

BSRC III D

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

ATTACHMENT 2

TITLE 3. PROGRAMS AND SERVICES

Division 5. Providers of Programs and Services

Chapter 2. Legal Services Trust Fund Program [3.60-3.99]

Article 1. Administration of Legal Services Trust Fund Program

Rule 3.660 Legal Services Trust Fund Commission

Rule 3.661 Duties of Legal Services Trust Fund
Commission

Rule 3.662 Legal Services Trust Fund Commission
membership and terms

Article 2. Construction of certain statutory provisions

Rule 3.670 Operation in California by qualified entities

Rule 3.671 Primary purpose and function

Rule 3.672 Delivery of legal services

Rule 3.673 Permissible uses of funds

Article 3. Applications and distributions

Rule 3.680 Application for Trust Fund Program grants

Rule 3.681 Duties of Trust Fund Program grant recipient

Rule 3.682 No abrogation of legal or professional
responsibilities

Article 4. Requests for review and complaints process

Rule 3.690 ~~Definition~~ Receipt of document

Rule 3.691 ~~Commission decisions to deny or terminate
funding~~ Denial or termination of funding

Rule 3.692 Complaints

Article 1. Administration of the Legal Services Trust Fund Program

Rule 3.660 Legal Services Trust Fund Commission

The Board of Governors of the State Bar of California has established a Legal Services Trust Fund Commission ("Commission") to administer, in accordance with legal requirements and these rules ("Trust Fund Requirements"), revenue from IOLTA (Interest on Lawyers' Trust Accounts) funds and other funds remitted to the Legal Services Trust Fund Program of the State Bar.

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 specifies a provisional grant amount and any additional requirements, such as a site visit, for a final determination.~~ 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 ~~assessment~~ 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 ~~independent~~ evaluation of a recipient provided at the request of the Commission 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) ~~The Standards for the Provision of Civil Legal Services to the Poor Aid adopted by the American Bar Association's House of Delegates on August 7, 2006, or amended versions of these standards,~~ as limited by the general introduction to the standards, are the guidelines normally used by the Commission in ~~reviewing and approving~~ the quality control procedures and reviewing and evaluating the maintenance of quality service and professional standards and evaluating the quality control and other practices 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) The Commission may terminate a grant for noncompliance or take other action in accordance with Article 4 of this chapter.

Rule 3.662 Legal Services Trust Fund Commission membership and terms

The Commission consists of twenty-one voting members and three nonvoting judicial advisors. At least two members must be or have been within five years of appointment indigent persons as defined by statute.¹ No employee or independent contractor acting as a consultant to a potential recipient of Trust Fund grants may be appointed to the Commission.

- (A) The Board of Governors appoints fourteen voting members, ten of whom must be members of the State Bar and four of whom must be public members who have never been admitted to the practice of law in any United States jurisdiction. Each member serves at the pleasure of the Board for a term of three years that begins and ends at the State Bar annual meeting, unless the Board extends an appointment by one or two years to allow a member to serve as chair or vice-chair or to provide continuity for a specific project.
- (B) The chair of the Judicial Council appoints seven voting members, five of whom must be members of the State Bar and two of whom must be public members, as well as three nonvoting judges, one of whom must be an appellate justice. Each member serves at the pleasure of the chair of the Judicial Council for a term of three years.
- (C) The Board of Governors appoints voting members as chair and vice-chair.

Article 2. Construction of certain statutory provisions

Rule 3.670 Operation in California by qualified entities²

- (A) A qualified legal services project is required by statute to be a nonprofit corporation operating exclusively in California or a program operated exclusively in California by a nonprofit law school ~~that is~~ accredited by the State Bar.³ A qualified legal services project that is a California nonprofit corporation with operations outside California may be considered as meeting the statutory requirement if it ~~expends Trust Fund Program funds only in California and otherwise meets Trust Fund Requirements and~~ expends Trust Fund Program grant funds only in California.

¹ Business & Professions Code § 6213(d).

² ~~Business & Professions Code § 6213(a)(1).~~

³ Business & Professions Code 6213 (a).

- (B) A qualified support center is required by statute to be an incorporated nonprofit legal services center that provides through an office in California a significant level of legal support services to qualified legal services projects on a statewide basis.⁴

Rule 3.671 Primary purpose and function

- (A) A qualified legal services project is required by statute to have as its primary purpose and function providing legal services without charge to indigent persons.⁵ A qualified legal services project applying for Trust Fund Program funds is presumed to have such a purpose and function if ~~(1) more than~~ 75% or more of the budget for the fiscal year for which it is seeking funds is designated to provide free legal services to indigents, and ~~more than~~ 75% or more of its expenditures for the most recent reporting year were incurred for such services; ~~the~~ The calculation of 75% of expenditures may include a reasonable share of administrative and overhead expenses. ~~as authorized by these rules.~~

~~(2) its services meet the requirements of Business and Professions Code § 6213(a) and are funded either in whole or in part by the Legal Services Corporation or the Older Americans Act.~~

- (B) ~~(C)~~A qualified support center is required by statute to have as its primary purpose and function the provision of legal training, legal technical assistance, or advocacy support without charge.⁶ A qualified support center applying for funds is presumed to have such a primary purpose and function if ~~more than~~ 75% or more of its budget for the fiscal year for which it is seeking funds is designated to provide such support services, and ~~more than~~ 75% or more of its expenditures for the most recent reporting year were incurred for such services.
- (C) ~~(B)~~A qualified legal services project or qualified support center that does not meet the 75% test may nevertheless apply, provided that the ~~project~~ applicant can satisfactorily demonstrate that it meets the primary purpose and function requirement by other means.

Rule 3.672 Delivery of legal services

- (A) “Legal services” include all professional services provided by a member of the State Bar and similar or complementary services of a law student or

⁴ Business & Professions Code § 6213(b).

⁵ Business & Professions Code § 6213(a)(1).

⁶ Business & Professions Code § 6213(b).

paralegal under the supervision and control of a member of the State Bar in accordance with law.⁷

- (B) “Legal support services” required by statute ~~include professional services to qualified legal services projects and the direct provision of legal services to an indigent client of a qualified legal services project, provided the services are provided directly to the client~~ to be provided by a qualified support center include but are not limited to
- (1) professional services to qualified legal services projects; and
 - (2) the direct provision of legal services to an indigent client of a qualified legal services project, provided the services are provided directly to the client
 - (a) ~~(1)~~as co-counsel with an attorney employed or recruited by a qualified legal services project; or
 - (b) ~~(2)~~at the request of an attorney employed or recruited by a qualified legal services project that is unable to assist the client.⁸

Rule 3.673 Permissible uses of funds

- (A) A qualified legal services project or qualified support center ~~may only~~ must use funds received under Business and Professions Code Section 6216 to provide legal assistance to indigent persons or qualified legal services projects as defined by statute.⁹ ~~A reasonable share of~~ Reasonable share of administrative expenditures and overhead required to deliver such services meets the statutory requirement.
- (B) No recipient may use an allocation made under Business and Professions Code Section 6216 to provide services in a fee-generating case, except as described in Business and Professions Code Section 6213(e)(1)-(4). If a recipient determines that a case is not fee generating because it qualifies for a statutory exemption,¹⁰ the recipient must maintain records reflecting the facts that led to that conclusion and any action taken to confirm it. Client reimbursements of nominal costs or expenses are not considered fees. If attorney fees are generated in cases funded by Trust Fund Program grants, the fees must be used only for purposes permitted by statute.¹¹ Recipients

⁷ Business & Professions Code § 6213(a).

⁸ Business & Professions Code § 6213(b).

⁹ Business & Professions Code §§ 6216 and 6223.

¹⁰ Business & Professions Code § 6213(e)(1).

¹¹ Business & Professions Code § 6223.

must maintain complete records of all such fees and ~~comply with reporting requirements.~~

Article 3. Applications and distributions

Rule 3.680 Application for Trust Fund Program grants

To be considered for a Trust Fund Program grant, ~~A~~ a qualified legal services project or qualified support center seeking a Trust Fund Program grant must submit a timely and complete application for funding in the manner prescribed by the Commission. The applicant must agree to use any grant in accordance with grant terms and legal requirements.

- (A) A qualified legal services project must meet statutory criteria.
- (B) A qualified support center must agree to offer support services in two or more of the following ways: consultation, representation, information services, and training. ~~A support center may apply for funding on the basis of special need, provided that its application demonstrates that it meets State Bar quality control requirements and the support center is deemed to be of special need by a majority of qualified legal services projects in accordance with Trust Fund Program procedures.~~ The board of directors of the support center must establish priorities for providing such services after consulting with legal services attorneys and other relevant stakeholders.
- (C) A support center not in existence prior to December 31, 1980 must demonstrate that it is deemed to be of special need by a majority of qualified legal services projects in accordance with Trust Fund Program procedures. Upon request, the Commission must make available to the applicant a list of all the names and addresses of qualified legal services projects.
- (D) A nonprofit corporation that believes it meets the criteria for a qualified legal services project and qualified support center may submit two applications, one as a project and one as a support center, indicating in each application whether it is to be considered the primary or secondary application. The Commission will consider the secondary application only ~~if it determines that~~ the primary application is not approved. No applicant may receive a grant as a qualified legal services project and as a qualified support center.
- (E) An application must include
 - (1) an audited financial statement by an independent certified public accountant for the latest completed fiscal year; if the fiscal year is not a calendar year, the application must also include an income and expense statement for the time between the closing date of the

statement and December 31. A financial review in lieu of an audited financial statement may be submitted by an applicant whose gross corporate expenditures were less than the amount specified in the Schedule of Charges and Deadlines;

- (2) ~~(3)~~ information to demonstrate about the maintenance of quality service and professional standards and how it ~~it~~ the applicant maintains standards, including such as internal quality control and review procedures ~~and standards,~~; experience and educational requirements of attorneys and paralegals; supervisory structure, procedures, and responsibilities; job descriptions and current salaries for all filled and unfilled professional and management positions; and fiscal controls and procedures;
- (3) ~~(2)~~ a budget and budget narrative, which must be submitted within thirty days of receipt of the a Notice of Tentative Allocation, explaining how funds will be used to provide civil legal services to indigent persons, especially underserved client groups such as, ~~but not limited to,~~ the elderly, the disabled, juveniles, and non-English-speaking persons within their their the applicant's service area; and
- (4) information pertaining to about program activities ~~for evaluative purposes and to enable statewide assessment of gaps in the delivery system and to collect data and statistics to increase funding for legal services, such as level and~~ substantive practice areas, of service, the extent and complexity of services, a summary of litigation docket, and populations served.

Rule 3.681 Duties of Trust Fund Program grant recipient

The recipient of a Trust Fund Program grant must

- (A) use the grant in accordance with the terms of the application grant agreement and Trust Fund Requirements;
- (B) maintain complete financial records, including budgets, to account for the receipt and expenditure of all ~~Trust Funds~~ grant funds and derivative income all income earned by a grant recipient from grant-supported activities, such as income from fees for services (including attorney fee awards and reimbursed costs), training, sales and rentals of real or personal property, and interest earned on grant amounts.
- (C) maintain records for five years after completion of services to a client regarding the eligibility of the client and promptly provide such records to the Commission for inspection upon demand;
- (D) annually submit information that describes, in the manner required by the Commission, the grant recipient's maintenance of quality service and

professional standards and compliance with program requirements and, as requested by the Commission,

- (1) information for evaluative purposes about program activities in the prior grant year; and
 - (2) information to enhance the delivery system of legal services;
- (E) ~~(D)~~ cooperate regarding any reasonable site visit ~~to determine whether the grant is being used in compliance with Trust Fund Requirements;~~
- (F) ~~(E)~~ submit timely quarterly financial reports and any other information reasonably required by the Commission; and
- (G) ~~(F)~~ pay any noncompliance fees set forth in the Schedule of Charges and Deadlines ~~to defray administrative costs for handling processing documents that late or that do not comply~~ are substantially noncompliant with Trust Fund Requirements or that are late without permission.

Rule 3.682 No abrogation of legal or professional responsibilities

Nothing in these rules ~~authorizes a recipient to interfere with~~ may limit or impair in any way the professional responsibility of an attorney ~~whose services to a client are funded by the Trust Fund Program to provide a client with legal services appropriate to the client's needs. Attorneys providing legal services funded by Trust Fund Program grants and the clients of such attorneys are entitled to all rights and privileges under the law. Trust Fund Program applicants and recipients and their staffs; volunteers; consultants; and clients and prospective clients of qualified legal service projects and support centers are entitled to all rights and privileges under the law.~~ Nothing in these rules may be interpreted to require ~~an~~ a grant applicant or recipient to violate the law.¹²

Article 4. Requests for review and complaints process

Rule 3.690. ~~Definition~~ Receipt of document

~~In this article,~~ For purposes of this article, receipt of a document mailed by staff or the Commission is deemed to be the earlier of either five days after the date of mailing or ~~is~~ is the actual time of receipt when staff or the Commission delivers a document physically by ~~personal service,~~ courier, or otherwise.

Rule 3.691. ~~Commission decisions to deny or terminate funding~~ Denial or termination of funding

¹² Business & Professions Code § 6217(d).

- (A) The Commission has the authority to deny an application for initial funding or for renewal of funding, or to terminate existing funding in accordance with law and these rules.¹³ The applicant or grant recipient is entitled to written notice of the denial or termination of funding.
- (B) The applicant or grant recipient may request reconsideration by the Commission.
- (1) The request must be provided to the Commission in writing within ~~30~~ thirty days of receipt of the notice of denial or termination of funding. The request may include additional evidence information.
 - (2) The Commission may affirm its decision, modify its decision, or schedule an informal conference to be held within ninety days of receipt of the request. The applicant or recipient is entitled to written notice of the date, time and place of the conference, and must have an opportunity to present evidence information at the conference.
 - (3) Unless all parties agree otherwise, The the Commission must make mail or otherwise deliver a written decision within ~~one hundred twenty six~~ sixty days of receipt of the request the conference. ~~The applicant or recipient is entitled to written notice of the decision of the Commission.~~
- (C) Within ~~30~~ thirty days of receipt of written notice of the Commission decision of the ~~Commission~~ on the request for reconsideration, the applicant or grant recipient may file a request for review by the State Bar Court. The request ~~for review~~ must be submitted to the State Bar Court in accordance with the Rules of Procedure of the State Bar on Legal Services Trust Fund Proceedings. Pending a final decision by the State Bar Court, ~~the~~ a current grant recipient must continue to receive funding.¹⁴
- (D) The decision of the Commission on the request for reconsideration is final if the applicant or grant recipient fails to file a timely request for review by the State Bar Court.

Rule 3.692. Complaints

- (A) Any person or entity may file a formal written complaint that a grant recipient fails to meet Trust Fund Requirements.
- (B) Staff must ~~evaluate and attempt to resolve~~ provide a copy of evaluate and attempt to resolve a formal written complaints ~~regarding a grant recipient regarding to the~~ grant recipient whom it concerns and attempt to resolve

¹³ Business & Professions Code § 6224.

¹⁴ ~~Business & Professions Code § 6224.~~

[the complaint](#). If the complaint is not resolved within ninety days after staff receives the complaint, staff must provide the Commission, complainant, and recipient with a written report of its efforts to resolve the complaint and recommendation of what action, if any, is appropriate.

- (C) Within thirty days of receipt of the staff report, the complainant and grant recipient may provide the Commission with a written response that may include additional evidence information and may request review by the Commission.
- (D) Within a reasonable time, the Commission or a committee of its members appointed by the Commission must consider the staff report and any response. The Commission or committee must then dismiss the complaint or schedule an informal conference. The complainant and grant recipient are entitled to written notice of the dismissal or the date, time, and place of the conference.
- (E) At the informal conference, the staff member who conducted the investigation must be present barring extenuating circumstances. The complainant and grant recipient must have an opportunity to present evidence information. The Commission must issue a written notice dismissing the complaint; requiring corrective action; or terminating funds. The complainant and recipient are entitled to written notice of the decision ~~of the Commission~~.
- (G) If the Commission or committee decides to dismiss the complaint, the decision is final.
- (H) If the Commission or committee decides to terminate funding, within ~~30~~ thirty days of receipt of written notice of the decision the grant recipient may file a request for review by the State Bar Court. The request ~~for review~~ must be submitted to the State Bar Court in accordance with the Rules of Procedure of the State Bar on Legal Services Trust Fund Proceedings. Pending a final decision by the State Bar Court, ~~the~~ a current grant recipient must continue to receive funding.¹⁵
- (I) The decision of the Commission to terminate funding is final if the grant recipient fails to file a timely request for review by the State Bar Court.

¹⁵ ~~Business & Professions Code § 6224.~~