



# The State Bar *of California*

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## **OPEN SESSION**

## **AGENDA ITEM**

**5.7 FEBRUARY 2025**

## **LEGAL SERVICES TRUST FUND COMMISSION**

**DATE:** February 28, 2025

**TO:** Members, Legal Services Trust Fund Commission (LSTFC)

**FROM:** Members, LSTFC Grant Eligibility and Support Committee

**SUBJECT:** Approval of Vacatur (Penal Code Sections 236.14 and 236.15) as Civil Legal Services

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### **EXECUTIVE SUMMARY**

Grantees have inquired if IOLTA and EAF funds could be utilized to provide vacatur relief to individuals with arrests or criminal convictions. Amendments to the IOLTA statute classify various legal proceedings, including expungements and record sealing, as civil legal services, which raises the question of whether certain vacatur relief should also be included. The Grant Eligibility and Support Committee recommends that vacatur relief provided under Penal Code sections 236.14 and 236.15 be considered qualifying civil legal services.

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### **RECOMMENDED ACTION**

The Grant Eligibility and Support Committee advises the Legal Services Trust Fund Commission (LSTFC) to approve vacatur relief under Penal Code sections 236.14 and 236.15 as qualifying civil legal services.

### **DISCUSSION**

At its meeting on January 27, 2025, State Bar staff (staff) presented to the Grant Eligibility and Support Committee. The central question was whether vacatur relief on behalf of survivors of human trafficking or intimate partner or sexual violence under the cited Penal Code provisions is properly characterized as criminal or civil legal services.

Staff reported that this type of vacatur relief may be considered criminal legal services as the Penal Code sections could be read to require a finding of factual innocence by negating an element of the crime (intent). However, since the request for vacatur relief under these Penal Code sections looks to the person's status as a victim at the time of the offense--rather than the details of the person's state of mind--the request for vacatur relief could also be interpreted as not requiring a finding of factual innocence and thus considered civil legal services pursuant to Business and Professions Code section 6213(l).

Staff further reported the dearth of assistance with vacatur relief through public defender offices and ways in which such relief might benefit individuals in other areas of civil law (employment, housing, immigration). Finally, staff shared with the committee that the Office of General Counsel opined that finding this work to be civil legal services was a permissible interpretation of the statute. (Additional details may be found in the memorandum prepared for the Grant Eligibility and Support Committee and linked here in the Previous Action section.)

After discussion and questions, the Grant Eligibility and Support Committee voted unanimously to recommend work performed under these Penal Code sections as qualifying civil legal services to the LSTFC.

## **PREVIOUS ACTION**

[7.4 Action on Defining Vacatur \(Penal Code Sections 236.14 and 236.15\) as Civil Legal Services](#)

## **FISCAL/PERSONNEL IMPACT**

None

## **AMENDMENTS TO RULES**

None

## **AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL**

None

## **STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS**

None – compliance

## **RESOLUTIONS**

Should the Legal Services Trust Fund Commission (LSTFC) concur, it is:

**RESOLVED**, that the LSTFC upon recommendation of the LSTFC Grantee Eligibility and Support Committee, approves legal services related to vacatur relief (Penal Code Sections 236.14 and 236.15) as civil legal services.

## **ATTACHMENT(S) LIST**

None