



# THE STATE BAR OF CALIFORNIA

## LEGAL SERVICES TRUST FUND PROGRAM

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DATE: October 27, 2008

TO: Members, Board Committee on Stakeholder Relations

FROM: Stephanie Choy, Managing Director, Legal Services Trust Fund Program

SUBJECT: Title 3, Rules 3.60 – 3.92 of the Rules of the State Bar, re Legal Services Trust Fund Program Request Release of Revised Rules for 45-day Public Comment

### EXECUTIVE SUMMARY

As part of a broader rules revision project begun by the State Bar in 2006, the Legal Services Trust Fund Commission (LSTFC) has been revising rules regulating the operation of the Legal Services Trust Fund program (LSTFP) and its grantees. The LSTFC now seeks authority to release the LSTFP revised rules for public comment.

Proposed revisions to the LSTFP rules governing the Legal Services Trust Fund Commission and the administration of grants first came before the Board Committee on Stakeholder Relations on May 16, 2008 with a request that revised rules be released for public comment. The committee authorized a public comment period of forty-five days. During a series of five meetings with IOLTA-funded programs, the LSTFP staff listened to concerns about both the substance and the wording of the rules. Given the scope and extent of the initial comments, the LSTFP requested and was granted an extension of an additional 45-day public comment to allow the rules drafting committee enough time to synthesize and incorporate changes based on those comments.

The LSTFC now has revised the rules to address the comments received and submits the attached revised rules for a new 45-day public comment period. The public comments received through a series of meetings with the IOLTA-funded community that give rise to the proposed revisions, as well as staff responses to those comments, are summarized and attached. All substantive written comments are also attached.

Board members with questions about the proposal may contact Stephanie Choy at (415) 538-2249 or [stephanie.choy@calbar.ca.gov](mailto:stephanie.choy@calbar.ca.gov), or contact Mary Yen at (415) 538-2369 or [mary.yen@calbar.ca.gov](mailto:mary.yen@calbar.ca.gov).

### BACKGROUND

The ongoing State Bar Rules Revision Project will integrate the State Bar's more than two dozen sets of rules into one comprehensive structure and make the rules simpler, clearer, and more uniform. The Board adopted the organizational scheme for the Rules of the State Bar at its July 20, 2007 meeting. The rules that govern the Legal Services Trust Fund

Commission (LSTFC) and the administration of grants funded through the Legal Services Trust Fund Program (LSTFP) are the subject of this agenda item.

The Board Committee on Stakeholder Relations approved sending a revised version of the proposed LSTFP rules out for 45-day public comment at its May 2008 meeting. To solicit public comment, the LSTFP scheduled a series of five meetings with IOLTA-funded stakeholders as follows: 1) qualified support centers by videoconference between San Francisco and Los Angeles, June 9; 2) San Diego, June 18; 3) Los Angeles, June 19; 4) San Francisco, June 23; and 5) teleconference, June 25.

In order to give the State Bar staff and the Rules Revision Committee of the Legal Services Trust Fund Commission time to consider comments and to revise the rules to reflect public comments, the LSTFP requested that the Committee on Stakeholders Relations grant an extension of the initial public comment period to: 1) allow ample opportunity for the public to comment; and, 2) provide adequate opportunity for the rules drafting committee of the Legal Services Trust Fund Commission, and State Bar staff, to synthesize the comments and propose revisions to the draft rules. The Committee on Stakeholder Relations granted this extension at its July 2008 meeting.

At this time, the LSTFC is pleased to return the attached revised rules to the Committee on Stakeholders Relations, with a request that the newly revised rules be released for a new 45-day public comment period. Please note that the organization of the proposed rules has not changed but the rule numbers have changed because of revisions made to the overall structure of Title 3 since May of this year. [Attachment 1 is Title 3, Rules 3.660 – 3.692 of the Rules of the State Bar (revised) for release for public comment; Attachment 2 is Title 3, Rules 3.660 – 3.692 of the Rules of the State Bar (revised) redlined against the draft of the same rules released for public comment in May 2008.]

## **PUBLIC COMMENT AND REVISIONS**

Approximately eleven hours of public comment are summarized in the attached “Summary of Public Comment Meetings.” That document captures thoughtful concerns and cogent suggestions from the legal aid community, as well as the staff and commission's explanations for existing wording and discussion of areas for potential revision to address concerns raised. (Attachment 3 is the Summary of Public Comment Meetings; Attachment 4 is written comments received.)

Substantive revisions include the following:

**Standards and monitoring for quality in the delivery of legal aid (3.61, renumbered as 3.661):** The revised rules have created an opportunity for substantial dialogue about the Commission's role in ensuring the delivery of quality legal services. No single set of standards work for the many contexts in which legal aid programs work, and it is difficult to draw a line on paper between monitoring for quality and second-guessing a program's priorities and its strategies to accomplish the best results for its clients. Many revisions to the rules arise out of efforts to achieve this balance. For example, the legal aid community expressed concern about being held to quality standards in 3.61(C) that were not identified. For that reason, wording that had been included to provide flexibility with respect to prevailing standards was eliminated, and wording has been added here in 3.661(C) to provide that the Legal Service Trust Fund program must provide due notice if it chooses to rely on other standards that are generally accepted in the legal aid community.

**Commission membership (3.62, renumbered as 3.662):** The programs expressed concern that the proposed rules allowed persons who had been but were no longer indigent to serve

as client members of the Commission. Recognizing that having been indigent at one time does not mean that the Commission member is representative or understanding of the client class, the Commission revised the rules to establish that the client member must have been recently client-eligible. While other criteria could have been attached, the Commission with agreement from the legal aid community opted not to define client criteria too narrowly.

**Limitations on the application process (3.80 and 3.81, renumbered as 3.680 and 3.681):** The existing rules had limited the scope of information that could be requested in the application process to information about eligibility and allocation of funds. The proposed rules deleted this limitation in recognition of the need for information on program quality. Some in the legal aid community commented that although the application can provide information about quality, the written application cannot demonstrate quality (3.80). The revisions presented here are responsive to such concerns. Additionally, 3.681(D) has been revised to acknowledge that information about maintenance of standards and compliance with program requirements is more appropriately submitted in a separate report rather than as part of the grant application.

**Noncompliance Fees (3.81, renumbered as 3.681):** Programs agreed that noncompliance fees and even termination of funding is appropriate in extreme circumstances. However, programs requested the addition of language indicating that the LSTFP have discretion with respect to the assessment of fees and exercise the discretion only in the event of substantial noncompliance. Wording to that effect has been added to the 3.681(G).

**Complaint Process (3.92, renumbered as 3.692):** The complaint process has been revised to give the Commission broad authority not just to dismiss a complaint or terminate funding, but also to require intermediate steps, such as corrective action. Additionally, the procedure has been clarified to provide that the LSTFP advise the grantee of a formal complaint.

**Derivative Income (3.81, renumbered as 3.681):** The rules were revised to articulate that all income earned by a grant recipient from grant-supported activities, must be used for qualified purposes. While the LAAC working group noted that the wording expanded the prior rule of derivative income beyond the previously articulated attorney fees, they agreed with the concept and suggested only that the wording be made more explicit to spell out the sources of derivative income, such as income from fees for services, training, sales and rentals of real or personal property, and interest earned on grant amounts.

Additionally, there were numerous revisions made to capture concepts in prior rules and to clarify text.

The rules that are now before the Committee for release for public comment have been carefully vetted within the legal aid community. At a special teleconference meeting of the LSTFC, the Commission approved submission of this agenda item to the Board Committee on Stakeholders Relations for re-release of these revised rules for a new public comment period.

## **RECOMMENDATION**

It is recommended that the attached revised rules be released for public comment for a period of 45 days, beginning no later than November 24, 2008 and ending no earlier than 45 days later on or after Thursday, January 8, 2009.

At the March meeting of the Board Committee on Stakeholders' Relations, the LSTFP will make recommendations regarding the proposed rules either for adoption or for public comment on recommended revisions.

## **FISCAL AND PERSONNEL IMPACT**

No fiscal or personnel impact is anticipated.

## **RULE AMENDMENTS IMPACT**

This proposal would result in new rules for the Legal Services Trust Fund Program in Title 3, Rules 3.660 – 3.692 of the Rules of the State Bar and repeal of the Rules Regulating Interest-Bearing Trust Fund Accounts for the Provision of Legal Services to Indigent Persons.

## **BOARD BOOK/ADMINISTRATIVE MANUAL IMPACT**

Upon return from public comment, this item may impact Tab 15, Article 7, in Section 1: make appropriate changes in the text to reflect that “at least two members must be or have been within five years of appointment indigent persons as defined by statute”; in Section 3 delete the second sentence and replace it with “Under the Legal Services Trust Fund Program rules, the commission shall administer the legal requirements and program rules for revenue from IOLTA (Interest on Lawyers’ Trust Accounts) funds and other funds remitted to the program.”

## **PROPOSED BOARD COMMITTEE ACTION**

Should the Board Committee on Stakeholder Relations agree with the proposed recommendation, adoption of the following resolution would be appropriate:

**RESOLVED**, that the Board Committee on Stakeholder Relations authorizes sending the attached proposed Rules of the State Bar, Title 3 Rules 3.660 through 3.692 (Legal Services Trust Fund Program) for forty-five day public comment beginning no later than November 24, 2008 and ending no earlier than 45 days later on or after Thursday, January 8, 2009.

**FURTHER RESOLVED** that publication of the foregoing is not, and shall not be construed as, a recommendation of approval by the Board Committee.

## **ATTACHMENTS:**

- Attachment 1: Title 3, Rules 3.660 – 3.692 of the Rules of the State Bar (revised) for release for public comment
- Attachment 2: Title 3, Rules 3.660 – 3.692 of the Rules of the State Bar (revised) for release public comment (redlined to show changes made after public comment)
- Attachment 3: Summary of Public Comment during meetings with IOLTA-funded programs
- Attachment 4: Written comments received: Legal Aid Association of California; Affordable Housing Advocates; Insight, Center for Community Economic Development