



The State Bar of California

OPEN SESSION

AGENDA ITEM 4.1

JULY 2024

LEGAL SERVICES TRUST FUND COMMISSION RULES COMMITTEE

DATE: July 17, 2024

TO: Members, Legal Services Trust Fund Commission Rules Committee

FROM: Jacqueline Alikhaani, Member, Rules Committee
Erica Connolly, Member, Rules Committee
Diana Kruze, Member, Legal Services Trust Fund Commission
Jennifer Zelnick, Lead Program Analyst, Office of Access & Inclusion

SUBJECT: Approve Recommendations Regarding Program Quality Controls and Noncompliance Requirements

EXECUTIVE SUMMARY

This memo is part of the continuing work of the Legal Services Trust Fund Commission (LSTFC) Rules Committee (committee) 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 (staff).

This memo presents a working group of the committee's recommendations on the following issues regarding program quality controls and noncompliance:

- How quality controls are defined;
- What quality controls are required for Trust Fund Program grant recipients;
- Procedures for staff and the LSTFC to address grant recipient noncompliance; and
- Actions available to the LSTFC when faced with severe, recurring, or unresolved noncompliance.

This memo describes the working group's recommendations, after considering the legal aid community's feedback, for the Rules Committee meeting on July 17, 2024.

BACKGROUND

CODIFICATION PROCESS

In 2019, at the recommendation of the State Bar Board of Trustees, staff and the LSTFC agreed to engage in a multi-phase process of revising and/or codifying grantmaking decision points for Interest on Lawyers' Trust Accounts (IOLTA), Equal Access Fund (EAF), and other Trust Fund Program grants. The intent is to increase transparency in LSTFC processes and ensure consistency in administering grant funds.

Commissioners form working groups to investigate and develop preliminary recommendations to the questions in the committee's work plan. The working group circulates those 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 Board of Trustees. Per Business and Professions Code section 6210.5, the Board of Trustees approves LSTFC recommendations unless it makes a written finding that the recommendation conflicts with a statutory, fiduciary, or legal obligation of the State Bar.

GOVERNING AUTHORITIES AND GUIDANCE

Applicants for IOLTA and EAF funds must comply with criteria set forth in the IOLTA statute¹, rules, Eligibility Guidelines for Legal Services Projects and Support Centers (eligibility guidelines), General Grant Provisions, and Standards for Financial Management Systems and Audits. The IOLTA statute requires qualified legal services projects (QLSPs) and support centers to have quality control procedures or standards that satisfy State Bar requirements.² Additionally, the IOLTA statute permits the State Bar to withhold, deny, or terminate funding for noncompliance.³

This section outlines the specific governing authorities and guidance related to each of the four program quality controls and noncompliance issues for which the working group recommends changes.

Quality Controls

The IOLTA statute requires QLSPs, including law school clinical programs, to have "quality control procedures approved by the State Bar of California."⁴ Similarly, support centers that are not subject to deeming as legacy programs must meet "quality control standards established by the State Bar."⁵ Additionally, section 6217(a) requires both QLSPs and support centers to maintain "quality service and professional standards." This memo uses the phrases "quality control(s)," "quality control procedures," "quality control standards," "quality service and professional standards," and other permutations interchangeably.

¹ In this memo, the "IOLTA statute" refers to California Business and Professions Code sections 6210–6228.

² See Business and Professions Code § 6213(a) for QLSPs and Business and Professions Code § 6215(b)(1) for support centers.

³ Business and Professions Code § 6224.

⁴ Business and Professions Code § 6213(a).

⁵ Business and Professions Code § 6215(b)(1).

Rule 3.661(C) clarifies that the LSTFC uses the most recent version of the *Standards for the Provision of Civil Legal Aid* adopted by the American Bar Association’s House of Delegates (the ABA Standards) as the guidelines to approve quality control procedures and standards for QLSPs and support centers. Similarly, rule 3.681(D) requires grantees to submit annually information describing how they maintain quality services and professional standards, as required by the LSTFC, and how they comply with Trust Fund Program requirements.

The eligibility guidelines expand on the IOLTA statute and rules by requiring that, in addition to the ABA Standards, QLSPs that are subject to quality control review by the Legal Services Corporation or the California Department of Aging must describe those review procedures.⁶ Additionally, QLSPs must describe their quality control standards, specifically regarding the structure, procedures, and responsibilities of supervisors.⁷ The eligibility guidelines provide the same requirements for support centers that are not legacy programs.⁸ Finally, as stated in Appendix A of the General Grant Provisions for QLSPs, and in Appendix B for support centers, grantees must comply with the State Bar’s quality control review procedures.

The working group seeks to define quality control standards and procedures and identify required quality controls for all Trust Fund Program grant recipients.

Noncompliance

The State Bar may determine an applicant does not qualify for funding, cannot receive funding in the future, or terminate existing funding if a recipient fails to comply with the IOLTA statute.⁹ The IOLTA statute also specifies that such determinations become final only after applicants and grantees are afforded reasonable notice and opportunity for a hearing.¹⁰ Rule 3.661(D) further clarifies that the LSTFC may take action or terminate a grant due to noncompliance. Rule 3.691 outlines the procedure the LSTFC must follow to deny or terminate funding, including applicant and grantee requests for LSTFC reconsideration and review by the State Bar Court.

The working group seeks to codify procedures for staff and the LSTFC to address grant recipient noncompliance, as well as courses of action available to the LSTFC when faced with serious noncompliance concerns.

⁶ Eligibility Guidelines for Legal Services Projects 2.4.

⁷ Ibid.

⁸ Eligibility Guidelines for Support Centers 2.9.2.

⁹ Business and Professions Code § 6224.

¹⁰ Ibid.

CURRENT PRACTICE

Program Quality Controls

Grantees and applicants must answer a series of questions about their quality controls as part of the annual IOLTA/EAF application. These questions include a quality control review, information about staffing and volunteers, certifications and assurances, and maintaining up-to-date organizational profile documents. Additionally, when the LSTFC finds an applicant eligible for IOLTA/EAF funding, they must complete a budget. The budget asks about quality control via a set of compliance assurances. Furthermore, staff conduct regular monitoring visits with grantees to determine whether they are complying with the IOLTA statute, rules, General Grant Provisions, Standards for Financial Management Systems and Audits, and the ABA Standards. All new grantees participate in a monitoring visit during the first year they receive IOLTA funds. Established grantees typically participate in monitoring visits every three years. If the LSTFC has concerns about a grantee's quality controls and/or grant compliance, staff may conduct a monitoring visit sooner.

Noncompliance

The LSTFC reviews quality control and related noncompliance concerns on an ad hoc basis. Staff and the committees make recommendations on which the LSTFC may act. IOLTA and EAF eligibility concerns are reviewed by an Eligibility and Budget Review Committee (EBR) working group at an Eligibility Review Conference (ERC). The ERC working group makes recommendations to EBR, which then makes recommendations to the LSTFC.

GRANTEE FEEDBACK SESSION

To collect preliminary input from stakeholders about how codifying the above topics would affect grantees, the working group convened a feedback session open to all current grantees on March 4, 2024. Twenty grantees attended the feedback session. Attendees expressed concerns about whether the proposed rule revisions would require grantees to provide additional documentation or provide documentation at an increased frequency. Staff clarified that grantees already must provide most of the materials listed in the proposed rule revisions, as explained in the discussion section of this memo. Additionally, staff noted that this rule would not increase the frequency with which grantees would need to provide or update these documents. Codifying these existing requirements would make expectations for grantees and applicants clearer.

DISCUSSION

HOW TO DEFINE QUALITY CONTROLS IN THE RULES

The rules do not define quality controls nor provide a robust list of items to demonstrate quality controls. Historically, the LSTFC has determined whether a grant applicant or recipient has approved quality control standards and procedures by analyzing documents submitted as part of the annual IOLTA/EAF application and budget review process, as well as through triennial monitoring visits conducted by staff.

The working group recommends codifying a definition of quality controls as well as a list of requirements for grantees. The working group proposes the following definition for quality controls: “quality control standards and procedures are safeguards (e.g., supervision and policies) that aim to ensure that grant recipients protect eligible clients while providing high-quality, professional services. Quality control standards and procedures also aim to ensure that grant recipients are managed effectively with adequate governance and oversight. To be approved by the LSTFC, an applicant’s quality control standards and procedures must be sufficient to allow the applicant to credibly demonstrate compliance with all IOLTA statutory requirements.” Defining and listing required quality controls would promote clarity and transparency when assessing whether an applicant or grantee has, under the IOLTA statute, such controls that the State Bar approves.

The working group recommends codifying the below list of requirements to demonstrate State Bar-approved quality controls:

- Appropriate organizational infrastructure that ensures adequate governance and oversight and complies with applicable laws, regulations, and ordinances, including:
 - Requisite business, legal, and financial registrations and licenses;
 - Requisite insurance policies; and
 - Adherence to the organization’s articles of incorporation and bylaws.
- Policies and procedures to comply with all applicable laws, regulations, and ordinances, including on the following topics:
 - Privacy, including technology and data security;
 - Workplace safety;
 - Prevention of workplace harassment and discrimination;
 - Prevention and mitigation of conflict of interest; and
 - Reporting mechanisms for and protection of whistleblowers.
- Oversight of service provisions and appropriate client protections, including:
 - Qualified staff and staffing infrastructure;
 - Staff and volunteer supervision;
 - Case opening and closing oversight;
 - Training for staff and volunteers;
 - Oversight of work assignments to ensure appropriate workloads;
 - Work quality review;
 - Case management system and recordkeeping;
 - Client eligibility screening;
 - Procedure for client grievance and appeals;
 - Procedures for providing all legally mandated trainings; and
 - Policies and procedures for conflict of interest, disclosure and waiver issues.
- Maintenance of financial records, including:
 - Submission of a timely, complete, and accurate audited financial statement or a

financial review in accordance with rules 3.680(A)(1) and 3.680(E).

- Compliance with applicable local, state, and federal professional laws.
- Timely providing additional information and/or documentation as needed.

Table 1 explains the rationale and current practice for each of the above requirements.

Table 1. Recommended Requirements to Demonstrate Quality Controls

Requirement	Rationale	Current practice
<p>Appropriate organizational infrastructure that ensures adequate governance and oversight and complies with applicable laws, regulations, and ordinances, including:</p> <ul style="list-style-type: none"> • Requisite business, legal, and financial registrations and licenses; • Requisite insurance policies; and • Adherence to the organization's articles of incorporation and bylaws. 	<ul style="list-style-type: none"> • Requiring requisite registrations, licenses, and policies will help ensure that grantees remain in good standing as nonprofit corporations. • Requiring adherence to the organization's articles of incorporation and bylaws will help ensure that grantees have adequate governance and oversight. 	<ul style="list-style-type: none"> • Grantees must already maintain requisite registrations, licenses, and policies on the State Bar's grant management platform. Staff check these documents annually during the IOLTA/EAF application process. • Staff check grantees' bylaws during monitoring visits.
<p>Policies and procedures to comply with all applicable laws, regulations, and ordinances, including on the following topics:</p> <ul style="list-style-type: none"> • Privacy, including technology and data security; • Workplace safety; • Prevention of workplace harassment and discrimination; • Prevention and mitigation of conflict of interest; and • Reporting mechanisms for and protection of whistleblowers. 	<p>This will help ensure effective organizational management that protects both the grantee and its employees.</p>	<p>Staff check grantees' workplace safety and conflict of interest policies during monitoring visits.</p>

Requirement	Rationale	Current practice
<p>Oversight of service provisions and appropriate client protections, including:</p> <ul style="list-style-type: none"> • Qualified staff and staffing infrastructure; • Staff and volunteer supervision; • Case opening and closing oversight; • Training for staff and volunteers; • Oversight of work assignments to ensure appropriate workloads; • Work quality review; • Case management system and recordkeeping; • Client eligibility screening; • Procedure for client grievance and appeals; • Procedures for providing all legally mandated trainings; and • Policies and procedures for conflict of interest, disclosure and waiver issues. 	<ul style="list-style-type: none"> • The requirements under oversight of service provisions and appropriate client protections aim to ensure that grantees deliver appropriate, professional, and quality services to indigent Californians. • The working group strongly encourages grantees to provide all staff and volunteers with culturally and linguistically appropriate ethics and customer service training that is tailored to the services offered and clients served. 	<ul style="list-style-type: none"> • Grant applicants and recipients provide some of these requirements, such as information about staffing, supervision, and case opening and closing oversight, as part of the annual IOLTA/EAF application. • Grantees provide other requirements related to oversight of services and client protections, such as additional details about staffing, supervision, and training; case management system and recordkeeping; client eligibility screening; client grievances and appeals; and procedures to check for client conflicts as part of the regular monitoring visit procedure.
<p>Maintenance of financial records, including:</p> <ul style="list-style-type: none"> • Submission of a timely, complete, and accurate audited financial 	<p>Maintenance of financial records helps ensure that grant applicants and recipients have adequate fiscal internal controls.</p>	<ul style="list-style-type: none"> • Business and Professions Code § 6222 already requires grantees and applicants to

Requirement	Rationale	Current practice
statement or a financial review in accordance with rules 3.680(A)(1) and 3.680(E).		annually submit an audit. <ul style="list-style-type: none"> • While fiscal internal controls are closely related to quality controls, a separate working group studying fiscal issues will codify additional requirements in a future memo.
Compliance with applicable local, state, and federal professional laws.	Grantees and applicants must comply with all relevant laws to remain in good standing.	Grantees are currently required to comply with all applicable local, state, and federal professional laws.
Timely providing additional information and/or documentation as needed.	The LSTFC may require additional information as needed to confirm an applicant's or grantee's ability to provide safe, statutorily compliant, civil legal services to indigent Californians. This recommendation ensures that	Grantees are already required to timely provide additional information and/or documentation under the General Grant Provisions.

In the proposed rule change and in this memo, a policy refers to the guidelines that an organization enacts, and a procedure refers to the steps an organization takes to implement the policy. For example, an organization may have a performance evaluation policy that all employees are evaluated annually. Such an employee performance evaluation procedure may include the following steps:

- A simultaneous self-evaluation by the employee and evaluation by the employee's supervisor;
- A meeting between the employee and supervisor to discuss the evaluations; and
- Entering the supervisor's evaluation, signed by both the employee and supervisor, into the employee's personnel file.

Additionally, the working group recommends codifying that grant applicants and recipients be responsible for ensuring that any organization to which they subgrant LSTFC funds maintains adequate quality control standards and procedures. The working group recommends clarifying

that the LSTFC may take action against grant recipients in cases of subgrantee wrongdoing. Extending the required quality control standards and procedures to subgrant recipients helps ensure that all funds distributed by the State Bar would still be used to provide quality and professional legal services to eligible Californians.

HOW TO CODIFY NONCOMPLIANCE REMEDIES IN THE RULES

The rules do not provide clear guidance on the LSTFC's recourses in cases of serious and/or repeated noncompliance. Currently, the LSTFC reviews quality controls and related noncompliance concerns and takes action to resolve these problems on an ad hoc basis. IOLTA and EAF eligibility concerns are reviewed by an Eligibility and Budget Review Committee (EBR) working group at an ERC. The ERC working group makes recommendations to the EBR Committee, which then makes recommendations to the LSTFC. Other committees review noncompliance concerns as they arise and then present recommendations to the LSTFC.

The working group recommends codifying actions available to the LSTFC when faced with serious noncompliance concerns to standardize these remedies and procedures. In addition to the LSTFC's ability to terminate a grant for noncompliance, the working group recommends codifying the below list:

- Informing and/or meeting with the grant recipient's Board of Directors;
- Requiring payments as reimbursements instead of advance payments;
- Converting grant payments from annual or quarterly payments to monthly payments;
- Requiring additional reporting and/or monitoring;
- Requiring the grant recipient to obtain technical and/or management assistance;
- Disallowing costs because of noncompliance;
- Suspending the grant; and
- Initiating suspension or debarment of the grant recipient.¹¹

Codifying a list of other remedies to address noncompliance would help ensure that grant applicants and recipients, staff, the committees, and the LSTFC all understand the options the LSTFC may pursue. The General Grant Provisions already list some of these actions such as converting annual or quarterly payments to monthly payments and disallowing costs. The working group drew upon the Code of Federal Regulations (CFR) to recommend additional actions. Specifically, 2 CFR section 200.208 stipulates that the grantor organization may require payments as reimbursements, require additional reporting and/or monitoring, and require the grantee to obtain technical and/or management assistance. The LSTFC may decide to inform an organization's Board of Directors when a grantee experiences significant difficulties managing the program or when other serious quality controls issues emerge.

Additionally, the working group recommends codifying that staff directly inform the relevant committee or the LSTFC if it suspects fraud or other serious and/or flagrant violations of law,

¹¹ Debarring or defunding an organization means that a grantee's State Bar grant(s) and status as a State Bar grant recipient would be rescinded, not that the grantee's attorneys would lose their license(s) to practice law in the State of California.

and that the LSTFC may withhold payment in cases of egregious concerns about fraud. Codifying these existing procedures ensures that the LSTFC can protect eligible clients and the public dollars it administers.

FEEDBACK FROM THE LEGAL AID COMMUNITY

From April 24, 2024, to May 16, 2024, the working group sought the legal services community's feedback on the proposed rule revisions. The working group 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 more transparency on grantee requirements to demonstrate adequate quality controls and grant compliance and the escalation of consequences for noncompliance.

LAAC also asked for additional information or clarity on several issues. LAAC requested templates or examples of policies that would demonstrate quality controls and requested clarification about the difference between a policy and a procedure. LAAC also asked for an explanation about why the LSTFC requests particular documents and how they relate to compliance. LAAC noted that it would be helpful to specify when organizations should redact documents. Grantees requested examples of when the LSTFC would notify an organization's Board of Directors of noncompliance, as well as examples of when the LSTFC may debar or defund an organization. LAAC suggested providing examples in the *Reporting Handbook* to help increase transparency and predictability in compliance.

Finally, LAAC shared feedback related to timelines and deadlines. Grantees expressed frustration that desk monitoring visits or other monitoring visits and document requests sometimes overlap with the IOLTA application or other important State Bar deadlines.¹² LAAC also noted that while some grantees asked for and received extensions, others did not know they could ask for extensions and struggled to meet deadlines. Finally, several organizations reported that they submitted materials for the desk monitoring visit for their federally-funded homelessness prevention grant(s) and did not hear back for several months until staff requested additional materials. LAAC suggested that an explanation about staff's timeline would be helpful to ensure greater predictability for grantees.

WORKING GROUP'S RESPONSE TO THE COMMUNITY'S FEEDBACK

The working group added language differentiating a policy from a procedure into the memo. The working group also agrees with LAAC that providing templates for some policies and procedures will help grantees satisfy quality controls. Since each organization's structure and capacity differs, grantees should plan to develop or adapt materials to fit their needs. Staff plan to develop templates for the *Reporting Handbook* as part of codification implementation. Until then, the Legal Services Corporation provides a series of example policies and templates at

¹² Desk monitoring visits are additional fiscal monitoring that the State Bar conducts for grantees who receive federal funds—specifically the 2021/2022–2024 Homelessness Prevention grants and/or 2022–2025 California Housing Finance Agency grants.

[Implement LSC Resources](#) that grantees may find useful. The working group created Table 1, above, in response to the legal aid community’s request for an explanation about why each document is requested and how it relates to compliance. Although the draft memo shared with LAAC contained the information provided in the table, the working group created Table 1 to further clarify each of the proposed requirements.

Additionally, the working group added examples of when the LSTFC would notify an organization’s Board of Directors and when a grantee might be debarred or lose funding and a footnote clarifying that the proposed rule revision’s use of the word “debar” would mean that an organization’s status as a State Bar grant recipient would be rescinded, not that their attorney license(s) would be revoked. The working group notes that debarring or defunding an organization is different (and more serious) than disallowing costs. Unlike debarment or defunding, disallowed costs means that the State Bar would require the grantee to return certain costs charged to a specific State Bar grant.

Finally, the working group appreciates the legal aid community’s feedback about redacting documents, deadlines and extensions, monitoring visits, and staff response times. While these concerns fall outside the scope of this codification topic, the working group will briefly address each one: Grantees should always redact sensitive information such as on I-9s. Rule 3.680(F) and staff’s codification implementation efforts address concerns about deadlines and extensions. Rule 3.680(E)(1) addresses deadlines and extensions for grantees’ and applicants’ annual audit requirement specifically. Staff agree to more transparency and timely communication about monitoring visits and staff response times.

CONCLUSION

Attachment A shows the proposed revisions to Rule 3.661(C)–(E). These changes would provide clear guidance in grant administration for grant applicants and recipients, the LSTFC, and staff, about quality controls and noncompliance. By providing clarity, these rule changes would promote interpretive consistency and compliance with the governing authorities and guidance. Additionally, the proposed rule changes would help ensure that grantees have the quality controls they need to provide quality legal services to—and protect—eligible clients. Finally, codifying a list of actions to address noncompliance helps ensure grantees understand potential actions available to the LSTFC to remedy such concerns.

RECOMMENDATIONS

Should the committee concur in the proposed action, passage of the following resolution is recommended:

RESOLVED, that the Legal Services Trust Fund Commission Rules Committee recommends adopting the amendments to State Bar Rule 3.661(C)–(E) as set forth in the working group’s July 17, 2024, memo, including Attachment A.

ATTACHMENTS LIST

- A.** Proposed Revision to State Bar Rule 3.661(C)–(E).
- B.** Letter from LAAC.

Rule 3.661 Duties of the Legal Services Trust Fund Commission

- (A) The Commission must determine an applicant's eligibility for grants and notify each grant applicant that its application has been approved or denied. If the Commission tentatively approves an application, it issues a notice of the grant award, including the tentative allocation. If the notice requires submission of additional information, the Commission considers the application incomplete pending receipt of the information.
- (B) The Commission must monitor and evaluate a recipient's compliance with Trust Fund Requirements and grant terms. The evaluation may be based on
- (1) application information, grant reports, and additional information reasonably necessary to determine compliance with Trust Fund Requirements;
 - (2) reasonable site visits scheduled upon adequate notice;
 - (3) an evaluation of a recipient by an impartial third party designated and funded by the Commission; or
 - (4) information from other sources, such as an evaluation provided by the Legal Services Corporation or other funding entity.
- (C) Quality control standards and procedures are safeguards (e.g., supervision and policies) that aim to ensure that grant recipients protect eligible clients while providing high-quality, professional services. Quality control standards and procedures also aim to ensure that grant recipients are managed effectively with adequate governance and oversight. To be approved by the Commission, an applicant's quality control standards and procedures must be sufficient to allow the applicant to credibly demonstrate compliance with all IOLTA statutory requirements. In order for the Commission to determine whether an organization meets the eligibility requirements to qualify for funding, grant recipients must:
- Have appropriate organizational infrastructure that ensures adequate governance and oversight and complies with applicable laws, regulations, and ordinances, including:
 - Requisite business, legal, and financial registrations and licenses;
 - Requisite insurance policies; and
 - Adherence to the organization's articles of incorporation and bylaws.
 - Have policies and procedures to comply with all applicable laws, regulations, and ordinances, including on the following topics:
 - Privacy, including technology and data security;
 - Workplace safety;

- Prevention of workplace harassment and discrimination;
- Prevention and mitigation of conflicts of interests; and
- Reporting mechanisms for and protection of whistleblowers.
- Oversee service provisions and appropriate client protections, including:
 - Qualified staff and staffing infrastructure;
 - Staff and volunteer supervision;
 - Case opening and closing oversight;
 - Training for staff and volunteers;
 - Oversight of work assignments to ensure appropriate workloads;
 - Work quality review;
 - Case management system and recordkeeping;
 - Client eligibility screening;
 - Procedures for client grievance and appeals;
 - Procedures for providing all legally mandated trainings; and
 - Policies and procedures for conflict of interest, disclosure, and waiver issues.
- Maintain financial controls, including:
 - Submission of a timely, complete, and accurate audited financial statement or a financial review in accordance with 3.680(A)(1) and 3.680(E).
- Comply with applicable local, state, and federal professional laws.
- Timely provide additional information and/or documentation as needed.

Grant recipients must maintain documentation of each of these requirements and timely provide it upon Commission request which may be made at any time. The Commission may require additional information as needed that would be probative of the applicant's ability to provide safe, statutorily compliant, civil legal services to indigent Californians.

The most recent version of the Standards for the Provision of Civil Legal Aid adopted by the American Bar Association's House of Delegates, as limited by the general introduction to the standards, are the guidelines used by the Commission in approving the quality control procedures and reviewing and evaluating the maintenance of quality service and professional standards of applicant and recipient programs. With due notice, the Commission may also rely on other standards that are consistent with law and generally accepted access to justice principles in the legal aid community.

(D) Grant recipients are responsible to ensure subgrantees maintain adequate quality control standards and procedures. The Commission may take action against grant recipients for subgrantee wrongdoing.

(E) The Commission may terminate a grant for noncompliance or take other action in accordance with Article 4 of this chapter.

(1) In addition to terminating a grant for noncompliance, other action may include one or more of the following:

- Informing and/or meeting with the grant recipient's Board of Directors;
- Requiring payments as reimbursements instead of advance payments;
- Converting grant payments from annual or quarterly payments to monthly payments;
- Requiring additional reporting and/or monitoring;
- Requiring the grant recipient to obtain technical and/or management assistance;
- Disallowing costs because of noncompliance;
- Suspending the grant; and
- Initiating suspension or debarment of the grant recipient.

(2) If the State Bar has reason to suspect a grant recipient has engaged in fraud or other serious and/or flagrant violations of law, staff will directly inform the relevant committee or the Commission. Additionally, egregious concerns about fraud may result in withholding of payment.

Rule 3.661 adopted effective March 6, 2009; amended effective November 16, 2023.

Legal Aid Fights for Justice. We Fight for Them.



May 16, 2024

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Dear Ms. Zelnick,

Thank you so much for allowing LAAC to collect feedback from our community on the draft memo for quality control and noncompliance issues. We collected feedback via two listening sessions (on May 2 and May 13) and via email, both by emailing our “Directors of Litigation and Advocacy” listserv and by emailing all executive directors of IOLTA-funded organizations.

Generally, everyone supported more transparency on what was needed from organizations to show they had adequate quality controls in place to ensure grant compliance. The memo touches upon this in several places – new organizations need the same baseline understanding of what the Trust Fund is looking for that other organizations have developed over years of working with your staff. We heard several requests for templates or examples needed. Organizations do not want to be required to use a particular format, but many of them, especially those with newer EDs, wanted to understand what a particular policy might look like.

We also heard that organizations would like a bit more clarity on the difference between a policy and a procedure. Many organizations shared that they have a policy and they follow it, but they don’t have a written procedure on how they follow that policy. Examples of written procedures would help.

We heard of a few documents that were requested, and organizations weren’t sure why they were requested. It may help, especially for the newly-funded IOLTA programs or for newer leaders, to explain why each document is requested and what it is meant to support for compliance. I think it would also help to note when you anticipate a document should be redacted. For example, several organizations said they were requested to share employee I-9s, and there seemed to be some confusion over whether they could or should redact personal information included in the I-9.

Generally, no one expressed concerns about the escalation of consequences for noncompliance. I think it would help for new grantees to see a few examples, whether hypothetical or real, of when a board would be notified and the most extreme cases where someone may be de-barred or an organization would lose funding.

The last grouping of comments was around timelines and deadlines. Organizations expressed frustration at having desk monitoring visits or other monitoring visits and documents due at the same time as the IOLTA application or other important State Bar application deadlines. Several organizations said they had a lot of requested samples due back at the same time they were working on applications or reports, which especially taxed small organizations' teams. That said, when some organizations shared that they asked for and received an extension, many organizations said they didn't know they could ask for that. This reflects a theme of greater transparency and predictability needed by programs. Some organizations knew to ask for extensions, while others just didn't know that and struggled to meet deadlines.

Organizations asked to receive more information in monitoring visits on when they would hear back from State Bar staff. Again, this is part of the predictability theme. Several organizations shared that they submitted materials for their HP3 desk monitoring visit and did not hear back for several months from staff until there was a request for additional documents. A recommendation was to explain more about the State Bar staff timeline and when organizations would be likely to hear from staff again. This will lead to more predictability for organizations who may have a leader or grant staff going on planned leave – if they know, for example, that the State Bar staff will follow up in six to eight months, they will know to train other staff who may have to answer those questions.

As we've said in past comments, I think the grantee handbook with sufficient examples will really help increase transparency and predictability in compliance so no organization is worried that they aren't providing you what you need.

Take care,
Salena