

AGENDA ITEM

NOVEMBER 54-132

Proposed Revisions 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
- Return from Public Comment

DATE: October 19, 2007

TO: Members of the Board Committee on Member Oversight
Members of the Board of Governors

FROM: Richard Carlton
Lawyer Assistance Program

SUBJECT: Proposed Revisions 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 (Eligibility Criteria) - Return From Public Comment

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

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 currently 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 proposed changes came before this Board Committee on July 20, 2007. The Board Committee authorized their distribution for a public comment of period of ninety days. The public comment period ended on October 31, 2007. No public comment was received. It is now appropriate for the Board of Governors to approve the proposed revisions to Section 2. Board members with questions or concerns may contact Richard Carlton, 415/538-2355 or richard.carlton@calbar.ca.gov.

ISSUE

Should the Board of Governors of the State Bar of California amend Section 2 of the Rules Governing the Financial Assistance Plan of the State Bar of California Lawyer Assistance Program to change the criteria for determining eligibility for assistance from the Plan?

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.

REPORT OF PUBLIC COMMENTS RECEIVED

No public comment was received on this proposed Rule revision.

EFFECTIVE DATE OF PROPOSAL

The proposed revision would take effect immediately.

FISCAL 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.

BOARD BOOK/ADMINISTRATIVE MANUAL IMPACT

None.

RECOMMENDATION

The Oversight Committee of the Lawyer Assistance Program recommends that the proposed modification to Section 2, paragraphs (A), (B), and (C), in the form attached hereto as Exhibit A, be approved.

PROPOSED BOARD COMMITTEE RESOLUTION

Should the Board Committee on Member Oversight agree with the proposed recommendation, adoption of the following resolution would be appropriate.

RESOLVED, following publication for comment and no comments having been received, that the Board Committee on Member Oversight recommends that the Board of Governors of the State Bar of California amend 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, to read as set forth in the attached Exhibit A; and that the modifications be effective immediately.

PROPOSED BOARD RESOLUTION

RESOLVED, following publication for comment and no comments having been received, and upon the recommendation of the Board Committee on Member Oversight, that the Board of Governors of the State Bar of California hereby amends 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, to read as set forth in the attached Exhibit A; and that the modifications be effective immediately.