



# The State Bar of California

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**OPEN SESSION**  
**AGENDA ITEM 3.5**  
**AUGUST 2023**  
**LEGAL SERVICES TRUST FUND COMMISSION**

**DATE:** August 10, 2023

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

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

**SUBJECT:** Recommend Codifying Requirements for Law School Clinical Programs

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## **EXECUTIVE SUMMARY**

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

Law School Clinical Programs (LSCPs) are a type of qualified legal services project (QLSP). However, because of the unique structure of LSCPs and their relationships to law schools, some rules that govern QLSPs generally may not be suitable for LSCPs. Specifically, this memo asks six questions related to LSCPs:

1. How should LSCPs demonstrate they are an “identifiable law school unit?”
2. What documentation must a LSCP submit to establish nonprofit status?
3. How is duration of operations calculated for LSCPs?
4. How should LSCPs document community support and cash funding?
5. How should teaching time be handled on applications and spending reports?
6. How can LSCPs fulfill their obligation to submit audits?

The working group sought preliminary advice about these topics through three focus groups. Two focus groups were composed primarily of law school clinics that have never been Interest on Lawyers’ Trust Accounts (IOLTA) grantees. The third focus group was composed of current LSCP grantees. The working group also circulated proposals to the legal aid community via the

Legal Aid Association of California (LAAC) for three weeks. This memo describes the Committee's recommendations for the LSTFC meeting on August 10, 2023.

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## **BACKGROUND**

### **CODIFICATION PROCESS**

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

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

### **GOVERNING AUTHORITIES AND GUIDANCE**

The IOLTA statute<sup>1</sup> specifically enumerates that LSCPs are QLSPs. However, because of their unique structure and relationship to law schools, LSCPs work differently than other QLSPs. Generally, the IOLTA statute discusses LSCPs sparingly. The IOLTA statute states that LSCPs must operate exclusively in California as part of a nonprofit law school with State Bar of California accreditation.<sup>2</sup> It also must have expenses of at least \$20,000 per year. The IOLTA statute explains that LSCPs, like all QLSPs, must provide free civil legal services to indigent persons as their primary purpose and function.<sup>3</sup> Additionally, the IOLTA statute's requirements for all QLSPs govern LSCPs. The rules refer to LSCPs even more sparingly, and only mention LSCPs when quoting the IOLTA statute. The Legal Services Trust Fund Program Eligibility Guidelines for Legal Services Projects (Eligibility Guidelines) say similarly little regarding LSCPs.

This section outlines the specific governing authorities and guidance related to each of the six LSCP codification issues for which the working group recommends changes.

#### **Identifiable Law School Unit**

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

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

<sup>3</sup> Business and Professions Code § 6213(a)(2)(A).

The IOLTA statute states that LSCPs must be identifiable law school units whose primary purpose and function is providing free civil legal services to indigent persons.<sup>4</sup> Additionally, programs must have operated for at least two years at a cost of at least \$20,000 per year prior to each application.<sup>5</sup> In practice, the LSTFC has determined whether a LSCP demonstrates identifiability by weighing factors such as administration, facilities, fiscal practices, and the presence of a board or other oversight mechanism. The Committee seeks to create a standardized list of required criteria that establish whether an LSCP applicant is an identifiable law school unit to avoid confusion.

### **Nonprofit Status**

As mentioned above, the IOLTA statute mandates that a QLSP must either be a nonprofit that is incorporated and operated exclusively in California or a program operated exclusively in California by a nonprofit law school.<sup>6</sup>

The commentary to Eligibility Guideline 2.1 states that an organization must provide certified copies of its Articles of Incorporation, a current Certificate of Status proving the corporation's good legal standing, and determination letters from the Internal Revenue Service and the State Franchise Tax Board. Office practice allows LSCPs to provide these documents from the Law School or University. The Committee seeks to codify this practice.

### **Duration of Operations**

According to the IOLTA statute, the LSCP must have been in operation for at least two years and must cost at least \$20,000 per year.<sup>7</sup> The rules do not address duration of operations for QLSPs. LSTFC practice has been to look two years back from the application due date to ensure the program has sufficient experience and longevity to justify receipt of IOLTA funds. The Committee seeks to codify this practice.

### **Community Support and Cash Funding**

Projects that satisfy the criteria of the IOLTA statute section 6213(a) and receive funding from the Legal Services Corporation (LSC) or the Older Americans Act (OAA) are presumed to be QLSPs.<sup>8</sup> Applicants without LSC or OAA funding must fulfill items one and two, below, among other requirements:

- (1) They receive at least \$20,000 in cash funds per year from other sources to support free legal representation to indigent persons.
- (2) They have demonstrated community support.<sup>9</sup>

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<sup>4</sup> Business and Professions Code § 6213(a)(2). Rule 3.670(A) repeats this requirement. See also the August 12, 2022, memo, "Codifying Grant Administration Practices: Defining Civil Legal Services" from the Rules Committee available at <https://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000029523.pdf> (Attachment A, p. 18-19) for proposed revisions to the definition of "civil legal services."

<sup>5</sup> Business and Professions Code § 6213(a)(2)(A).

<sup>6</sup> Business and Professions Code § 6213(a)(1). See the definition of identifiable law school unit in the "Governing Authorities" section, *supra*.

<sup>7</sup> Business and Professions Code § 6213(a)(2)(A).

<sup>8</sup> Business and Professions Code § 6214(a).

<sup>9</sup> Business and Professions Code § 6214(b).

The LSTFC has not counted funds received from a parent law school toward the minimum “other sources” of required funding, because each LSCP is part of the law school. The Committee seeks to clarify whether this interpretation accurately reflects the structure of LSCPs, and to codify language to ensure parity between LSCPs and non-LSCP QLSPs regarding community support and cash funding.

### **Teaching Time**

The IOLTA statute and rules do not discuss teaching time. However, the IOLTA statute states that “the State Bar shall distribute all moneys...for the provision of civil legal services to indigent persons.”<sup>10</sup> The working group seeks to clarify whether and when teaching time may be considered “civil legal services to indigent persons.”<sup>11</sup> Like all QLSPs and support centers, LSCPs also need to know how to calculate their qualified expenditures on their IOLTA/EAF applications. The LSTFC calculates qualified expenditures based on tracking all qualifying and nonqualifying costs. The LSTFC uses this calculation to determine the program’s primary purpose and function, and therefore their threshold eligibility for funding.<sup>12</sup> Qualified expenditures also determine each organization’s share of the total IOLTA funding for their county or counties, per Section 6216(b)(1)(A).

Rule 3.673(A) permits QLSPs and support centers to use funds received from the State Bar to provide services to the indigent or to QLSPs. The Committee seeks to codify a practice where qualifying teaching time may count as a program expense similar to professional development services or trainings for non-LSCP QLSPs.

### **Audits**

The IOLTA statute requires grant recipients to submit financial statements to the State Bar annually. That must include an audit from a certified public accountant or a State Bar-approved fiscal review. It also must include a report demonstrating the programs on which the grantee spent IOLTA funds, a report on their compliance with the requirements of Section 6217, and progress in meeting the service expansion requirements of Section 6221.<sup>13</sup> Section 6217 requires organizations to ensure: they maintain quality service and professional standards; expend funds in accordance with the provisions of the IOLTA statute; preserve attorney-client privilege and protect the integrity of the adversary process from any impairment in providing legal assistance to indigent persons; and no one interferes with attorneys funded by the IOLTA statute in carrying out their professional responsibility to their clients. Section 6221 requires QLSPs to try to spend 20 percent of IOLTA funds to increase the availability of services to the elderly, the disabled, juveniles, or other indigent persons who belong to disadvantaged and underserved groups within their service areas.

Rule 3.680(E)(1) further clarifies that programs must submit audits for the fiscal year that ended in the prior calendar year. Furthermore, applicants may submit financial reviews—rather than

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<sup>10</sup> Business and Professions Code § 6216.

<sup>11</sup> Ibid.

<sup>12</sup> See the August 12, 2022, memo “Codifying Grant Administration Practices: Defining Civil Legal Services” from the Rules Committee available at <https://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000029523.pdf>. (p. 3).

<sup>13</sup> Business and Professions Code § 6222.

audits— when their “gross corporate expenditures were less than the amount specified in the Schedule of Charges and Deadlines.” The Schedule of Charges and Deadlines (Appendix A to the Rules of the State Bar of California) specifies that organizations with gross expenditures of \$500,000 or more must submit audits. Organizations with gross expenditures below \$500,000 may submit “independent CPA-audited or reviewed statements.” The LSTFC permits LSCPs to submit audits prepared on behalf of the law school and an independently audited schedule for the clinic, regardless of the program’s gross expenditures. The Committee seeks to codify this practice.

## **FOCUS GROUPS**

To collect preliminary input from stakeholders about how codifying the above topics would affect LSCPs, the working group convened three focus groups. The first focus group consisted of one current LSCP grantee and four non-grantee law school clinics and met once. The second focus group consisted of six current LSCP grantees and met twice. Five respondents attended both sessions, and a sixth respondent only attended the first session. The third focus group was composed of two participants from non-grantee law school clinics and met once.

State Bar staff aimed for geographic cross-sections and similar numbers of participants in each discussion. Staff sought opinions from a mixture of grantees and non-grantees. The current grantees shared their perspectives on the current rules as well as how proposed changes would affect their continued eligibility for, and level of, IOLTA/EAF funding. Non-grantee participants provided invaluable insights into barriers to applying for IOLTA/EAF funding as a law school clinic.

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

- (Consensus) Funds received from the law school or university should count toward the \$20,000 minimum in cash funds per year required in Business and Professions Code Section 6214(b). If the LSCP is an identifiable unit, then funds from the parent organization should count as separate.
- (Consensus) Office practice allowing LSCPs to submit either an audit for the clinic or a schedule from the law school’s audit should continue.
- (Consensus) In order to demonstrate their nonprofit status, LSCPs must continue to provide copies of their host institution’s Articles of Incorporation and determination letters from the Internal Revenue Service and the State Franchise Tax Board.
- (Differing views) Participants disagreed about what criteria to require to determine identifiability as a law school unit, and whether identifiability should be decided through a fixed list or more loosely based on meeting some of the predetermined categories.
- (Differing view) While all focus group participants agreed that teaching time should be included, opinions about which classes to include differed between LSCPs and non-grantees.
- (Differing views) While there was consensus that a traditional governing board does not make sense as a requirement for LSCPs, ideas varied regarding appropriate alternatives

to ensure proper oversight.<sup>14</sup>

- (Differing views) While current grantees supported requiring two years of audits to demonstrate duration of operations, non-grantees noted this requirement could pose a hardship for applicants.

## DISCUSSION

### HOW TO DEFINE IDENTIFIABLE LAW SCHOOL UNIT IN THE STATE BAR RULES

The rules do not define “identifiable law school unit” as that phrase appears in the IOLTA statute. Historically, the LSTFC has determined whether a LSCP demonstrates identifiability based on the following factors:

1. Physical location of the law school clinic and its relation to the University, Law School, and other Law School Clinics;
2. Fiscal separation of the specific law school clinic and University, Law School, and other Law School Clinics; and
3. Separation of oversight and supervision of the law school clinic from the University, Law School, and other Law School Clinics.

Furthermore, the application requires information about topics such as supervisory structure and case opening and closing procedures to determine that programs meet quality control requirements.

The Committee recommends codifying a modified version of the current approach to determining identifiability for LSCPs. The Committee proposes a bright-line rule where LSCPs must satisfy all the following criteria:

1. An identifiable and dedicated location associated with a law school designed to provide civil legal services to indigent Californians;
2. Dedicated staffing (whether full- or part-time) whose job duties exclusively serve the law school clinical program;
3. A clinical director (regardless of title) with authority over operations and staffing of non-faculty positions;
4. Segregation of fiscal records and activities (including, but not limited to, the ability to provide audited confirmation of clinical expenditures); and
5. Proof of institutional oversight such as by identifying specific position(s) and/or mechanisms.

A bright-line approach would standardize office practice, promoting consistency in determinations. Refining the factors to reflect the realities of LSCPs (e.g., faculty staffing and law school oversight) would promote accuracy in determinations.

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<sup>14</sup> LSTFC practice has been to require QLSPs and support centers to demonstrate that they are governed by a board of directors to demonstrate proper oversight. However, most LSCPs do not have a board of directors and are permitted to demonstrate oversight through a dean of the law school or similar. While a future memo will discuss this topic when rules around board oversight are codified, it is mentioned here because board oversight has been used to determine law school identifiability.

An identifiable and dedicated location conforms to the current practice. Specifying that the location must be designed to provide civil legal services to indigent Californians reflects the purpose of this identifiable and dedicated location. While the working group recommended specifying that the location may be either physical or a website, moving away from defining the form a space may take better accounts for contemporary service delivery models.

Requiring dedicated staffing increases identifiability and stipulates that staff must focus on the clinical program. Requiring a clinical director also further increases identifiability and provides parity with non-LSCP QLSPs, who identify an executive director with similar authority. Requiring segregation of fiscal records and activities helps demonstrate identifiability and satisfy audit requirements, as described below. Finally, requiring proof of institutional oversight helps demonstrate the law school unit by situating the clinic as part of the law school which provides oversight and has authority over the clinic. Because the rules do not address identifiability, the Committee proposes revising Rule 3.680(A) to include the above definition as part of the statutory criteria required for LSCPs.

#### **REVISIONS TO THE DEFINITION OF CORPORATE STATUS IN THE STATE BAR RULES**

Although the rules define corporate status, including in relation to LSCPs, the definition does not currently specify how LSCPs must demonstrate they meet the statutory requirement. Eligibility Guideline 2.1 states that an organization must provide certified copies of its Articles of Incorporation, a current Certificate of Status demonstrating the corporation's good legal standing, and determination letters from the Internal Revenue Service and the State Franchise Tax Board. However, LSCPs are unable to provide these documents for their clinics because they are not standalone nonprofit organizations. Accordingly, the working group recommends codifying additional language to specify how LSCPs may demonstrate corporate status: "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."

To clarify how LSCPs must demonstrate corporate status, the Committee proposes revising Rule 3.670(A) to include the above definition. This recommendation would ensure that LSCPs can comply with the rules while acknowledging their unique organizational structures differ from non-LSCP QLSPs.

#### **REVISIONS TO THE DEFINITION OF DURATION OF OPERATIONS IN THE STATE BAR RULES**

Currently, the IOLTA statute and rules do not specify how to calculate whether a program has been in operation for at least two years. LSTFC practice has been to look two years back from the application due date to ensure the program has sufficient experience and longevity to justify receipt of IOLTA funds. The Committee proposes codifying this practice, along with specific records that may be used to satisfy this requirement:

- Audited financial statements and schedules;
- Budgets;
- Staff lists;
- Class rosters;
- Clinic enrollment records; or

- Functional equivalent.

These six options including a catchall offer LSCPs several ways to demonstrate that they have been in operation for at least two years. It is unnecessary for LSCPs to provide all these records. Rather, this list presents applicants with a combination of documents they already need to provide to satisfy other requirements (such as audited financial statements and schedules) as well as novel mechanisms (such as class rosters and enrollment records) to demonstrate the program's experience and stability.

The Committee proposes revising rule 3.680(A) to include the above clarification about how LSCPs can demonstrate duration of operations.

### **HOW TO DEFINE COMMUNITY SUPPORT AND CASH FUNDING IN THE STATE BAR RULES**

The rules do not define "community support" or "cash funds," as those terms appear in the IOLTA statute. Historically, the LSTFC has not counted funds received from the law school toward the LSCP's minimum funding from "other sources" because the LSCP is part of the law school. Similarly, the LSTFC has not counted funds received from related entities (e.g., affiliated county bar associations) toward the minimum funding from "other sources" for non-LSCP QLSPs. However, the working group finds that excluding funds received from the law school likely creates an unfair hardship for LSCPs. Unlike other QLSPs, which are organizations, LSCPs are unlikely to have staff and a Board that fundraises. The reality is that most LSCPs fundraise through their law school.

Focus group participants unanimously agreed that the exclusion of funds received from the law school disadvantages LSCPs. Therefore, the Committee proposes codifying that LSCPs may count funds received from parent or affiliate entities: "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)." The Committee proposes revising rule 3.680(A) to include this language about demonstrating community support and cash funding. Like for all QLSPs, LSCPs would continue to be able to count the dollars they receive under Business and Professions Code section 6214(b)(1) toward community support in Business and Professions Code section 6214(b)(2).

### **HOW TO DEFINE TEACHING TIME IN THE STATE BAR RULES**

The IOLTA statute states, "The State Bar shall distribute all [IOLTA] moneys...for the provision of civil legal services to indigent persons."<sup>15</sup> The statute and rules do not discuss whether/when teaching time counts as "civil legal services to indigent persons."<sup>16</sup> The LSTFC has allowed grantees to use funds for teaching classes that directly correlate to LSCP clinic activities. However, in the absence of rules related to teaching time, the LSTFC has needed to judge on a case-by-case basis whether individual classes should count as qualifying.

While all focus group participants reached consensus that teaching time should qualify, opinions differed among participants about how to decide which classes to include. All

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<sup>15</sup> Business and Professions Code § 6216.

<sup>16</sup> Ibid.



participants agreed that clinic classes should be included, in keeping with current practice. For example, if a LSCP with an immigration law clinic requires all clinical students to enroll in the immigration clinic class, that class should count as a qualified legal expenditure.

The working group invited the legal services community to provide input on whether other classes may count as qualifying work. Some focus group members compared non-LSCP classes that are, nonetheless, related to the LSCP, to minimum continuing legal education (MCLE) for legal aid attorneys. For example, should an immigration law class that is required for a clinic but that has a mix of clinic and non-clinic students qualify? Several focus group participants and one member of the working group find the MCLE comparison to be apt, and that such courses have a primary function of clinic placement.

On the other hand, differences—such as time commitments and the purpose of—MCLEs and law school classes can undermine the comparison. Whereas teaching an MCLE might take just a few hours, teaching a semester-long class might take dozens or over a hundred hours to prepare, teach, and grade. Moreover, while a legal aid attorney, paralegal, or other legal aid employee taking a MCLE likely helps their provision of legal aid to indigent people, teaching students a semester-long non-clinical class on immigration law is perhaps too attenuated. The State Bar’s Office of General Counsel has raised concerns that treating non-clinical classes as qualifying may violate the IOLTA statute, including because these classes may not be part of the “identifiable law school unit” that a LSCP must constitute under Business & Professions Code section 6213(a)(2) and because spending State Bar funds on such classes is too attenuated from the provision of free legal services to the indigent to satisfy the requirements of Business & Professions Code section 6218(a).

After considering these perspectives, the Committee proposes codifying that LSCPs may include clinical classes in which only clinic students can enroll, and in which clinic participation is an expectation of the course. Additionally, the class must advance the clinic’s provision of civil legal services to indigent persons pursuant to Business and Professions Code section 6218(a). 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.

Counting only clinical classes ensures they are directly related to “the provision of civil legal services to indigent persons.”<sup>17</sup> This in turn ensures that these classes are qualifying expenditures.<sup>18</sup> Prohibiting the funding of nonqualifying work with State Bar grant monies helps LSCPs maintain their primary purpose and function.<sup>19</sup> Like for all IOLTA-funded work done by QLSPs, LSCPs need to track their spending on qualifying versus nonqualifying instruction. Requiring the exclusion of classes that are not directly part of providing free civil legal aid also helps maintain parity between LSCPs and other QLSPs. This is because for non-LSCP QLSPs, most professional development trainings for staff enable the provision of civil legal services to the indigent. In law schools, clinic faculty often teach classes that do not train students to work in a clinic (e.g., a first-year writing class).

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<sup>17</sup> Ibid.

<sup>18</sup> See footnote 13, *supra*.

<sup>19</sup> Rule 3.671.

The LSTFC's grants support legal services for individuals who are facing significant legal problems often related to the loss of basic rights, and a part of that is training the advocate effectively. However, as described above, work that does not provide legal aid may not qualify for funding. The Committee proposes revising rule 3.673(A) to include the above criteria as a qualifying expenditure for LSCPs.

#### **REVISIONS TO THE DEFINITION OF AUDITS IN THE STATE BAR RULES**

The IOLTA statute, rules, and Eligibility Guidelines require QLSPs and support centers to submit audits for all organizations with gross expenditures over \$500,000. Recognizing that submitting audits poses a hardship for many LSCPs, the LSTFC permits LSCPs to submit audits prepared on behalf of the law school and an independently audited schedule for the clinic, regardless of the program's gross expenditures. Focus group participants unanimously supported codifying this practice. Therefore, the Committee proposes codifying language to allow LSCPs to submit either an audit for the clinic, or an audit for the law school along with a schedule for the clinic: "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."

The Committee proposes revising rule 3.680(E)(1) to include the above definition for LSCP audits.

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

The working group sought the legal services community's feedback on the proposed definitions from April 17, 2023, to May 8, 2023. The Committee is thankful to LAAC for its time and care in circulating a draft of this memo, meeting with its members, and writing a letter to the working group (Attachment B). LAAC's letter expressed support for allowing LSCPs to include funds received from parent or affiliate entities and organizations toward the \$20,000 or more in cash funds as required by Business and Professions Code section 6214(b)(1), noting that it "makes sense and is overdue."

LAAC also asked for clarity regarding the proposed rule change for the permissible use of funds in Rule 3.673. Specifically, LAAC asked for greater clarity defining "teaching" versus "instructor" roles, as well as clarifying what it meant by "supplantation." LAAC also asked for clarification about whether the IOLTA statute prohibits other organizations from covering existing expenditures like the proposed rule change suggested. Finally, LAAC noted division within the community regarding whether teaching of "classes ... [that are] required of clinical students, even if [they are] open to other students" should count for funding. LAAC believes this should not count, but notes that some law schools want the inclusion of these classes.

The Committee also thanks University of California, Irvine School of Law (UC Irvine), a non-grantee focus group participant, for their email to the working group (Attachment C). UC Irvine asked for clarification regarding "whether applications can be submitted by a clinic, a clinical program, or both" since many schools have multiple clinics, but not all clinics may engage in qualifying work.

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

The Committee agrees with LAAC that the previously circulated rule change for permissible use of funds related to teaching time—in particular, the words “supplant,” “teaching,” and “instructor”—could be clearer. Additionally, the no supplantation clause placed LSCPs at a disadvantage over QLSPs, who regularly use IOLTA funds to cover existing expenditures. To clarify this, the working group removed the sentence “[t]he law school clinical program must attest that any grant monies funding a qualifying class will fund existing teaching costs, rather than increase instructor salaries or supplant expenditures.”<sup>20</sup> Eliminating this sentence also eliminated the need to clarify the terms “teaching” and “instructor.”

The Committee understands that the legal services community remains divided regarding whether to count non-clinical classes as qualifying. Nonetheless, it upholds its original proposal to limit permissible use of funds to those clinical classes in which all clinic students must enroll, and in which clinic participation is an expectation of the course. This would establish the clinic’s provision of legal services to indigent persons pursuant to Business and Professions Code section 6218(a).

Finally, the Committee appreciates UC Irvine’s question about whether a law school clinical program may include just one or some clinics within a law school, or if all clinics within a school must apply and qualify. The question of nonqualifying work applies to all QLSP applicants. QLSPs often engage in both qualifying and nonqualifying activities. Like other QLSPs, when a LSCP applies for IOLTA funding, the LSTFC reviews all their work to ensure they meet primary purpose. Then, the LSTFC deducts nonqualifying work when calculating their award. Indeed, several current LSCP grantees have one or more clinics at their law schools that do not receive IOLTA funding.

## **CONCLUSION**

Attachment A shows the proposed revisions to the rules. These changes would provide clear guidance in grants administration for LSCPs and other QLSPs, as well as to applicants, the LSTFC, and State Bar staff. By providing clarity, these rule changes would ensure greater interpretive consistency and compliance with the governing authorities and guidance. These changes would also balance the unique needs and circumstances of LSCPs, while maintaining parity between LSCPs and other QLSPs where possible. Finally, these changes may help increase access to civil justice through the funding of civil legal aid by providing clearer expectations for applicants interested in pursuing State Bar grants.

## **FISCAL/PERSONNEL IMPACT**

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<sup>20</sup> When LAAC circulated the working group’s memo, the proposed rule change read:

For law school clinical programs, clinical classes in which all clinical students must 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. The law school clinical program must attest that any grant monies funding a qualifying class will fund existing teaching costs, rather than increase instructor salaries or supplant expenditures.

None

## **RECOMMENDATIONS**

Should the LSTFC agree with the Committee's recommendation, passage of the following resolution is recommended:

**RESOLVED**, that the Legal Services Trust Fund Commission 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 Committee's August 10, 2023, memo, including Attachment A.

## **ATTACHMENTS LIST**

- A.** Proposed Revision to State Bar Rules 3.670(A), 3.673(A), 3.680(A), and 3.680(E)(1).
- B.** Letter from LAAC.
- C.** Letter from UC Irvine.

**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.<sup>1</sup>

*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.<sup>2</sup> 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,<sup>3</sup> the recipient must maintain records reflecting the facts that led to that conclusion and any action taken to confirm it. Client reimbursements of nominal costs or expenses are not considered fees. If attorney fees are generated in cases funded by Trust Fund Program grants, the fees

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<sup>1</sup> Business & Professions Code § 6213(b).

<sup>2</sup> Business & Professions Code § 6216 and 6223.

<sup>3</sup> Business & Professions Code § 6213(e)(1).

must be used only for purposes permitted by statute.<sup>4</sup> 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) 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

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<sup>4</sup> Business & Professions Code § 6223.

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.*



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



May 8, 2023

Jennifer Zelnick  
[The State Bar of California](#)  
845 South Figueroa Street  
Los Angeles, CA 90017

**Re: Law School Clinic & IOLTA codification issues**

Dear Jennifer,

Thank you so much for the opportunity to respond to the proposal to make changes to rules impacting law school clinics' ability to receive IOLTA funding. We reached out to members and heard only minor concerns, which we are passing on to you.

**We support the change in the \$20k requirement.** This makes sense and is overdue. Thank you for that analysis.

**We request for clarity in the memo:** Rule 3.673 proposed change is a bit confusing.

"For law school clinical programs, clinical classes in which all clinic students must 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. **The law school clinical program must attest that any grant monies funding a qualifying class will fund existing teaching costs, rather than increase instructor salaries or supplant expenditures.**"

LAAC suggestion on the highlighted portion: I think it may be helpful to more clearly define "teaching" vs "instructor" roles. Law schools may think more of the clinical seminar instruction vs. "podium" teaching classes. I think that you've used the visa versa here, that the instructor is the "podium" instructor and the teacher is the clinical seminar teacher. I'm not sure that there is an agreed-upon nomenclature, unless it came up in your focus groups. Also, some clinical leaders may mainly focus on the clinical supervision, some may teach the required clinical seminar, and some may need to also teach a "podium" class for their required teaching "load." So it may help to define a way for the schools to divide up salary costs when one person may do all three things in the course of one academic year. Even if currently-funded law school clinics have a method, adding clarity will help for transparency so new clinics may apply.

I think they would also need more clarity on what supplanting means in the context of a law school, where even the clinical director may not have much authority over their own budget. And if the IOLTA funds are meant to cover "existing" teaching costs, then that would be supplantation by definition if there are currently other funds being used for that purpose. A related question is: do other (non law school clinics) organizations have a limitation on supplanting expenditures like this proposed change?

**There is a split in our membership on whether "podium" teaching of clinical required classes should count. LAAC believes it should not.**

You captured this well in your memo - some law schools want the poverty law or immigration law class to be covered if it's required of clinical students, even if it's open to other students. I believe our community (outside of law schools) would largely be in opposition. The connection to actual legal services provided to indigent Californians is too remote. By contrast, clinical seminar instruction time, open to only clinical students, and focused on how to provide those services, should certainly count. If the State Bar were to decide to be more expansive, IOLTA funds could be used directly for "podium" classes in which only a small handful of students were participating as a "prerequisite." This could have the unintended consequence of law school clinics determining that more classes were necessary in order to ensure funding for those professors through IOLTA funds. I do not assume this would be for any ill intent - the clinical directors may want their students to be fully prepared to serve clients with cultural humility and substantive knowledge, and additional courses would support that.

Hope this is helpful - happy to hop on a zoom to discuss, too.

Sincerely,

A handwritten signature in black ink, reading "Salena Copeland". The signature is fluid and cursive, with the first name "Salena" being more prominent and the last name "Copeland" following in a similar style.

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

**Zelnick, Jennifer**

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**From:** Annie Lai <alai@law.uci.edu>  
**Sent:** Saturday, April 22, 2023 8:15 AM  
**To:** Zelnick, Jennifer  
**Subject:** Re: Draft of Law School Clinical Programs Codification Memo (Feedback Requested by 5:00 p.m. on Friday, May 5, 2023)

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Jennifer,

Thank you again for the convening the focus group and for sharing the draft with us.

My only comment at this time is that it may be helpful for the rules to specify whether applications can be submitted by a clinic, a clinical program, or both. A number of schools have programs that contain multiple clinics, some of which do work that may qualify for funding and some of which may not. If only an entire program can apply, then I might allow for the possibility that the program may include some clinics that are not seeking funding.

Best,

Annie

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**From:** Zelnick, Jennifer <Jennifer.Zelnick@calbar.ca.gov>  
**Date:** Monday, April 17, 2023 at 1:39 PM  
**To:** Zelnick, Jennifer <Jennifer.Zelnick@calbar.ca.gov>  
**Subject:** Draft of Law School Clinical Programs Codification Memo (Feedback Requested by 5:00 p.m. on Friday, May 5, 2023)

Hello,

Thank you again for participating in the Law School Clinical Program Codification Focus Group. Attached, please find the draft memo and draft rule changes.

Participants are invited to provide comments by 5:00 p.m. on Friday, May 5, 2023. Comments will be shared with the working group and will be attached to the final memo. The final memo will be posted to the State Bar's website five days before it is discussed, first at the June 21, 2023, Rules Committee meeting, and then for the Legal Services Trust Fund Commission meeting and Board of Trustees meeting after that.

Although comments do not guarantee changes will be made, they help shape the final memo and are an important part of the codification process. Of course, providing feedback is entirely optional.

While this memo is being shared with focus group participants and to legal aid organizations, we ask that you do not circulate the memo to anyone else at this time.

Please let me know if you have any questions, and thank you again for your time.

Sincerely,  
Jennifer

Jennifer Zelnick (she/her/hers)  
Senior Program Analyst, Office of Access & Inclusion  
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