

2004 Annual Report of the Lawyer Assistance Program of the State Bar of California

—MISSION STATEMENT—

The mission of the Lawyer Assistance Program is to support recovering attorneys in their rehabilitation and competent practice of law, enhance public protection, and maintain the integrity of the legal profession.

In Compliance with Bus. & Prof. Code § 6238

March 1, 2005

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Introduction

This is the third Annual Report of the Lawyer Assistance Program (“LAP” or “Program”) of the State Bar of California, as required by Section 6238 of the Business and Professions Code. As the statute provides, the Annual Report includes information concerning the number of attorney participants accepted, denied, or terminated with compliance or noncompliance, and annual expenditures related to the Program. It also addresses the development of the Program in its third year, its status at the end of the year, and its plans for 2005.

The LAP was established by the California Legislature in 2002 as a confidential resource for every California attorney whose personal or professional life suffers from substance abuse or dependence and/or mental health concerns such as depression or anxiety. Many attorneys refer themselves to the Program; others are referred as the result of an investigation or disciplinary proceeding.

The LAP provides a comprehensive program of professional support and structure including expert assessment, arrangements for treatment, monitored continuing care, random lab testing, and professionally facilitated support groups. The program also offers free, short-term counseling to all attorneys to address stress, burnout, or career challenges. The Program works with family members, friends, colleagues, judges and other court staff who wish to obtain help for an impaired attorney.



Executive Summary

By every measure the LAP's accomplishments in 2004 continued on the steep upward curve of the Program's two previous years. The Program accepted 199 new participants in 2004, an increase of twenty-eight (28) percent over 2003. Requests for counseling increased substantially, and the number of professionally facilitated support groups grew to 27 meetings each week.

The widening knowledge of the LAP among California attorneys, and their increasing trust in the LAP as a confidential resource for recovery, were underscored by the sharply increased proportion of new participants who sought out the Program in the absence of any disciplinary proceedings. During the first two years of the Program's operation, nearly two-thirds of all participants faced some type of disciplinary proceedings. During 2004, only half of the new participants were facing discipline. This gratifying development suggests that the LAP is achieving earlier intervention, which means better client protection, better treatment prospects, and greater savings to the disciplinary process.

A major success in the LAP's outreach efforts in 2004 was the release and widespread dissemination of a 17-minute video entitled "The Lawyer Assistance Program." The video, introduced and endorsed by Chief Justice Ronald M. George of the Supreme Court of California, is being distributed to judicial officers and lawyers' groups statewide. It was viewed and favorably received by the Conference of Chief Justices of the 50 states and territories, and is rapidly becoming a national model for LAP promotional material.

The LAP, now fully operational, laid a foundation for the future by adopting a Strategic Plan to implement its vision, approving a Strategic Communications Plan for outreach, and beginning a major fundraising program centered on an event to be held early in 2006.



How the Program Works

The Lawyer Assistance Program was established by the California Legislature (Bus. & Prof. Code §§ 6140.9; 6230-38 (Appendix A)) as a result of Senate Bill 479 introduced in 2001 by then Sen. John Burton, president Pro Tem of the California State Senate. SB 479 was passed by the Legislature and signed into law effective January 1, 2002. Shortly after its startup, the LAP implemented an optimal assistance model.

Attorneys may enter the LAP during a pending disciplinary proceeding or voluntarily by self-referral. All participation in the LAP is completely voluntary and strictly confidential. An attorney who calls the LAP is assigned to a local Case Manager who is a professional clinician experienced in the areas of substance abuse and mental health. The Case Manager immediately addresses any life-threatening issues, handles medical needs and provides emotional support.

A new participant immediately begins attending the closest LAP professionally facilitated support group and other local self-help programs as appropriate. Within a week the participant has an intake session with the Case Manager. The newcomer is referred to medical and psychiatric professionals for evaluation if indicated.

Experience shows that these early interactions are essential to helping break through the denial that often characterizes these disorders, fostering the formation of critical personal alliances and friendships to lessen the isolation and shame that is typical in those afflicted, and reinforcing central elements of early recovery.

The participant meets regularly with the Case Manager, weekly with a professionally facilitated support group, and more frequently with other self-help groups. Inpatient or outpatient treatment begins, if indicated, with financial help by the LAP if necessary. The attorney meets with an Evaluation Committee (a physician, a clinician, and a local attorney experienced in recovery), which reviews reports from the Case Manager, Group Facilitator, evaluators, and treatment facilities, and meets with the participant. The individualized components of the participant's long-term recovery program are then determined, and the attorney signs a participation plan.

The Case Manager, Group Facilitator, and Evaluation Committee follow the participant throughout his or her program of structured recovery, and the Committee eventually determines when the participant has successfully completed the Program. This unique process ensures continuity of treatment and provides a multidisciplinary perspective. The process avoids some of the challenges faced by a sole clinician providing assessment and monitoring, which may include perceived power struggles, personality clashes and



resistance to authority. It also invites the participant to work actively with the multidisciplinary team on his or her recovery.

The LAP offers all State Bar members short term counseling (up to three sessions free of charge) with a local therapist who specializes in working with legal professionals. This counseling service addresses common problems such as stress, burnout, relationship conflicts, and career concerns, and is intended to identify and treat potential problems at the earliest possible stage.



2004: The Third Year in Review

Program Activity

Intakes

LAP outreach efforts have resulted in a sharp rise in contacts initiated by members of the Bar and others. The growth in participants (attorneys who completed the intake process and began actively participating in the Program) is graphically represented in the chart below. The chart demonstrates the phenomenal growth of the LAP in 2004.

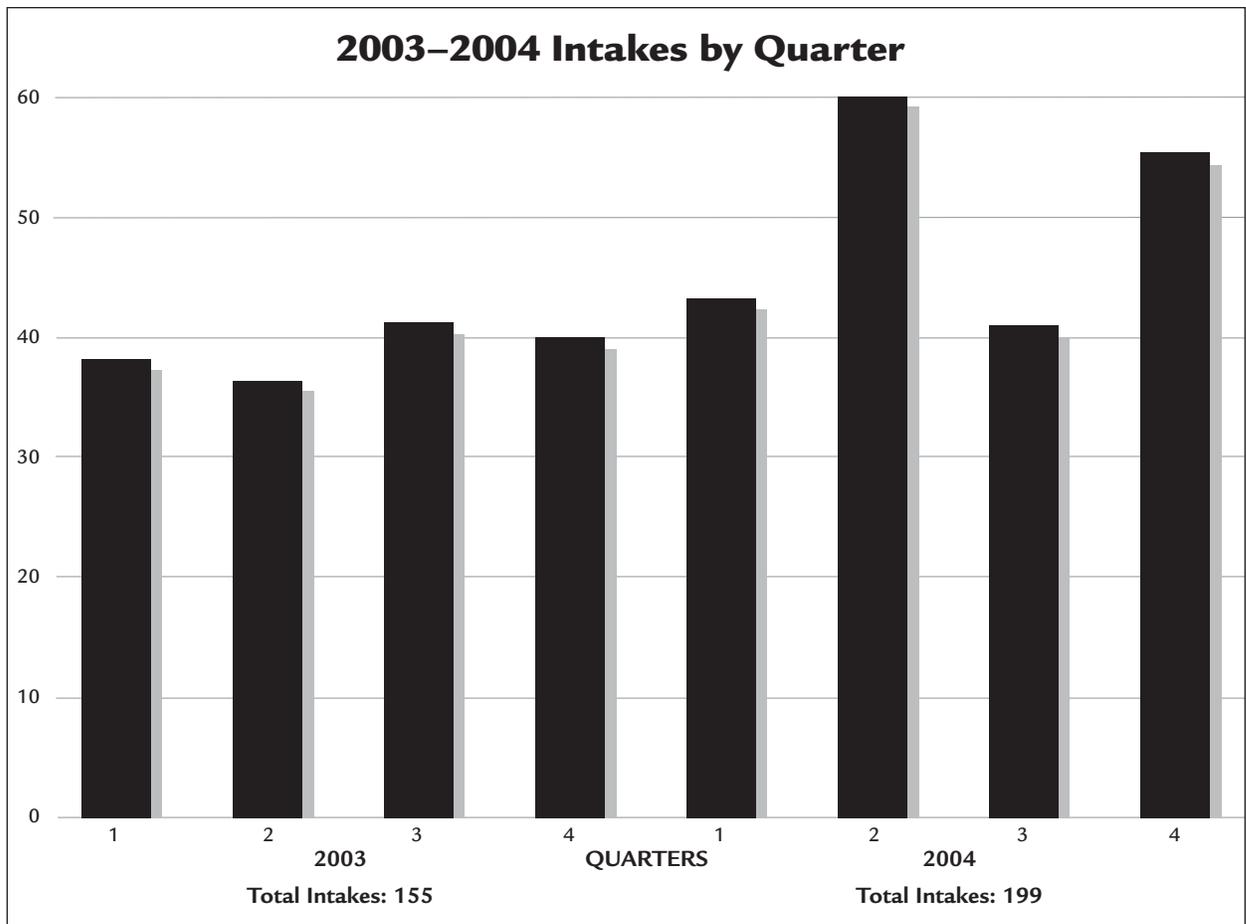


Chart A: 2003-2004 Intakes by Quarter.

The number of participants with mental health issues continues to be much higher than originally anticipated. During 2004, forty (40) percent of participants had a substance abuse diagnosis without a concurrent mental health diagnosis. Thirty-eight (38) percent of participants had a mental health diagnosis without a concurrent substance abuse diagnosis. Twenty-two (22) percent had both mental health and substance abuse issues (dual diagnosis). The distribution of these diagnoses is represented in the chart that follows.



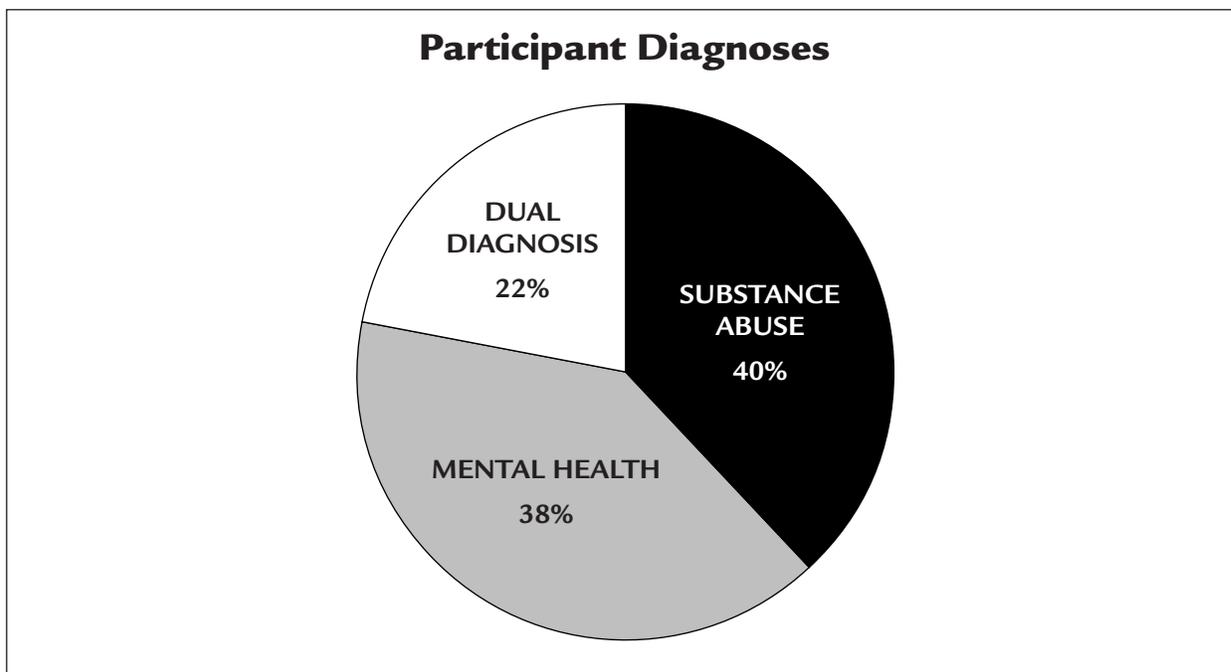


Chart B: Participant Diagnoses.

In order to meet the needs of the rapidly growing number of participants, the number of professionally facilitated support group meetings increased substantially. There are now 27 meetings each week around the state. A roster of current Group Facilitators is attached as Appendix H.

The work of the Evaluation Committees also expanded substantially during 2004. Statewide, the Program’s four Evaluation Committees (two in the North, two in the South) met 27 times. A roster of current Evaluation Committee members is attached as Appendix G.

Terminations

During 2004, the program participation of five attorneys was terminated by the Evaluation Committee. All five met the criterion for termination by failing to comply with the terms of the participation agreement (see Appendix C, “Criteria for Acceptance, Denial, Completion of, or Termination from the Lawyer Assistance Program”). One of these attorneys has returned to the program and is now participating successfully.

During 2004, two attorneys were denied acceptance into the program by the Evaluation Committee. These attorneys either failed to meet the criterion requiring that the applicant “shall be found to have a substance-related disorder or a mental health disorder” or met the criterion that “the applicant will not substantially benefit from participation in the Program” (see Appendix C).



2004 Highlights

Increase in Self-Referrals

A very striking achievement in 2004 was the increase in participation in the Program by attorneys not facing disciplinary charges before the State Bar. As the chart below shows, during the first two years of the Program’s operation, nearly two-thirds of all participants faced some type of disciplinary proceedings. During 2004, only half of the new participants were involved in disciplinary proceedings. This is a clear indication that there is growing acceptance of the Program as a confidential resource for all attorneys challenged by substance abuse and/or mental health concerns and of the Program’s success in meeting the statutory intent of early intervention.

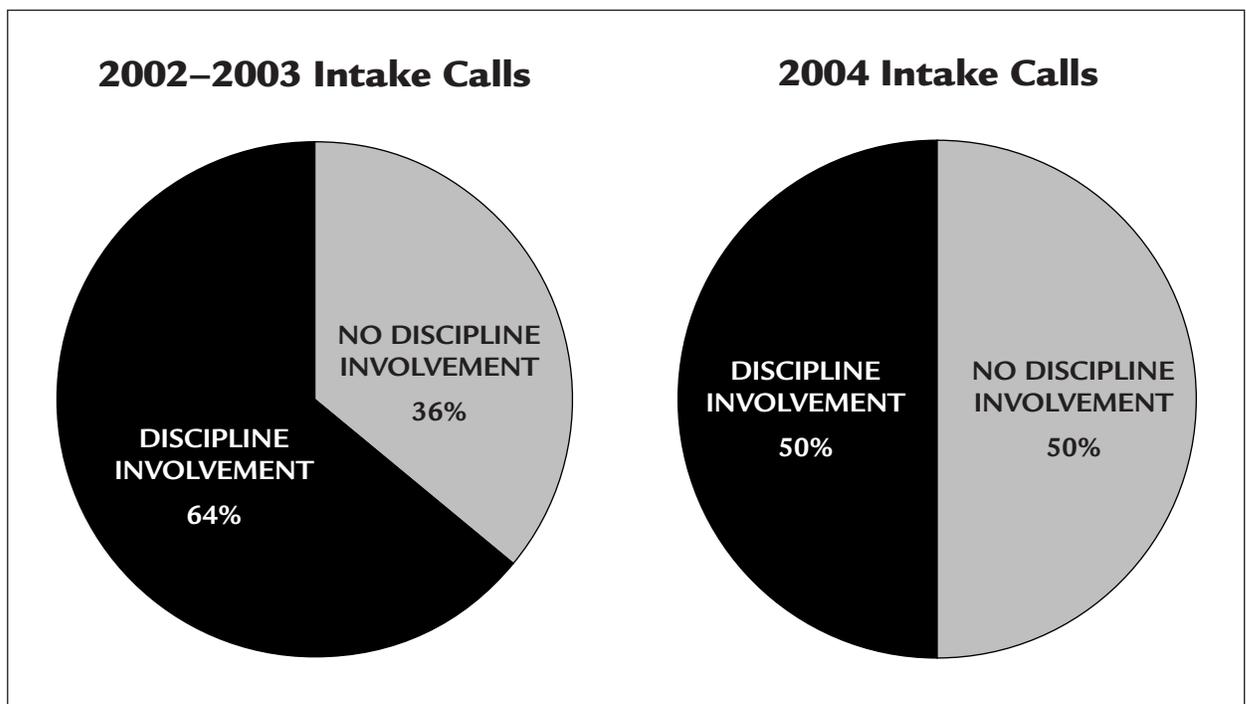


Chart C: 2002-2003 and 2004 Intake Calls.

Release of LAP Video

The statute requires the LAP to engage actively in outreach, targeted advertising and the development of no-cost and low-cost MCLE materials to make its availability and resources known to the profession, the public and the judiciary (Bus. & Prof. Code § 6236).

The centerpiece of the LAP’s outreach efforts in 2004 was the release and widespread dissemination of a 17-minute video entitled “The Lawyer Assistance Program.” Under the guidance of Starr Babcock, Special Assistant to the Executive Director of the State Bar, LAP staff worked with a professional screenwriter and director to develop a script, audition



actors, tape interviews with judges and lawyers, and film courtroom and office scenes for the video. Production was also assisted by the Administrative Office of the Courts.

The video opens with an introduction by the Honorable Ronald M. George, Chief Justice of the Supreme Court of California. The Chief Justice notes that his more than 30 years' involvement with the judicial system has made him aware of the "significant adverse effect on the administration of justice" caused by the conduct of impaired attorneys. He announces the creation and existence of the LAP as a new solution to the problem, and recommends and endorses the use of the Program by California's judicial officers in addressing attorney impairment. Chief Justice George is also President of the Conference of Chief Justices, a national organization that represents the top judicial officers of the 50 states and U.S. territories. At the 2004 Annual Meeting of the Conference of Chief Justices, the LAP's video was prominently featured and well received.

The video features three short enactments illustrating the problems caused by impaired attorneys in and out of court, and how judges and other lawyers can help by referring those attorneys to the LAP. The enactments are interspersed with narrative descriptions of the Program and with brief appearances by numerous endorsers, including six Superior Court judges and one federal district court judge, the Chair of the Standing Committee on Professional Conduct of the United States District Court for the Northern District of California, and two members of the Board of Governors of the State Bar, one of whom is a former President of the State Bar. A great deal of emphasis is placed throughout the video on the fact that any attorney making inquiries of or receiving assistance from the LAP can be assured that, by statute, his or her participation is entirely confidential.

As announced by Chief Justice George in his introduction, the film has been distributed to every Chief Justice nationwide. Reviewers have hailed the film as groundbreaking, full of impact, and a top quality production. LAPs in other jurisdictions are considering following California's lead and hope to develop similar video presentations. Those without sufficient resources to develop their own films are considering using California's video in their outreach efforts.

Outcomes Study Task Force

An Outcomes Study Task Force was formed early in 2004 to plan a study that will eventually produce evidence of the long-term results of attorney participation in the LAP. The Task Force comprises members of the Oversight Committee, representatives from the Office of the Chief Trial Counsel, representatives from the Other Bar, volunteers with knowledge of treatment and recovery issues, and a consultant from the Psychiatry Department at the University of California, San Francisco. The Task Force met in September and focused on determining an appropriate research design, defining outcome measures, and identifying appropriate instruments for data collection. Data collection will begin early in 2005.



Office of the Chief Trial Counsel

Throughout 2004 the number of impaired attorneys with reported discipline problems continued to grow. As a result of the burgeoning numbers, Chief Trial Counsel Mike Nisperos added another attorney (David Sauber) to the team of deputies trial counsel (Cydney Batchelor, Charles Murray, and Brooke Schafer) who handle these disciplinary cases on a full-time basis. Although the LAP and the Office of the Chief Trial Counsel (“OCTC”) are independent from each other, and do not exchange information about an impaired attorney without that attorney’s express written permission, there is increasing evidence that the cooperative effort of these two separate Bar entities is having a positive impact by protecting the public and reclaiming lives and careers of attorneys. Experience is already beginning to show that respondents in the discipline system who participate in a LAP-structured recovery program are honoring their obligations to their clients and to the profession. Restitution is being paid; ethics education is being completed; and most importantly, there is virtually no recidivism to date.

In view of this success, the OCTC no longer resolves discipline cases involving an impaired attorney without factoring testing, monitoring and a treatment protocol into the ultimate discipline if the attorney is allowed to continue to practice. The LAP is always the OCTC’s first choice to provide that information because of its demonstrated level of commitment and expertise. Although participation in the LAP is voluntary on the part of the respondents, the OCTC urges all impaired attorneys to avail themselves of the Program’s excellent services. In addition, to foster better understanding between the OCTC and the LAP, deputies Batchelor and Murray continue to attend all LAP Oversight Committee meetings and continue to provide information about the OCTC policies and procedures to the LAP staff at in-service trainings. DTC Batchelor serves on the ABA Commission on Lawyer Assistance Programs and DTC Murray serves as the Vice President of the California Association of Drug Court Professionals.

The State Bar Court’s Alternative Discipline Program

Attorneys with pending disciplinary proceedings and investigations related to the consequences of substance abuse or mental health issues are referred to the LAP by the State Bar Court’s Alternative Discipline Program (“ADP”). Chief Court Counsel Scott Drexel and Administrative Specialist Doug Hull closely coordinate the interaction of the Bar Court and the LAP. In order to be accepted into the ADP, a respondent attorney must be accepted by the LAP and must comply with all LAP requirements. Currently, 59 respondents are enrolled in ADP, 54 are in the evaluation process and four have been referred for evaluation. These 117 respondent attorneys account for 216 separate disciplinary complaints. ADP cases now comprise forty (40) percent of the State Bar Court’s caseload. In 2004, the State Bar Court Program was thoroughly evaluated and a number of modifications were implemented to address issues raised by respondents, the LAP, the



Office of the Chief Trial Counsel and State Bar Court staff. The modifications included: 1) removal of the “pilot” status from ADP; 2) proposed amendments to Business and Professions Code 6007(b) to allow participants to serve any period of actual suspension recommended by a Hearing Department Judge at the commencement of ADP participation instead of at the end; 3) a process for allowing participants to have a hearing prior to potential termination from ADP for failure to comply with one or more of its requirements; and 4) clearer delineation of the confidentiality extended to ADP matters.

Short-term and Career Counseling

In addition to the long-term recovery support services previously described (see How the Program Works), the LAP offers two additional forms of counseling to the membership: 1) Short-term Counseling—up to three sessions of counseling with a local therapist who specializes in working with legal professionals; and 2) Career Counseling—up to three hours of consultation with a local career counselor who is experienced in helping legal professionals through important career transitions. Demand for these services continued at a brisk pace during 2004, with a total of 266 attorneys requesting this short-term assistance. An article describing the LAP Career Counseling Survey conducted by California Career Services of Los Angeles is in Appendix J.

The Other Bar

Staff of the LAP and Other Bar Consultants continue to work together to provide a maximum level of service to all attorneys with substance abuse issues. The services of the Other Bar continue to be largely funded by the State Bar through a \$372,000 annual contract. The Other Bar’s Consultants provide peer consultation and are available to speak with attorneys seeking advice or assistance with substance abuse problems.

The services of the Other Bar and the LAP are complementary. The Other Bar does not provide the case management services rendered by the LAP; for this reason, the Other Bar Consultants do not routinely make followup calls or otherwise monitor the outcome of their consultations. The LAP, in contrast, does not directly provide pure peer support. Instead, the LAP offers professional treatment consultation, provides peer support by way of the professionally facilitated support groups, and encourages participants in the LAP to benefit from the peer support in recovery that they would receive by attending Other Bar meetings in their communities. Other Bar Consultants inform callers of the benefits and availability of LAP services, and a number of MCLE presentations have been delivered jointly by representatives of both programs.

The Other Bar’s Consultants reported a total of 478 initial contacts with attorneys seeking peer assistance during 2004, either by telephone or at local Other Bar meetings.



Outreach Activities

Staff of the LAP delivered 39 continuing legal education presentations to a wide range of local and statewide specialty bar associations and to law firms during 2004. Nearly 2200 attorneys attended those presentations, an increase of nearly 50% over the prior year. The Program sent descriptive materials to all 199,000 members of the State Bar of California in the annual fee bill mailing.

Fundraising Event Task Force

The LAP Oversight Committee has long considered a fundraising event and associated solicitations to be a viable strategy for raising funds from the legal community to support treatment and LAP participation for attorneys unable to afford them. A Fundraising Task Force of Oversight Committee members and staff was appointed by the Chair of the Oversight Committee to plan for such an event. As a result, an event called “Saving Careers, Saving Lives” will be held on Saturday, January 21, 2006 in Santa Monica in conjunction with the State Bar Section Education Institute. The purposes of the event will be to increase awareness of the Program and to raise funds for the Financial Assistance Plan of the LAP. The Program will retain a fundraising specialist to seek major donations and sponsorships for the event from various entities in the legal community and from businesses that serve the legal community.

ABA Commission on Lawyer Assistance Programs

The Director of the LAP and a member of the Oversight Committee attended the annual conference of the American Bar Association’s Commission on Lawyer Assistance Programs (Co-LAP) in Philadelphia. The Program’s new promotional video was shown at the conference and received critical acclaim. The Director is serving on the planning committee for Co-LAP’s 2005 conference.



Oversight and Policies

Long-Range Strategic Plan

Based upon the governance model adopted by the Board of Governors, and with the guidance of planning consultant Shelley Stump, the Oversight Committee in 2003 began to develop a Long-Range Strategic Plan for the purposes of 1) articulating a long-term vision for the Program, 2) developing and enhancing relationships with the LAP's many stakeholders, and 3) ensuring the viability and accountability of the Program. A day-long strategic planning session was held by the Committee, facilitated by Ms. Stump. The resulting 21-page Plan was finalized in May 2004 and approved by the Committee at its June 5, 2004 meeting. The Plan includes an assessment of the external policy environment in which the Program functions, a vision statement explaining the core values and mission of the Program, goals, strategies, objectives, and performance indicators. The Plan will be reviewed and updated annually.

Strategic Communications Plan

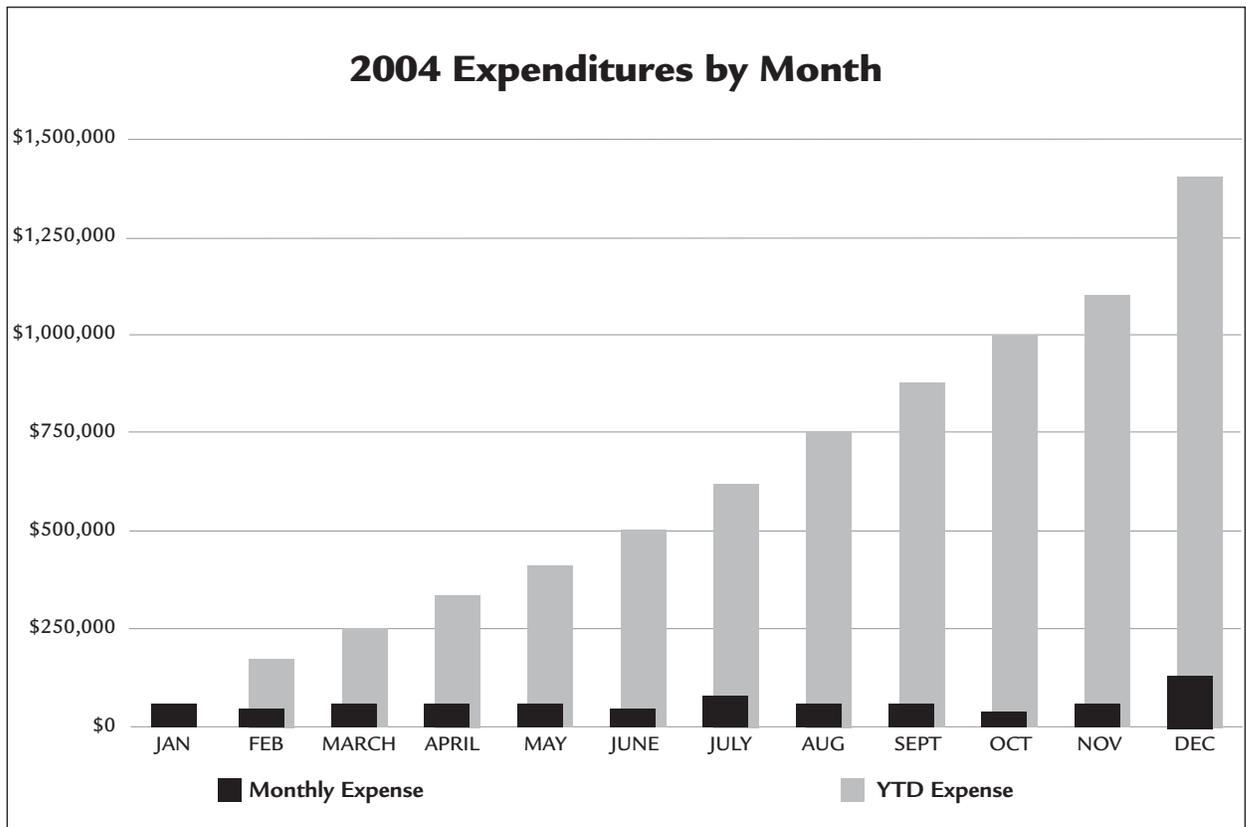
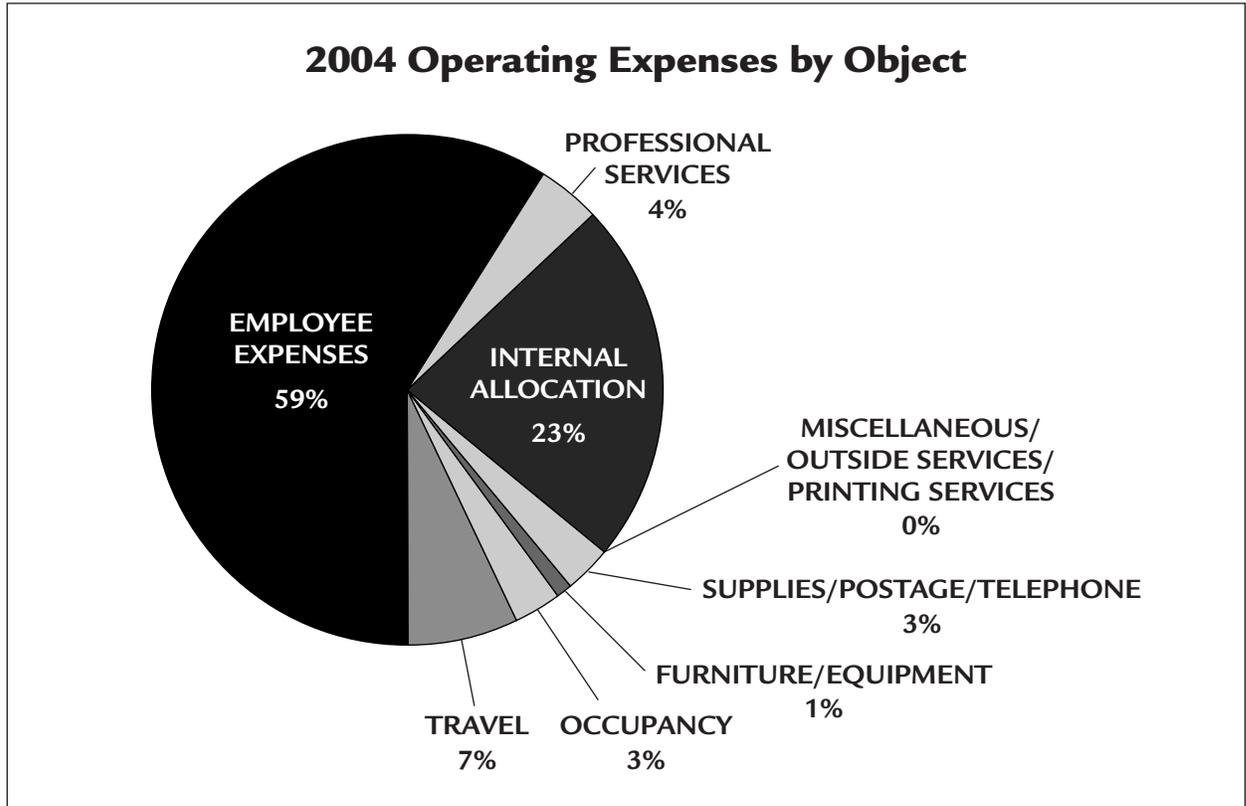
The LAP retained the MWW Group to develop a public relations, communications, and fundraising strategic plan for the Program. MWW consultants considered how the Program could present a clear message to the membership as well as the consistency of the message and graphic design used to present the message. They conducted a complete analysis of the Program's communications, communications needs, practices, and capabilities. Their research included a Strategic Position Workshop with Oversight Committee members, staff, and Program advisors; focus groups with attorneys drawn from the Bar membership at large; focus groups with participants in the Program; a member survey returned by thousands of attorneys; and analysis of similar programs in other states. The primary purpose of the resulting report was to assist the Program in designing a clear and consistent message and increasing its name recognition and positive image among all attorneys in California.

Other Policy Developments

The Oversight Committee held four in-person meetings in 2004, all attended by members and interested stakeholders. The Committee proposed to the Board of Governors and received approval (following a public comment period) of a modification of Section 9 of the Rules Governing the Financial Assistance Plan of the Lawyer Assistance Program, changing the description of the types of public or pro bono service that the Committee would consider in waiving and forgiving amounts due and payable to the Plan. The Committee also implemented a procedure for regular administrative review of all actions taken by Evaluation Committees to terminate participation in the LAP.



Expenditures





Expenditures

LAP Fund	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	2004
<i>Budgeted Expenditures</i>													
Actual	\$89,482	\$83,555	\$103,422	\$102,504	\$99,247	\$91,591	\$134,454	\$120,178	\$118,014	\$101,882	\$106,169	\$253,664	\$1,404,162
<i>Expenditures</i>													
YTD Total	\$173,037	\$276,459	\$478,210	\$569,801	\$704,255	\$824,433	\$942,447	\$1,044,329	\$1,150,498	\$1,404,162			
<i>Expenses</i>													
Variance													\$79,802
Fund Balance 12/31/04													\$199,131

In 2004 the Lawyer Assistance Program was funded by proceeds generated from the State Bar sponsored Professional Liability Insurance Program. Since the inception of the program through December 31, 2004, \$484,154 has been paid to service providers on behalf of those members who applied for financial assistance pursuant to §6235 (b) of the State Bar Act. Of this amount, \$2,998 has been reimbursed by participants in the program. In 2005, the LAP will be operating with a budget of \$1,404,163 for operational and Oversight Committee costs and a budget of \$300,000 in the Legal Education and Development Fund for the Financial Assistance Program.

LAP Looks to the Future

The Lawyer Assistance Program continues to enhance the level of public protection and service to the membership it provides, and it will focus in 2005 on implementing important strategic initiatives. Meanwhile, the Program continues to grow at a pace that few would have predicted. Obtaining the additional funds that will be necessary to serve the LAP's growing number of participants will be of utmost importance during the coming year. Other priorities will include:

- Beginning regular collection of data for the outcomes study described earlier in this report;
- Soliciting financial sponsorship of the Program's Financial Assistance Plan from the legal community and from those businesses that serve the legal community, using a major fundraising event as a central platform; and
- Maintaining compliance with the strategic planning initiatives adopted by the Board pursuant to statutory mandate.



Conclusion

After three years the LAP is no longer a start-up, but is, instead, a mature operational program. Its results demonstrate its success. They also confirm the compelling need for assistance among California attorneys and the wisdom of the Legislature in providing for it.

Every indication is that the Program will continue to expand at a rapid pace and accomplish its central goals: to support recovering attorneys in their rehabilitation and competent practice of law, enhance public protection, and maintain the integrity of the legal profession.



Appendices

