

4.2 Approval of Recommendation for Revised Effective Date of Pro Bono Allocation Rule
3.680(H)(I)



The State Bar of California

OPEN SESSION AGENDA ITEM 4.2 SEPTEMBER 2024 BOARD OF TRUSTEES

DATE: September 19, 2024

TO: Members, Board of Trustees

FROM: Angela O'Hara, Senior Program Analyst, Office of Access & Inclusion

SUBJECT: Approval of Recommendation for Revised Effective Date of Pro Bono Allocation Rule 3.680(H)(I)

EXECUTIVE SUMMARY

On July 18, 2024, the Board of Trustees (BOT) approved proposed State Bar Rules 3.680(H)(I) related to determining eligibility for a pro bono allocation for legal aid organizations applying for Interest on Lawyer Trust Account (IOLTA) grants. The rules seek to simplify and add flexibility to the pro bono allocation eligibility process for qualified legal service providers whose principal means of delivering legal services is through pro bono attorneys providing free legal representation to indigent persons. While the rules were set to go into effect January 1, 2025, in the interest of expanding the availability of pro bono legal services to a greater number of low-income Californians as soon as possible, the Legal Services Trust Fund Commission (LSTFC) recommends that the BOT amend the rules' effective date to July 18, 2024, the date the BOT approved the rules, and approve this change at its September 19–20, 2024, meeting. The Office of General Counsel has reviewed this recommendation and agrees that the proposed change does not conflict with any statutory, fiduciary, or legal obligation of the State Bar.

RECOMMENDED ACTION

It is recommended that the BOT amend the effective date of 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 from January 1, 2025, to July 18, 2024, and approve this change at its September 19–20, 2024, meeting.

DISCUSSION

On July 18, 2024, the Board of Trustees (BOT) approved proposed State Bar Rules 3.680(H)(I) related to determining eligibility for a pro bono allocation for legal aid organizations applying

for Interest on Lawyer Trust Account (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).

Approved State Bar Rules 3.680(H)(I) simplify and codify the pro bono allocation eligibility process and clarify related definitions. The new rules allow for greater flexibility for a QLSP to demonstrate that pro bono is its principal means of service delivery.

The BOT approved the new rules, and they were set to go into effect January 1, 2025. However, the Legal Services Trust Fund Commission (LSTFC) has since reviewed the 2025 IOLTA applications and found two programs that would meet the requirements for the pro bono allocation under the proposed rules, but are excluded from the additional allocation under the current eligibility guidelines. To expand the availability of pro bono legal services to a greater number of low-income Californians as soon as possible, the LSTFC recommends the BOT amend the new rules’ effective date to July 18, 2024, the date the BOT approved the rules, and approve this change at its September 19–20, 2024, meeting.

PREVIOUS ACTION

[Approve Recommendation for Revised Effective Date of Pro Bono Allocation Rule](#) (LSTFC, August 9, 2024)

[Approve 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](#) (BOT, July 18-19, 2024)

[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)

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 amending the effective date of State Bar Rules relating to the Legal Services Trust Fund Program—Rule 3.680(H)(I)—provided as Attachment A, from January 1, 2025, to July 18, 2024.

ATTACHMENT LIST

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

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.

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.
- (l) 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.