

**LEGAL SERVICES
TRUST FUND PROGRAM**

Eligibility Guidelines

SUPPORT CENTERS ONLY

December 2010

Trust Fund Program Eligibility Guidelines

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Trust Fund Program Eligibility Guidelines

The Trust Fund Program Eligibility Guidelines were designed as a brief statement of factors governing eligibility for an allocation under the Trust Fund Program. The Guidelines, together with their Commentary, are intended to incorporate provisions found in the statute (Business and Professions Code §6210 et seq.) and at Title 3, Rules 3.660-3.692 of the Rules of the State Bar.

Commentary follows each Guideline and is designed to further assist you in seeking an allocation under the Trust Fund Program. Bracketed references are to the Business and Professions Code (“B&P Code”) and Rules of the State Bar.

Requirements for All Applicants

1. ***To be considered for a Trust Fund Program grant, an applicant must submit a timely and complete application for funding in the manner prescribed by the Commission. To qualify for an allocation under the Trust Fund Program, an applicant must be either:***
 - a. **a qualified legal services project (Guidelines 2-2.9); or**
 - b. **a qualified support center (Guidelines 2-2.9).**

A single applicant may not qualify as both a legal services project and a support center. [Rule 3.680(D).]

Commentary:

The main distinction between a legal services project and a support center is found in the primary purpose of the organization. Compare Guideline 2.3 (legal services projects) with Guideline 2.3 (support centers). You must indicate on your application the status under which you wish to be considered. You may complete the applications for both a legal services project and a support center. If you qualify in the category of first preference, you will not be considered in the second category. If you do not qualify in the category of your first choice, you will be considered for eligibility under the category of your second choice if your primary purpose and function qualifies you for that category. [Rule 3.671(A)-(C).]

- 1.1 **All applicants must include with their applications an assurance that the applicant will use the funds allocated from the Trust Fund Program for the purposes set forth in §§6210-6228 of the Business and Professions Code.**

Commentary:

Your application package will contain an Assurance form. Execution of that form will satisfy the requirements of Guidelines 1.1 and 1.2.

1.2 All applications must include an assurance that the applicant:

Commentary:

See Commentary 1.1 above. [B&P Code §§6210, 6217, 6221; Rule 3.682.]

- 1.2.1 at all times will honor the attorney-client privilege and will uphold the integrity of the adversary process; and**
- 1.2.2 will not impose restrictions unrelated to statutes and rules of professional conduct on attorneys who provide representation to indigent clients with funds provided in whole or in part from the Trust Fund Program; and**
- 1.2.3 does not discriminate on the basis of race, color, national origin, religion, sex, handicap, or age.**

Commentary:

The Legal Services Trust Fund Commission recognizes that certain applicants will concentrate on providing legal services to members of specific disadvantaged and underserved groups within their service area, such as elderly, disabled, juveniles, or non-English-speaking persons. The statute is intended to facilitate the provision of free legal services to such disadvantaged and underserved client groups. [B&P Code §§6210 and 6221.] The Commission therefore will not regard Guideline 1.2.3 as violated merely by the fact that services are concentrated on (or limited to) specific disadvantaged and underserved client groups within the meaning of Business and Professions Code §§6210 and 6221 so long as the basis for such concentration and limitation is reasonably designed to benefit distinct disadvantaged and underserved groups. The certification required by Guideline 1.2.3 does prohibit any discrimination within the targeted client groups, and prohibits any discrimination on matters other than the selection of eligible clients.

1.3 Within 30 days after notice of a tentative allocation from the Commission, the applicant must submit a budget and budget narrative for the expenditure of the allocation, including but not limited to:

- 1.3.1 an explanation of how funds shall be utilized to provide civil legal services to indigent persons; and**
- 1.3.2 for a qualified legal services project, a description of how the project will make significant efforts to use 20% of the funds allocated to increase services to disadvantaged and underserved client groups such as (but not limited to) the elderly, the disabled, juveniles and non-English-speaking persons within the project's service area. [B&P Code §6221; Rule 3.680(E)(3).]**

Commentary:

Do not submit a budget with your application. Once the Commission has found your program tentatively eligible and has approved an allocation to your program,

you will be notified of a tentative grant allocation. You must then prepare a budget and budget narrative in conformance with Guideline 1.3, explaining your intended use of the funds. This budget and budget narrative will be reviewed by the Commission for conformance with the statute prior to disbursement of funds.

The budget and budget narrative should identify how the proposed allocation will aid in providing civil legal services to indigent persons. The narrative should describe the expected increased benefit to indigent persons as a result of the allocation.

The statute requires that qualified legal services projects make significant efforts to use 20% of the allocated funds to increase the availability of service to the elderly, the disabled, juveniles, non-English-speaking persons, or other indigent persons who are members of disadvantaged and underserved groups within your service area. Your narrative should describe specifically how you intend to use 20% or more of the proposed allocation to increase services to such disadvantaged and underserved groups.

One method by which a project may demonstrate its use of 20% of allocated funds to increase services to disadvantaged and underserved client groups is to enter into subcontracts specifically utilizing 20% of the funds for legal services to such client groups.

If you do not demonstrate your “significant efforts” through the use of subcontracts, your budget narrative should describe the clients presently served by your project, the additional clients from disadvantaged and underserved client groups that will be served in the future through the use of 20% of the funds allocated, and your quantifiable objectives for increased services to such groups.

If your legal services project is part of a corporation that has activities outside California, the proposed budget and budget narrative must explain how the proposed allocation will be used within the state of California, as distinguished from an increase in the total multi-state budget. The statute prohibits the use of allocated funds outside the state of California.

If your project provides both, legal services and other types of services, your budget and budget narrative must show that the allocation will be used solely for legal services. If your project provides services in both civil and criminal matters, your proposed budget and budget narrative must show that the allocation will be used solely for civil matters. If your project serves some persons who do not fall within the statutory definition of indigent persons (Commentary 2.3.4), your proposed budget and budget narrative must show that the allocation will be used solely for persons who are indigent within that definition. [B&P Code §§6213(d), 6218(a), 6221; Rule 3.680(E)(3).]

If you receive an allocation for more than one county, the budget and budget narrative must show that each allocation will be used to provide services to clients in the county for which it is made.

- 1.3.3 for support centers, your budget and budget narrative must show that all funds allocated from the Trust Fund Program will be used in support of qualified legal services projects providing free legal services in California.
- 1.4 If the Commission or the staff requests any further information relating to an applicant's eligibility, or related to the amount of the allocation under the Trust Fund Program, the applicant must supply that information. However, the Commission is not required to notify applicants if their initial application fails to include information sufficient to demonstrate eligibility. Failure to provide information necessary to the Commission's decisions on eligibility or eligible expenditures (or failure to supply requested information relevant to those decisions) will be grounds for denial of eligibility, or for refusal to recognize part of the applicant's expenditures within the allocation formula. [Rules 3.680(E) and 3.691(A).]

Requirements for Support Centers

2. *To be a qualified support center, the applicant must meet (a) each of the requirements of Guidelines 1.1-1.3 above, and (b) each of the following Guidelines 2.1-2.7, and (c) the requirements of either Guideline 2.8 or 2.9.*

Commentary:

The qualified support center must meet: (1) the requirements applicable to all programs (see Guidelines 1.1-1.3); (2) the mandatory requirements of Guidelines 2.1-2.7 applicable to all support centers; and (3) either the eligibility presumption established by Guideline 2.8 or the requirements for quality control and "special need" set forth in Guideline 2.9.

The mandatory requirements applicable to all support centers (Guidelines 2.1-2.7) contain two separate requirements. A support center must demonstrate that it provides a significant level of legal support services to qualified legal services projects in California (the "significant level" test). Additionally, a support center must demonstrate that its primary purpose is the provision of legal support services (the "primary purpose and function" test). [Rule 3.680(A).]

- 2.1 **The applicant must be a nonprofit corporation (in California or another state).**

Commentary:

In order to demonstrate your status as a California corporation, copies of your Articles of Incorporation certified by the California Secretary of State and a current Certificate of Status from the California Secretary of State showing that the corporation is in good legal standing must be filed with the Trust Fund Program.

To demonstrate your nonprofit status, copies of (1) your determination letter from the Internal Revenue Service granting your application for exemption from the appropriate provisions of subchapter (f) of Chapter 1 of the Internal Revenue Code of 1954, as amended and (2) your determination letter from the State Franchise Tax Board granting your application for exemption from the appropriate section of the California Revenue and Taxation Code must be filed with the Trust Fund Program. If you have not received such determination letter(s), attach copy(ies) of your application(s) for exemption together with an explanation of its/their status. [B&P Code §6213(a)(1); Rules 3.670(A), 3.680(A).]

2.2 The application must provide objective information demonstrating that the organization is currently providing:

Commentary:

The statute requires that applicants must **currently** be providing the services described in Guidelines 2.2.1-2.2.4.

The regulations require that you demonstrate with “objective information” that you are providing the required services. Objective information that can be used to demonstrate your services is described in Guidelines 2.2.1-2.3. See also Commentary 2.3. [B&P Code §6213(b); Rule 3.670(B), 3.671(B), 3.680(E)(2), 3.680(E)(4).]

2.2.1 a significant level of legal training, legal technical assistance or advocacy support to qualified legal services projects

Commentary:

You must demonstrate that you are currently providing **a significant level** of legal training, legal technical assistance or advocacy support to programs that are qualified for Trust Fund Program allocations as legal services projects. In order to meet this test, the services provided must be offered on a regular and consistent basis.

Such training, assistance or support include, but are not limited to, the direct provision of civil legal services to an indigent person, either as co-counsel with an attorney employed or recruited by a qualified legal services project, or at the request of an attorney employed or recruited by a qualified legal services project that is unable to assist the client [see Rule 3.672(B)(2)], provided that:

- (a) you keep written records to demonstrate that the direct provision of services was either as co-counsel with an attorney employed or recruited by a qualified legal services project or at the request of such an attorney [Rules 3.672(B), 3.682.]; and
- (b) you establish and use policies and procedures that encourage qualified legal services projects to participate in your center’s representation of persons referred by them.

Support services provided to organizations that are not qualified legal services projects or to attorneys in private practice who were not recruited by a qualified legal services project will not be taken into consideration for purposes of demonstrating that a support center provides a significant level of services to qualified legal services projects.

In deciding whether you meet the “significant level” test, the Legal Services Trust Fund Commission will consider several factors. At a minimum you must demonstrate that in the last year you have provided legal training, legal technical assistance or advocacy support to at least ten qualified legal services projects. For purposes of this test, services provided to more than one office of a multi-office legal services project shall only count as services to one project. In addition, for purposes of this test, you **cannot** count the distribution of newsletters, general mailings, or the provision of other materials of general distribution. You must maintain written records of requests for services to demonstrate the number of projects to which you provided services.

You must provide services to at least ten projects to qualify as a support center. Applicants that fail to meet this test will be found not to have provided a significant level of services to qualified legal services projects.

Provided you meet this minimum test, you must also demonstrate through objective information that the nature and content of the services you provided were significant. In determining whether a support center’s services were significant, the Commission may consider the following factors and any others that aid in making that determination:

- (a) The provision of legal training, legal technical assistance and advocacy support to a large number of projects is relevant data for demonstrating a significant level of support. However, numbers alone will not be the sole test.
- (b) Services must be substantial in nature, not merely simple or intermittent responses to requests for assistance. For example, responding to ten simple requests for assistance will not itself demonstrate a significant level of support services. One large-scale complex lawsuit that takes a substantial amount of attorney time to complete will demonstrate a more significant level of services than a simple individual action. But handling a substantial number of individual actions may demonstrate a significant level of work. Distribution of newsletters or other educational material will not itself meet the “significant level” test, but development of useful resources for qualified legal services projects is relevant data for demonstrating a significant level of support.

2.2.2 and such training, assistance or support not only is actually available statewide

Commentary:

Your services must actually be available statewide. You must hold your services available on request on a statewide basis to all qualified legal services

projects irrespective of where they are located within the state and publicize the availability of such services on a statewide basis. This publicity should ordinarily include at least two written communications during each calendar year, directed to every qualified legal services project in California, in which you describe the availability of your services. These written communications may be included in newsletters or other regular publications. You should send a copy of the communications to the Legal Services Trust Fund Program when you send them to the legal services projects.

Second, you must also demonstrate through objective information that your services are actually available and publicized throughout the state. In determining whether this requirement is met, the Commission may consider such factors as your staff's participation in task forces and other training forums, your distribution of newsletters and general mailings, and any other efforts you make to give notice of the availability of your services.

2.2.3 but also is actually provided statewide

Commentary:

You must also demonstrate that you provide services on a statewide basis. Your services must have actually been utilized within the last year in a majority of the State Bar Districts, and in at least two Northern California counties and two Southern California counties. A map of the State Bar Districts will be provided upon request. Southern California counties shall include the counties of San Luis Obispo, Kern and San Bernardino and counties further south.

In determining whether a support center's services were statewide, the Commission may consider the following factors and any other objective information that aids in making the determination:

- (a) The provision of support services to a number of State Bar Districts or counties larger than the minimum stated above would be relevant data for demonstrating a geographic distribution of service. However, numbers alone will not be the sole test.
- (b) Statewide services must be substantial in nature, not merely simple or intermittent responses to requests for assistance. For example, providing most services in one or a few counties but occasionally responding to inquiries from other parts of the state will not itself demonstrate a statewide distribution of services.

For purposes of determining whether your services were actually provided on a statewide basis, the Commission will consider only the provision of legal training, legal technical assistance and advocacy support. Other services provided by you, such as general information, the distribution of newsletters and general mailings, will not be sufficient to demonstrate that an applicant is not local but statewide or that an applicant has provided services in a majority of the State Bar Districts.

2.2.4 without charge

Commentary:

The “without charge” standard is fully met when services are provided without imposing any fee or requiring any payment. However, training services may still be considered “without charge” when the fee imposed is directly tied to the actual additional expense incurred in training an individual and does not include general expenses that are incurred in providing the training to the community at large. To illustrate,

- (a) Direct expenses that can be charged to individuals participating in training events include the actual cost of their own refreshments, lodging, materials distributed (including manuals, workbooks, and binders), per participant webinar fees, and similar costs associated with individual participation.
- (b) Training expenses that should not be charged to participants include the costs of facilities rental for the training event; general costs of materials, equipment, and services necessary to conduct trainings (such as visual aids, projectors, IT services, licensing fees, and delivery charges); expenses associated with travel, food, or lodging for staff or outside trainers; costs of developing materials (including staff salaries and consultant fees/expenses); and organizational expenses, including but not limited to insurance, audit costs, library costs, overhead, or telecommunications expenses.

Under Business and Professions Code §6213(b), the “without charge” standard applies to assistance provided to qualified legal services projects. It would be consistent with the spirit of the Trust Fund statute whenever possible to also extend this consideration to fellow qualified support centers.

2.2.5 through an office in California.

Commentary:

You must actually have a regularly functioning office physically located in California and provide these services through that office. The office must have been in existence and operating prior to your application for a Trust Fund Program grant.

2.3 The provision of legal training, legal technical assistance or advocacy support without charge must be the primary purpose and function of the corporation.

Commentary:

You must demonstrate that it is the primary purpose and function of the **corporation** viewed as a whole, and not simply that of part of the corporation, to provide free legal training, legal technical assistance or advocacy support. You may consider the provision of similar services in other states when determining the primary purpose and function of the corporation.

To be considered legal training, legal technical assistance and advocacy support, the services must meet the following criteria:

- (a) Services must be provided (1) to attorneys or lay advocates or others involved in the direction or operation of legal services projects that provide legal services to indigent persons; or (2) to attorneys in private practice who are providing legal services without charge to indigent persons; or (3) directly to indigent persons when requested to do so by a qualified legal services project.
- (b) The content of the training and technical assistance must be directed toward meeting the legal needs of indigent persons or the functioning of the legal services project.
- (c) The direct provision of legal services to clients is not a “support service” unless it is delivered (1) as co-counsel with a qualified legal services project; or (2) as co-counsel at the request of a private attorney representing indigent clients without charge; or (3) after a referral from a qualified legal services project.
- (d) The provision of similar legal support services in states other than California will be considered in determining the primary purpose and function of the corporation.

A support center shall be presumed to meet the “primary purpose and function” test if the services described above constitute more than 75% of the corporation’s expenditure budget in the year for which it is seeking an allocation from the Legal Services Trust Fund Program.

If your center cannot meet the “primary purpose and function” test by complying with this presumption, you may demonstrate your primary purpose and function by other means. You will need to demonstrate that the primary purpose of your organization is to assist legal services advocates who provide direct civil legal services to indigent clients through the provision of legal training, legal technical assistance and advocacy support. You must show that your primary purpose is not the direct provision of legal services to clients and that your support services consist of training, technical assistance and advocacy support. [B&P Code §6213(b); Rule 3.671(B), (C).]

2.4 If the center receives funds from sources other than the Trust Fund Program, the applicant must submit a plan assuring that the services funded from the Trust Fund Program are in addition to those already funded from other sources.

Commentary:

Describe the sources, amounts and conditions of your funding other than the Trust Fund Program and the additional services you intend to provide with the monies allocated by the Trust Fund Program. You must also submit a plan to maintain your current level of funding from sources other than the Trust Fund Program. [B&P Code §6216(c).]

- 2.5 The application must include an agreement by the center to use all funds allocated from the Trust Fund Program in support of qualified legal services projects providing free legal services in California and to restrict their use of funds allocated from the Trust Fund Program to matters directly related to the needs of legal services clients.**

Commentary:

You may meet this requirement by signing the Assurances form that is part of your application. [B&P Code §6216(c).]

- 2.6 The application must include a resolution of the board of directors of the corporation establishing the center's priorities for the provision of legal support services. The adoption of this resolution must have followed consultation with legal services attorneys, members of the private bar and eligible clients.**

Commentary:

You must attach to your application a resolution adopted by your board of directors within the last two years establishing the center's priorities. In addition, you must describe the manner in which legal services attorneys, members of the private bar and eligible clients were consulted for purposes of establishing priorities. Those consulted to meet this requirement must include persons who are not members of your board of directors. [Rule 3.680(B).]

- 2.7 The center must offer a range of services including more than one of the following: consultation, representation, information services and training.**

Commentary:

Describe the manner in which your organization offers services falling under at least two of the headings: consultation, representation, information services and training. [Rule 3.680(B).]

- 2.8 The center must meet either the requirements of this Guideline 2.8, or the requirements of Guideline 2.9. To meet the requirements of this Guideline 2.8, your center must have met the requirements of Guidelines 2.2-2.3 on December 31, 1980.**

Commentary:

If your support center has met the general requirements applicable to all applicants, Guidelines 1.1-1.4, and has met the requirements of Guidelines 2.1-2.7, it must also meet either the requirements of this Guideline 2.8 or the requirements of Guideline 2.9.

In order to meet the requirements of Guideline 2.8 (and thus avoid the necessity of complying with Guideline 2.9), your center must, on December 31, 1980, have been a nonprofit center which had as its primary purpose and function the provision of legal training, legal technical assistance or advocacy support without charge and which was actually providing a significant level of such services to qualified legal services projects, and such training, assistance or support must have been available statewide without charge through an office in California at that time. (See Commentary 2.2 above.) [B&P Code §6215(a).]

If your center has previously been determined by the Commission to meet this requirement, you do not need to reestablish each grant year that you meet it.

2.9 An applicant that does not meet the requirements of Guideline 2.8 must meet the requirements of Guidelines 2.9.1 and 2.9.2 below:

2.9.1 The center must be deemed to be of special need by a majority of the qualified legal services projects. If an applicant was affirmatively deemed of special need for one grant period, the Commission will assume (without need for further information) that it continues to be so deemed for the immediately following two grant periods.

Commentary:

If you do not meet the presumption established by Guideline 2.8, your support center must be deemed of special need by a majority of legal services projects which receive allocations from the Legal Services Trust Fund Program. The statute requires that your center presently be so deemed.

Evidence of such deeming in prior years, while it may be considered by the Commission as relevant evidence, is not determinative of the issue before the Commission except in the two funding periods after the grant period for which you were so deemed. The Commission itself intends to solicit the views of qualified legal services projects as to whether your center is presently deemed “of special need” in every third year, starting with your application for the first funding period. Therefore, you must (for your first, fourth, seventh, etc., funding periods) supply the Commission with a one-page description of your center.

The Commission will solicit advice from qualified legal services projects whether they presently deem your center to be “of special need.” More than one-half of those whose advice is solicited must respond affirmatively in order for your center to be eligible. Upon request, the Commission will make available to you a list of the names and addresses of the qualified legal services projects from which the Commission will solicit views.

In deciding whether they deem a support center to be “of special need,” projects will be instructed to consider what support the legal services projects in California need in delivering legal services to indigent persons, and to evaluate how the center’s services meet that need, including such issues as the quality and/or quantity of the center’s work. Project directors will be encouraged to consult with service providers or others associated with the project in making their decision. [B&P Code §6215(b)(2); Rule 3.680(C).]

2.9.2 The application must include a description of the organization’s quality control procedures and standards, including, but not limited to, the matters described below:

Commentary:

The State Bar’s Board of Governors adopted the American Bar Association’s *Standards for the Provision of Civil Legal Aid* as the quality control standards for the Trust Fund Program, pursuant to Business & Professions Code §6225 and

Rule 3.661(C). These standards are the State Bar's guidelines for review and approval of applicant and recipient program practices.

If you are already subject to quality control reviews by any non-Trust Fund Program funding source or entity, describe the quality control review procedures to which you are subject, and attach the most recent comprehensive written quality control review by that entity in lieu of the information requested by Guidelines 2.9.2.1-2.9.2.4. (It is not necessary to explain in detail the review procedures followed.)

If you are not subject to such review procedures, describe your quality control standards and how compliance with each of the subjects listed in Guidelines 2.9.2.1–2.9.2.4 is ensured. The Commission is particularly interested in your standards and procedures regarding supervisory structure, procedures and responsibilities. [B&P Code §§6123(b) and 6217(a); Rule 3.680(E)(2).]

- 2.9.2.1 the minimum experience and education requirements for attorney and paralegal employees;**
- 2.9.2.2 the current salaries and job descriptions for all filled and unfilled management and professional positions, including paralegal personnel;**
- 2.9.2.3 the minimum experience and educational requirements for attorney supervisors;**
- 2.9.2.4 the supervisory structure, procedures and responsibilities.**