

# IN THE SUPREME COURT OF TEXAS

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Misc. Docket No. 17-9008

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## ORDER OF THE COURT APPROVING RULES AND PROCEDURES GOVERNING THE ADMINISTRATION OF THE LEGAL AID FOR SURVIVORS OF SEXUAL ASSAULT PROGRAM

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### **ORDERED:**

Effective September 1, 2015, the Texas Legislature appropriated funds in Strategy B.1.1. Basic Civil Legal Services, from General Revenue-Dedicated Funds, to include \$10,000,000 in Sexual Assault Program Account No. 5010 for basic civil legal services to victims of sexual assault that may only be used for the purposes established for the Supreme Court of Texas in Texas Government Code, Section 420.008 Sexual Assault Program Fund Subsection (c)(11).

### **1. Appointment of the Texas Access to Justice Foundation**

The Supreme Court of Texas (Court) as authorized by Section 420.008(c)(11) of the Texas Government Code, appoints the Texas Access to Justice Foundation (“Foundation”) to administer the basic civil legal services to victims of sexual assault, herein after called the “Legal Aid for Survivors of Sexual Assault” Program, including but not limited to, the application process, grant award decisions, the distribution of funds by vouchers approved by the Court (“Funds”), the monitoring of grant recipients, the recommendation to the Court of sanctions, and the recommendation to the Court of appropriate reports.

### **2. Funds to be Maintained in the Sexual Assault Program Fund Account**

Funds received by the Court shall be credited to the Sexual Assault Program Fund 5010 account (“Account”) for use in programs approved by the Foundation to provide victim-related civil legal services to victims of sexual assault. The Comptroller may pay money from the Account only on vouchers recommended by the Foundation and approved by the Court. Funds from the Account may be supplemented by local or federal funds and private or public grants.

### **3. Organizations Eligible and Criteria for Grants**

The Foundation shall recommend and the Court shall approve grants to organizations, not individuals. To qualify for a grant, an organization must be a Texas nonprofit organization

exempt from taxation under Section 501(c)(3) of the United States Internal Revenue Code, as amended, or corresponding provisions of any subsequent United States Internal Revenue law or laws, and must provide victim-related civil legal services to victims of sexual assault meeting the income eligibility requirements as set out in Rule 4, and must be current in all filings required to be made by it with any governmental authority, maintain open records and conduct open meetings (subject to reasonable limitations for an organization of its type), be an equal employment opportunity employer, and be able to demonstrate that it can utilize any funds granted to it in a manner consistent with these Rules and policies adopted by the Court and the Foundation. No grantee shall subgrant any Funds to any other organization unless it is approved by the Foundation. The organization receiving a subgrant must read, comply with, and agree in writing to be subject to and bound by the Act, Rules, grant provisions, and other policies of the Foundation. The organization providing the subgrant shall be responsible for monitoring the recipient organization to determine compliance. The organization receiving a subgrant also may be monitored by the Foundation.

#### **4. Persons Eligible to Benefit from Grants**

Organizations receiving Funds granted under the Legal Aid for Survivors of Sexual Assault Program shall use the Funds to provide victim-related civil legal services directly to survivors of sexual assault. An individual must not earn more than 200% of the federal poverty guidelines published by the United States Department of Health and Human Services to be eligible for services. "Survivor" is defined in 420.003(8) of the Texas Government Code.

#### **5. Use of Funds Limited to Cases Which Cannot Generate Fees**

Funds granted under the Legal Aid for Survivors of Sexual Assault Program to organizations to provide legal services to the survivors of sexual assault in civil matters may not be used for any case or matter that, if undertaken on behalf of an indigent person by an attorney in private practice, might reasonably be expected to result in payment of a fee for legal services from an award to a client from public funds, or from the opposing party.

#### **6. Exception to Rule 5**

The provisions of Rule 5 shall not be applicable in any case where the organization receiving funds granted by the Foundation determines in good faith that the person seeking legal assistance has made reasonable efforts to obtain the services of an attorney in private practice for the particular matter (including contacting attorneys in private practice in the county of residence of the indigent person who normally accept cases of a similar nature), and has been unable to obtain such services because the potential fee is inadequate, is likely to be uncollectible, would substantially consume any recovery by the client, or because of any other reason which the organization, acting in good faith, believes prevents the client from obtaining the services of a private attorney.

#### **7. Funding of Certain Suits and Activities Not Permitted**

No funds shall be granted by the Foundation to directly fund class action suits, lawsuits against governmental entities, or lobbying for or against any candidate or issue.

Funds from the Account may be used to support a lawsuit brought by an individual, solely on behalf of the individual or the individual's dependent or ward, to compel a governmental entity to provide benefits that the individual or the individual's dependent or ward is expressly eligible to receive, by statute or regulation, including social security benefits, temporary assistance to needy families, financial assistance under Chapter 31, Human Resources Code, food stamps, special education for persons with disabilities, Medicare, Medicaid, subsidized or public housing, and other economic, shelter, or medical benefits provided by a government directly to an individual, but not to support a claim for actual or punitive damages.

## **8. Certain Activities of Grantees**

8.1 In addition to all other requirements and not by way of limitation, to be eligible to receive funds:

(i) Grantees will cooperate and collaborate in their service areas with (a) all other organizations providing civil legal services to survivors of sexual assault, (b) the local organized bar, (c) relevant social and human service organizations, (d) relevant governmental agencies, and (e) other organizations that specifically provide victim-related services.

(ii) In accepting and pursuing matters for clients, grantees shall adhere to the Texas Disciplinary Rules of Professional Conduct and the Texas Rules of Disciplinary Procedure and any other code or rules of professional responsibility adopted by this state for attorneys and should exercise reasonable prudent judgment and consider all relevant factors, including the legal merits and the economic and practical value of the matter.

(iii) Except for matters involving limited advice and brief services (e.g. clinics, hotlines, and similar services), each grantee shall execute a written retainer agreement, or letter of engagement, containing appropriate provisions for withdrawal of representation, with each client who receives legal services from the grantee. For cases that are referred by grantees to private attorneys, the grantee shall make available to the accepting attorney a standard form retainer agreement which may be modified based on agreement between the attorney and client.

8.2 In addition to all other matters monitored by the Foundation and not by way of limitation, the Foundation shall monitor the foregoing activities of Grantees.

## **9. Records and Reports of Grantees**

The Foundation shall require, as a condition to the granting of funds to any organization or program, that adequate provision be made for reports to the Foundation as to the actual use of the funds so granted and for audit of such reports. Each such organization or program receiving funds from the Foundation shall keep its financial records in accordance with generally accepted accounting principles for organizations of its type and shall furnish reports to the Foundation in

such form and containing such information as shall be reasonably requested pursuant to policies adopted by the Board of Directors of the Foundation.

9.1 As a condition to the award of a grant to any organization or program, the Foundation requires the grantee to acquire and maintain certain financial, program and other information and to submit periodic and special reports to assist the Foundation in monitoring compliance with the Act, these Rules, grant provisions, grant agreement, and other policies of the Foundation.

9.2 The required information is intended, among other matters, to provide the basis for the required reports; to facilitate review of the actual use of the funds granted; to evaluate programs, the level of legal services provided by the grantee, and the remaining level of unmet need. All such information shall be as required by these Rules and as reasonably required by the Foundation pursuant to its policies, grant application, grant provisions, and grant agreement.

9.3 Each grantee shall keep its financial records in accordance with generally accepted accounting principles or other comprehensive basis of accounting approved by the Foundation for grantees of its type.

(i) Grantees must account for Funds as restricted funds, which specifically requires that any donor-imposed restrictions be met before Funds are expended.

(ii) Accounting records shall be supported by source documentation such as cancelled checks, paid invoices, time cards, time sheets, payrolls or similar data. The Foundation may disallow unsupported expenditures and may require that funds expended for unsupported expenditures be returned.

9.4 Grantees shall submit financial, program activity and other reports to the Foundation at least quarterly during the grant period and at such other times as shall be directed by the Foundation. These reports will be in the form and contain the information specified in these Rules and by the Foundation.

(i) The reports shall be in formats determined by the Foundation and designed to provide reasonable assurance that the restricted funds were spent in compliance with the purposes for which the grant was awarded, the Act and these Rules. Grantees will disclose any facts or events which would make the grantee ineligible for funding if applying for a grant as of the date of the report.

(ii) The financial report will detail the expenditure of the grant to date and compare those expenditures against the approved budget.

(iii) Grantees shall submit annual financial statement within the earlier of 9 months of the close of their fiscal year or 30 days after receipt of the auditor's report(s). All grantees must be audited regardless of size of the grant award unless the Foundation approves an exception to this requirement. On receipt of a

justified request from the Grantee, the Foundation may approve: (1) a waiver of the requirement for an audited financial statement; (2) a grant audit in lieu of an audited financial statement; or (3) any other procedure or action as the Foundation may deem appropriate. Each request will be evaluated on a case-by-case basis. The Foundation shall submit an annual report to the Supreme Court of Texas of each instance in which it authorized a grant audit in lieu of an audited financial statement.

(iv) Grantees that expend greater than the “major program” threshold in state or federal grants must have a Single Audit conducted by their auditor, as required by OMB Circular A-133.

9.5 Visits to one or more of a grantee's places of business by Foundation representatives may be made as determined by the Foundation to inspect the physical facilities, and to review financial and program records, operational policies and procedures, including but not limited to, observation of grantee's delivery of basic civil legal services, and such other aspects of a grantee's program as may be reasonably necessary to ensure compliance with the Act, these Rules, grant provisions, grant agreement, and other policies of the Foundation. Such monitoring visits will be conducted in reliance upon the practices and principles articulated by the American Bar Association in its Standards for the Monitoring and Evaluation of Providers of Legal Services to the Poor, adopted in 1991, and Standards for Providers of Civil Legal Services to the Poor, adopted in 1966 and revised in 1970 and 2001.

9.6 The Foundation may not require that confidential information be divulged in breach of the attorney/client relationship.

## **10. Default**

A grantee shall be deemed in default of the grant conditions upon the occurrence of any of the following:

- (i) Any material violation by the grantee of the Act, these Rules, grant provisions, the policies of the Foundation, or the grant agreement;
- (ii) Any use of grant funds not in substantial compliance with the approved budget and grant agreement including approved budget revisions for that grant period;
- (iii) The occurrence of any event which would make the grantee ineligible to receive a grant if applying for one at that time;
- (iv) The submission of any materially false or misleading information to the Foundation as a part of the grant application, approved budget, financial report, financial statements, or otherwise; or

- (v) Any failure to return unused grant funds at the end of a grant period.

## **11. Sanctions**

The Board of Directors of the Foundation shall adopt appropriate procedures to be followed by the Foundation in deciding to impose sanctions, including reasonable notice to the organization involved, an opportunity to correct any deficiency (if reasonably possible to do so) and, if deemed appropriate by the Executive Committee of the Foundation, a hearing before the Executive Committee or the Board of Directors. In the event of a default, as defined above in Rule 10, by a grantee, the Foundation shall have the right, among others, but not by way of limitation, to implement any of the following sanctions: reduce the grant; terminate the grant; withhold payment of an installment; demand repayment of a portion or all of the grant funds; institute legal action to recover funds; adopt a monthly grant disbursement schedule (including demanding a return of grant funds already disbursed in excess of the pro rata current month's installment); condition payment of subsequent installments on the grantee's cure of the default; or other remedies as the Foundation may deem appropriate.

## **12. Administrative Costs to the Foundation**

Beginning September 1, 2016, the Foundation may expend funds for administrative costs of the Legal Aid for Survivors of Sexual Assault Program and shall be reimbursed periodically upon application to the Court from the Sexual Assault Program Account No. 5010 in an amount up to 3.5% of the funds deposited to the Account.

## **13. Records of the Foundation**

The records of the Foundation with respect to the Legal Aid for Survivors of Sexual Assault Program, including applications for Funds, whether or not granted, shall be open for public inspection at reasonable times and subject to reasonable restrictions dictated by the operational needs of the Foundation. The Foundation shall maintain its books of account in accordance with generally accepted accounting principles for organizations of its type and shall maintain written minutes of meetings of its Board of Directors and committees. It shall also maintain such other records as are within reasonable policies established by its Board of Directors.

## **14. Reports of the Foundation**

The Foundation shall file a report with the Court at the end of each fiscal year showing disbursements from the Account and the purpose for each disbursement and the sanctions imposed, if any, and shall recommend an appropriate report for filing with the Legislative Budget Board.

## **15. Audits of Funds Received by Grantees**

Funds received by grantees from the Sexual Assault Program Fund are subject to audit by the Court, the comptroller, and the state auditor. The Foundation will recommend the appropriate procedures for an audit on behalf of the Court.

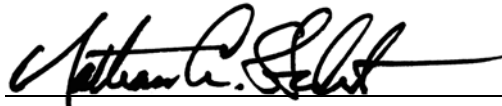
## **16. Appeals**

Grant awards and denials are not subject to appeals by applicants to the Foundation or the Court.

## **17. Effective Date**

The Texas Access to Justice Foundation shall proceed immediately with the implementation of the Legal Aid for Survivors of Sexual Assault Program pursuant to these Rules, effective immediately.

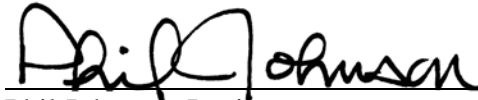
SIGNED this 17<sup>th</sup> day of January, 2017.



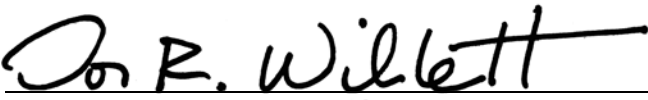
Nathan L. Hecht, Chief Justice



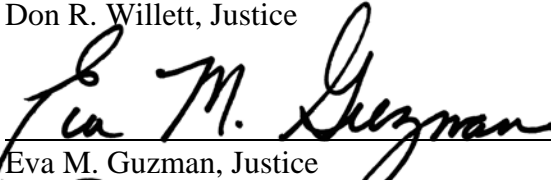
Paul W. Green, Justice



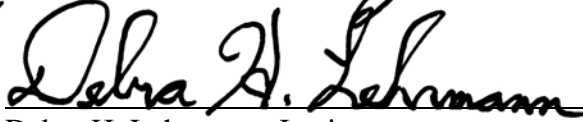
Phil Johnson, Justice



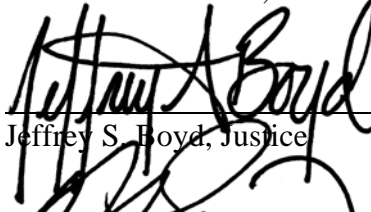
Don R. Willett, Justice



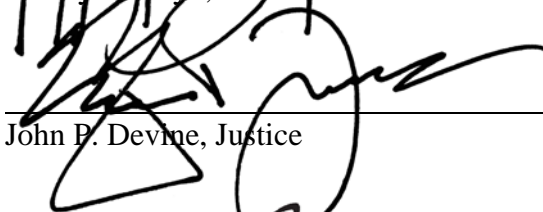
Eva M. Guzman, Justice



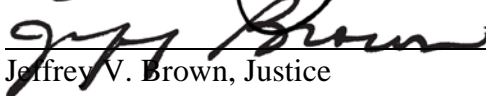
Debra H. Lehrmann, Justice



Jeffrey S. Boyd, Justice



John P. Devine, Justice



Jeffrey V. Brown, Justice