



# The State Bar of California

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## **OPEN SESSION AGENDA ITEM 4.6 JULY 2024 BOARD OF TRUSTEES**

**DATE:** July 18, 2024

**TO:** Members, Board of Trustees

**FROM:** Doan Nguyen, Program Director, Office of Access & Inclusion  
Angela O'Hara, Senior Program Analyst, Office of Access & Inclusion

**SUBJECT:** Proposed State Bar Rules 3.680(H)(I) (Eligibility for Pro Bono Allocation as Part of Legal Services Trust Fund Program): Return from Public Comment and Request for Approval

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### **EXECUTIVE SUMMARY**

The Legal Services Trust Fund Commission (LSTFC) administers civil legal aid grants to nonprofit organizations serving indigent persons throughout California with the support of the State Bar staff. The work of the LSTFC is governed by California Business and Professions Code sections 6210–6228 and the Rules of the State Bar of California under Title 3, Division 5, Chapter 2. The LSTFC has undertaken a codification process to recommend updates to the existing rules. Goals of this process include, but are not limited to, clarifying grant eligibility and compliance parameters; improving efficiency and fairness in grants administration; and ensuring all grant requirements are contained in the governing authorities.

On June 21, 2024, the LSTFC approved proposed rules related to determining eligibility for a pro bono allocation for legal aid organizations applying for Interest on Lawyer Trust Account (IOLTA) grants. The proposed rules seek to simplify the pro bono allocation eligibility process and clarify related definitions. Staff circulated the rules for a 45-day comment period, which closed on January 11, 2024, and received only one comment in favor. Under Business and Professions Code section 6210.5, subsections (e)(1) and (e)(3), the Board of Trustees shall approve the LSTFC's recommended changes unless "a recommendation conflicts with a statutory, fiduciary, or legal obligation of the State Bar." The State Bar's Office of General Counsel reviewed the proposed rules and identified no such conflicts. The rules are recommended for approval.

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## **RECOMMENDED ACTION**

It is recommended that the Board of Trustees approve the proposed State Bar Rules 3.680(H)(I) regarding determining eligibility for a pro bono allocation for legal aid organizations applying for Interest on Lawyer Trust Account (IOLTA) grants (see Attachment A for proposed new rules).

## **DISCUSSION**

### **LSTFC CODIFICATION PROCESS**

In 2019, the Board of Trustees undertook a review of the functions of all its subentities and advisory bodies, including the LSTFC. As a result of that process, in early 2020, the LSTFC developed a long-term plan to examine existing State Bar Rules pertaining to grants administration, as well as the accompanying Eligibility Guidelines for the two types of legal aid grantees (legal services projects and support centers). The statute creating the LSTFC, and the Rules of the State Bar, are official, binding authority for the LSTFC and grantees regarding legal aid grant requirements. The Eligibility Guidelines provide further explanation and context for the requirements under the statute and rules and are not intended to expand or alter existing requirements. The codification process intends to harmonize all the governing authorities and examine whether the guidelines are still useful once proposed updates to the Rules of the State Bar become effective.

The LSTFC established a Rules Committee to review the existing authorities and recommend updates and revisions to the rules. With the help of the Legal Aid Association of California (LAAC), the Rules Committee has circulated preliminary recommendations to, and solicited feedback from, the existing legal aid grantees regarding the impact of the proposed changes. For larger topics, State Bar staff has also convened focus groups of grantees. These efforts occur prior to the formal public comment process and have yielded a high level of engagement from major stakeholders in the codification process.

The rules proposed in this agenda item relate to determining eligibility for a pro bono allocation for legal aid organizations applying for IOLTA grants. The pro bono allocation is a 10 percent set-aside of IOLTA grant funds distributed to organizations that recruit “substantial numbers of attorneys in private practice to provide free legal representation to indigent persons or to qualified legal services projects” as their “principal means of delivering services.” (Bus. & Prof. Code, § 6214(b)(3)(A) and § 6216(b)(1)(B)). The proposed new rules seek to simplify and codify the pro bono allocation eligibility process and clarify related definitions. The LSTFC has discussed and approved the recommendations regarding the pro bono allocation (see PREVIOUS ACTIONS below).

### **RESPONSE TO PUBLIC COMMENTS**

The public comment period for the proposed rules closed on January 11, 2024, and the State Bar received one response. The comment was from LAAC, indicating support of the rules without additional comment. Staff believes the low number of comments received may be attributed, in part, to the fact that the LSTFC has proactively engaged the stakeholders most impacted by these new rules—the legal aid community—throughout the codification process.

Accordingly, staff does not recommend any changes to the proposed rules based on public comment.

Under Business and Professions Code section 6210.5(e)(1), the LSTFC is charged with recommending rules related to grants administration to the Board of Trustees. The LSTFC was provided an update at its June 21, 2024, meeting regarding the public comment received. The LSTFC tentatively approved recommending the rules revisions, and staff does not anticipate any changes prior to the Board of Trustees' review.

#### **THE BOARD OF TRUSTEES MUST APPROVE THE PROPOSED RULE CHANGES ABSENT ANY CONFLICT WITH STATUTORY, FIDUCIARY, OR LEGAL OBLIGATIONS OF THE STATE BAR**

The LSTFC must obtain Board of Trustees approval for certain decisions, including proposed rule changes, but such approval must be given unless the LSTFC's recommendations conflict with the statutory, fiduciary, or legal obligations of the State Bar. (Bus. & Prof. Code, section 6210.5(e)(1) & (3).) The LSTFC does not believe that its current proposals create any conflict with such requirements. The Office of General Counsel has been involved in all stages of the codification process and agrees that the proposed rule changes do not conflict with any statutory, fiduciary, or legal obligations of the State Bar. The rules are recommended for approval.

#### **PREVIOUS ACTION**

- [Approve Recommendations Regarding Pro Bono Allocation](#) (LSTFC Rules Committee, August 2, 2023)
- [Approve Recommendations Regarding Pro Bono Allocation](#) (LSTFC Rules Committee, November 1, 2023)
- [Approve Recommendations Regarding Pro Bono Allocation \(Rules Committee\)](#) (LSTFC, November 9, 2023)
- [Approve Proposed Rules Regarding Pro Bono Allocation Following Public Comment Period](#) (LSTFC, June 21, 2024)

#### **FISCAL/PERSONNEL IMPACT**

None

#### **AMENDMENTS TO RULES**

Title 3, Division 5, Chapter 2, Rules 3.680(H)(I) (new proposed rules)

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

None

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

None – core business operations

## **RESOLUTIONS**

**Should the Board of Trustees concur, it is:**

**RESOLVED**, that the Board of Trustees approves and adopts proposed State Bar Rules relating to the Legal Services Trust Fund Program—Rule 3.680(H)(I)—provided as Attachment A, effective January 1, 2025.

## **ATTACHMENT LIST**

- A.** Proposed State Bar Rules 3.680(H)(I) Regarding the Legal Services Trust Fund Program