AGENDA ITEM

July 2007
MOC Agenda Item :III.H

Date: June 27, 2007

To: Members of the Board Committee on Member Oversight

From: The Oversight Committee of the Lawyer Assistance Program

Re: Proposed Revisions – Section 2, paragraphs (A), (B) and (C) of the Rules Governing the Financial Assistance Plan of the State Bar of California Lawyer Assistance Program (Eligibility Criteria) – Request for Public Comment

Executive Summary

Paragraphs (A), (B) and (C) of Section 2 of the Rules Governing the Financial Assistance Plan of the State Bar of California Lawyer Assistance Program ("Rules") define the criteria for determining eligibility for assistance from the Plan. Eligibility is based upon "net disposable income," defined as "the amount of average monthly income available, after deduction, for all normal, ordinary, necessary and reasonable household expenses, based upon a community standard." The applicant is deemed eligible if the cost of participating in the program exceeds fifty percent (50%) of the Applicant's net disposable income. This process for determining eligibility requires that the Members of the LAP Oversight Committee make a discretionary judgment for each application as to whether or not that Applicant's expenses are "normal, ordinary, necessary and reasonable household expenses."

The Oversight Committee is proposing that Section 2 of the Rules be revised and that eligibility for assistance be based upon gross income rather than net, adjusted for family size, and by incorporating a sliding scale formula. It is anticipated that the proposed sliding scale formula would have the affect of slowing the growth of outstanding loan obligations.

The Member Oversight Committee is being asked to authorize the circulation of this proposal for a shortened public comment period of thirty (90) days, pursuant to §4 of the Procedure for Adoption, Amendment or Repeal of State Bar Regulations.

ISSUE

Should the Committee authorize the circulation of the proposed modifications to Section 2, paragraphs (A), (B) and (C) of the Rules Governing the Financial Assistance Plan of the State Bar of California Lawyer Assistance Program ("Rules") for a ninety (90) day period of Public Comment?

BACKGROUND

Section 2 of the Rules define eligibility criteria for assistance based upon *net disposable income*, defined as "the amount of average monthly income available, after deduction, for all normal, ordinary, necessary and reasonable household expenses, based upon a community standard." The applicant is deemed eligible if the cost of participating in the program exceeds fifty percent (50%) of the Applicant's net disposable income**.**

The LAP Oversight Committee is recommending that the eligibility criteria be changed. The current criteria require that the Committee Members make a discretionary judgment, on a case by case basis for each Applicant, as to whether or not that Applicant's expenses are "normal, ordinary, necessary and reasonable." The Committee proposes that Section 2 of the Rules be revised and that eligibility for assistance be based upon current gross income rather than net (irrespective of expenses), adjusted for family size, and that a sliding scale formula be added. A similar but different formula is proposed for treatment expenses. Though capped at $5,000, the upfront costs of a course of treatment are generally much higher than LAP monthly participation expenses.

The proposed sliding scale formula allows for partial assistance for those program participants who have moderate incomes. The eligibility criteria being proposed by the Committee are similar to the criteria used by the State Bar to determine income qualifications for fee waivers (Section 6141.1) as well as to the formulas employed by the State of California to determine eligibility for Medi-Cal and WIC assistance.

The proposed changes are intended to slow the growth of outstanding loan obligations.

SUMMARY OF PROPOSAL

If Section 2, paragraphs (A), (B) and (C) are modified as proposed, eligibility for the LAP Financial Assistance Plan will be based upon current income, adjusted for family size but otherwise irrespective of expenses, and will incorporate a sliding scale formula that allows for partial support for members earning a moderate income.

FISCAL AND PERSONNEL IMPACT

This proposal would have limited personnel impact other than simplifying the application review (a process that involves both staff and Committee Members time). It is anticipated that incorporating a sliding scale formula that allows for partial assistance would have the affect of slowing the growth of outstanding loan obligations.

LENGTH OF PUBLIC COMMENT PERIOD

The Member Oversight Committee is being asked to authorize the circulation of this proposal for a shortened public comment period of thirty (90) days, pursuant to §4 of the Procedure for Adoption, Amendment or Repeal of State Bar Regulations.

BOARD BOOK IMPACT

None.

RULE AMENDMENT

The proposed change would modify Section 2 of the Rules Governing the Financial Assistance Plan of the State Bar of California Lawyer Assistance Program.

STRATEGIC IMPACT

None.

RECOMMENDATION

The LAP Oversight Committee recommends that the proposed modification of Section 2, paragraphs (A), (B) and (C) in the form attached hereto as Exhibit A, be circulated for public comment for a period of ninety (90) days. If the members of the Board Committee concur with the Oversight Committee's recommendation, it should adopt the following resolution:

> **RESOLVED**, that the Board Committee on Member Oversight authorizes the proposed modification of Section 2 of the Rules Governing the Financial Assistance Plan of the State Bar of California Lawyer Assistance Program, in the form attached hereto as Exhibit A, to be circulated for public comment for a period of ninety (90) days, as provided for by § 4 of the Procedure for Adoption, Amendment or Repeal of State Bar Regulations.

Exhibit A

Proposed Amendments to Section 2 of the Rules Governing the Financial Assistance Plan of the State Bar of California Lawyer Assistance Program

(A) A family of two earning up to $40,000 gross current income would be eligible for 100% assistance with participation expenses; earning $40,001 up to $60,000 would be eligible for 50% assistance with participation expenses; and earning $60,001 up to $80,000 would be eligible for 25% assistance with participation expenses. A family of two earning up to $60,000 gross income would be eligible for 100% assistance with treatment expenses; earning $60,001 to $90,000 would be eligible for 50% assistance with treatment expenses.

(B) A family of three to five (one to four dependents) earning up to $55,000 gross current income would be eligible for 100% assistance with participation expenses; earning $55,001 to $75,000 would be eligible for 50% assistance with participation expenses; earning $75,001 to $90,000 would be eligible for 25% assistance with participation expenses. A family of three to five earning up to $75,000 would be eligible for 100% assistance with treatment expenses; earning $75,001 to $100,000 would be eligible for 50% assistance with treatment expenses.

(C) A family of six or more (more than four dependents) earning up to $65,000 gross current income would be eligible for 100% assistance with participation expenses; earning $65,001 to $80,000 would be eligible for 50% assistance with participation expenses; earning $80,001 to $90,000 would be eligible for 25% assistance with participation expenses. A family of six or more earning up to $90,000 would be eligible for 100% assistance with treatment expenses; earning $90,001 to $110,00 would be eligible for 50% assistance with treatment expenses.