

RULES GOVERNING THE FINANCIAL ASSISTANCE PLAN OF THE STATE BAR OF CALIFORNIA LAWYER ASSISTANCE PROGRAM (SB 479, BURTON--ATTORNEY DIVERSION AND ASSISTANCE PROGRAM)

THESE ADMINISTRATIVE RULES are promulgated pursuant to the provisions of California Business and Professions Code section 6230 et seq. to aid in the implementation of the Lawyer Assistance Program.

1. POLICY STATEMENT.

(a.) The LAWYER ASSISTANCE PROGRAM (hereinafter "PROGRAM") is available to all members of the State Bar of California (hereinafter "State Bar"), pursuant to the provisions of California Business and Professions Code section 6235(b). These rules provide for financial aid to those attorneys who seek to and are eligible to participate in the PROGRAM (hereinafter "Applicants") and who would otherwise be financially unable to do so. These rules shall be construed for the purpose of enabling eligible Applicants to receive financial aid as permitted, provide for repayment, and, as applicable, forgiveness.

(b.) The Lawyer Assistance Program Oversight Committee (hereinafter "COMMITTEE") as defined under Business and Professions Code section 6231, can, as may be required from time to time, assign one or more of its members by way of a subcommittee, or appoint such other designee, to administer, manage or execute the duties of the COMMITTEE under the general supervision of the COMMITTEE and according to these Rules Governing the Financial Assistance Plan (hereinafter "Rules").

(c.) These Rules are adopted pursuant to the authority invested in the COMMITTEE, subject to the approval of the Board of Governors of the State Bar, pursuant to Business and Professions Code sections 6231(c) and 6232(a), and as otherwise allowed by law.

(d.) The State Bar authorizes the COMMITTEE to perform all administrative functions under these Rules and to manage and monitor repayment obligations.

2. INCOME ELIGIBILITY CRITERIA.

As set forth in these Rules, the Applicant shall be eligible for financial aid if the projected amortized amount of the monthly expense incurred in the matriculation through the PROGRAM exceeds fifty percent (50%) of the Applicant's net disposable income. The COMMITTEE shall determine eligibility as follows:

(a.) The Applicant shall reasonably project the total amount in expenses incurred in the administration of the PROGRAM, and amortize the same, without the accrual of interest, over a period of sixty (60) months, hereinafter "Estimated Amortized Monthly Expense" or "EAME". In the event that the Applicant is unable to reasonably provide an EAME, or the COMMITTEE finds that the Applicant's EAME is inaccurate, unsupported, wrong or overstated, the

COMMITTEE may, at its own discretion and absent evidence to the contrary, substitute its own EAME in the amount of five hundred dollars (\$500.00) per month.

(b.) In the event that the EAME exceeds fifty percent (50%) of the Applicant's net disposable income, he or she shall be entitled to financial assistance in payment of the EAME, subject to adjustments as set forth below, during the life of the Applicant's active participation in the Attorney Diversion and Assistance Program.

(c.) **Net disposable income** shall be defined as the amount of average monthly income available, after deduction, for all normal, ordinary, necessary and reasonable household expenses, based on a community standard, incurred by the Applicant, the spouse of the Applicant, or any dependent of the Applicant, with due consideration given to any income of the spouse of the Applicant or any dependent thereof, and any consideration to any changes thereof to avoid any undue hardship, and due consideration to any intervening changes in income. **Average monthly income** means income of the Applicant shall be determined by averaging the monthly income over a 12-month period.

(d.) The COMMITTEE may, at its option, demand and receive payment of the cost of an intake evaluation through a credit card, third party, guarantee, execution of a promissory note, or any other means, before offering further financial assistance to a potential Applicant in undertaking participation in the Attorney Diversion and Assistance Program. Absent countervailing evidence, the COMMITTEE shall accept a promissory note for the amount of the intake evaluation with payments at the rate of fifty dollars (\$50.00) per month, due thirty (30) days from the date of conclusion of the intake evaluation, in a form acceptable to the COMMITTEE. The obligation of the Applicant to pay under the promissory note, or to reimburse the State Bar for the intake evaluation, shall be separate and apart from any other obligation herein.

3. APPLICATION, CONTENTS OF APPLICATION, VERIFICATION, RIGHT OF AUDIT.

(a.) The Applicant shall duly execute an Application, seeking financial assistance, executing the same under penalty of perjury. The Application shall contain a current financial statement showing all income, expenses, along with assets and liabilities of the Applicant. To the extent that the Applicant is married, the Applicant shall likewise include any income, expenses, assets and liabilities deemed community property under and pursuant to the laws of the State of California, or declare that such income, expenses, assets and liabilities are separate property, and upon request, provide documentary proof thereof to the satisfaction of the COMMITTEE.

(b.) The Applicant shall provide a fully signed federal or state tax return for the preceding twenty-four (24) calendar months, or if no tax return has been filed, a reasonable facsimile thereof.

(c.) The COMMITTEE shall have the right by which to approve, deny, or condition any Application, and to determine the veracity of all statements therein.

(d.) The COMMITTEE shall have the right to engage in a random audit of any Application, and may request any other documents, which in the COMMITTEE'S discretion, are necessary to verify any of the specific representations thereunder.

(e.) In submitting such an Application, the Applicant waives any right to confidentiality pertaining and relating to any of the financial disclosures.

(f.) Any Applicant whose Application is denied by the COMMITTEE'S designee, shall have the right to request review of that denial by the COMMITTEE. Any such request for review shall be submitted within thirty (30) days of the date notice of the designee's decision to deny is sent to the Applicant.

(g.) The final decision of the COMMITTEE may be reviewed by the appropriate committee of the Board of Governors. The final decision of the board committee shall constitute the final action of the State Bar.

4. LOAN AGREEMENT.

(a.) The Applicant shall enter into a Loan Agreement that sets forth the terms and conditions of the contract between the State Bar and the Applicant.

(b.) The COMMITTEE may, in its discretion, modify the terms of the loan agreement to accommodate the individual circumstances of each Applicant and to provide reasonable assurances that the Applicant will repay the loan.

5. INSURANCE.

The fact that an Applicant, or the spouse of an Applicant, may be entitled to insurance, employment, or third party benefits, either in part or in whole, for any of the benefits provided under this PROGRAM, shall not preclude the Applicant from seeking and receiving any financial assistance. The fact of insurance, employment, or third party benefits, which may cover, in part or in whole, the costs of such a PROGRAM, may also be considered by the COMMITTEE in determining eligibility. The Applicant shall provide, upon request, copies of all insurance policies and other memoranda which document, directly or indirectly, the entitlement of the Applicant to any insurance benefits.

6. BENEFITS UNDER AN APPROVED APPLICATION.

(a.) EVALUATION COSTS. As set forth by these Rules, the Applicant may be entitled to financial assistance, subject to the terms and conditions mandated by the COMMITTEE.

(b.) PARTICIPATION COSTS. In the event that financial assistance is granted, the Applicant shall be entitled to a loan in an amount equal to the cost of the basic Lawyer Assistance Program. This loan is subject to and conditioned on an annual review and audit. The COMMITTEE may, at its discretion and subject to any just and reasonable terms and conditions, reevaluate the Application in light of any new or changed information; seek affirmation that the contents thereof are true and correct; or request an updated financial statement reflecting the income and financial obligations of the Applicant, and the spouse of the Applicant.

(c.) The decision to grant or deny financial assistance shall be at the sole discretion of the COMMITTEE, subject to administrative review.

7. CESSATION OF PAYMENTS, REVOCATION OF BENEFITS.

In the event that the Applicant ceases to participate in the PROGRAM either by complete cessation, or cessation in any other manner as determined by the COMMITTEE, the COMMITTEE reserves the right to discontinue further payments, and the total amount of any loans or advances shall be immediately due and payable by the Applicant. Interest shall begin to accrue at the rate of seven percent (7%) per annum from the date of cessation or revocation.

8. OBLIGATION TO REPAY UPON COMPLETION OR SUCCESSFUL PARTICIPATION.

(a.) In the event that the Applicant earns a certificate of completion, or otherwise satisfies the COMMITTEE that he or she has successfully completed the PROGRAM, and absent an excuse for payment as set forth below, the Applicant shall repay the COMMITTEE for all amounts advanced over a sixty (60) month period, amortized at a rate of seven percent (7%) interest per annum on the declining unpaid principal balance. In the event of default by nonpayment of any installment when otherwise due and payable (all installments due on the 1st day of each month), based upon the amortization schedule provided, the COMMITTEE shall have the right, without further notice, to accelerate all the remaining installments, declare the same due and payable, and proceed to initiate appropriate civil litigation in a court of competent jurisdiction.

(b.) For any cases of undue hardship, or for other good cause, the COMMITTEE may, at its discretion, waive any default payment, permits reinstatement for any missed installment, or

extend the repayment period from a period of sixty (60) months to a period not to exceed a total of seventy-two (72) months.

9. FORGIVENESS OF DEBT.

(a.) By advancing credit under these Rules, the State Bar is making public funds available to assist the Applicant in resolving problems of substance abuse or mental illness, which may have impaired the Applicant's ability to perform as a member of the legal community, and the Applicant is receiving a financial loan, advance or extension of credit with a commitment to repay.

(b.) The Applicant may be relieved of this obligation by contributing a substantial benefit to the community, as set forth below.

(c.) In the event that the Applicant earns a certificate of completion, or otherwise satisfies the COMMITTEE that he or she has successfully completed the PROGRAM, and then becomes a full-time employee (as defined below) of any public or private corporation, or any government entity, subdivision, subsidiary or affiliate, or any non-profit or charitable organization providing either legal, social or educational services, health services, or other services to the indigent or for the public benefit, for a period of twenty-four (24) consecutive months, the State Bar shall waive and forgive any amount due and payable. In the event that the Applicant is employed less than twenty-four (24) months in that capacity, the amount of such employment shall be deemed a pro rata reduction of any amount due. Full-time employment means employment for no less than a full calendar year, allowing for normal and regular vacations. Public benefit service includes, but is not limited to, employment with any federal, state, county or city governmental agency or other public entity, the armed services, law enforcement, and may include the office of any prosecuting attorney, public defender, public guardian, or other entity providing legal services to the indigent or financially distressed.

(d.) The State Bar may consider, as a substitute in lieu of public service, the full or part-time practice of law, providing legal services to any individual entitled to the services of an attorney guaranteed by law, or pro bono legal services, if such constitutes at least fifty percent (50%) of the Applicant's practice and continues for at least twenty-four (24) months.

10. DUTY TO MAKE ANNUAL REPORTS.

The COMMITTEE shall, on an annual basis, make a report to the State Bar of all disbursements and collections, and all such other financial disclosures as may be requested. The COMMITTEE shall maintain all records, books, papers, files, and accounting materials to allow for the accurate, detailed and timely reporting of all disbursements and collections.

11. COLLECTION ACTIONS SHALL WILL BE IN THE NAME OF THE STATE BAR OF CALIFORNIA.

In the event that it becomes necessary to collect a loan, advance, obligation or charge by taking action in any court, including but not limited to any state or federal tribunal, such action shall be taken in the name of the STATE BAR OF CALIFORNIA, a public corporation.

12. WAIVERS IN THE EVENT OF DEFAULT.

In the event of default of any financial obligation owed by the Applicant to the State Bar, and to the extent that the State Bar files suit to effectuate collection thereof, Applicant, based on the default, waives to the extent necessary, confidentiality with respect to the fact that the Applicant was a participant in the Lawyer Assistance Program and received an advance, loan or extension of credit as consideration in the execution of any promissory note, Agreement, or other evidence of the indebtedness therein. In the event that the Applicant disputes the claim of the State Bar or raises any other matter affirmatively or otherwise, as a defense, the State Bar may in its discretion and only to the extent necessary, release such information as may be required to fairly litigate, defend, or rebut any claim of the Applicant. All necessary records concerning the loan from the Lawyer Assistance Program may be used as evidence in order to prove the Applicant's financial liability.

02/26/03
