

## PROPOSED NEW STATE BAR RULE LANGUAGE

Please note, the following are new State Bar Rules regarding determining eligibility for a pro bono allocation for legal aid organizations applying for Interest on Lawyer Trust Account (IOLTA) grants. The proposed effective date is January 1, 2025, to coincide with the 2026 IOLTA grant cycle.

### Proposed Rule 3.680 Application for Trust Fund Program Grants

- (H) The following rules apply to new and returning applicants seeking the additional pro bono allocation under Business and Professions Code section 6216(b)(1)(B). To qualify, an applicant must show (1) that it recruited substantial numbers of pro bono attorneys to provide free legal representation to indigent persons or to qualified legal services projects in California AND (2) that pro bono is the applicant's principal means of delivering legal services by meeting one of the following requirements:
- a. Providing objective evidence demonstrating that the number of hours of free legal services provided by recruited pro bono attorneys in the prior calendar year exceeded the number of hours of legal services provided by attorneys employed by the applicant.
  - b. Providing a narrative description and explanation of the applicant's program demonstrating its recruitment of substantial numbers of pro bono attorneys to provide free civil legal services to indigent persons or qualified legal services projects in California and that pro bono is its principal means of delivering these legal services.
    - i. Substantial numbers shall be demonstrated through a description of the following factors:
      1. The number of pro bono attorneys recruited;
      2. The number of pro bono attorneys recruited compared to the number of attorneys on staff;
      3. The percentage of attorneys in your local service area that donated services through your project;
      4. The verified value of donated civil legal services in comparison to your expenditures and budget;
      5. The number of hours donated by each attorney compared to number of paid attorney hours;
      6. The number of attorneys in your area who have special expertise needed to provide the services your project offers; and
      7. Other considerations that may affect the availability of pro bono attorneys in your service area.
    - ii. Pro bono as principal means of delivering legal services shall be demonstrated through a description of each of the following factors:
      1. Pro bono recruitment and retention strategy,
      2. Training curriculum,
      3. Type and number of volunteer opportunities available,
      4. Service delivery model that requires volunteers,

5. Supervision and scope of support for volunteers, and
  6. Data demonstrating quantifiable commitment to pro bono as the principal means of delivery, such as percent or number of pro bono cases compared to cases by attorneys on staff, a substantial combined number of total pro bono attorney and non-attorney volunteer hours, or other relevant data points.
- (I) For purposes of determining whether an applicant has demonstrated the recruitment of substantial numbers of pro bono attorneys and pro bono as its principal means of delivering legal services,
- a. "recruited" means either a newly recruited attorney or returning pro bono attorney who is continuing to engage in providing pro bono services;
  - b. attorneys can be considered pro bono attorneys even though they work for government agencies, corporations, or in non-legal occupations so long as they are not employees of the applicant;
  - c. attorneys can be considered to serve without compensation even when they are reimbursed for out-of-pocket expenses, whether by the client, the applicant, or other sources;
  - d. non-attorney volunteers may include paralegals, interpreters, legal assistants, social workers, undergraduate students, law students, intake volunteers, and other volunteers so long as their work is supervised by an attorney and the work of the volunteer contributes to the delivery of free legal services to the indigent;
  - e. law student hours count toward volunteer non-attorney hours regardless of whether law students receive academic credit, a stipend, or compensation, so long as they are not being paid an equivalent amount and doing equivalent work as a paid employee; and
  - f. legal fellows are law graduates or licensed attorneys who have temporary and/or timebound employment and are typically compensated by a third party; legal fellow hours count toward staff attorney hours unless legal fellows are current law students and/or participating in the Legal Services Trust Fund Commission Legal Aid Leaders Fellowship grant program.