



**KRILL STRATEGIES**  
TRANSFORMING THE LEGAL PROFESSION

# The California Lawyers Assistance Program: Opportunities for Growth and Improvement in a Time of Need

*A review of current processes for Monitored and Support LAP*



## **I. Introduction:**

As part of the LAP's efforts to implement the Strategic Plan adopted in March 2017, Krill Strategies was hired for the purposes of developing and producing educational content, and to conduct a process review of the Monitored and Support LAP programs. The purpose of the process review was to assess the efficacy of the current program design and to offer, as warranted, concrete recommendations for improvement of functioning, enhancement of services, and increased program utilization. As part of this undertaking, I reviewed a comprehensive binder of materials provided by LAP staff which included policy and operations documents for the LAP, intake and assessment forms, and informational materials about the purpose, scope, and structure of the LAP. I also reviewed the three most recent annual reports of the LAP, as well as the LAP-specific pages of the State Bar website, and conducted in-person interviews of staff members Doug Hull and Michelle Harmon. This report outlines the key findings of that review and the recommendations that emerged as a result.

Although the various components of the Monitored and Support LAP programs subject to review were clearly defined and neatly delineated, and thus the scope of the review seemingly well-bounded with clear parameters, any meaningful evaluation of the program's functioning was not possible without consideration of broader issues related to the LAP's overall purpose, history, goals, and mission. Similarly, consideration of best practices and national trends in both the legal and behavioral health fields was essential to developing recommendations that will best serve the LAP now and in the future. In other words, the various components of the LAP programs do not exist in a vacuum, and therefore could not be properly evaluated in isolation, as either freestanding concepts or independent practices unrelated to broader contexts and implications. As such, this report incorporates ideas and considerations that may extend beyond the historically perceived ambit of the LAP, and the way it has both inwardly viewed and outwardly presented itself. In a sense, therefore, several of the recommendations that

follow should be rightly understood as a call for the LAP to reimagine and reorient itself, to aim higher and ultimately perform better.

From a timing perspective, the LAP's efforts around implementing a new Strategic Plan and generally improving its level of functionality could not be more opportune. Beginning in early 2016, the spotlight on attorney addiction, mental health problems, and general lack of well-being has increased significantly as the result, primarily, of the publication of the first [national study](#) of the issues in *The Journal of Addiction Medicine*. That study, in tandem with a smaller but significant study of [law student well-being](#) also published in 2016, made clear that the rates of personal dysfunction in the legal profession are both alarming and widespread. Beginning in law school and continuing into all phases of practitioners' careers, problem drinking, depression, and anxiety are plaguing would-be and current members of the bar at levels which have prompted heightened attention and increased action on both the national and state levels. Among the steps being taken at the national and state level are changes to CLE requirements, revisions to ethics guidelines, and the formation of working groups, committees, and task forces to search for solutions and implement change.

At the forefront of the new and growing momentum to reduce addiction and mental health distress in the legal profession, a National Task Force on Lawyer Wellbeing was formed by a collection of entities including the American Bar Association, the National Conference of Chief Justices, the National Conference of Bar Examiners, the Association of Professional Responsibility Lawyers, and numerous other key groups. In August of 2017, the Task Force published a [groundbreaking report](#) of recommendations for all stakeholders in the profession, which included a focus on the pivotal role and primary importance of lawyer assistance programs in addressing the profession's addiction and mental health problems. As one of the largest, most visible, and important State Bar Associations in the country, it is crucial that California not fall further behind other states' ongoing efforts to augment and more highly prioritize the work, funding, and overall profile of their lawyer assistance programs.

## **II. Overarching Considerations**

### **A. Identity of the LAP**

Chief among the “big-picture” considerations with which the LAP must grapple is, essentially, a question of identity. Currently, the LAP is situated as a resource for those members of the State Bar who either independently wish to avail themselves of support for addiction, mental health, and other problems, or those who have been directed to seek such support and provide documentation of its receipt. This mixed constituency presents a threshold, and potentially irreconcilable, tension between housing discipline-related LAP participants and referrals under the same roof as voluntary self-referrals. Experience and research demonstrate that fear of disclosure and discipline keeps many legal professionals and those close to them from seeking help from agencies that may be perceived to be court or bar related.

To overcome this fear for the purposes of attracting voluntary self-referrals to the LAP, the LAP must not only guarantee confidentiality, but that confidentiality must be widely advertised. Even presented with such guarantees of confidentiality, however, many lawyers will still not trust an agency that is part of the State Bar to help them with private matters such as addiction or mental health disorders. In short, the intensely personal and potentially embarrassing nature of their problems make many lawyers skeptical that firewalls between the LAP and the State Bar are adequate for preventing a breach of confidentiality and the damage to their professional reputation that could ensue. Irrespective of the merits of such fears, they are real, pervasive, and dis-incentivizing for many in the legal community to step forward and get help.

This dichotomy between being a resource for voluntary self-referrals and the entity responsible for monitoring discipline-related referrals also highlights the fundamental tension between being a consumer-focused agency and one focused on serving the State Bar as its client. In everything from marketing materials and strategy, to overall philosophy and ethos, to the mechanics of service delivery and metrics for performance evaluation, there is a significant

difference between an agency that is “public” - facing and one that is geared more towards the goals, priorities, and culture of intra-organizational clients.

Further examination and evaluation of these tensions and potential conflicts is recommended, with an eye towards seeking greater alignment between seemingly divergent interests. In the interim, my recommendation is to outwardly de-emphasize the relationship between LAP and the State Bar Court, ADP, and OCTC, and greatly increase focus on the voluntary, self-referral aspect of the program. An additional interim recommendation is for the LAP to view itself more as a consumer-focused agency, and to place greater emphasis on customer service, performance, and accountability. Part of this shift will include viewing its services and processes through the eyes of their “customers” (who are likely experiencing significant fear, shame, and guilt) and developing a more welcoming, user-friendly image along with strategies aimed at positive outcomes and client satisfaction.

**B. Telehealth, apps, and the future of behavioral health services.**

With the growing emergence of telehealth products, providers, and services, substance use and mental health treatment is undergoing transformation of sorts, as an increasing number of Americans turn to their computer screens or smartphones to help them overcome behavioral health problems. In recent weeks, an app for treating substance use disorders was approved by the FDA for the first time, joining scores of mental health apps that are already available or coming to market soon. Additionally, highly interactive websites, secure patient/client portals, and video conferencing are all increasingly common in the behavioral health field. Though the full and long-term impact that technological advances will have on addiction and mental health treatment remains to be seen, it is clear that, on the whole, treatment methods and service delivery mechanisms are changing. It is imperative that the LAP remain as current and abreast of technological trends as possible if it is going to emerge and subsequently remain as a viable and appealing option for struggling and impaired lawyers to seek help in the years to come.

### **C. Stigma**

Recent years have brought a far greater national emphasis on ending the social stigma associated with mental health and substance use disorders. Mental health advocates and advocacy campaigns have been growing in number and visibility, and we are closer to a normalization of help-seeking than we have ever been. Unfortunately, nothing in LAP program design or materials speaks directly to that issue, or seeks to actively eliminate the stigma associated with addiction and mental health problems in the legal profession. While this topic is generally beyond the scope of this report, I note it as something that should be closely examined. The LAP should look for ways to be at the forefront of reducing addiction and mental health stigma for lawyers, judges, and law students. Clearly, there is a line between functioning as a lawyer assistance program and functioning as an advocacy group, but it is less clear where that line in fact is, and it is likely further into the realm of advocacy than the LAP may currently perceive. Many state lawyer assistance programs are working diligently to change the legal culture in their jurisdictions as it relates to stigma and help-seeking for addiction and mental health problems, and the California LAP should seek to emulate and replicate many of those efforts.

## **III. Specific Recommendations**

1. The LAP needs clearly defined goals and targets. There do not appear to be any set goals for program utilization, or any benchmarks or metrics for measuring program efficacy, success, and client satisfaction. To achieve better results, these goals and targets should be developed in a timely manner, and the program's success in reaching them regularly monitored.
  - a. A comparative analysis is useful in this regard, and the recommendation is for the LAP to assess how its program utilization rate compares to other states around the country that are similarly situated in terms of state attorney population, program budget, staff, etc., though few states approximate the same

density of attorney population as California. For purposes of this initial report, a rough comparison was made to Illinois, a state with a mix of a large urban, suburban, and rural attorney population. Overall, Illinois has approximately 40% as many attorneys as California, yet served more than twice as many LAP clients last year. The majority of those (55%) were self-referrals, another 30% were referred by colleagues or family members, and only 5% were discipline-related referrals.

2. The LAP should be conducting ongoing program evaluations to measure client progress and satisfaction, and to better understand program strengths and weaknesses and implement modifications as appropriate. There does not currently appear to be any such ongoing feedback mechanism, and instead LAP participants are only asked for feedback upon graduation from program. Not only would such evaluations allow LAP staff to make substantive program improvements as needed, they would also demonstrate to LAP participants that the program is committed to providing the best possible service and being responsive to participant needs. Finally, the therapeutic value of allowing clients in this sort of setting to “feel heard” can be significant.
  - a. For example, it is difficult to meaningfully evaluate the efficacy of groups or group facilitators in the absence of some survey data. Anecdotal evidence of how well groups are working is not adequate. The groups seem like a valuable resource, and indeed are valuable in concept, but their ongoing execution needs to be evaluated.
  - b. BSI. (Brief symptom inventory). This instrument is currently administered at intake only, whereas it was intended to track participants’ progress. Ideally this or a similar instrument could be used to assess progress, program efficacy, and symptom remission.

3. The Transition Assistance Services component of the LAP's services should be more widely advertised and promoted. Short-term and career counseling services are highly valuable resources for attorneys, and could conceptually be viewed as "loss leaders" for the LAP to attract clients and familiarize more California attorneys with the organization's services, structure, and staff. Providing short-term and career counseling can also serve a prophylactic purpose, functioning as an early intervention for people who may be in the first stages of dysfunction or otherwise facing short-term challenges that have not yet grown into significant or diagnosable mental health or substance use disorders. Helping these individuals early will ultimately reduce the number of impaired attorneys in the state and therefore provides an important public protection function.
4. The Lawyer's Assistance Program *must* have its own website that is not part of the broader State Bar site.
5. Brief screenings (for both mental health disorders and problematic substance use) should be available on the LAP's website. These would not be diagnostic instruments, but rather simple screens or quizzes to help individuals understand whether their behaviors and symptoms warrant further evaluation from a licensed professional. Additionally, potential LAP applicants should be able to initiate the intake process or request an appointment online. It is important to allow people to begin engaging/interacting with the LAP from the comfort and privacy of their iPad.
  - a. It is also important to note that younger attorneys have been making up a greater percentage of referrals, and research shows that they are also at the highest risk for problem drinking and mental health distress. The LAP should strive to be "on their page" with current and technologically adequate resources, including a more interactive website, and a social media presence that regularly disseminates articles of interest and other resources.

6. The fee structure for the LAP should be evaluated for both value and competitiveness. (\$250 month, plus lab fees, all medical fees). Participants complain about the fees, and a determination should be made as to the fee structure's necessity and appropriateness. Furthermore, the LAP should attempt to better understand the extent to which fees have been or are a barrier to greater participant enrollment.
  
7. The Evaluation Committee should be eliminated entirely, or its use restricted to those who are in the LAP as the result of some involvement with discipline. As currently structured and executed, the Evaluation Committee process is cumbersome, opaque, and inefficient, all without adding a corresponding level of value to offset its drawbacks. Furthermore, the mere existence of such a process, in and of itself, sounds daunting (e.g. the need for participants to "go before an evaluation committee") and participants lack clarity about what to expect from the committee process. Furthermore, as has been discussed, fears about program confidentiality are significant barriers for lawyers who may need help. The prospect of having one's intimate and personal struggles "aired" to a committee of volunteers (and complete strangers), with whom no rapport or therapeutic alliance exists, would likely be horrifying to many lawyers, judges, or law students exploring voluntary participation in Monitored LAP. A chilling effect on voluntary, self-referrals to the LAP is all but certain as a result, and has likely been occurring for as long as the Committee structure has been in place. Such a chilling effect must be avoided at all costs, due not only to the already low levels of program utilization, but also because monitoring has been proven to significantly improve outcomes related to addiction recovery. To the extent that prospective participants are "scared off" from the Monitored LAP program due to its current structure, the potential for more positive outcomes is diminished, as fewer people will avail themselves of an otherwise highly efficacious tool for their recovery.
  - a. Additionally, the lack of trainings, standards, and accountability for the Evaluation Committee is very concerning. All members are volunteers who

receive an orientation packet, but no formal training. A determination should be sought as to whether this lack of training and ultimate lack of “ownership” over Committee decisions raises administrative due process concerns for any LAP participant who faces career, licensure, or financial consequences because of an Evaluation Committee decision.

- i. Of particular concern are the facts that: recommendations made by the Evaluation Committee are effective immediately; in cases where the Evaluation Committee terminates participation, the same Committee determines the requirements for future application to the LAP; while there is a review process, it does not delay the termination decision.

8. The LAP should unofficially collaborate or otherwise develop relationships with treatment providers and mental health professionals who specialize in or regularly treat lawyers. The lack of such relationships deprives the LAP of countless potential referrals, as therapists and treatment providers frequently seek to include additional resources (especially profession-specific resources) in their patients’ continuing care recommendations or overall treatment plan. (Here, again, it is essential to have an approachable and thoughtfully-designed monitoring program that providers could incorporate into their continuing care recommendations to help their patients maintain the recovery and stability that may have been initiated during treatment/therapy.)
9. Similarly, the LAP should develop and maintain an approved list of treatment providers and vetted resources that is available to members of the State Bar. The LAP could develop a survey that could be circulated to treatment providers and mental health professionals to vet them and solicit key program information to determine if certain criteria are met, thereby allowing them to be added to the LAP list of preferred providers. Obviously, the LAP will want to avoid the practice or appearance of partiality

to one treatment provider; the goal is to develop a comprehensive list and be able to provide lawyers with as many quality options as possible.

- 10.** The LAP should offer additional drug and alcohol testing options. Currently, all Monitored LAP participants are required to use the same company for drug and alcohol testing, a company which relies primarily (if not exclusively) on urine testing. Many options exist for accurate and reliable drug and alcohol testing beyond urine sampling, and more of those options should be available to Monitored LAP participants. For example, Soberlink is a portable breathalyzer test that is both convenient and accurate, and could present an appealing, affordable, and non-disruptive testing option for LAP participants struggling with or requiring testing for alcohol only.
  
- 11.** The LAP should develop more targeted resources for solo practitioners, especially those in outlying or rural areas who cannot easily attend facilitated groups. Solo or small firm practitioners make up a disproportionate percentage of LAP participants (nationwide, not just in California) and the organization should be more directly responsive to their needs. Not only do solo and small firm practitioners have less available resources than their counterparts in larger firms, government, or corporate settings (such as extensive benefit plans or employee assistance programs), they also face far more barriers to treatment as a result of lacking the same level of backup or support as lawyers in those other settings might. For many solo practitioners, seeking treatment means abandoning their practice and their clients for a period, and potentially causing catastrophic damage to their finances. It is not hard to understand why so many attorneys in that situation choose to forego seeking help for as long as possible. Finally, most discipline-involved attorneys tend to be solo or small firm practitioners, and many of them struggle with substance use or mental health disorders. By reaching more solo practitioners and providing them with greater resources, the LAP will in effect be performing an important public protection function.

- 12.** The 102-question, 21-page intake form is excessive and tedious. This document should be shortened and streamlined, with any redundancies and non-essential questions eliminated.
- 13.** The intake assessment and other documents require a general refresh/update in order to be current with contemporary clinical terminology. All documents should then be reviewed to ensure internal consistency throughout. (For example, “substance abuse” is no longer a preferred term of art; Axis I and II are no longer current terminology. etc.)
- 14.** The use of well-being monitors should be revived and reinvigorated. This concept offers significant value for newly recovering attorneys and could, in theory, provide the type of extra accountability and support that would help such individuals avoid relapse in those critical first 12-18 months of abstinence. It is not clear to me why the well-being monitor component of the program became defunct, but efforts should be made to resuscitate it and, if necessary, retool any aspect of the process that was not previously successful.
- 15.** A better working relationship and stronger alliance between the LAP and the Other Bar would be highly advantageous. Peer support is very important in the recovery process. To the extent that LAP participants have access or are otherwise introduced to a broader pool of other attorneys in recovery, the better their chances of experiencing less stigma, fear, shame, and guilt. The fellowship and camaraderie that some LAP participants would experience through involvement with the Other Bar would likely enhance their odds of maintaining their recovery and successfully completing any LAP programs in which they may be participating.

## **IV. Conclusion**

The California Lawyers Assistance Program is in a period of transition as it seeks to implement and fully realize a new Strategic Plan. Although faced with many dilemmas, including low levels of utilization, the Program has many existing attributes and characteristics which provide a strong foundation upon which to grow and realize its full potential. Stable and adequate funding, clearly articulated goals and targets, an ongoing commitment to self-improvement, and an emphasis on removing outdated or unnecessary barriers to greater utilization will all be key ingredients to the LAP's future success. By redoubling their focus on improving the LAP's functionality and performance, the State Bar and the LAP Oversight Committee can ensure that the LAP rises to the many challenges that substance use and mental health disorders continue to pose to the profession, and ultimately the public they serve.

By: Patrick R. Krill, JD, LL.M, MA, LADC

Date: October 6, 2017