

STATE OF MINNESOTA
IN SUPREME COURT
ADM10-8021



**ORDER PROMULGATING AMENDMENTS TO THE MINNESOTA
LEGAL SERVICES ADVISORY COMMITTEE MEMBERSHIP
RULES AND THE RULES RELATING TO DISTRIBUTION OF
CIVIL SURCHARGE FUNDS**

The Legal Services Advisory Committee (LSAC) filed a petition recommending amendments to the Legal Services Advisory Committee Membership Rules and the Rules Relating to Distribution of Civil Surcharge Funds to: (1) amend the Legal Services Advisory Committee Membership Rules to remove gendered language; (2) remove the definitions that repeat language of Minn. Stat. § 480 *et seq.* (2022) and are not necessary in the court rule; (3) take out language relating to the civil surcharge fee that was repealed in 1990; (4) reference the additional funding that LSAC administers along with the legislative appropriation; (5) allow for per diem compensation of client eligible members on the committee; and (6) repeal the Rules Relating to Distribution of Civil Surcharge Funds as out of date. *See* In re: Proposed Amendment to the Legal Services Advisory Committee Membership Rules and the Rules Relating to Distribution of Civil Surcharge Funds, ADM10-8021 (filed Dec. 19, 2022).

By order filed on January 25, 2023, we established a period for the public to file written comments in response to the petition filed by the committee. Order Establishing Public Comment Period on Proposed Amendments to the Minnesota Legal Services Advisory

Committee Membership Rules and the Rules Relating to Distribution of Civil Surcharge Funds, ADM10-8021 (Minn. filed Jan. 25, 2023). No comments were filed.

The court agrees that LSAC's proposed amendments should be adopted, with some minor changes. As an initial matter, the court agrees that the Rules Relating to Distribution of Civil Surcharge Funds should be repealed as out of date. In 1982, the Legislature enacted legislation governing legal service programs, which is codified in Minn. Stat. § 480.24 *et seq.* That original law included Minn. Stat. § 480.241 (1984), which governed a filing fee surcharge in civil actions. Rules 4–6, in turn, Relat[ed] to the Distribution of Civil Surcharge Funds. But in 1990, Minn. Stat. § 480.241 concerning civil surcharge funds was repealed, *see* Act of May 8, 1990, ch. 594, art. 1, § 81, 1990Minn. Laws 2328, 2365, without the corresponding Rules Related to the Distribution of Civil Surcharge Funds ever being repealed. The court thus does so here by this order.

The court also agrees that LSAC's proposed amendments should be adopted as to the Legal Services Advisory Committee Rules, with some minor revisions. First, the court amends the Legal Services Advisory Committee Rules to remove gendered language as recommended, with minor modifications for readability and to avoid any unintended substantive alteration to the rules. Second, the definitions in what was previously Legal Services Advisory Committee Rule 1 have been deleted as unnecessarily duplicative with the language of Minn. Stat. § 480.24, *et seq.* The terms used in the Legal Services Advisory Committee Rules have the same meaning ascribed to them in Minn. Stat. § 480.24. Third, the court has removed language in the Legal Services Advisory Committee Rules relating to the civil surcharge fee, which was repealed in 1990. *See* Act of May 8, 1990, ch. 594, art. 1,

§ 81, 1990 Minn. Laws 2328, 2365. Fourth, the court has included language in the Legal Services Advisory Committee Rules referencing the additional funding that LSAC administers along with the legislative appropriation.

Finally, the court adopts LSAC's request to allow for per diem compensation of client eligible members. LSAC's committee includes "two persons who could qualify as eligible clients ('client eligible members')," Amended Rule 2.A.2, *i.e.*, two persons who are "financially unable to afford legal assistance," *see* Minn. Stat. § 480.24, subd. 2 (defining "Eligible client"). The court acknowledges that per diem compensation, *i.e.*, an allowance for lodging, meals, and incidental expenses incurred while travelling, would help reduce a financial barrier that may otherwise exist for client eligible members, in addition to the allowance already made in the rules for members to be reimbursed "their reasonable and necessary expenses incurred in the performance of their duties," *see* Amended Rule 2.C.1. LSAC has requested that this additional per diem compensation be governed by "Operating Guidelines published by the Legal Services Advisory Committee when requested." The court agrees, with the added amendment that these guidelines are "subject to review by the Court," consistent with the court's reviewing role in other areas of LSAC's work. *See* Minn. Stat. § 480.242, subd. 2 (2022) ("The applications shall be reviewed by the advisory committee, and the advisory committee, subject to review by the supreme court, shall distribute the funds available for this expenditure to qualified legal services programs or to qualified alternative dispute resolution programs submitting applications.").

IT IS HEREBY ORDERED that the attached amendments to the Minnesota Legal Services Advisory Committee Membership Rules and the Rules Relating to Distribution of Civil Surcharge Funds are prescribed and promulgated as shown below. The amendments are effective as of July 3, 2023.

Dated: June 1, 2023

BY THE COURT:

A handwritten signature in black ink, appearing to read "Lorie S. Gildea". The signature is written in a cursive style with a large initial "L" and "G".

Lorie S. Gildea
Chief Justice

AMENDMENTS TO THE MINNESOTA LEGAL SERVICES ADVISORY COMMITTEE MEMBERSHIP RULES

[Note: In the following amendments, deletions are indicated by a line drawn through the words and additions are indicated by a line drawn under the words.]

Legal Services Advisory Committee Membership Rules

Adopted May 24, 1982

With amendments received through ~~August 1, 2009~~ July 3,
2023

Rule 1. Definitions

As used in these rules:

1. ~~Eligible client means an individual who is financially unable to afford legal assistance as determined by a recipient by applying Federal Legal Service Corporation standards in effect on July 1, 1982.~~

2. ~~Qualified Legal Services Program means a nonprofit corporation which provides or proposes to provide legal services to eligible clients in civil matters and which is governed by a board of directors composed of attorneys at law and consumers of legal services.~~

3. ~~Recipient means a qualified legal services program that receives funds from the Supreme Court to provide legal services to eligible clients.~~

Rule 2. Purpose

It is of primary importance for all ~~citizens~~ Minnesotans to have access to our system of justice. The Minnesota Legislature has recognized this necessity by appropriating a ~~surcharge on civil filings to fund~~ funds for legal services for persons unable to afford private counsel and to fund programs which organize members of the private bar to perform services for qualified alternative dispute resolution programs. The Minnesota Supreme Court has also designated funds to support access to justice. The distribution of funds for such legal services, ~~and~~ alternative dispute resolution, and other programs as directed by the Court shall be accomplished in accordance with these rules.

Rule ~~3~~2. Legal Services Advisory Committee

A. Composition.

The Legal Services Advisory Committee shall consist of:

1. ~~A chairman~~ and ten additional committee members.

a. The chair appointed by ~~the~~ this Court for such time as it designates and serving at the pleasure of this Court but not more than six years as ~~chairman~~; and

b. 2. Effective July 1, 1982, ~~ten~~ Ten members appointed by the Court for three year terms or until their successors are appointed, except that shorter terms shall be used where

necessary to assure that as nearly as may be possible one third of all terms expire each June 30th. No persons may serve more than two three-year terms in addition to any additional shorter terms to which they were~~as~~ originally appointed to fill a vacancy and any period served as chairman.

~~23.~~ The members specified in subdivision 1a. and 1.b. ~~and 2~~ shall be constituted as follows: seven attorneys at law who are well acquainted with the provision of legal services in civil matters, four of whom shall be nominated by the state bar association in a manner determined by it, ~~and three of whom shall be nominated by the programs in Minnesota providing legal services in civil matters on July 1, 1982, with funds provided by the Federal Legal Services Corporation in the manner determined by them;~~ two public members who are not attorneys and two persons who could qualify as eligible clients (“client eligible members”). In making the appointments of the attorney-at-law members the Court shall not be bound by the nominations prescribed above.

B. Vacancy.

In the event of a vacancy, the Court shall fill the vacancy from same constituency represented by the member being replaced. Any member who misses three consecutive regularly scheduled meetings will be deemed to have resigned from the committee and the Court will appoint a new member to fill the vacancy and complete the term.

C. Members Expenses.

1. The members shall be ~~paid~~ reimbursed their reasonable and necessary expenses incurred in the performance of their duties when requested.

2. Client eligible members shall receive additional per diem compensation when requested, pursuant to operational guidelines published by the Legal Services Advisory Committee, which are subject to review by the Court.

D. Duties.

The committee shall have general supervisory authority over the administration of these rules, shall advise the Court on the distribution of funds to qualified legal services programs, or alternative dispute resolution programs, and other programs as directed by the Court after a review of applications which meet the eligibility criteria established by the committee and perform such other duties as the Court may direct. ~~The committee may elect a vice chairman and specify the duties of the position. The committee may also elect an executive committee and authorize it to perform specified duties of the Legal Services Advisory Committee between meetings.~~

E. Staff.

The State Court Administrator or his designee(s) shall serve as staff to the Legal Services Advisory Committee. When authorized by the Court, the State Court Administrator may employ such additional personnel as necessary with funds appropriated for this purpose to administer these rules.

F. ~~Guidelines~~ Rules.

The committee may adopt ~~rules for its operation~~ operational guidelines not inconsistent with these rules.

**AMENDMENTS TO THE RULES RELATING
TO DISTRIBUTION OF CIVIL SURCHARGE FUNDS**

[Note: In the following amendments, deletions are indicated by a line drawn through the words and additions are indicated by a line drawn under the words.]

*Rules Relating to Distribution of Civil Surcharge Funds
With amendments received through August 1, 2006*

~~Rule 4. Federal Legal Services Corporations~~

~~A. Eligible Entities—Mandatory Distribution~~

The Legal Services Corporations which have been identified by statute, Minnesota Statutes, section 480.242, subdivision 2, as recipients of 85 percent of the surcharge funds, are those qualified legal services programs which have demonstrated an ability as of July 1, 1982, to provide legal services to persons unable to afford private counsel with funds provided by the federal Legal Services Corporation.

Those programs are:

1. ~~Southern Minnesota Regional Legal Services~~

~~60 East Fourth Street~~

~~St. Paul, MN 55101~~

2. ~~Mid Minnesota Legal Assistance~~

~~222 Grain Exchange Building~~

~~323 South Fourth Street~~

~~Minneapolis, MN 55415~~

3. ~~Judicare of Anoka County~~

~~403 Jackson Street~~

~~Anoka, MN 55303~~

~~4.—Legal Aid Service of Northeastern Minnesota~~

~~302 Ordean Building~~

~~424 West Superior Street~~

~~Duluth, MN 55802~~

~~5.—Northwest Minnesota Legal Services~~

~~Eighth Street and Fourth Avenue South~~

~~P.O. Box 714~~

~~Moorhead, MN 56560~~

~~6.—Anishinabe Legal Service~~

~~Box 157~~

~~Cass Lake, MN 56633~~

~~B. Frequency of Distribution~~

~~The mandatory distribution to the Legal Services Corporations shall be made of funds on deposit at the Supreme Court on October 15, January 15, April 15, May 15 and June 15 based upon the number of persons with incomes below the poverty level established by the United States Census Bureau who reside in the geographical area served by each program as determined by the Supreme Court on the basis of the 1980 national census. Until the 1980 figures are available, the 1970 census poverty level data shall be the basis for preliminary distributions.~~

~~An adjustment in funds disbursed shall be made to insure that total fiscal year 1983 disbursements are in accord with the 1980 census data applied for the entire year. The Legal Services Corporations shall, upon request by the Legal Services Advisory Committee, provide a report and recommendation in writing concerning the number of such persons in the areas served by each program in accordance with the statutory criteria. The report shall set forth the bases for the enumerations.~~

C. Maintenance of Financial Records

Each Legal Service Corporation shall maintain books and records in accord with generally accepted accounting principles. The books and records shall account for the receipts and expenditure of all funds appropriated from the surcharge. Within 90 days after the close of the state fiscal year the Legal Service Corporation shall return any unexpended funds to the Supreme Court. Books and records shall be maintained for a period of five years from the close of the fiscal year in question or until audited whichever is sooner.

D. Budgets

Each Legal Service Corporation shall submit a proposed budget to the legislature biennially. These budgets shall be submitted to the Supreme Court for inclusion in the agency's budget in the manner, form, and time prescribed for state agencies.

Rule 5. Discretionary Grant Funds

A. Application Process

The Legal Services Advisory Committee shall solicit applications for funding for the provision of qualified legal services in civil matters to eligible clients, including programs which organize members of the private bar to perform services and programs for qualified alternative dispute resolution.

B. Requests for Proposal

Requests for proposal shall be prepared by the Legal Services Advisory Committee specifying the requirements with which applicants must comply. At a minimum applicants must furnish statements about the nature of the proposed program, a proposed budget, and a description of the organizational structure of the sponsoring agency.

C. Notice of Requests for Proposal

Notice of the requests for proposal shall be posted in the Bench and Bar, Finance and Commerce, the St. Paul Legal Ledger and such other places as the Legal Services Advisory Committee deems likely to give adequate notice to potential applicants at least 30 days prior to the application deadline.

D. Application Deadline

The request for proposal shall clearly state the application deadline. The Legal Services Advisory Committee shall consider all applications submitted prior to the deadline.

E. Review and Recommendation

The Legal Services Advisory Committee shall review all applications within 90 days of the deadline and recommend in writing to the Supreme Court the agencies and dollar amount of the awards which it deems most suitable for receiving surcharge funding.

F. Award of Surcharge Funds by the Supreme Court

The Supreme Court, if it agrees with the recommendations of the Legal Services Advisory Committee, shall contract with the agency to execute the proposed program

~~within legal and budgetary limitations. The funds shall be disbursed in the manner provided by contract.~~

~~G. Maintenance of Books and Records~~

~~Each recipient of an award of legal services surcharge funds shall maintain books and records in accord with generally accepted accounting principles. The books and records shall account for the receipt and expenditure of all funds appropriated from the surcharge. Within 90 days after the close of the state fiscal year the recipient shall return any unexpended funds to the Supreme Court. Books and records shall be maintained for a period of five years from the close of the fiscal year in question or until audited whichever is sooner.~~

~~Rule 6. Surcharge Appropriation Budget~~

~~The responsibility for presenting the surcharge budget to the legislature shall reside with the Legal Services Advisory Committee.~~