

### TITLE 3. PROGRAMS AND SERVICES

Adopted July 2007

#### DIVISION 5. PROVIDERS OF PROGRAMS AND SERVICES

##### Chapter 2. Legal Services Trust Fund Program

##### Article 1. Administration of the Legal Services Trust Fund Program

###### Rule 3.660 Legal Services Trust Fund Commission

The Board of Trustees 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) and other funds remitted to the Legal Services Trust Fund Program of the State Bar.

*Rule 3.660 adopted effective March 6, 2009; amended effective January 1, 2012.*

###### Rule 3.661 Duties of the Legal Services Trust Fund Commission

- (A) The Commission must determine an applicant's eligibility for grants and notify each grant applicant that its application has been approved or denied. If the Commission tentatively approves an application, it issues a notice of the grant award, including the tentative allocation. If the notice requires submission of additional information, the Commission considers the application incomplete pending receipt of the information.
- (B) The Commission must monitor and evaluate a recipient's compliance with Trust Fund Requirements and grant terms. The evaluation may be based on
  - (1) application information, grant reports, and additional information reasonably necessary to determine compliance with Trust Fund Requirements;
  - (2) reasonable site visits scheduled upon adequate notice;
  - (3) an evaluation of a recipient by an impartial third party designated and funded by the Commission; or
  - (4) information from other sources, such as an evaluation provided by the Legal Services Corporation or other funding entity.
- (C) The Standards for the Provision of Civil Legal Aid 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 used by the Commission in

approving the quality control procedures and reviewing and evaluating the maintenance of quality service and professional standards of applicant and recipient programs. With due notice, the Commission may also rely on other standards that are consistent with law and generally accepted access to justice principles in the legal aid community.

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

*Rule 3.661 adopted effective March 6, 2009.*

#### Rule 3.662 Legal Services Trust Fund Commission membership and terms

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

- (A) The Board of Trustees appoints fourteen voting members, ten of whom must be licensees 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. Upon completion of an initial term, the Board may reappoint a member for a second three-year term. The Board may extend an initial or second term by one or two years to allow a member to serve as chair or vice-chair.
- (B) The chair of the Judicial Council appoints seven voting members, five of whom must be licensees 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 Trustees appoints voting members as chair and vice-chair.

*Rule 3.662 adopted effective March 6, 2009; amended effective January 1, 2012; amended effective September 14, 2014; amended effective January 25, 2019.*

#### Article 2. Construction of certain statutory provisions

##### Rule 3.670 Operation in California by qualified entities

- (A) A qualified legal services project is required by statute to be a nonprofit corporation operating exclusively in California or a program operated exclusively

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<sup>1</sup> Business & Professions Code § 6213(d).

in California by a nonprofit law school accredited by the State Bar.<sup>2</sup> 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 otherwise meets Trust Fund Requirements and expends Trust Fund Program grant funds only in California.

- (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.<sup>3</sup>

*Rule 3.670 adopted effective March 6, 2009.*

#### Rule 3.671 Primary purpose and function

- (A) A qualified legal services project is required by statute to have as its primary purpose and function providing legal services without charge to indigent persons.<sup>4</sup> A qualified legal services project applying for Trust Fund Program funds is presumed to have such a purpose and function if 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 75% or more of 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 administrative and overhead expenses.
- (B) 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.<sup>5</sup> A qualified support center applying for funds is presumed to have such a primary purpose and function if 75% or more of its budget for the fiscal year for which it is seeking funds is designated to provide such support services, and 75% or more of its expenditures for the most recent reporting year were incurred for such services.
- (C) A qualified legal services project or qualified support center that does not meet the 75% test may nevertheless apply, provided that the applicant can satisfactorily demonstrate that it meets the primary purpose and function requirement by other means.

*Rule 3.671 adopted effective March 6, 2009.*

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<sup>2</sup> Business & Professions Code § 6213(a).

<sup>3</sup> Business & Professions Code § 6213(b).

<sup>4</sup> Business & Professions Code § 6213(a)(1).

<sup>5</sup> Business & Professions Code § 6213(b).

### Rule 3.672 Delivery of legal services

- (A) “Legal services” include all professional services provided by a licensee of the State Bar and similar or complementary services of a law student or paralegal under the supervision and control of a licensee of the State Bar in accordance with law.<sup>6</sup>
- (B) “Legal support services” required by statute to be provided by a qualified support center include but are not limited to
  - (1) professional services to qualified legal services projects; and
  - (2) the direct provision of legal services to an indigent client of a qualified legal services project, provided the services are provided directly to the client
    - (a) as co-counsel with an attorney employed or recruited by a qualified legal services project; or
    - (b) at the request of an attorney employed or recruited by a qualified legal services project that is unable to assist the client.<sup>7</sup>

*Rule 3.672 adopted effective March 6, 2009; amended effective January 25, 2019.*

### Rule 3.673 Permissible uses of funds

- (A) A qualified legal services project or qualified support center 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.<sup>8</sup> Reasonable administrative expenditures and overhead required to deliver such services meet the statutory requirement.
- (B) No recipient may use an allocation made under Business and Professions Code Section 6216 to provide services in a fee-generating case, except as described in Business and Professions Code Section 6213(e)(1)-(4). If a recipient determines that a case is not fee generating because it qualifies for a statutory exemption,<sup>9</sup> 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

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<sup>6</sup> Business & Professions Code § 6213(a).

<sup>7</sup> Business & Professions Code § 6213(b).

<sup>8</sup> Business & Professions Code §§ 6216 and 6223.

<sup>9</sup> Business & Professions Code § 6213(e)(1).

permitted by statute.<sup>10</sup> Recipients must maintain complete records of all such fees.

*Rule 3.673 adopted effective March 6, 2009.*

### Article 3. Applications and distributions

#### Rule 3.680 Application for Trust Fund Program grants

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

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

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<sup>10</sup> Business & Professions Code § 6223.

- (2) information about the maintenance of quality service and professional standards and how the applicant maintains standards, such as internal quality control and review procedures; experience and educational requirements of attorneys and paralegals; supervisory structure, procedures, and responsibilities; job descriptions and current salaries for all filled and unfilled professional and management positions; and fiscal controls and procedures.
- (3) a budget and budget narrative, which must be submitted within thirty days of receipt of a notice of tentative allocation, explaining how funds will be used to provide civil legal services to indigent persons, especially underserved client groups such as, the elderly, the disabled, juveniles, and non-English-speaking persons within the applicant's service area; and
- (4) information about program activities, such as substantive practice areas, extent and complexity of services, a summary of litigation, and populations served.

*Rule 3.680 adopted effective March 6, 2009; amended effective January 25, 2019.*

#### Rule 3.681 Duties of Trust Fund Program grant recipient

The recipient of a Trust Fund Program grant must

- (A) use the grant in accordance with the terms of the grant agreement and Trust Fund Requirements;
- (B) maintain complete financial records, including budgets, to account for the receipt and expenditure of all grant funds and all income earned by a grant recipient from grant-supported activities, such as income from fees for services (including attorney fee awards and reimbursed costs), training, sales and rentals of real or personal property, and interest earned on grant amounts;
- (C) maintain records for five years after completion of services to a client regarding the eligibility of the client and promptly provide such records to the Commission for inspection upon demand;
- (D) annually submit information that describes, in the manner required by the Commission, the grant recipient's maintenance of quality service and professional standards and compliance with program requirements and, as requested by the Commission,
  - (1) information for evaluative purposes about program activities in the prior grant year; and
  - (2) information to enhance the delivery system of legal services;

- (E) cooperate regarding any reasonable site visit;
- (F) submit timely quarterly financial reports and any other information reasonably required by the Commission; and
- (G) pay any noncompliance fees set forth in the Schedule of Charges and Deadlines for processing documents that are substantially noncompliant with Trust Fund Requirements or that are late without permission.

*Rule 3.681 adopted effective March 6, 2009.*

#### Rule 3.682 No abrogation of legal or professional responsibilities

Nothing in these rules may limit or impair in any way the professional responsibility of an attorney to provide a client with legal services appropriate to the client's needs. Trust Fund Program applicants and recipients and their staffs; volunteers; consultants; and clients and prospective clients are entitled to all rights and privileges under the law. Nothing in these rules may be interpreted to require a grant applicant or recipient to violate the law.<sup>11</sup>

*Rule 3.682 adopted effective March 6, 2009.*

#### Article 4. Requests for review and complaint process

##### Rule 3.690 Receipt of document

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

*Rule 3.690 adopted effective March 6, 2009.*

##### Rule 3.691 Denial or termination of funding

- (A) The Commission has the authority to deny an application for initial funding or for renewal of funding, or to terminate existing funding in accordance with law and these rules.<sup>12</sup> The applicant or grant recipient is entitled to written notice of the denial or termination.
- (B) The applicant or grant recipient may request reconsideration by the Commission.

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<sup>11</sup> Business & Professions Code § 6217(d).

<sup>12</sup> Business & Professions Code § 6224.

- (1) The request must be provided to the Commission in writing within thirty days of receipt of the notice of denial or termination of funding. The request may include additional information.
  - (2) The Commission may affirm its decision, modify its decision, or schedule an informal conference to be held within ninety days of receipt of the request. The applicant or recipient is entitled to written notice of the date, time and place of the conference, and must have an opportunity to present information at the conference.
  - (3) Unless all parties agree otherwise, the Commission must mail or otherwise deliver a written decision within sixty days of the conference.
- (C) Within thirty days of receipt of written notice of the Commission decision on the request for reconsideration, the applicant or grant recipient may file a request for review by the State Bar Court. The request 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, a current grant recipient must continue to receive funding.
- (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 3.691 adopted effective March 6, 2009.*

#### Rule 3.692 Complaints

- (A) Any person or entity may file a formal written complaint that a grant recipient fails to meet Trust Fund Requirements.
- (B) Staff must provide a copy of a formal written complaint to the grant recipient whom it concerns and attempt to resolve the complaint. If the complaint is not resolved within ninety days after staff receives the complaint, staff must provide the Commission, complainant, and recipient with a written report of its efforts to resolve the complaint and recommendation of what action, if any, is appropriate.
- (C) Within thirty days of receipt of the staff report, the complainant and grant recipient may provide the Commission with a written response that may include additional information and may request review by the Commission.
- (D) Within a reasonable time, the Commission or a committee of its members appointed by the Commission must consider the staff report and any response. The Commission or committee must then dismiss the complaint or schedule an informal conference. The complainant and grant recipient are entitled to written notice of a 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 information. The Commission must issue a written notice dismissing the complaint; requiring corrective action; or terminating funds. The complainant and recipient are entitled to written notice of the decision.
- (F) If the Commission or committee decides to dismiss the complaint, the decision is final.
- (G) If the Commission or committee decides to terminate funding, within thirty days of receipt of written notice of the decision the grant recipient may file a request for review by the State Bar Court. The request 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, a current grant recipient must continue to receive funding.
- (H) 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.

*Rule 3.692 adopted effective March 6, 2009.*

TITLE 3, DIVISION 5, CHAPTER 2

LEGAL SERVICES TRUST FUND

*Fees previously adopted by the Board of Trustees or mandated by statute.  
Amended effective March 2, 2012; amended effective January 25, 2019.*

<i>Rule</i>	<i>Description</i>	<i>Amount</i>	<i>Deadline</i>
3.680(E)(1)	<p>Threshold amount of gross corporate expenditures requiring submission of an audited financial statement.</p> <p>Deadline for applicant to submit an audited or reviewed financial statement for the fiscal year that concluded during the prior calendar year.</p>	\$500,000	<p>Not applicable</p> <p>Promptly when available, and no later than May 1. Upon written request, an extension up to the application deadline may be granted by the State Bar staff. Upon a showing of extraordinary circumstances, the Commission may grant an extension beyond the application deadline. Under no circumstances shall such extension be granted beyond the date upon which grant allocations are determined.</p>