



The State Bar of California

OPEN SESSION

AGENDA ITEM

APRIL 2024

LEGAL SERVICES TRUST FUND COMMISSION ELIGIBILITY & BUDGET REVIEW COMMITTEE 4.2

DATE: April 26, 2024

TO: Members, Legal Services Trust Fund Commission Eligibility & Budget Review Committee

FROM: Danielle MacRae, Lead Program Analyst

SUBJECT: Action on Audit Extension Requests

EXECUTIVE SUMMARY

Interest on Lawyers' Trust Accounts (IOLTA) and Equal Access Fund (EAF) grants are awarded to approximately 110 qualified legal services projects (LSP) or support centers (SC) each year to support the provision of free civil legal aid in California to indigent persons. Applications for 2025 IOLTA/EAF eligibility are due May 15, 2024. As part of their annual IOLTA/EAF application, organization must submit an audited financial statement by an independent certified public accountant for the fiscal year that ended in the prior calendar year, per State Bar Rule 3.680(E). If an organization's gross corporate expenditures are less than \$500,000, they may submit a reviewed financial statement in lieu of an audit. The State Bar Rules Schedule of Charges and Deadlines states that this audited or reviewed financial statement must be submitted no later than May 1 annually.

Staff have the authority to approve audit extension requests up to the IOLTA/EAF application deadline of May 15, but only the Legal Services Trust Fund Commission (Commission) has authority to grant an extension beyond that date. The Commission may do so "upon a showing of extraordinary circumstances." If no extraordinary circumstances are present, the Commission may approve an extension beyond that date with conditions. Staff typically bring such audit extension requests to the Eligibility and Budget Review (EBR) Committee during its June meeting, but two grantees have already submitted audit extension requests beyond May 15. Staff recommend approval of the extension requests for extraordinary circumstances.

BACKGROUND

Business and Professions Code section 6222 and State Bar Rule 3.680(E)(1) require organizations applying for IOLTA grants to submit “an audited financial statement by an independent certified public accountant for the fiscal year that concluded during the prior calendar year” as part of a “timely and complete” application. (For 2025 IOLTA/EAF applications, this financial statement must be for the fiscal year ending in calendar year 2023). Organizations with gross expenditures of less than \$500,000 may submit a financial review in lieu of an audit. See State Bar Rule 3.680(E)(1). This is necessary to confirm the organization’s qualified expenditures for the purposes of determining eligibility and ultimately the amount of any grant award. According to the Schedule of Charges and Deadlines, the audit or financial review is due “no later than May 1.”

The Schedule of Charges and Deadlines notes this amount is \$500,000. The Schedule of Charges and Deadlines further states

Upon written request, an extension up to the application deadline may be granted by 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.

State Bar staff typically approve extension requests up to the application deadline of May 15, as long as the explanation for the delay seems reasonable. If no extraordinary circumstances are present, the conditions with which the Commission may approve an extension request might include sending a letter to the organization’s board or requiring the applicant submit a plan detailing how it will avoid a late submission in the future.

DISCUSSION

Applicants seeking an extension request beyond May 15 are instructed to submit a written explanation for the delay and the circumstances that led to it, the date they anticipate the final audit will be ready, and the steps they are taking to submit a timely audit in the future. This written explanation is due May 15.

Staff typically bring audit extension requests beyond the IOLTA/EAF application deadline to the EBR committee for discussion at its June meeting when the committee also discusses late application submissions and organizations that might require an eligibility review conference to discuss their application materials in more detail with staff and commissioners. However, this year, two grantee organizations have already requested an audit extension request beyond May 15 and provided the requested explanation. Staff are bringing the requests to EBR for discussion at its April meeting as a courtesy to give these organizations an earlier response, given their earlier than necessary submission of the request.

Legal Services of Northern California (LSNC) and Capital Pro Bono (CPB) are partner organizations and are both requesting an audit extension to June 30, 2024, though they hope to submit sooner. LSNC's finance director is retiring in mid-2024 and needed a medical procedure that required her absence for two months in early 2024. LSNC hired a new staff member to shadow the outgoing finance director and eventually transition into the finance director role. This new staff member onboarded in February 2024; however, in March, she required unexpected out-of-state surgery that will make her unavailable to work for several weeks and only available on a limited basis until May 2024. (See LSNC and CPB's audit extension request letters in Attachment A and B, respectively.) The Legal Services Corporation, which provides federal funding for civil legal services, has already granted LSNC an audit extension request to June 30.

Staff believes the circumstances outlined constitute extraordinary circumstances and recommends granting the extension requests to June 30, 2024, without conditions. In past years, submissions later than June 30 have made it difficult for staff to prepare final eligibility recommendations in time for the August EBR and Commission meetings before tentative grant allocations are calculated.

RECOMMENDATION

Should EBR concur with the recommendation, passage of the following resolution is recommended:

RESOLVED, that the Eligibility and Budget Review Committee of the Legal Services Trust Fund Commission recommends approval of Legal Services of Northern California (LSNC)'s and Capital Pro Bono (CPB)'s audit extension requests to June 30, 2024.

ATTACHMENTS

- A. Legal Services of Northern California Audit Extension Request Letter
- B. Capital Pro Bono Audit Extension Request Letter

March 26, 2024

Legal Services Trust Fund Commission
c/o Doan Nguyen
State Bar of California
180 Howard St.
San Francisco, CA 94105

Re: Request for Extension on Submission of 2023 Audit

Dear Commission Members:

Due to extraordinary circumstances, I am writing to request an extension to June 30, 2024 for Legal Services of Northern California to submit its 2023 Audit.

While LSNC's Finance Unit is actively engaged with its auditors, Baker Tilly, and is working as quickly as possible to provide all requested materials and samples, the staff has been unavoidably delayed in completing this work due to the unanticipated absence of key staff and staff vacancies, which are described below.

LSNC's long-time Finance Director, Sharon Hulett, announced last year that she would retire in mid-2024. She also gave notice of a scheduled medical procedure that would require her absence for two months in early 2024. To prepare for her retirement and extended absence, LSNC began a search for a new Finance Director in mid-2023. In January 2024, LSNC hired Erika Trujillo, a former LSNC Finance Unit employee who was chief financial officer for several non-profit organizations after she left LSNC in 2006. Erika started in early February 2024 and had several weeks shadowing Sharon and beginning work on the annual audit. Sharon began her medical leave in early March.

Very unexpectedly and after six years on the transplant registry list, last Tuesday, March 19, Erika received a call that a donor kidney was available for transplant the following day. With just a few hours' notice, Erika had to travel to Omaha, Nebraska for the transplant. She expects, based on her doctors' reports, that she will be unable to work for several weeks, after which she will be able to work on a limited basis for several more weeks until she is back full-time in May 2024.

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A Legal Services Corporation Program 

Currently, LSNC has one experienced accounting manager and one new accounting manager, who just assumed her position at the end of 2023. There are currently two full-time accountants, one accounts payable specialist and one payroll/HR specialist in the unit, in addition to one part-time accountant. There are currently two full-time accountant vacancies in the unit and one accounts payable specialist vacancy (which will be filled in mid-April). The absence of the Finance Directors, who lead the audit in ordinary years has significantly impeded the process of the audit which was scheduled for March 18 through April 5, 2024. Baker Tilly informed me today that they could only complete the audit on time if the Finance Unit could provide all requested documents and samples by March 29. I do not believe that is possible given the inexperience of the accounting managers and the inaccessibility of the Finance Directors to guide them. Two accountants and the accounting managers worked throughout the weekend to respond to audit requests.

Last week, immediately after Erika's departure, and on the advice of Baker Tilly, I requested that the federal Legal Services Corporation provide LSNC an extension for submitting our audit, due to them by April 29. Legal Services Corporation granted an extension to June 30, 2024.

Baker Tilly will have to assign other audit teams to work on LSNC's audit for the parts that they are unable to complete next week. Their availability is limited due to scheduled audits with other organizations. However they assured us today that if we continue to produce items responsive to their requests, the audit can be completed by June 30, 2024. They have made no findings of concern at this stage – the delays in no way reflect any problems with LSNC's financial operations during 2023.

This is a unique set of circumstances, and it is difficult to imagine a similar situation occurring again. However, unexpected illness or absence can occur, which is why LSNC is committed to cross-training its Finance staff to be prepared to fill-in for absent colleagues when necessary. In addition, after this year, the two accounting managers will have gained hands-on audit experience so that if a similar event occurred in future years, they would be prepared to step into the Finance Director role (in the context of the audit).

LSNC was reluctant to make this request given its commitment to fulfill all of its obligations as grantees of State Bar administered funds. The Finance Unit is still hopeful it can complete the audit much sooner than June 30. As soon as it is complete, LSNC will provide it to the State Bar.

LSNC's Executive Director, Gary Smith, has been traveling and away from the office during the last two weeks, however, he returns this week and is available to answer any questions from the Commission members. You can reach him at (916) 551-2111 or via email at gsmith@lsnc.net. Thank you for your consideration of this request. If you have questions for me, you can reach me at (916) 396-2098 or via email at jaguilar@lsnc.net.

Sincerely,

/s/

Julie Aguilar Rogado
Deputy Director

April 2, 2024

Legal Services Trust Fund Commission
c/o Doan Nguyen
State Bar of California
180 Howard St.
San Francisco, CA 94105

Re: Request for Extension on Submission of 2023 Audit

Dear Commission Members:

Due to extraordinary circumstances, I am writing to request an extension to June 30, 2024 for Capital Pro Bono to submit its 2023 Audit. This request mirrors the same request made last week on behalf of CPB's sister organization, Legal Services of Northern California (LSNC) whose Finance Unit undertakes all the financial and accounting work for CPB as well as LSNC.

While our Finance Unit is actively engaged with its auditors, Baker Tilly, and is working as quickly as possible to provide all requested materials and samples, the staff has been unavoidably delayed in completing this work due to the unanticipated absence of key staff and staff vacancies, which are described below.

LSNC's long-time Finance Director, Sharon Hulett, announced last year that she would retire in mid-2024. She also gave notice of a scheduled medical procedure that would require her absence for two months in early 2024. To prepare for her retirement and extended absence, LSNC/CPB began a search for a new Finance Director in mid-2023. In January 2024, LSNC/CPB hired Erika Trujillo, a former LSNC/CPB Finance Unit employee who was chief financial officer for several non-profit organizations after she left LSNC in 2006. Erika started in early February 2024 and had several weeks shadowing Sharon and beginning work on the annual audit. Sharon began her medical leave in early March.

Very unexpectedly and after six years on the transplant registry list, on March 19 Erika received a call that a donor kidney was available for transplant the following day. With just a few hours' notice, Erika had to travel to Omaha, Nebraska for the transplant. She expects, based on her doctors' reports, that she will be unable to work for several weeks, after which she will be able to work on a limited basis for several more weeks until she is back full-time in May 2024.

Currently, LSNC/CPB has one experienced accounting manager and one new accounting manager, who just assumed her position at the end of 2023. There are currently two full-time accountants, one accounts payable specialist and one payroll/HR specialist in the unit, in addition to one part-time accountant. There are currently two full-time accountant vacancies in the unit and one accounts payable specialist vacancy (which will be filled in mid-April). The absence of the Finance Directors, who lead the audit in ordinary years, has significantly impeded the process

of the audit which was scheduled for March 18 through April 5, 2024. Baker Tilly has informed us that they could not complete the audit on time, even though our Finance staff are working overtime to comply with audit-related requests.

Last week, immediately after Erika's departure, and on the advice of Baker Tilly, we requested that the federal Legal Services Corporation provide LSNC an extension for submitting our audit, due to them by April 29. Legal Services Corporation granted an extension to June 30, 2024.

Baker Tilly will have to assign other audit teams to work on CPB's audit for the parts that they are unable to complete this week. Their availability is limited due to scheduled audits with other organizations. However they assured us that if we continue to produce items responsive to their requests, the audit can be completed by June 30, 2024. They have made no findings of concern at this stage – the delays in no way reflect any problems with LSNC/CPB's financial operations during 2023.

This is a unique set of circumstances, and it is difficult to imagine a similar situation occurring again. However, unexpected illness or absence can occur, which is why LSNC/CPB is committed to cross-training its Finance staff to be prepared to fill-in for absent colleagues when necessary. In addition, after this year, the two accounting managers will have gained hands-on audit experience so that if a similar event occurred in future years, they would be prepared to step into the Finance Director role (in the context of the audit).

LSNC/CPB was reluctant to make this request given its commitment to fulfill all of its obligations as grantees of State Bar administered funds. The Finance Unit is still hopeful it can complete the audit much sooner than June 30. As soon as it is complete, we will provide it to the State Bar.

I am available to answer any questions from the Commission members. You can reach me at (916) 551-2111 or via email at gsmith@lsnc.net. Thank you for your consideration of this request.

Sincerely,



Gary F. Smith
Executive Director

cc: Heather Tiffie, CPB Managing Attorney