



The State Bar of California

Legal Services Trust Fund Commission (LSTFC) Rules Committee Teleconference

Open Session Minutes
Wednesday, August 2, 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: 3:00 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: Lorin Kline, Zach Newman

Liaisons Absent: None

*Boschelli was present at the meeting but because he did not provide advance public notice of his location, he acted as a public member and did not participate in voting.

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 as to whether there were persons who wished to comment on any agenda item. Public member Todd Hill shared a complaint he had regarding not receiving a transcript from an institution. Chair Connolly explained that his issue was outside the scope of the Committee.

3. Approval of Minutes

3.1 Open Session Minutes: June 21, 2023

RESOLVED, that the Legal Services Trust Fund Commission Rules Committee approves the minutes as amended to correct James Meeker's name.

Moved by Meeker, seconded by Bayles-Fightmaster.

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 Pro Bono Allocation

Senior Program Analyst Angela O'Hara presented the working group recommendation and rule language for grantees applying to receive the pro bono allocation. The proposed rule sought to simplify and streamline the tests to improve equity, transparency, and clarity.

Discussion ensued over concern that the requirements from the IOLTA statute were being conflated in the proposed rule and whether it was statutorily compliant. Staff reported that the Office of General Counsel reviewed the proposed rule and concluded that it complied with statute. Committee members grappled with identifying a bright-line rule that would apply fairly across all 58 counties. The Committee raised additional concerns about how law students were defined in the rule and requested the clause be revised to read, "Law student hours count toward volunteer non-attorney hours so long as law students are not being paid an equivalent amount and doing equivalent work as a paid employee."

The Legal Aid Association of California (LAAC) supported the working group's recommendations and noted that the proposed approach would provide programs with more clarity. Betty Nordwind from Harriet Buhai Center for Family Law appreciated the Committee's time spent on this topic and expressed hope for a clear test that allows organizations to count law students as non-attorney volunteers. Staff mentioned a plan to conduct a landscape analysis to better understand the pro bono environment post pandemic.

Ultimately, the Committee felt that further work was needed before they could approve the working group's recommendations. The working group will reconvene to reconcile the Committee's feedback with its recommendations and explore options to address the concerns.

4.2 **Approve Recommendations Regarding (1) Audited Financial Statement/Financial Review Findings; (2) Delayed Payment of Grant Funds; (3) Grant Award Reductions or Grant Terminations; and (4) Unspent and Relinquished Grant Funds**

Lead Program Analyst Christal Bundang presented an overview of the fiscal codification workplan. She explained the bifurcated approach, identifying which topics were appropriate for codification and which were administrative policy level topics that the working group recommended capturing and documenting in a separate grantee handbook.

A. Approve Recommendations Regarding (1) Audited Financial Statement/Financial Review Findings

Lead Program Analyst Bundang presented the working group recommendation and rule language for when audited financial statements or financial reviews contain findings. Discussion ensued about the proposed rule and minor adjustments were made for clarity. The committee approved the following rule change:

Rule XX.XX Audited Financial Statement/Financial Review Findings

State Bar staff will review all audited financial statements and financial review findings. For serious findings, such as grant recipients not accurately reflecting expenditures by activity, findings of fraud, or repeat findings from prior audits, staff shall take the following steps:

- i. send a letter to the grant recipient's governing body requesting the current status of the finding, and if the finding is not resolved, require a corrective action plan; and
- ii. notify the Commission.

The Commission may require additional corrective action and/or oversight of the grant recipient's fiscal and governance functions, including, but not limited to:

- i. requiring an Eligibility Review Conference, or
- ii. delaying grant payments until corrective action is taken* or
- iii. taking other action(s) the Commission deems appropriate, such as requiring additional monitoring or proceeding with the denial or termination process outlined in Rule 3.691

*Refer to proposed rule XX.XX regarding delayed payment of grant funds.

RESOLVED, that the Rules Committee of the Legal Services Trust Fund Commission approves the working group recommendations related to audited financial statement/financial review findings, as referenced in Attachment A and edited at the August 2, 2023, Rules Committee Meeting.

Moved by Milrod, seconded by Connolly.

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

Motion carries.

B. Approve Recommendations Regarding (2) Delayed Payment of Grant Funds

Senior Fiscal Analyst Heidi Slater presented the working group recommendation and rule language for how to handle ongoing grant payments when a grantee demonstrates or reports significant underspending and/or performance issues.

Discussion ensued regarding threshold spending amounts and whether they should apply only to multi-year grants and competitive grants versus all grant distributions. Committee members sought more detail on how that would be determined and implemented. Discussion then focused on the degree of evidence and standards by which LSTFC determines that grant payments need to be shifted to a monthly basis and what kind of procedural mechanisms would be in place prior to a determination to move to month-to-month distribution.

Ultimately, the Committee felt further work was needed before they could approve the working group's recommendations. The working group will reconvene to reconcile the Committee's feedback with its recommendations and explore options to address the concerns.

C. Approve Recommendations Regarding (3) Grant Award Reductions or Grant Terminations

Senior Fiscal Analyst Heidi Slater presented the working group recommendation and rule language for when a grant award may need to be reduced or terminated. She explained that these adjustments may be initiated by grant recipients, staff, or the Commission. The working group sought to clarify the process for reviewing and approving funding reductions and terminations by initiating party and to clarify factors for the Commission to consider when reducing or terminating a grant agreement. The working group sought legal aid community feedback and incorporated it into revisions. Discussion ensued where Committee members asked clarifying questions about the authority to reduce or terminate grants and the "significant underspending threshold." Staff adjusted language to make the rule clearer and added a footnote cross referencing Business and Professions Code 6224. LAAC supported the proposed rule change.

The Committee approved the following rule changes:

Rule XX.XX Grant Award Reductions or Grant Terminations

1. "Funding reduction" is when the grant award amount is reduced.

2. "Grant termination" is when the grant agreement is terminated.
3. Grant recipients must return to the State Bar any unspent funds or relinquished funds (as defined in rule XX.XX) when a grant agreement is terminated or amended.
4. Grant recipients must request a funding reduction or grant termination if they cease operations, are unable to perform the grant activities fully, and/or are no longer providing services in a particular county if the grant terms require services to be performed in a particular county.
5. State Bar staff may reduce a formula grant if the grant recipient or staff determines that the organization's reported qualified expenditures used to calculate the formula amount were incorrect. Staff may recalculate the formula award amount based upon the organization's corrected qualified expenditures.
6. The Commission has authority to reduce grant awards or terminate grant agreements. In determining whether a reduction of a grant award or a termination of a grant agreement is warranted, the Commission shall consider whether there is evidence of the following: lack of substantial compliance with the terms and conditions of the grant, fraud, organizational mismanagement, significant underspending, accounting irregularities, misuse of funds, or failure to meet service deliverables.
7. Staff may approve the following funding reductions without Commission approval; all reductions shall be reported to the Commission:
 - a. Grant recipient-initiated reductions
 - i. Termination of grant agreements due to cessation of operations
 - ii. Grant recipients no longer providing services in a particular county if the grant terms require services to be performed in a particular county
 - iii. Grant recipients requesting less than the calculated formula amount
 - iv. Grant recipients requesting a reduction that is equal to or less than 25 percent of their competitive-based grant award
 - b. Staff-initiated grant reductions based upon corrected qualified expenditures.
8. The following are subject to review and approval by the Commissions:
 - a. Grant recipients requesting a reduction that is greater than 25 percent of their competitive-based grant award
 - b. Any grantee-initiated reductions not approved by staff
9. Following a staff-initiated, grant recipient-initiated, or Commission-initiated funding reduction or grant termination the Commission has the discretion to find that the reduction or termination will impact future competitive grant awards; to add additional terms and conditions to current or future grant agreements; to require additional monitoring visits; to require eligibility review conferences; to delay future grant distributions until corrective action

is taken; or to undertake other actions the Commission deems appropriate in furtherance of its oversight responsibilities.

10. All staff-initiated and Commission-initiated reductions are subject to reconsideration pursuant to the procedures set forth in Rule 3.691.

RESOLVED, that the Rules Committee of the Legal Services Trust Fund Commission approves the working group recommendations related to grant award reductions or grant terminations, as referenced in Attachment C and edited at the August 2, 2023, Rules Committee Meeting, and that the definition of “significant underspending” be confirmed in the accompanying grantee administrative handbook.

Moved by Connolly, seconded by Campbell.

Ayes – (5) Bayles-Fightmaster, Blakemore, Campbell, Meeker, Connolly

Noes – (0)

Abstain – (0)

Absent – (3) Al-Sarraf, Galkin, Milrod

Motion carries.

D. Approve Recommendations Regarding (4) Unspent and Relinquished Grant Funds

The Committee did not have time to address this item and will take it up at the next Rules Committee meeting.

ADJOURN