

ATTACHMENT 4

***“The Unified Voice of Legal
Services”***



August 14, 2008

Glory Tabuena
The State Bar of California
Legal Services Trust Fund
180 Howard Street
San Francisco, CA 94105

Submitted via email to Glory.Tabuena@calbar.ca.gov

Re: Proposed Rules of the State Bar, Title 3, Rules 3.60-3.92 (Legal Services Trust Fund Program)

Dear Ms. Tabuena:

I am writing on behalf of the Board of Directors and organizational members of the Legal Aid Association of California (LAAC) that have signed on below to provide comments on the State Bar of California's proposed changes to the rules regulating funding from the Interest on Lawyer's Trust Accounts (IOLTA) trust fund. LAAC is the statewide membership organization for nonprofit corporations that provide legal assistance to low-income, disadvantaged, and underserved Californians. LAAC's 2008 membership consists of 81 IOLTA-funded legal services programs, as well as over forty individual legal services staff and supporters. All of LAAC's member organizations would be subject to the proposed rule changes.

LAAC and the undersigned commend the State Bar of California and the Legal Services Trust Fund Program (LSTFP) for the rules revision project and applaud the efforts of the proposed rules' drafters. Overall, the proposed rules are clearer and more readable, both in terms of language and organizational structure. LAAC and the undersigned thank the Legal Services Trust Fund Program and staff for the many opportunities provided for stakeholders to offer public comment during the thoughtful, comprehensive, and inclusive process.

There are several areas in the proposed rules where LAAC and the undersigned recommend revision and/or clarification. We will address below changes that are supported by the legal services community, as well as proposals that LAAC believes would benefit from additional discussion and revision prior to final approval by the Board of Governors.

I. LAAC SUPPORTS PROPOSED CHANGES TO PROCEDURE FOR TERMINATION OF FUNDING, FILING COMPLAINTS, AND NEW WRITTEN NOTICE REQUIREMENTS

The proposed revisions to procedures for termination of funding, filing complaints, and new written notice requirements achieve the stated goals of increased clarity and efficiency without sacrificing substance.

A. Proposed Rule Regarding Requests for Commission Reconsideration

The proposed rules contain a provision which would allow applicants or recipients to request reconsideration after a denial of their funding application. The current rules and the IOLTA statute provide that applicants who have been denied funding or had funding terminated receive a thirty day period within which to file a request for rehearing by the State Bar Court. See Rules 6.7, 7, 7.1; see also Article 14 § 6224. The proposed rules would add a step before this statutorily imposed hearing with the opportunity for a “request for reconsideration” by the Commission. See Proposed Rule 3.91(B). LAAC and the undersigned believe this extra step will ensure sufficient reconsideration of any denials and therefore support this change.

B. Proposed Rule for Complaint Procedure

The proposed rules would make minor changes to the current procedures for filing and responding to complaints. Under the proposed rules, if a filed complaint is not resolved after ninety days of receipt (this time frame is not specified in the current rules), State Bar staff must provide the Commission, the complainant and the recipient a written report of its efforts to resolve the issue. As in the current rules (See Rule 6.3), the report would be required to include a recommendation of what action, if any, is appropriate. See Proposed Rule 3.92(B). The proposed rules would also increase the amount of time given for the complainant and the recipient to submit a written response or additional evidence from 20 to 30 days. See Proposed Rule 3.92(C). Further, the proposed rules would add that both the complainant and the recipient may request review by the Commission, differing from the current rules which only specify a recommendation from the State Bar staff investigator.

Under both the current and proposed rules, if the Commission decides not to hold a review, the matter will be dismissed. Under the current rules, however, if the complaint is dismissed, the complaining party may request a State Bar Board of Governors review of the Commission record. In the proposed rules, this route of “appeal” for the complaining party would be removed, making final a Commission decision to dismiss. Proposed Rule 3.92(G).

Under the current rules either party can request review of a Commission decision (whether it is dismissal of the complaint or termination of funding) by the State Bar Board. See Rule 6.6. Under the proposed rules, a Commission decision to dismiss would be final (either before a review or after one). See Proposed Rule 3.92(G). A Commission decision to terminate funding can be appealed by the recipient to the State Bar Board under both the current and

proposed rules (See Rule 6.6 and Proposed Rule 3.92(h)). The proposed rules would add a thirty day period for filing such appeals.¹ These proposed changes are both fair and efficient.

C. New Written Notice Requirements

In several places where the current rules merely state that “notice shall be given,” the proposed rules would add a requirement that notice for all termination of funding or the denial of an application must be in writing. While the current rules state “[t]he Commission shall notify each applicant of the approval or disapproval of its application” (Rule 5), the proposed rules would add a requirement that such decisions require written notice. See Proposed Rule 3.91. This change will ensure adequate notice to grant recipients.

This is mirrored in the proposed rules regarding complaints as well. The proposed rules state, “[t]he Commission must issue a written notice dismissing the complaint or terminating funds.” Proposed Rule 3.92(E). The current rules do not mention notice to the applicant at this stage. Again, LAAC and the undersigned support this change.

II. RULES SHOULD TRACK STATUTORY REQUIREMENTS REGARDING COMMISSION REVIEW OF QUALITY CONTROL PROCEDURES AND CLARIFY REQUIREMENTS FOR APPLICANTS AND RECIPIENTS

LAAC and the undersigned strongly and actively support the presumption that all IOLTA-funded programs should provide high caliber services and maintain maximum professional standards. Organizations’ quality control procedures are an essential part of both requiring and maintaining high standards for service and practice. Further, LAAC and the undersigned hope that a thoughtful revision of these rules will result in the legislative aim of the statute, which was to increase access to and improve the quality of legal services.

There are two statutorily required ways in which the State Bar regulates the provision of legal services by IOLTA-funded organizations: (1) approval of applicants’ quality control procedures to determine eligibility, and (2) review of recipients’ maintenance of quality service and professional standards to determine compliance with both the IOLTA rules. Business & Professions Code §§ 6213, 6217 (emphasis added). These are both in addition to the State Bar’s more general oversight and regulation of all California attorneys pursuant to the Professional Code of Conduct.² LAAC acknowledges that this statutory distinction is not explicit in the

¹ The current rules provide that a recipient whose funding has been terminated is entitled to a hearing before the State Bar Court, separate from the previous Commission hearing and State Bar review. This hearing is provided for in the statute. See Article 14 § 6224. This hearing is mentioned in Proposed Rule 3.91(C) with regard to termination of existing funding but not again with regard to termination because of a complaint. LAAC and the undersigned would oppose this change if it is an intentional difference, but suspect it was merely a drafting error. LAAC proposed that the language be amended to clarify that programs are entitled to such a hearing.

² Distinct from either “review of quality control procedures,” or overseeing “maintenance of quality legal services,” is review of substantive decisions. A review of substantive decisions would involve evaluating the *actual services provided* by an organization, not from a quality control or professional services standpoint, but rather a judgment regarding the type of service or the actual services provided. Statutorily, the LSTFP may review the process (i.e., the quality control procedures in place) by which a program makes a decision regarding the use of limited resources to focus on one specific client population, type of service, substantive area, etc., but may not evaluate and comment

current rules, but LAAC asserts that the basic statutory concepts are echoed there. The lack of clarity continues in the proposed rules, but adoption of the proposed rules would further conflate the issue, and LAAC strongly advocates that the State Bar take advantage of the overall work on revising the rules to implement in regulation the distinction between IOLTA eligibility requirements and application process from the evaluation, monitoring and report process.

A. “Quality Control Procedures” and “Quality Service Standards” are Distinct Concepts as Reflected in the Statute

The statute states that in order to be considered a Qualified Legal Services Project (QLSP) and eligible to receive IOLTA funding, programs must have quality control procedures approved by the State Bar. § 6213(a)(2)(B).³ Once an organization receives IOLTA funds, the QLSP or Support Center (now a recipient) must ensure “the maintenance of quality service and professional standards.” § 6217(emphasis added). This is achieved through the statutory mandate that recipients of funding provide a report to the State Bar. § 6222. In summary, the statute states that the LSTFP must review and approve a program’s “quality control procedures” to determine eligibility, and also requires IOLTA-funded recipients to ensure maintenance of “quality services and professional standards” and demonstrate that they do so through an annual reporting process.

These two concepts are implemented in the current rules in two ways: (1) description of quality control procedures as an eligibility requirement (Rule 4.4); and (2) an ongoing responsibility of the Commission of monitoring *recipients’* practices to ensure provision of quality services and compliance with other rules (Rule 5.3). LAAC supports the design of the current application process in which the State Bar requires information about the quality control procedures in the application documents in order to determine whether the program meets this eligibility requirement. LAAC also supports the Commission’s monitoring process by which the State Bar can engage with programs and offer technical assistance to ensure programs have

on the substance of the decision itself as a “quality” issue. Accordingly, the statute limits the LSTFP as to reviewing the policy and procedures by which a recipient makes service-related decisions – to ensure that the quality controls exist and are sufficient – but the statute does not allow the LSTFP to evaluate the substantive decisions made by programs as to which types of cases to take, types of services to offer, or client groups to assist.

LAAC has concerns that the “quality” provision in the proposed rules could be interpreted to enable the LSTFP to evaluate these types of substantive decisions made by programs, as well as perhaps the actual services provided to clients. LAAC supports that the LSTFP should be working with programs to assess their quality control procedures or the standards programs set into place to ensure the maintenance of quality services, but LAAC opposes the proposed rules that might extend beyond statutory authority into allowing the LSTFP to assess the actual types and levels of services provided in determining eligibility for IOLTA funding. Such decisions regarding service delivery involve, by necessity, decisions relating to available resources, client need assessments, the organization's charitable purpose, and the organization's role in its unique community. Accordingly, such decisions are more appropriately left to a program’s Board of Directors and staff, subject to the statutory requirement that the program have appropriate quality control procedures in place and that all attorneys providing legal services at an IOLTA-funded program comply with the Rules of Professional Responsibility.

³ Note that the statutory requirements are slightly different for qualified Support Centers, where quality standards are to be established by the State Bar for the Support Centers that are required to go through the deeming process. (Business & Professions Code § 6215).

systems in place to ensure quality service and professional standards, including through the review of the programs' reports on the expenditure of funds.⁴

B. "Quality Control Procedures" and "Quality Service" Should be Differentiated Accordingly in LSTFP Regulations

The proposed rule changes appear to intertwine and treat as interchangeable the process for reviewing applications to determine eligibility with the process of reviewing programs' reports and monitoring the expenditure of funds. See Proposed Rule 3.61. LAAC is concerned that this will lead to ambiguity and confusion between the treatment of "applicants" and "recipients" or "applicants for refunding."⁵ Treating the application process interchangeably with the monitoring process eliminates the separate and distinct requirements in the statute as to eligibility (i.e., requirements for applicants) versus the ongoing requirements of fund recipients. The criteria for review of both applications and the reports required by statutes are also currently found in the section on the duties of the Commission and include no description of the process for reviewing applications and deciding on eligibility, or the process for monitoring recipients including review and approval of the statutorily required reports, financial reports, and possible site visits.

Furthermore, as explained in more detail below, the proposed rules also add significant new requirements to the application process, including a new level of information required regarding demonstrating the service to be provided as well as additional information regarding the organization. As more requirements are added to programs' participation in the IOLTA program, it becomes even more important to distinguish between what is required in the application process as to eligibility and the information collected as to monitoring the expenditure of IOLTA funds.

LAAC acknowledges that the current rules are also somewhat confusing on this issue and that the current application process conflates the two statutory requirements. The current rules revision process provides an excellent opportunity to clarify the requirements and procedures. Therefore, LAAC and the undersigned recommend that the rules be revised to include one

⁴ Note that the current annual re-application for funding for programs already receiving IOLTA funding conflates the two processes to some extent, with programs providing information about fore-going eligibility and reporting on past expenditure of funds in one document. However, the current forms used could be easily separated into an "application" section and a "reporting" section with no change to the information collected.

⁵ The statute defines a "recipient" as "a qualified legal services project or support center receiving financial assistance under this article." §6213. The statute does not specifically define an "applicant." Both the current rules and proposed rules are vague as to whether a recipient re-applying for funding continues to be a "recipient" or is again an "applicant." However, the instructions for completing applications (i.e., "the guidelines") provide a choice between completing a "New Application for Funding," and an "Application for Refunding." This phrasing "applicant for refunding," as opposed to "re-applicant," or "recipient who is re-applying" makes it clear in the application instructions that an organization is a recipient only during the period it received funding, and that all regulations regarding "applicants" do apply to current recipients when they are applying for "re-funding." In contrast to the information in the application instructions, there is no clarification in either the current rules or the proposed rules that programs current receiving IOLTA funding would be treated as "applicants" or "applicants for re-funding." This omission leads to lack of clarity as to how the rules apply to programs once they are receiving IOLTA funds.

section on eligibility and the application process and another separate section regarding the monitoring reporting process by programs and related monitoring and evaluation by the Commission. LAAC would welcome the opportunity to offer proposed language if that would be helpful to this process.

In addition to the above important clarifying reorganization, LAAC also has specific comments to proposed changes as to both the issues of eligibility and maintenance, discussed below as II(B) (1) and (2).

1. Applications: Revised Application Requirements for Quality Control Standards of Concern to the Legal Services Community

As stated above, the statute affirms that in order to be eligible for funding, QLSP's must have quality control procedures approved by the State Bar. § 6213. The current rules reflect this requirement: "applications shall describe the applicant's quality control procedures and standards." Rule 4.4. The current rules also permit applications to require only information that is reasonably necessary to determine eligibility. See Rule 4.1. The proposed rules, however, would require applications to include information which "demonstrates the maintenance of quality service and professional standards," in addition to the information required in the current rules; the rules also omit the requirement that programs provide information about the, "minimum experience and educational requirements for attorney supervisors."⁶ Proposed Rule 3.80 (emphasis added). The proposed rules also insert the statutory language regarding responsibilities of a recipient ("maintenance of quality service and professional standards") into the application requirements. (See next section.)

The proposed rules would increase the level of explanation of services provided in the application from "describe" to "demonstrate," requiring applicants not only to explain their standards but also show how they maintain them. See Proposed Rule 3.80(E)(3). This change would make the application process considerably more burdensome to programs and requires additional clarification as to how programs would meet this new standard. The concept of "demonstrating" services might be better suited with regard to site visits (where quality control could be demonstrated or shown), but in the written application document, an applicant can better *describe* procedures. LAAC and the undersigned advocate that "describe" continue to be used in the rules pertaining to the application, to better reflect what is possible in any application process and more closely track what is statutorily required for programs. See Rule 4.4 and Proposed Rule 3.80.

2. Recipients: Proposed Rules for Monitoring and Evaluating Quality Control of Concern to the Legal Services Community

The current rules involve the LSTFP Commission in "reviewing and approving the quality control procedures and evaluating the practices" of applicant and recipient programs. Rule 5.3. The proposed rules would add to the sentence so it reads: "reviewing and approving the *maintenance of quality service and professional standards*, and evaluating the quality control and other practices." Proposed Rule 3.61 (emphasis added). Therefore, in addition to including

⁶ LAAC and the undersigned merely note this omission, but do not take a position on the deletion.

“maintenance of quality services and professional standards,” which is statutorily required for recipients, the proposed rules would move the word “evaluating” so that it covers quality control in addition to “other practices.” Moreover, changing the current rules “practices” to “other practices” without defining the term is vague. Proposed Rule 3.61. It is not clear whether this was an intentional change. Further, it is not clear whether “reviewing and approving” applies to applicants, and “maintaining and evaluating” applies to recipients. Such an interpretation would seem logical, given the statutory requirements outlined above for applicants, recipients and the Commission, but if so it should be explicit in the proposed rules. LAAC suggests the language be modified to read *“reviewing and approving the quality control procedures of applicants and evaluating the maintenance of quality service and professional standards by recipient programs.”*

In addition, the current and proposed rules provide for an independent evaluation at the request of the Commission. The language in the proposed changes raises the question of whether programs could be required to bear the cost of such an evaluation, and if so, under what circumstances. LAAC and the undersigned question how it would be determined which third party would perform the evaluation and who would cover the cost of such an evaluation. LAAC and the undersigned further advocate that this section be clarified, including the insertion of the word “unbiased” to “third party independent evaluation.”

III. SUBSTANTIVE CHANGES LAAC OPPOSES

A. The Reasonableness Standard Should be Explicitly Retained

LAAC and the undersigned assume that removal of the reasonableness standard must have been inadvertent, as presumably the IOLTA funding process is intended to be reasonable at every step along the way. Were reasonableness no longer the standard in these rules, LAAC and the undersigned would be concerned as to what standard, if any, would be used to determine eligibility and the amount of funding. If a reasonable standard is presumed to be implied throughout the proposed rules, it should be noted that Proposed Rules 3.73(A), 3.61(B)(1), and 3.92(D) still use the term “reasonable” (to refer to “a reasonable share of expenditures,” “information reasonably necessary,” and “a reasonable time,” respectively), implying that when there is a reasonable standard it will be explicitly stated. LAAC and the undersigned therefore oppose the removal of the explicit reasonableness standard in the current rules and advocate for explicit inclusion of the word “reasonable” in the revised proposed rules to ensure that the standard is not eliminated.

1. Retain Reasonableness Standard re: Site Visits and Additional Information

The current rules state “[a]pplications should not require information other than that reasonably needed to determine eligibility and the amount of funds to be allocated.” Rule 4.1. This sentence sets the tone for the current rules, making explicit that a degree of reasonableness will infuse the entire application process. The proposed rules do not reference reasonableness with regard to required application documents or eligibility standards. LAAC and the undersigned advocate that the “reasonable” language be left in the revised regulations.

2. Retain Reasonableness Standard re: Recipient Requirements

Current Rule 5.3 states that an IOLTA “recipient may be required by the Commission to permit reasonable site visits or to present additional information as the Commission deems reasonably necessary to determine compliance.” The proposed rules would instead require recipients to “cooperate regarding any site visits,” and to submit “any other information required by the Commission.” Proposed Rule 3.81(D) and (E) (emphasis added). Thus by substituting the phrases “any other information” and “any site visit” rather than “additional information” and “reasonable site visits,” the proposed rules eliminate the reasonableness standard. It should be noted that this is divergent from Proposed Rule 3.61(B)(2) which notes that site visits, as one of the things the Commission may use to assess recipients, should be “reasonable,” and with “adequate notice.” LAAC and the undersigned advocate that the “reasonable” language be consistent throughout the revised regulations, and inserted in Proposed Rule 3.81(D) and (E).

B. Language Regarding Common Law, Statutory, and Constitutional Privileges Should Be Retained

The current rules state, “[s]ubject to common law, statutory and constitutional privileges, and subject to professional responsibilities of the State Bar of California contained in the State Bar Act and the Rules of Professional Conduct, the applicant or recipient may be required by the Commission to permit reasonable site visits or to present such additional information as the Commission deems reasonably necessary to determine compliance with the foregoing rules.” Rule 5.3. Here, currently the State Bar’s actions are explicitly limited by these protections. The proposed rules would eliminate the reference to common law, statutory, constitutional privileges as well as professional responsibilities. In proposed rule 3.82, recipients are not authorized to abrogate their legal responsibilities or interfere with their attorneys’ professional responsibilities. However, under the proposed rules, any common law, statutory and constitutional privileges would no longer explicitly be afforded to programs in the context of site visits or requests for additional information. This removal without additional information could be interpreted as regulatory intent to remove those protections. LAAC and the undersigned strongly oppose the elimination of these protections and advocate keeping the language from the current rules.

C. Proposed Change in Composition of Commission Members May Not Meet Need to Have Client-Eligible Community Representation

The proposed rules would add much more detail about the composition of the Commission that is not in the current rules. See Proposed Rule 3.62. LAAC and the undersigned understand that many of these changes have already been approved by the Board of Governors in the implementation of the Equal Access Fund, and therefore including them in the proposed rules is primarily a formality.

However, one new change is to the requirements for client-eligible representatives on the Commission. According to the Board of Governors Board Book, at least two members “shall be ‘indigent persons.’” Board Book, Article 7, Section 1. The proposed rules change this to “must be or have been” indigent persons, allowing the Commission to fulfill this requirement with individuals who were once indigent but no longer are.

There is some divergence of opinion in the legal services community regarding this proposed change. Some programs would oppose it outright. The majority would advocate for clarifying language. LAAC advocates that the proposed rules be amended to read “are indigent or have been indigent within the last five years.” This revision would maintain the spirit of the regulation by ensuring that these two Commission members continue to represent the interests of the client-eligible community, while incorporating an understanding that in practice it may be very difficult to find client-eligible Commission members.

D. Ensure Consistent Use of Terminology

The proposed rules use inconsistent terminology, contradicting the stated revision project’s aims of clarity and improved readability. Application requirements listed in Proposed Rule 3.80(E)(2) state that a budget and budget narrative must be submitted within thirty days of receipt of the “Notice of Tentative Allocation.” This is the first time the term “Notice of Tentative Allocation” is used; earlier in Proposed Rule 3.61(A) Duties of Legal Services Trust Fund Commission, a “provisional grant amount” is referred to, but the two are not connected at any time.

LAAC and the undersigned advocate that Proposed Rule 3.61(A) should be revised to read, “If the Commission tentatively approves an application, it must notify the applicant by sending a Notice of Tentative Allocation specifying a provisional grant amount and any additional requirements, such as a site visit, for a final determination.” This revision is consistent with the current rules which refer to “notification of proposed allocation of funds.” Rule 5.1. Again, if the proposed rules were to include one section on eligibility requirements and the application process, this language would fit well there.

E. Retain Current Definition of “Legal Services”

While the statute does not define “legal services,” current Rule 2 defines “legal services” to include “all professional services provided by a member of the state bar, and similar or complementary services of a law student or paralegal under the supervision and control of a member of the State Bar in accordance with the law.” (emphasis added). The proposed rules would define “legal services” the same way, but omitting the word “all.” See proposed Rule 3.72.

This seemingly minor change has the potential to have a serious impact. Omitting just the one word could be interpreted as creating a regulatory history with the intent to limit the activities that fall under the definition of qualified “legal services.” LAAC and the undersigned are concerned about whether this word was taken out for a purpose, and if so, if there are specific activities that it is meant to exclude. “All professional activities” is already limited by the rest of the sentence, “in accordance with the law,” and by the very term it defines – “legal services,” clearly excluding accounting or medical services, for example. LAAC and the undersigned strongly advocate that the rules retain the word “all.”⁷

⁷ The current use of the word “all” is similar to the definition of “legal work” in the ABA Standards for the Provision of Civil Legal Aid:

“‘Legal work’ refers to all of the work that involves the use of legal skills and knowledge that a provider performs on behalf of the low income community it serves. It includes legal

IV. PROPOSED NEW REQUIREMENTS THAT REQUIRE FURTHER EXPLANATION AND REVISION

The proposed rules include several new requirements in the application process that have raised significant questions and concerns in the public comment process. These new requirements would benefit from additional opportunity for public comment, as well as greater clarity and revision in the rules themselves.

A. Proposed Additional Application Requirements Require Revision

The current rules state that “[a]pplications should not require information other than reasonably necessary to determine eligibility and the amount of funds to be allocated.” Rule 4.1. The proposed rules would add that an application “must” include “information pertaining to 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 areas of service, the litigation docket, and populations served.” Proposed Rule 3.80(E)(4), see also Proposed Rule 3.80, “a complete application.” There is no reference in the statute or current rules to the “level and areas of service, the litigation docket, and populations served.” LAAC understands and supports the reasons for collecting this information, however including it as an element of the application and therefore potentially as an eligibility requirement for funding is burdensome to programs. If included as such, it could create a regulatory requirement that programs provide information not required in the current rules or statute. Further, LAAC and the undersigned question whether the omission of such information in an application would result in the program incurring fees per the new Schedule of Fees and Deadlines (see below).

LAAC and the undersigned propose as one potential resolution that the sentence be revised to read: “*information pertaining to 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 areas of service, the litigation docket, and populations served.~~*” Alternatively, if, as recommended above, the rules were to bifurcate the information required for application from the information required in a recipient’s “report”, this request for additional information could be included in the separate rule implementing the statutorily-required annual report.

B. Proposed Requirement of Noncompliance Fees Should Be Revised or Removed

The proposed rules would require that programs “pay any noncompliance fees set forth in the Schedule of Charges and Deadlines to defray administrative costs for handling documents that are late or that do not comply with Trust Fund requirements.” Proposed Rule 3.81. This

representation of individuals and groups. It also encompasses non-representational services and forms of assistance, such as community legal education and the provision of legal information, pro se clinics and other forms of self-help assistance as well as studies and reports on issues of general importance to the low-income communities served by the provider.” *ABA Standards, Definitions of Significant Terms Used in Standards*, p. v.

requirement does not exist in the statute or current rules and would impact programs which would then be required to pay these fees. The proposed rules do not define "late" nor specify exactly which requirements would be included for assessing fees for failure to "comply with Trust Fund requirements." The description of the proposed system for allocating costs and determining which programs must pay fees would benefit from more details. Presumably at least some programs would pay such fees out of funding that otherwise would be dedicated to the provision of services to clients. LAAC strongly supports the presumption that all documents should be timely filed, but also understands that some times extenuating circumstances can arise.

At the minimum, LAAC and the undersigned advocate that language be included making it clear that the Trust Fund Program has discretion to grant extensions and clarify that fees will be incurred unless the trust fund has granted an exception. Alternatively, language such as "chronic, persistent, or extenuating circumstances" could also be added to this section so fees would be assessed only when appropriate. Further, the rules would benefit from greater clarity as to the functioning of this new system along with appropriate definitions. LAAC and the undersigned encourage that this section of the proposed rules be rewritten with greater detail and clarification of the process for assessing fees.

V. PROPOSED SUBSTANTIVE CHANGES TO CURRENT RULES REQUIRE FURTHER EXPLANATION AND REVISION

The proposed rules also make substantive changes to some of the requirements that exist in the current rules. These changes to existing requirements resulted in significant public comment during the series of meetings around the state, and accordingly LAAC requests further explanation and revision of the changes based on the comments received and below.

A. Question Regarding the Use of Aspirational Guidelines In the Application Process

The current rules state that the 1986 ABA Standards for Providers of Civil Legal Services to the Poor, as limited by their introduction, are the guidelines used by the Commission to review and approve and evaluate applicants and recipients. See Rule 5.3. LAAC and the undersigned request greater clarification as to how the Commission will use of the ABA standards, which are aspirational in nature, to approve applicant's quality control procedures and recipients' standards relating to quality service and professional practices. LAAC particularly queries whether the use of the ABA Standards to evaluate applications could result in the standards operating as de facto eligibility requirements. LAAC and the undersigned suggest that the proposed rules should separate mandatory, statutory eligibility requirements from the ABA Standards as the aspirational guidelines used by the Commission to evaluate quality control procedures and offer technical assistance to recipient programs in the monitoring or evaluation process.

B. Proposed Reference to "Amended Versions" of the ABA Standards Inappropriate if Not in Line with California Access to Justice Principles

The current rules state, "[t]he Standards for Providers of Civil Legal Services to the Poor approved by the American Bar Association House of Delegates in August 1986, as limited by the

general introduction to those Standards, are the guidelines to be used by the State Bar in reviewing and approving the quality control procedures and evaluating the practices of applicant and recipient programs.” Rule 5.3. The proposed rules state, “[t]he Standards for the Provision of Civil Legal Services to the Poor 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 maintenance of quality service and professional standards, and evaluating the quality control and other practices of applicant and recipient programs.” Proposed Rule 3.61 (emphasis added).

These proposed rules reference the Standards adopted on August 7, 2006, and include “or amended versions of these standards,” which is not in the current rules or statute. Proposed Rule 3.61. The term “normally” is also not in the current rules; hence, under the proposed rules, the State Bar could arguably look to other, unspecified guidelines as well. LAAC and the undersigned advocate the inclusion of language that would make it clear that programs could request that the LSTFP use future amended versions if they were consistent with the access to justice principles articulated in California law and that the term “normally” be eliminated to remain consistent with the current rules.

VI. PROPOSED CHANGES WITHOUT SUBSTANTIVE INTENT SHOULD BE ANNOTATED TO PROVIDE CLARIFICATION

The Proposed Rules include several edits intended to increase clarity and readability and not intended to be substantive changes. LAAC respectfully requests that such changes be so annotated to avoid creating any regulatory history that could later be misinterpreted.

A. Purpose of Change From “75%” to “more than 75%” Is Unclear

The current rules allow for “75% of [a program’s] expenditure for the most recent reporting year [to be] incurred, for the provision of free legal services to indigents.” Rule 2. The proposed rules would change this to “more than 75%,” which could theoretically impact programs which spent exactly 75% for the most recent reporting year on this expenditure. See Proposed Rule 3.71. LAAC and the undersigned advocate keeping the current rule on this issue.

B. Removal of Phrase “Including But Not Limited to” Requires Clarification

There are several sections in the current rules which outline a list of requirements or definitions and offer examples, using the language “including but not limited to.” See Rules 2.2, 3.1, 4.4, and 5.1. The proposed rules would change this to simply “including.” LAAC assumes that this is a stylistic change, not intended to be substantive, but cautions that has greater repercussions that perhaps intended.

In some sections (see Rules 3.1, 4.4 and 5.1) this change eliminates ambiguity surrounding what other items might also be required. “Including but not limited to” means that the items named are part of something larger, and the larger item may also have other parts. Yet in one other section (see Rule 2.2), this change is limiting because it refines the possible list of

qualifying activities for a support center. This minor word edit becomes a substantive change, again creating a regulatory history which could be misinterpreted in the future as an intention to limit qualifying activities.

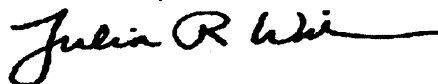
The ambiguity surrounding the meaning of "including but not limited to" vs. "including" should also be clarified. If this change assumes that the word "including" is exactly the same and merely a shortened version of "including but not limited to," then the change should be so annotated in the proposed rule to avoid creating a regulatory history that could be later misinterpreted as limiting what is in the current rules.

VII. CONCLUSION

LAAC and the undersigned acknowledge and commend the State Bar staff for their hard work revising the current rules and appreciate the tremendous improvements as to readability and clarity. On behalf of the entire legal services community, LAAC also thanks the State Bar, particularly the Legal Services Trust Fund Program staff, for the thoughtful and comprehensive public comment process on these proposed changes to the rules.

LAAC and the undersigned respectfully ask that the Board of Governors take these comments into consideration prior to approval of the proposed changes. Given the large number of substantive changes and comments submitted both during the public comment meetings and herein, LAAC respectfully requests that the proposed rules be redrafted to reflect the issues raised during the public comment process and there be another period for public comment. LAAC would welcome the opportunity to share proposed adjusted language with the State Bar and to participate in another period of public comment.

Sincerely,



Julia R. Wilson
Executive Director

Additional Signatories: (see the next page)

Additional Signatories:

Catherine Rodman
Executive Director
Affordable Housing Advocates

Bill Hirsh
Executive Director
AIDS Legal Referral Panel

Janis Spire
Executive Director
Alliance for Children's Rights

Richard Konda
Executive Director
Asian Law Alliance - Santa Clara County

Mina Titi Liu
Executive Director
Asian Law Caucus

Rosemary French
Executive Director
Benchmark Institute

Mitch Kamin
Executive Director
Bet Tzedek Legal Services

Devon Lomayesva
Executive Director
California Indian Legal Services

Amagda Perez
Executive Director
California Rural Legal Assistance
Foundation

Jose R. Padilla
Executive Director
California Rural Legal Assistance, Inc.

Katie Buckland
Executive Director
California Women's Law Center

Peter A. Schey
Executive Director
Center for Human Rights & Constitutional Law

Chris A. Schneider
Executive Director
Central California Legal Services

Bianca Sierra
Executive Director
Centro Legal De La Raza

Nancy Strohl
Executive Director
Child Care Law Center

Linda D. Kilb
Director, California Legal Services Trust
Fund Support Center Program
Disability Rights Education and Defense
Fund, Inc.

Paula L. Pearlman
Executive Director
Disability Rights Legal Center

Tirien Steinbach
Executive Director
East Bay Community Law Center

Carolyn Reilly
Executive Director
Elder Law & Advocacy

Betty L. Nordwind
Executive Director
Harriet Buhai Center for Family Law

William Oldfield
Executive Director
HIV & AIDS Legal Services Alliance, Inc.

Eric Cohen
Executive Director
Immigrant Legal Resource Center

Brad Seligman
Executive Director
Impact Fund

Irene Morales
Executive Director
Inland Counties Legal Services

Enrique R. Acuna
Executive Director
Inland Empire Latino Legal Aid

Adam Murray
Executive Director
Inner City Law Center

Gabrielle Lessard
Legal Director
Insight Center for Community Economic
Development

Linda Gonzalez
Executive Director
Law Center for Families

Jim K. Bower
Executive Director
Law Foundation of Silicon Valley

Janeen Steel
Executive Director
Learning Rights Law Center

Mario Salgado
Executive Director
Legal Aid Foundation of Los Angeles

Paul Cohen
Executive Director
Legal Aid of Marin

Joan M. Graff
Executive Director
Legal Aid Society - Employment Law
Center

Roberta Shouse
Executive Director
Legal Aid Society of San Bernardino

Gregory E. Knoll
Executive Director
Legal Aid Society of San Diego, Inc.

M. Stacey Hawver
Executive Director
Legal Aid Society of San Mateo County

Shannan Wilber
Executive Director
Legal Services for Children

Karen Shain
Executive Director
Legal Services for Prisoners with Children

Gary F. Smith
Executive Director
Legal Services of Northern California

Hellen Hong
Executive Director
Los Angeles Center for Law & Justice

Emily Spitzer
Executive Director
National Health Law Program

Gideon Anders
Executive Director
National Housing Law Project

Linton Joaquin
Executive Director
National Immigration Law Center

Gerald A. McIntyre
Directing Attorney
National Senior Citizens Law Center

Neal S. Dudovitz
Executive Director
Neighborhood Legal Services of Los
Angeles County

John D. Hedges
Executive Director
Pro Bono Project Silicon Valley

Jamienne S. Studley
Executive Director
Public Advocates, Inc.

Hernan Vera
Executive Director
Public Counsel

Julia R. Wilson
Executive Director
Public Interest Clearinghouse

Amy J. Fitzpatrick
Executive Director
San Diego Volunteer Lawyer Program

Angelo N. Ancheta
Executive Director
Santa Clara University Alexander Law
Center

Andrew Rossoff
Executive Director
Senior Law Project, Inc.

Michael Rawson
Executive Director
The Public Interest Law Project

Gary Smith
Executive Director
Voluntary Legal Services of Northern
California

Syd Whalley
Executive Director
Western Center on Law and Poverty

Suzanne Murphy
Executive Director
Worksafe Legal Center

Deborah Escobedo
Staff Attorney
Youth Law Center

Susan Townsend
Executive Director
Yuba Sutter Legal Center for Seniors

August 14, 2008

Supplemental Public Comment – LAAC Working Group

Re: Proposed Rules of the State Bar, Title 3, Rules 3.60-3.92 (Legal Services Trust Fund Program)

Subsequent to the distribution of LAAC's public comment letter to the IOLTA-funded community for organizational signatories, LAAC convened a Working Group to provide additional suggestions as to potential language or other solutions to some of the questions raised by IOLTA-funded legal services programs during the State Bar's comprehensive and thoughtful process for obtaining public input on the proposed rules revision.

Members of the Working Group included representatives from DREDF, Inner City Law Center, Inland County Legal Services, Legal Aid Foundation of Los Angeles, Legal Services for Prisoners with Children, Legal Services of Northern California, Neighborhood Legal Services of Los Angeles County, Protection and Advocacy Inc., Public Counsel, and Youth Law Center. While there was not sufficient time to submit the Working Group's additional proposals to the rest of the IOLTA-funded community, and therefore there are not additional organizational signatories to these supplemental comments, LAAC proffers these suggestions as to possible language resolutions to some of the questions raised through the public input process.

In addition, LAAC staff prepared a proposed revised version of the Proposed Rules, beginning with the current version of the proposed rules sent out for public comment and making the changes necessary to implement LAAC's public comment. LAAC's proposed revisions to the rules are attached as Appendix A to this Supplemental Comment in Word, so that the specific changes should be visible using the "track changes" tool.

The Working Group's suggestions are presented below:

1. Composition of Commission Membership

The Working Group confirmed the comments suggesting that language be added to specify that the two Commission members to represent the client-eligibility community must have been indigent within the last five years. (See Rule 3.62 in LAAC's proposed revisions attached as Appendix A).

2. Terminology – Tentative Grant Allocation versus Provisional Grant Amount

During the public input process, programs discussed the use of the terms "Notice of Tentative Allocation" and provision grant amount. LAAC's public comment letter recommends clarifying use of these terms. The Working Group further discussed the fact that these terms could indicate separate possible responses by the Trust Fund Commission in determining eligibility. It could be that a "Notice of Tentative Allocation" signifies that a program has been determined to be eligible for a grant, but that the final dollar amount of the grant is pending final determinations of funding available. In contrast, a "provisional grant amount" might signify that the Commission

has questions regarding a program's eligibility that must be answered before the Commission will find the program to be eligible. Given this possible interpretation of these two terms, the proposed rules should clarify both what is meant by each term and the process used by the Commission for determining when it will use either and how programs will be notified of the decision. (See Rule 3.80(D) and (E) in Appendix A.)

3. Definition of "Legal Services"

The Working Group discussed the omission of the word "all" in the proposed rule defining "legal services" provided by qualified legal services programs. Acknowledging that this is a topic that would benefit from widespread discussion between legal services programs and the Trust Fund Program, the Working Group supports LAAC's comment advocating the retention of the language "all professional services" in the definition in order to cover the instances in which professional services are required for effective legal work on a particular case or advocacy effort. For example, a legal services program might require the services of a forensic accountant in alleging certain types of financial abuse or fraud. Similarly, a program might need to hire a dentist as an expert witness in a case involving whether the state's Denti-Cal program is required to cover a particular dental service, or to retain the services of a doctor in class action litigation involving the Medi-Cal system. Based on these types of examples, the Working Group strongly urges that the proposed rules retain the word "all" and leave the definition as it is in the current rules. Omitting the word "all" could be misinterpreted to eliminate the inclusion of these types of professional services essential to the legal strategy in a particular case or advocacy campaign. (See Rule 3.72(A) in Appendix A.)

4. Proposed Requirement of Noncompliance Fees

The Working Group urges that the process for assessing fees for late or incomplete filings include discretion for the Trust Fund staff to consider and grant reasonable extensions for programs. The Working Group proposes that the information about financial penalties for late or incomplete filings could be built into the grant agreements that programs sign in order to receive funding, leaving the Trust Fund Program discretion as to whether or not to assess the fines. The Rules could reference this process or specify that the Trust Fund Program can grant reasonable extensions to deadlines or exceptions to the assessment of fees. (See Rule 3.92 in Appendix A).

5. Services Required of Support Centers

The Working Group discussed the question raised by Support Centers during the public input meetings as to how the Support Center services required by the rules (Rule 3.80(B), "consultation, representation, information services, and training") correlate to the statutory requirements that Support Centers provide legal training, legal technical assistance, or advocacy support. § 6213(b). The Working Group discussed that the current rules also include the language regarding "consultation, representation, information services, and training" in Rule 4.3, so this is not a change from the status quo, but agreed that the terminology is confusing. The Working Group proposes that these terms be clarified in the rules revision process, and suggests that the issue would benefit from further discussion by the LAAC Support Center Section at their next meeting in early October 2008.

6. The Collection of Data for the Statewide Delivery System

The Working Group expressed support for the collection of this data that will allow a greater understanding of the statewide delivery system. However, the Group agreed that including the collection of this type of data in the application section is confusing as to the purpose for collecting it. The Working Group agreed that the Trust Fund Program can also request programs' to report on the prior year's activities supporting by Trust Fund grants. The Working Group recommends that the collection of this data be bifurcated from the application process, by including it instead in the "report" required by the IOLTA statute and clarifying which information will be used for evaluative purposes and which information will be used to assess the statewide delivery system but not for determinations of eligibility or compliance by legal services programs. (See Rules 3.81 (A)(application requirements), 3.90(F)(reports by recipients including data collect as to program activities or statewide assessment), and 3.91(evaluation by the Commission) in Appendix A.)

7. Maintaining Quality in the IOLTA Statewide System

The Working Group confirmed LAAC's comments regarding the quality of the statewide system in the body of LAAC's Public Comment letter. The Working Group supports LAAC's comments regarding both the importance of maintaining quality in the system, and the fact that the IOLTA statute focuses on ensuring quality by mandating that the Commission evaluate and approve applicant's quality control procedures and recipients' standards that ensure quality service and professional work. The Working Group urges that the revised rules track the statutory language as to the quality procedures (for applicants) and standards (for recipients) in order to articulate the Commission's duties as to ensuring quality within the IOLTA system. (See Rules 3.61(C)(standards used by the Commission), 3.81(A)(2)(information describing quality control procedures required in applications), and 3.90(F)(information describing standards ensuring quality service required in annual report by recipients) in Appendix A for preliminary suggestions on how to ensure the rules track the statutory requirements as to quality control and practices).

8. Use of the ABA Standards As Amended.

The Working Group discussed this issue further and opposes the inclusion of future amended versions of the ABA Standards in the revised rules. The Working Group therefore recommends leaving the date of the last amended (August 7, 2006) but deleting the phrase "or amended versions of these standards." (See Rule 3.81(C) in Appendix A).

The Working Group also identified that there might be additional standards for some programs, to which they are already also subject, that might also assist the Commission in evaluating the recipient program's expenditure of funds and maintenance of quality standards. The Working Group recommends adding a section to the rules such that upon mutual agreement by both the recipient program and the Trust Fund Program, these additional standards could serve as an additional basis for evaluation, in addition to the ABA Standards. (See Rule 3.61(C) in Appendix A.)

9. Using the phrase “including but not limited to” throughout the rules.

The Working Group discussed that the phrases “including but not limited to” and “including” could be interpreted to mean different things, with “including” functioning to specifically enumerate a set of options. Accordingly, a regulatory change from “including but not limited to” from “including” could be interpreted as a purposeful regulatory limitation. Therefore, the Working Group recommends that the Proposed Rules use the phrase “including but not limited to” throughout the rules. (See Rules 3.72(B) and 3.81(A)(2) in Appendix A.)

10. Deletion of “More than” 75% Expenditures Requirement for Presumption of Eligibility

The proposed rules would require that only program’s with more than 75% of expenditures incurred for the provision of free legal services would fall within the presumption of eligibility. (Proposed Rule 3.71). This is a change from the current rules which require only 75% of expenditures. The Working Group discussed this change and concluded it must have been an error in the revision process. The Working Group recommends that the phrase “more than” be eliminated, retaining the status quo that the presumption includes programs with 75% of their expenditures for free civil legal aid to indigent clients. (See Rule 3.71 in Appendix A.)

11. Notice to Programs of Written Complaints

The Working Group also raised two new questions regarding the Complaints process, with suggestions for resolving them.

The Proposed Rules do not include a provision that an IOLTA-funded program would receive notice of a written complaint unless the Trust Fund staff is unable to resolve the complaint after 90 days. (See Proposed Rule 3.92(B)). The Working Group recommends that a provision be added such that organizations receive written notice within some reasonable period of time, perhaps several business days, after the Trust Fund receives a written complaint and that programs may provide additional information to assist the Trust Fund staff in evaluating and resolving the complaint. (See Rule 4.02(B) in Appendix A.)

12. The Commission's Discretion to Require Corrective Action by Programs While Continuing Funding

Proposed Rule 3.92(E) requires the Commission to either dismiss complaints or terminate funding. Currently the Commission has the discretion to find that the complaint has some merit and to require corrective action by the program while continuing funding. This discretion allows the Commission to ensure ongoing services to low-income clients served by the program, while offering essential technical assistance to the program to correct problem areas. The Proposed Rules should incorporate this discretion as another option for the commission in responding to meritorious complaints. (See Rule 4.02(E) in Appendix A.)

**APPENDIX A
TO LAAC PUBLIC COMMENT AND SUPPLEMENTAL COMMENT**



LAAC'S PROPOSED REVISED IOLTA RULES, August 2008

TITLE 3. PROGRAMS AND SERVICES

Division 4. Providers of Programs and Services

Chapter 2. Legal Services Trust Fund Program [3.60-3.994.02]

Article 1. Administration of Legal Services Trust Fund Program (Overview)

Rule 3.60 Legal Services Trust Fund Commission

Rule 3.61 Duties of Legal Services Trust Fund Commission

Rule 3.62 Legal Services Trust Fund Commission Membership and Terms

Article 2. Construction of certain statutory provisions (Definitions)

Rule 3.70 Operation in California by Qualified Entities

Rule 3.71 Primary Purpose and Function

Rule 3.72 Delivery of Legal Services

Rule 3.73 Permissible Uses of Funds

Rule 3.74 No Abrogation of Legal or Professional Responsibilities

Article 3. Application and Distributions

Rule 3.80 Application-Eligibility for Trust Fund Program Grants

Rule 3.81 Application for Trust Fund Program Grants

~~Rule 3.81 Duties of Trust Fund Program Grant Recipient~~

~~Rule 3.82 No Abrogation of Legal or Professional Responsibilities~~

Article 4. Monitoring and Evaluation of Recipients

Rule 3.90 Duties of Trust Fund Program Grant Recipient

Rule 3.91 Commission Monitoring and Evaluation of Recipients

Rule 3.92 Non-Compliance Fees

Rule 3.91 Duties of Trust Fund Program Grant Recipient

Rule

Article 45. Requests for Review and Complaints

Rule 3.904.00 Definition

Rule 3.914.01 Commission Decisions to Deny or Terminate Funding

Rule 3.924.02 Complaints

ARTICLE 1. ADMINISTRATION OF THE LEGAL SERVICES TRUST FUND PROGRAM

Rule 3.60 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 3.61 Duties of 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 ~~denied as specified in Article 3~~

~~If the Commission tentatively approves an application, it specifies a provisional grant amount and any additional requirements, such as a site visit [1], for a final determination it must notify the applicant by sending a Notice of Tentative Allocation, specifying a provisional grant amount and any addition requirements for a final determination. (See Rule 3.80)~~

(B) The Commission must monitor and evaluate a recipient's compliance with Trust Fund Requirements and grant terms ~~The assessment 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; or~~

~~(4) information from other sources, such as an evaluation provided by the Legal Services Corporation or other funding entity. (See Rule 3.90) as specified in Article 3.~~

~~(C) (C) The Standards for the Provision of Civil Legal Services to the Poor adopted by the American Bar Association's House of Delegates on August 7, 2006 as limited by the general introduction, to the standards are the guidelines normally used by the Commission in:~~

~~(1) evaluating the quality control and other practices/procedures of applicant programs, and~~

~~(2) reviewing and approving the maintenance of quality service and professional standards, and of recipient programs.~~

~~The Commission and applicant or recipient organization may agree to the use of other standards in addition to the ABA Standards, evaluating the quality control and other practices of applicant and recipient programs.~~

(D) The Commission may terminate a grant for noncompliance in accordance with ~~Article 4-5~~ of this chapter.

Rule 3.62 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 the last five years, 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.

¹ Business & Professions Code § 6213(d).

(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 3.70 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.

(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 3.71 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% 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%~~ of

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

³ Business and Professions Code 6213 (a).

⁴ Business and Professions Code § 6213 (b).

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

[0]

its expenditures for the most recent reporting year were incurred for such services; the calculation of 75% of expenditures may include a reasonable share of the administrative and overhead expenses as authorized by these rules; or

(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) A qualified legal services project that does not meet the 75% test may nevertheless apply, provided that the project can satisfactorily demonstrate that it meets the primary purpose and function requirement by other means.~~

~~(B) A qualified support center is required by statute to have as its primary purpose and function the provision of legal support services (legal training, legal technical assistance, or advocacy support without charge.)⁶ (LAAC Question – would it be helpful to define “without charge” here, incorporating the definition from the application guidelines into the regulations?)~~

~~(1) A qualified support center applying for funds is presumed to have such a primary purpose and function if more than 75% of its budget for the fiscal year for which it is seeking funds is designated to provide such support services, and more than 75% of its expenditures for the most recent reporting year were incurred for such services.~~

~~(B) A qualified legal services project or support center that does not qualify for the 75% presumption may nevertheless apply, provided that the project can satisfactorily demonstrate that it meets the primary purpose and function requirement by other means. [LAAC NOTE – presumably this is allowed for either QLSPs or support centers – the proposed rules limit it to QLSPs]~~

Rule 3.72 Delivery of Legal Services

(A) “Legal services” ~~provided by Qualified Legal Services Projects include includes all~~ professional services provided by a member of the State Bar and similar or complementary services of a law student or paralegal under the supervision and control of a member of the State Bar in accordance with law.

~~(B) “Legal training, legal technical assistance, or advocacy support without charge” provided by Support Centers as Legal support services required by statute includes, but is 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 either~~

~~(1a) as co-counsel with an attorney employed or recruited by a qualified legal services project; or~~

~~(2b) at the request of an attorney employed or recruited by a qualified legal services project that is unable to assist the client.~~

Rule 3.73 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.⁷ A reasonable share of administrative expenditures and overhead required to deliver such services meets the statutory requirement.

⁶ Business & Professions Code § 6213(b)

7 Business & Professions Code § 6223.

(B) No recipient may use an allocation made under Business and Professions Code Section 6216 to provide services in a fee-generating case, as described in Business and Professions Code Section 6213(e). If a recipient determines that a case is not fee generating because it qualifies for a statutory exemption,⁸ 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.⁹ Recipients must maintain complete records of all such fees and comply with reporting requirements.

Rule 3.74 No Abrogation of Legal or Professional Responsibilities

Nothing in these rules authorizes a recipient to interfere with the professional responsibility of an attorney whose services to a client are funded by the Trust Fund Program. Nothing in these rules may be interpreted to require an applicant or recipient to violate the law.¹²

ARTICLE 3. APPLICATIONS AND DISTRIBUTIONS

Rule 3.80 Application for Eligibility for Trust Fund Program Grants

~~A qualified legal services project or qualified support center seeking a Trust Fund Program grant must submit a 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 eligibility 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.¹⁰ 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.~~

~~(B)(C) A qualified support center must meet statutory eligibility criteria and must agree to offer support services in two or more of the following ways: consultation, representation, information services, and training.¹⁰ [RWJ]~~

(1) A support center not in existence prior to December 31, 1980 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. 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 the names and addresses of qualified legal services projects.¹¹

~~(D)(C)~~ A nonprofit corporation that believes it meets the the eligibility 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

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

9 Business & Professions Code § 6223.

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

11 See Business & Professions Code § 6215 for support centers in operation before December 31, 1980.

approved. No applicant may receive a grant as a qualified legal services project and as a qualified support center.

~~(D) The Commission shall determine an applicant's eligibility and shall notify applicants approved for funding of the proposed distribution amount through a written Notice of Tentative Allocation, specifying the tentative grant amount and any additional information reasonably necessary to make a final grant determination.~~

Rule 3.81 Application for Trust Fund Program Grants

A qualified legal services project or qualified support center seeking a Trust Fund Program grant must submit a complete and timely-filed 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. The application shall not require information other than that reasonably needed to determine eligibility and the amount of funds to be allocated. [This statement is in the current rules]

(A) An application must include:

(1) an audited financial statement by an independent certified public accountant for the latest 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; and

~~(2) a budget and budget narrative, which must be submitted within thirty days of receipt of the 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 service area; and~~

~~(23) information to demonstrate describe the applicant's internal quality control procedures and standards. Procedures and standards shall include, including but are not limited to, the maintenance of quality service and professional standards, including 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; and~~

~~(3) a budget and budget narrative, which must be submitted within thirty days of receipt of the Notice of Tentative Allocation in the manner prescribed by the Commission. The budget narrative shall include information reasonably necessary to describe how grant funds will be used to provide civil legal services to indigent persons as defined in the statute and especially to underserved client groups including, but not limited to, the elderly, the disabled, juveniles, and non-English-speaking persons within the applicant project's service area.~~

~~(4) [LAAC recommends a separate section here explaining the definition of and process for assessing a Provisional Grant Amount, if that is a separate option for the Commission in terms of determining a program's eligibility for funding. (See proposed Rule 3.61(A).)]~~

~~(4) information pertaining to 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~~

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~~areas of service, the litigation docket, and populations served~~**Rule 3.81 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 agreement and Trust Fund Requirements;~~

~~(B) maintain complete financial records, including budgets, to account for the receipt and expenditure of all Trust Funds;~~

~~(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) cooperate regarding any site visit to determine whether the grant is being used in compliance with Trust Fund Requirements;~~

~~(E) submit timely quarterly financial reports and any other information required by the Commission; and
(F) pay any noncompliance fees set forth in the Schedule of Charges and Deadlines to defray administrative costs for handling documents that are late or that do not comply with Trust Fund Requirements.~~

Rule 3.82 No abrogation of legal or professional responsibilities

~~Nothing in these rules authorizes a recipient to interfere with the professional responsibility of an attorney whose services to a client are funded by the Trust Fund Program. Nothing in these rules may be interpreted to require an applicant or recipient to violate the law.¹²~~

ARTICLE 4. RECIPIENT DUTIES & COMMISSION MONITORING PROCESS (THIS SECTION IS NEW BUT CONTAINS INFORMATION ALREADY IN THE PROPOSED RULES)

Rule 3.90 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 agreement and Trust Fund Requirements;

(B) maintain complete financial records, including budgets, to account for the receipt and expenditure of all Trust Funds;

(C) maintain records for five years after completion of services to a client regarding the eligibility of the client and timely provide such records to the Commission for inspection upon adequate notice;

(D) submit timely quarterly financial reports and other reasonable information requested by the Commission upon adequate notice;

(E) participate in reasonable site visits upon adequate notice; and

(F) submit a timely Grant Report in the manner prescribed by the Commission. The Report must describe the recipient's maintenance of quality service and professional standards and compliance with other statutory requirements.¹⁴ The Grant Report may also include:

- (1) information pertaining to program activities during the prior grant year for evaluative purposes and
- (2) information used not for evaluative purposes but to enable statewide assessment of gaps in the delivery system or to collect data and statistics to increase funding for legal services.

(3)

Rule 3.91 Monitoring and Evaluation of Recipients

The Commission must shall monitor and evaluate a recipient's compliance with Trust Fund statutory requirements and grant terms. The Commission's assessment/evaluation may be based on:

- (1) application information, grant report information in the application or grant report and additional information reasonably necessary to determine compliance with Trust Fund Requirements;
- (2) reasonable site visits scheduled upon adequate notice;
- (3) an independent, unbiased evaluation of a recipient provided at the request of the Commission (cost to be borne by the Commission); or
- (4) information from other sources, such as an evaluation provided by the Legal

Services Corporation or other funding entity.

3.92 Non-Compliance Fees

Non-compliance fees set forth in the Schedule of Charges and Deadlines to defray administrative costs for handling documents that are late or that do not substantially comply with Trust Fund Requirements. These fees will be incurred unless the Trust Fund Program has granted a reasonable exception.

Rule 3.91 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 agreement and Trust Fund Requirements;

(B) maintain complete financial records, including budgets, to account for the receipt and expenditure of all Trust Funds;

(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) demonstrate maintenance of quality service and professional standards and compliance with other Trust Fund Requirements at reasonable, and agree to adequately noticed site visits;

(E) submit timely quarterly financial reports and other reasonable information required by the Commission; and

(F) submit a timely filed State Bar Report on the recipient's compliance with the statutory requirements of section 6217, and progress in meeting the service expansion of requirements of section 6221.14. The State Bar Report must also include:

(1) Information pertaining to 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 areas of service, the litigation docket, and populations served.

ARTICLE 45. REQUESTS FOR REVIEW AND COMPLAINTS

Rule 3.904.00. Definition

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

Rule 3.914.01. Commission decisions to deny or terminate funding

(A) The Commission has the authority to deny an application for initial funding or for renewal of funding, or 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 days of receipt of the notice of denial or termination of funding. The request may include additional evidence.
- (2) The Commission may 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 at the conference.
- (3) The Commission must make a decision within one hundred twenty days of receipt of the request. The applicant or recipient is entitled to written notice of the decision of the Commission.

12 Business & Professions Code § 6217(d).

13 Business & Professions Code § 6224.

14 Business & Professions Code § 6222.

(C) Within 30 days of receipt of written notice of the 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 grant recipient must continue to receive funding.¹⁵

(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 3.924.02. Complaints

(A) Any person or entity may file a written complaint that a grant recipient fails to meet Trust Fund Requirements.

(1) Trust Fund staff shall notify the legal services organization of the fact of and basis for the complaint within (some number of) business days of receipt by the Trust Fund of the written complaint.

(B) Staff must evaluate and attempt to resolve written complaints regarding a grant recipient. The organization may provide additional information to the Trust Fund staff. 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 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. The Commission must issue a written notice dismissing the complaint or terminating funds. [LAAC recommends including an option here giving the Trust Fund Commission discretion such that if it determines a complaint has merit, the Commission can propose a course of corrective action for the program while continuing funding]. 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 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 recipient must continue to receive funding.¹⁶

(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.
16 Business & Professions Code § 6224.

Choy, Stephanie

From: Office [ahadvocates@sbcglobal.net]
Sent: Monday, June 23, 2008 4:44 PM
To: Trust Fund Program
Cc: Choy, Stephanie; Choy, Lorna; pbuske@apalc.org; andy.mudryk@pai-ca.org; Julia Wilson; Sarah Evans; John C Edwards; Charles T Scott
Subject: Re: REMINDER: Public Comment - LSTFP Rules



TITLE 3 Proposed
Rules 3.60 - ...

Hello-

Thank you for your time and attention at the meeting last Wednesday.
Attached are AHA's comments to date. If we have any more, we will submit them before the deadline. If you have any questions, please let us know.

Catherine A. Rodman
Director & Supervising Attorney
Affordable Housing Advocates
303 A Street, Suite 300
San Diego, CA 92101
(619) 233-8441, ext. 1
Fax: (619) 233-4828
www.affordablehousingadvocates.org

----- Original Message -----

From: "Trust Fund Program" <trustfundprogram@calbar.ca.gov>
Cc: "Choy, Stephanie" <Stephanie.Choy@calbar.ca.gov>; "Choy, Lorna" <Lorna.Choy@calbar.ca.gov>; <pbuske@apalc.org>; <andy.mudryk@pai-ca.org>
Sent: Tuesday, June 17, 2008 12:36 PM
Subject: REMINDER: Public Comment - LSTFP Rules

ON BEHALF OF LEGAL SERVICES TRUST FUND PROGRAM

This is a reminder that the State Bar is hosting a series of small meetings to solicit your input on proposed revisions to the Trust Fund Program's regulating rules. We will be meeting in San Diego and Los Angeles at the following locations:

June 18 in San Diego
10:30 a.m. to 12:30 p.m.
Protection & Advocacy, Inc.
111 Sixth Avenue, Suite 200
San Diego, CA

June 19 in Los Angeles
10:30 a.m. to 12:30 p.m.
Asian Pacific American Legal Center
1145 Wilshire Boulevard
Los Angeles, CA

RSVP is not necessary, but it will facilitate planning if you notify Glory Tabuena if you plan to attend. She can be contacted at glory.tabuena@calbar.ca.gov or at 415.538.2098.

> Dear Project Directors:

>

> On May 16, the Board Committee on Stakeholders Relations authorized
> release for a 45-day public comment period, proposed amendments to the
> State Bar Rules governing the administration of the Legal Services
> Trust Fund Program.

TITLE 3. PROGRAMS AND SERVICES

Division 4. 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 3.60 Legal Services Trust Fund Commission

Rule 3.61 Duties of Legal Services Trust Fund Commission

Rule 3.62 Legal Services Trust Fund Commission membership
and terms

Article 2. Construction of certain statutory provisions

Rule 3.70 Operation in California by qualified entities

Rule 3.71 Primary purpose and function

Rule 3.72 Delivery of legal services

Rule 3.73 Permissible uses of funds

Article 3. Applications and distributions

Rule 3.80 Application for Trust Fund Program grants

Rule 3.81 Duties of Trust Fund Program grant recipient

Rule 3.82 No abrogation of legal or professional responsibilities

Article 4. Requests for review and complaints

Rule 3.90 Definition

Rule 3.91 Commission decisions to deny or terminate funding

Rule 3.92 Complaints

Article 1. Administration of the Legal Services Trust Fund Program

Rule 3.60 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 3.61 Duties of Legal Services Trust Fund Commission

(A) **Within ninety (90) days of receipt of the Application,** the Commission must determine an applicant's eligibility for grants and notify each grant applicant that its application has been **tentatively approved,** 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. **If an Application is tentatively approved, a final determination of eligibility must be made within ninety (90) of the Applicant's satisfaction of all additional requirements.**

(B) The Commission must **annually review and periodically** monitor and evaluate a recipient's compliance with Trust Fund Requirements and grant terms. The assessment 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; 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 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 maintenance of quality service and professional standards, and evaluating the quality control and other practices of applicant and recipient programs.

(D) The Commission may terminate a grant for noncompliance in accordance with Article 4 of this chapter

Rule 3.62 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 indigent persons, **within the last three (3) years for a significant period of time,** 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.

¹ Business & Professions Code § 6213(d).

Draft of April 17, 2008 3 of 9

(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 3.70 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.

(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 3.71 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

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

³ Business and Professions Code 6213 (a).

⁴ Business and Professions Code § 6213 (b).

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

its expenditures for the most recent reporting year were incurred for such services; the calculation of 75% of expenditures may include a reasonable share of the administrative and overhead expenses as authorized by these rules; or

(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) A qualified legal services project that does not meet the 75% test may nevertheless apply, provided that the project can satisfactorily demonstrate that it meets the primary purpose and function requirement by other means.

(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.

Rule 3.72 Delivery of legal services

(A) "Legal services" include professional services provided by a member of the State Bar and similar or complementary services of a law student or paralegal under the supervision and control of a member of the State Bar in accordance with law.

(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

(1) as co-counsel with an attorney employed or recruited by a qualified legal services project; or

(2) at the request of an attorney employed or recruited by a qualified legal services project that is unable to assist the client.

Rule 3.73 Permissible uses of funds

(A) A qualified legal services project or qualified support center may only use fund received under Business and Professions Code Section 6216 to provide legal assistance to indigent persons or qualified legal services projects as defined by statute.⁷ A reasonable share of administrative expenditures and overhead required to deliver such services meets the statutory requirement.

⁶ Business & Professions Code § 6213(b).

⁷ Business & Professions Code § 6223.

(E) submit timely quarterly financial reports and any other information required by the Commission; and

(F) pay any noncompliance fees set forth in the Schedule of Charges and Deadlines to defray administrative costs for handling documents that are late or that do not comply with Trust Fund Requirements.

Rule 3.82 No abrogation of legal or professional responsibilities

Nothing in these rules authorizes a recipient to interfere with the professional responsibility of an attorney whose services to a client are funded by the Trust Fund Program. Nothing in these rules may be interpreted to require an applicant or recipient to violate the law.¹²

Article 4. Requests for review and complaints

Rule 3.90. Definition

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

Rule 3.91. Commission decisions to deny or terminate funding

(A) The Commission has the authority to deny an application for initial funding or for renewal of funding, or 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. **Upon receiving written notice of a proposed termination the grant recipient shall take all reasonable steps to preserve any unspent grant funds. Unless and until a grant is terminated, the Commission shall not withhold any payments due under the grant based on the proposed termination.**

(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 days of receipt of the notice of denial or termination of funding. The request may include additional evidence.

(2) The Commission may 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 at the conference.

(3) The Commission must make a decision within one hundred twenty days of receipt of the request. The applicant or recipient is entitled to written notice of the decision of the Commission.

¹² Business & Professions Code § 6217(d).

¹³ Business & Professions Code § 6224.



June 26, 2008

Glory Tabuena
The State Bar of California
Legal Services Trust Fund
180 Howard Street
San Francisco, CA 94105-1639

Dear Ms. Tabuena:

I am writing to comment on the proposed revisions to the Legal Services Trust Fund Program Rules. The Insight Center for Community Economic Development is a statewide support center that receives IOLTA and Equal Access funding. We have some concerns about Article 3 of the proposed rules.

Article 3.81(F) of the proposed rules would impose fees on programs that submit application documents late. This provision makes sense as a means to encourage program compliance, however, it can only have that effect when applied to documents produced by the program or persons under the program's control. It should not extend to financial audits and any other documents produced by independent third parties.

Some commentators have suggested amending Article 3.81(F) to create an exception for situations where Trust Fund Program staff had granted an extension. While we do not oppose this amendment, it would not resolve our concern. Such a provision would leave open the possibility, and in fact make it the general rule, that a program can be sanctioned although making every effort to comply.

We understand that Trust Fund Program staff need financial information in order to calculate fund allocations. Programs that cannot provide audited financials by the due date should be permitted to submit draft financial statements.

In sum, Article 3.80(E)(1) should be amended to permit programs to submit draft financial statements if their audited financials are not available by the due date, and Article 3.81(F) should be amended to exclude materials produced by third parties not under the program's control.

Sincerely,

A handwritten signature in dark ink, appearing to be "G Lessard".

Gabrielle Lessard
Legal Director