose job duties exclusively serve the law school clinical program; a clinical director (regardless of title) with authority over operations and staffing of non-faculty positions; segregation of fiscal records and activities (including, but not limited to, the ability to provide audited confirmation of clinic expenditures); and proof of institutional oversight such as by identifying specific position(s) and/or mechanisms.
- (2) A law school clinical program must demonstrate it has been in operation for at least two years as of the date on which its application is due. Law school clinical programs may provide a combination of audited financial statements and schedules, budgets, staff lists, class rosters, clinic enrollment records, or functional equivalent.
- (3) Law school clinical programs may include funds received from parent or affiliate entities and organizations towards the \$20,000 or more in cash funds per year from other sources as required by Business and Professions Code section 6214(b)(1).

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

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

(D) A nonprofit corporation that believes it meets the criteria for a qualified legal services project and qualified support center may submit two applications, one as a project and one as a support center, indicating in each application whether it is to be considered the primary or secondary application. The Commission will consider the secondary application only if the primary application is not

approved. No applicant may receive a grant as a qualified legal services project and as a qualified support center.

(E) An application must include

- (1) an audited financial statement by an independent certified public accountant for the fiscal year that concluded during the prior calendar year. A financial review in lieu of an audited financial statement may be submitted by an applicant whose gross corporate expenditures were less than the amount specified in the Schedule of Charges and Deadlines. Law school clinical programs may submit audited financial statements for the clinic or law school, provided the latter include a schedule for the clinical program showing its revenues and expenditures;
- (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, which must be submitted within thirty days of receipt of a notice of tentative allocation, explaining how funds will be used to provide civil legal services to indigent persons, especially underserved client groups such as, the elderly, the disabled, juveniles, and non-English-speaking persons within the applicant's service area; and
- (4) Information about program activities, such as substantive practice areas, extent and complexity of services, a summary of litigation, and populations served.

Rule 3.680 adopted effective March 6, 2009; amended effective January 25, 2019.

RESOLVED, that the Legal Services Trust Fund Commission Rules Committee adopts the amendments to State Bar Rules 3.670(A), 3.673(A), 3.680(A), and 3.680(E)(1) as set forth in the working group's June 21, 2023, memo as clarified in the Committee's June 21, 2023, meeting.

Moved by Blakemore, seconded by Milrod.

Ayes – (6) Bayles-Fightmaster, Blakemore, Campbell, Meeker, Milrod, Connolly

Noes – (0)

Abstain – (0)

Absent – (2) Al-Sarraf, Galkin

Motion carries.

4.3 Approve Recommendations Regarding Carryovers and Budget Modifications

Lead Program Analyst Danielle MacRae presented the statutory framework and current practices regarding carryovers and budget modifications. The working group sought to codify a rule that defines the terms “carryover,” “rollover,” and “budget deviation” as well as procedures regarding these terms. Discussion ensued about the working group’s proposed new rule. Ultimately, however, the Committee felt that further work was needed before they could approve the working group’s recommendations. The working group will reconvene to reconcile its recommendations with approval of the IOLTA reserve and the loan repayment assistance program, and with additional input provided by the State Bar Office of General Counsel.

No further discussion took place in open session.

ADJOURN