

2006 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.

March 1, 2007

Table of Contents

Charts and Graphs	ii
Introduction.....	1
Executive Summary	2
How the Program Works	4
2006: The Fifth Year in Review	6
Program Activity and Services.....	6
<i>Intakes</i>	6
<i>Strong Proportion of Self-Referrals</i>	7
<i>Staffing</i>	8
<i>Denials</i>	8
<i>Terminations</i>	9
2006 Highlights	10
<i>Outreach Activities</i>	10
<i>Enhanced Career, Credit and Other Short-term Counseling</i>	10
<i>Outcomes Study</i>	11
<i>Fundraising Efforts</i>	11
<i>Financial Assistance Plan</i>	12
<i>The State Bar Court's Alternative Discipline Program</i>	12
<i>Office of the Chief Trial Counsel</i>	13
<i>Committee of Bar Examiners</i>	14
<i>The Other Bar</i>	14
<i>ABA Commission on Lawyer Assistance Programs</i>	15
<i>LAP Strategic Plan</i>	15
LAP Looks to the Future	16
Conclusion.....	17
Expenditures.....	18
Appendices.....	20



Charts and Graphs

Chart A: 2006 <i>Intakes by Quarter</i>	6
Chart B: 2006 <i>Participant Diagnoses</i>	7
Chart C: 2006 <i>Intake Calls</i>	8
Chart D: 2006 <i>Alternative Discipline Program</i>	13
Chart E: 2006 <i>Expenditures by Month</i>	18
Chart F: 2006 <i>Operating Expenses by Object</i>	18
Chart G: 2006 <i>Statement of Revenue and Expenses</i>	19



Introduction

This is the fifth 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 fifth year, its status at the end of the year, and its plans for 2007.

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

In 2006, the LAP continued its success toward meeting the goals of the LAP Oversight Committee Long-Range Strategic Plan. The program provided effective early intervention, outreach and education; demonstrated program results; ensured sufficient resources to effectively support service delivery; augmented available financial assistance resources; and fostered the network of lawyer assistance programs nationwide to share ideas and information.

Program activity continues to climb, with nearly 800 attorneys receiving assistance from one or more of the services offered by the LAP during 2006—a twelve percent increase over the previous year. LAP outreach efforts resulted in a continued high rate of contacts initiated by members of the Bar and others. The year 2006 saw the highest number of intakes in one year since the program's inception. This is indicative of continued growth and progress toward goals, including a significant trend toward the predominance of self referrals, as opposed to those participants who were involved in disciplinary proceedings. To meet the needs of a steadily growing number of participants, the LAP clinical team was expanded during 2006. This resulted in an increase in the work of the Evaluation Committees as well.

In addition to long-term recovery support services, the LAP offers three additional forms of free counseling to the entire membership: Career, Credit and other Short-term Counseling. Demand for all forms of these short-term services continued to be strong during 2006, with a total of 277 attorneys requesting this short-term assistance. This component of service will be expanded during 2007 to include eight-week career transition support groups in Los Angeles and San Francisco.

While the program continues to grow at a pace that few would have predicted, the focus in 2006 was on implementing important strategic initiatives, including increased outreach to minority and specialty bar associations and fundraising to support the program's Financial Assistance Plan. The First Annual "Saving Careers, Saving Lives" Dinner was held on January 28, 2006 in Santa Monica in conjunction with the State Bar Section Education Institute. In addition to fundraising, another goal of the event was to increase awareness of the program.

A prospective outcomes study that will produce evidence of the short-term and long-term impact of participation in the LAP was pilot-tested during 2006. A research psychologist was retained to analyze the pilot test data and make recommendations regarding the study design prior to the start of the next phase of the study in March of 2007. Adjustments



to the research methodology and data collection tools are currently being made in response to this feedback in order to enhance the validity and utility of the study.

Cooperation with complementary programs continued in 2006. As in years past, the State Bar Court Alternative Discipline Program referred attorneys with pending disciplinary proceedings and investigations related to the consequences of substance abuse or mental health issues to the LAP, with closely coordinated interaction between the two programs. In addition, the State Bar Committee of Bar Examiners utilizes the LAP in cases where substance abuse or other mental health issues exist. The LAP and the Other Bar also continued to work together to provide a maximum level of service to all attorneys with substance abuse issues.

Program management and LAP Oversight Committee members continue to be active in the work of the ABA Commission on Lawyer Assistance Programs (Co-LAP), regularly attending Co-LAP meetings and communicating with programs in other states.

Looking ahead, a key goal for the coming year will be facilitating the successful completion of the program, following five years of participation by as many as 50 participants and ensuring a smooth transition by these participants into other activities that will bolster and support their continued recovery. Also in 2007 the program will focus on implementing several important strategic initiatives, including regular collection of data for the outcomes study, continuing to solicit financial sponsorship of the Financial Assistance Plan, a review by the Oversight Committee of existing quality assurance procedures, expansion of outreach strategies, increasing career counseling services and, pursuant to statutory mandate, maintaining compliance with the strategic planning initiatives adopted by the Board of Governors.



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 licensed 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 begins the LAP comprehensive assessment 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 assistance from the LAP if necessary. The attorney meets with an Evaluation Committee (a physician, a clinician, and a local attorney experienced in recovery), which has reviewed reports from the Case Manager, Group Facilitator, evaluators, and treatment facilities. 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.



2006: The Fifth Year in Review

Program Activity and Services

A total of 774 attorneys received assistance from one or more of the services offered by the Lawyer Assistance Program (“LAP”) during the year 2006—twelve (12) percent more than during the prior year. Similarly, the total number of attorneys entering the program during 2006 increased by fourteen (14) percent compared to the number of intakes during 2005. At the end of 2006, there were 362 active participants in the program, an increase of twenty-four (24) percent over the number of participants at the end of 2005.

Intakes

LAP outreach efforts continue to result in a sharp rise in contacts initiated by members of the Bar and others. Chart A shows that there was a steady level of intakes throughout the year, attesting to great consistency in the referral process. In 2006, there was a total of 206 new intakes for the year—the highest number of intakes in one year since the program’s inception—indicative of continued growth and progress toward goals, including a significant trend toward the predominance of self-referrals.

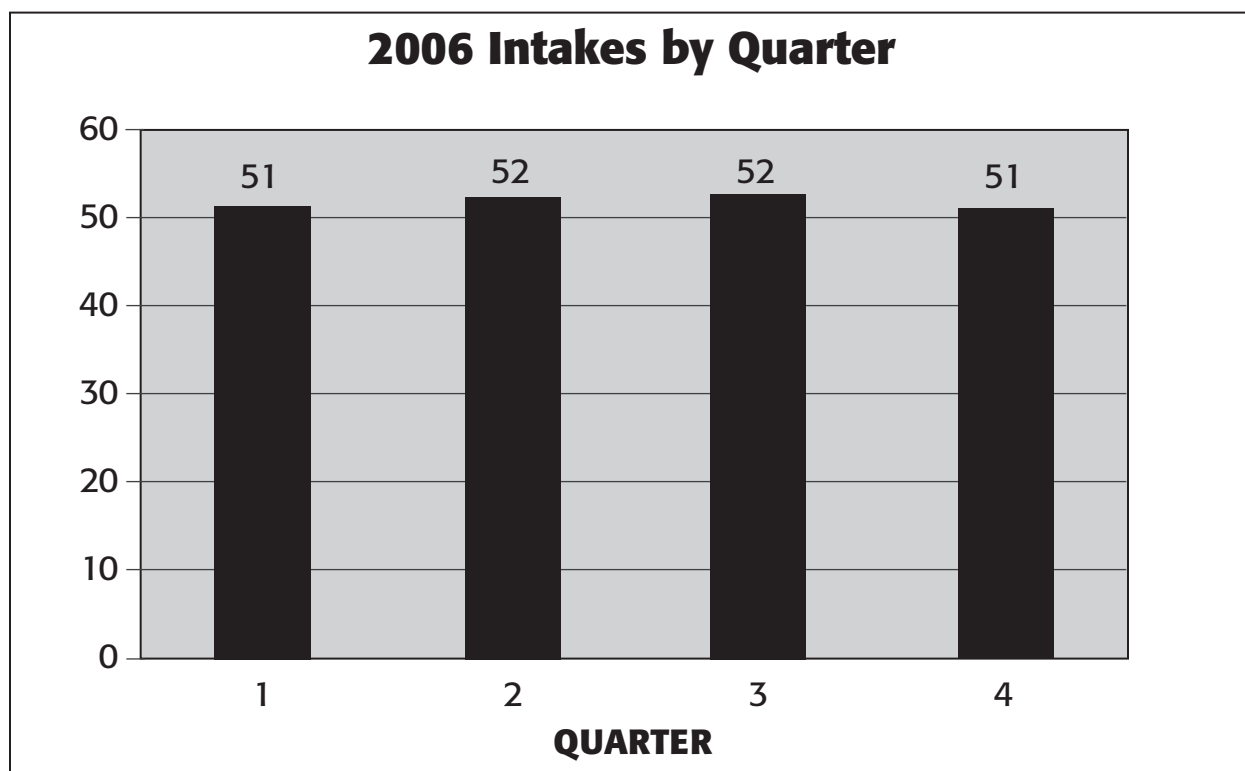


Chart A: 2006 Intakes by Quarter.



The distribution of mental health and substance abuse diagnoses among new participants is shown in Chart B. The chart shows that nearly three-quarters of new participants have a mental health diagnosis; this portion of the participant population continues to climb and is much higher than originally anticipated. During 2006, twenty-seven percent of participants had a substance abuse diagnosis without a concurrent mental health diagnosis. Thirty-seven percent of participants had a mental health diagnosis without a concurrent substance abuse diagnosis. Thirty-six percent had both mental health and substance abuse issues (dual diagnosis).

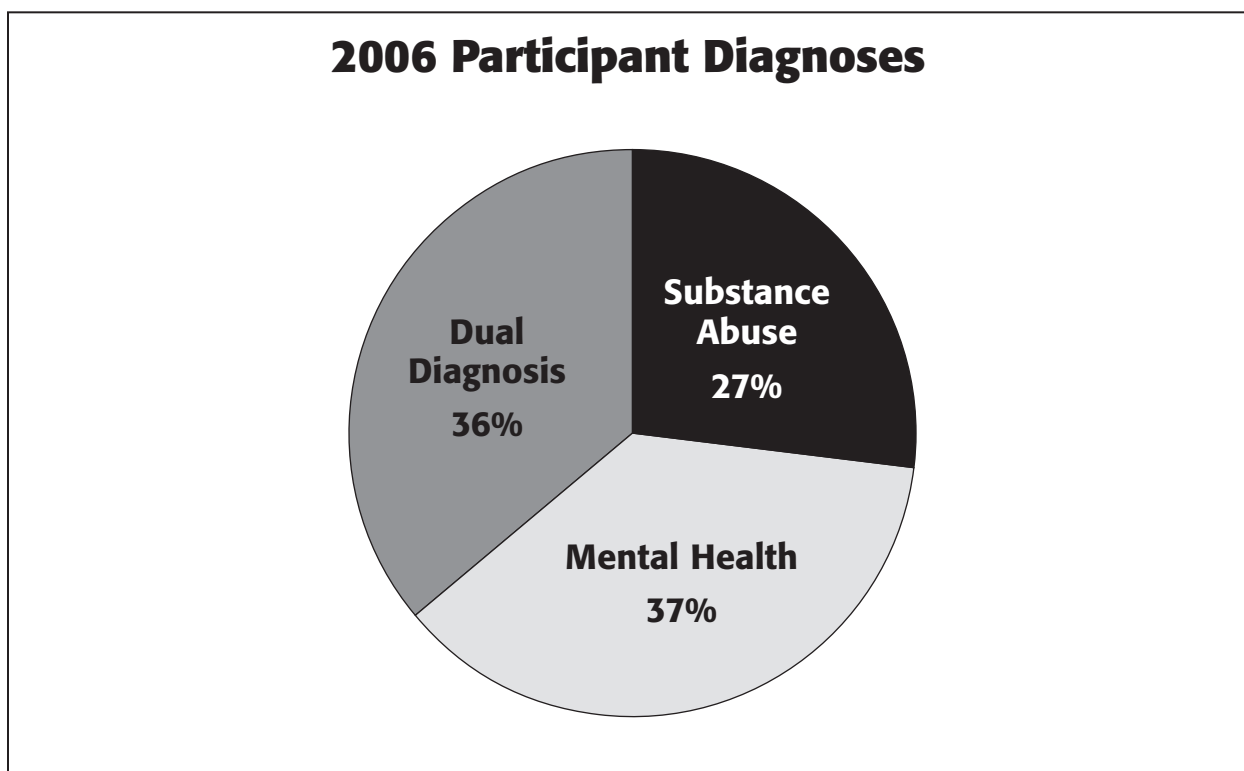


Chart B: 2006 Participant Diagnoses.

Strong Proportion of Self-Referrals

Again, in 2006 as in 2005, the number of attorneys entering the LAP who were *not* facing State Bar disciplinary charges exceeded the number of new participants who were involved in disciplinary proceedings, as is shown in Chart C on the next page. This is a clear indication that there is acceptance of the program as a confidential resource for 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: 2006 Intake Calls.

Staffing

The LAP clinical team grew during 2006 in order to meet the needs of a steadily growing number of participants. The clinical team now includes a Clinical Director, a Case Management Supervisor, and six full-time Case Managers. A roster of Program Staff is attached as Appendix I. The number of professionally-facilitated support group meetings expanded as well during 2006, from 30 to 39 meetings each week around the state. A roster of current Group Facilitators is attached as Appendix H.

The work of the Evaluation Committees also continued to expand during 2006. State-wide, there are four Evaluation Committees (two in the North, two in the South) for the program. A third Committee in the South will be formed early in 2007. The committees met a total of 30 times in 2006. A roster of current Evaluation Committee members is attached as Appendix G.

Denials

During 2006, six attorneys were denied acceptance into the program by an Evaluation Committee, approximately seven percent of all new participants reviewed by a 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).



Terminations

During 2006, the program participation of nine attorneys was terminated by an Evaluation Committee, approximately three percent of the total participant population. All nine 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”). In some cases, these attorneys may return to the program at a later date and achieve successful participation.



2006 Highlights

Outreach Activities

The LAP introduced to the membership during 2006 a free one hour self-study MCLE packet as part of the Bar's member services outreach initiative and to further achieve the LAP outreach goals. Availability of the packet was promoted via a notice in the *California Bar Journal*, via a Bar email blast, and via the LAP website. The packet includes an audio-tape of a LAP educational presentation at a recent State Bar Annual Meeting, a copy of the LAP educational film on CD-ROM, a copy of a *California Bar Journal* article regarding the LAP, and a recent LAP newsletter. Requests for the packet far exceeded expectations; over 1800 copies of this packet had been distributed to the membership through the end of January, 2007. This same material will also be made available for downloading via a LAP educational website to be launched in the near future, and the packet will be provided to every attendee at the 2007 State Bar Annual Meeting.

An educational article about the LAP, the issues addressed by the program, and the services offered appeared in the August issue of the *California Bar Journal*, a publication distributed to every member of the State Bar. "Getting Help When You Need It: If a lawyer has significant personal problems, who should he call for professional consultation and help?" is contained herein as Appendix J.

LAP staff delivered 34 continuing legal education presentations during 2006 to a wide range of local and statewide specialty bar associations and to law firms. A letter was mailed to every local, minority and specialty bar during the fourth quarter of 2006 offering to provide MCLE presentations to their membership as a means of increasing this effective outreach activity; as a direct result of this promotion, there has been an upswing in telephone calls from representatives of local and specialty bars requesting presentations during 2007.

Traffic was brisk at an exhibit booth that the program maintained at the State Bar Annual Meeting held in Monterey in October, 2006. Nearly 1,000 copies of the LAP brochure and newsletter were distributed to judges and attorneys in attendance at the Annual Meeting.

Enhanced Career, Credit and other Short-term Counseling

In addition to the long-term recovery support services previously described (see "How the Program Works"), the LAP offers three additional forms of free counseling to the entire membership: Career, Credit and other Short-term Counseling. Career Counseling provides up to three hours of consultation with a local career counselor who is experienced in helping legal professionals through important career transitions; this is by far the most popular form of short-term counseling offered by the program. The program also provides up to three sessions of free counseling with a local therapist who specializes in working



with legal professionals around any personal issue or concern impacting work productivity—stress, burnout, depression, conflicts with colleagues or family-members, etc. During 2006, in recognition of financial difficulties experienced by a high percentage of LAP participants, the program introduced a free session of credit and financial counseling through a consumer credit counseling agency, available to all members of the Bar.

Demand for all forms of these short-term services continued to be strong during 2006, with a total of 277 attorneys requesting this short-term assistance, a number very close to the number served by this component of the program during the prior year. This component of service will be expanded during 2007 to include an eight-week career transition support group in Los Angeles and San Francisco.

Outcomes Study

A prospective outcomes study that will produce evidence of the short-term and long-term impact of participation in the LAP was pilot-tested during 2006. A validated research instrument—a written questionnaire—was administered to all LAP participants during LAP group meetings. The questionnaire measures a wide-range of health status variables, and was designed to track changes in health status over time; it has been widely used to measure treatment outcomes for more than a decade. It measures changes in drug and alcohol use, other substance use, behavior patterns, health status, psychiatric disorders, social competence, family system, work adjustment, peer relationships, and leisure/recreation activities. Scores for each variable as well as a composite score are produced each time the participant completes the instrument. This system will allow staff to measure the degree of improvement of the entire participant population on both individual variables as well as on a composite basis; improvement will be analyzed at six, twelve, twenty-four, and sixty month intervals.

A research psychologist was retained to analyze the pilot test data and recommend any necessary changes in the study design prior to the start of the next phase of the study in March of 2007. Adjustments to the research methodology and data collection tools are currently being made in response to this feedback in order to enhance the validity and utility of the study.

Fundraising Efforts

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 out-of-pocket treatment and LAP participation costs for those attorneys unable to afford them. More than 400 staff hours went into planning the First Annual “Saving Careers, Saving Lives” Dinner, held on January 28, 2006 in Santa Monica in conjunction with the State Bar Section Education Institute. The event was also designed to increase awareness



of the program. James O. Heiting, Past-President of the State Bar of California, a staunch supporter of the LAP and an inspiration to attorneys with substance abuse problems, was selected to be the event's honoree. Seven organizations agreed to serve as event sponsors—Lawyers Professional Liability Insurance Program, Arch Insurance Company, Marsh Affinity Group Services, Metropolitan News, Lenos Software, Betty Ford Center, and The Ranch Recovery Centers, Inc. Throughout 2006, the LAP Oversight Committee reviewed the results of this event as well as other possible strategies in order to maximize the net proceeds from future fundraising efforts.

Financial Assistance Plan

Pursuant to Section 6235 (b) of the B & P Code, LAP participants who are unable to afford certain non-State Bar costs associated with participating in the program (i.e., group facilitator fees, drug testing fees, evaluation costs, and treatment expenses) are eligible to borrow those funds from the LAP Financial Assistance Plan. The *Rules Governing the Financial Assistance Plan of the State Bar of California Lawyer Assistance Program* are contained herein as Appendix D. Participants who complete the program are required to repay the Plan over a sixty-month period, amortized at a rate of seven percent interest per annum on the declining principle balance. In the event that a participant ceases to participate in the program prior to completion, the loaned amounts become immediately due and payable and begin to accrue interest at a rate of seven percent per annum from the date of cessation.

At the end of 2006, 189 LAP participants had been approved for loans from the Financial Assistance Plan to cover some or all of their expenses. The total amount loaned by the Plan since inception in 2002 was just over \$1 million as of the end of 2006. While no participants have yet completed the program, repayments totaling \$3,173 have been received from participants who ceased to participate prior to completion. During the coming year, approximately 50 attorneys are expected to complete the program and begin making monthly payments to the Financial Assistance Plan.

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 George Scott and Administrative Specialist Doug Hull closely coordinate the interaction of the State 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, 120 respondents are enrolled in ADP, 67 are in the evaluation process and 7 have been referred for evaluation. These 194 respondent attorneys account for 367 separate disciplinary complaints. In 2006, ADP cases represented about 15 percent of all new case filings in the State Bar Court.



Office of the Chief Trial Counsel

A significant achievement for both the Office of the Chief Trial Counsel (“OCTC”) and the State Bar Court, attorneys with substance abuse or mental health issues who are facing disciplinary charges may be referred to the ADP, where their cases are handled with the dual objectives of public protection and rehabilitation. Experience is beginning to show that attorneys in the discipline system who participate in a structured recovery program such as the LAP are honoring their obligations to their clients and to the profession. Restitution to clients is being paid, ethics education is being completed and, most important, there has been no recidivism to date among the attorneys who have successfully completed the program.

In discipline cases involving an impaired attorney allowed to continue to practice law, OCTC no longer resolves those cases without factoring testing, monitoring and treatment into the ultimate discipline.

A referral to ADP begins the process. A referral may be made before, after or in lieu of the filing of a Notice of Disciplinary Charges. Following the referral, the attorney will be evaluated by outside professionals for participation in the program. If the attorney has a substance abuse or mental health issue that is causally related to the misconduct, the attorney may be accepted into the ADP, at which point the attorney will sign a contract and stipulation as to facts and culpability. The contract will require participation in the State Bar’s LAP and require compliance with treatment conditions as determined by the LAP. The ADP judge will issue a decision that includes both a high and low disciplinary recommendation. A recommendation by the State Bar Court for imposition of the reduced or low-end discipline will depend upon successful completion of the program imposed and monitored by the ADP.

Chart D shows steady growth in the work of the staff of OCTC related to the Alternative Discipline Program since the inception of the ADP in 2003.

Alternative Discipline Program (ADP)				
	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>
Attorneys referred to the ADP	52	64	56	82
Attorneys evaluated for the program	38	68	73	97
Stipulations/contracts entered into by attorneys	31	32	50	48

Chart D: 2006 *Alternative Discipline Program*.



Although participation in the LAP is voluntary on the part of respondents, OCTC urges all impaired attorneys to avail themselves of the Program's excellent services. In addition, to foster better understanding between OCTC and the LAP, Deputies Batchelor and Murray continue to attend all LAP Oversight Committee meetings, and they continue to provide information about the OCTC policies and procedures to the LAP staff at in-service trainings.

Committee of Bar Examiners

The Moral Character Subcommittee of the Committee of Bar Examiners frequently refers Bar admissions applicants to the LAP. Where *Applications for the Determination of Moral Character* reflect misconduct indicating that an applicant might benefit from the services of the LAP, the Committee of Bar Examiners offers the applicant an opportunity to have their application held in abeyance while they participate in the LAP. During the period of abeyance, the LAP assesses each applicant's recovery, provides recovery support, monitors participation and reports to the Committee. During 2006, the Committee referred 13 applicants to the program.

The Other Bar

The LAP and the Other Bar worked together to provide a maximum level of service to all attorneys with substance abuse issues. During 2006, services of the Other Bar continued to be largely funded by the State Bar through a \$372,000 contract. The Other Bar's consultants provide peer consultation and are available to speak with attorneys seeking advice or assistance with substance abuse issues. Other Bar consultants also inform callers of the availability of LAP services.

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 follow-up calls or otherwise monitor the outcome of their consultations. The LAP, in contrast, does not directly provide pure peer support or advice. 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 that they would receive by attending Other Bar meetings in their communities.

The LAP will need increased peer support as the program continues to grow. This need is based on the mandate to provide statewide services to all California's attorneys—inactive members were included as eligible for LAP services in the 2004 fee bill. Discussions with the Other Bar on a closer, more coordinated arrangement will be a necessary challenge for the upcoming year.



ABA Commission on Lawyer Assistance Programs

The ABA Commission on Lawyer Assistance Programs (Co-LAP) is an important means of sharing knowledge and resources among the staff of lawyer assistance programs throughout this country, Canada, and the United Kingdom. In 2006, program management and Oversight Committee members continued to be active in the work of Co-LAP, regularly attending Co-LAP meetings and communicating with other LAP staff via the Commission's email listserve. Additionally, the Director served on the planning committee for the 2006 Co-LAP Annual Conference, held in late October in San Francisco.

LAP Strategic Plan

Based upon the governance model adopted by the Board of Governors, the LAP Oversight Committee had previously developed 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. The Plan includes an assessment of the external policy environment within which the program functions, a vision statement explaining the core values and mission of the program, goals, strategies, objectives, and performance indicators. As in years past, the Plan was revisited and updated at the Oversight Committee's first meeting of the year. The Committee's goals continue to be:

- Deliver effective outreach and education
- Achieve effective early intervention
- Demonstrate program results
- Ensure sufficient resources to effectively support service delivery
- Augment available financial assistance resources
- Foster the network of lawyer assistance programs nationwide to share ideas and information



LAP Looks to the Future

The Lawyer Assistance Program continues to grow at a pace that few would have predicted, while continuing to enhance the level of public protection and service to the membership of the State Bar of California. The program will focus in 2007 on implementing important strategic initiatives. Priorities will include:

- Regular collection of data for the outcomes study described earlier in this report.
- Continuing to solicit financial sponsorship of the program's Financial Assistance Plan from the legal community and from those businesses that serve the legal community, principally through the use of direct mail campaigns.
- A review by the Oversight Committee of existing quality assurance procedures and adoption of any new procedures necessary to assure continued high quality assistance.
- An expansion of outreach strategies to include a free MCLE self-study packet (CD-ROM and written material) for every attendee at the State Bar Annual Meeting as well as creation of a new educational website containing a variety of downloadable educational materials that will satisfy MCLE self-study requirements.
- Expansion of the program's career counseling options to include an eight-week career transition support group in Los Angeles and San Francisco.
- Facilitating successful completion of the LAP by as many as 50 participants during 2007 and ensuring a smooth transition by these participants into other activities that will bolster and support their continued recovery.
- Maintaining compliance with the strategic planning initiatives adopted by the Board of Governors pursuant to statutory mandate.



Conclusion

After five years the LAP is no longer a start-up but is, instead, a mature operational program. Its results demonstrate its success. At the end of 2006, 362 participants were engaged in successful recovery, which confirms the compelling need for assistance among California attorneys and the wisdom of the Legislature in providing for it.

By every indication, 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, to enhance public protection, and to maintain the integrity of the legal profession.



Expenditures (Lawyer Assistance Program Fund)

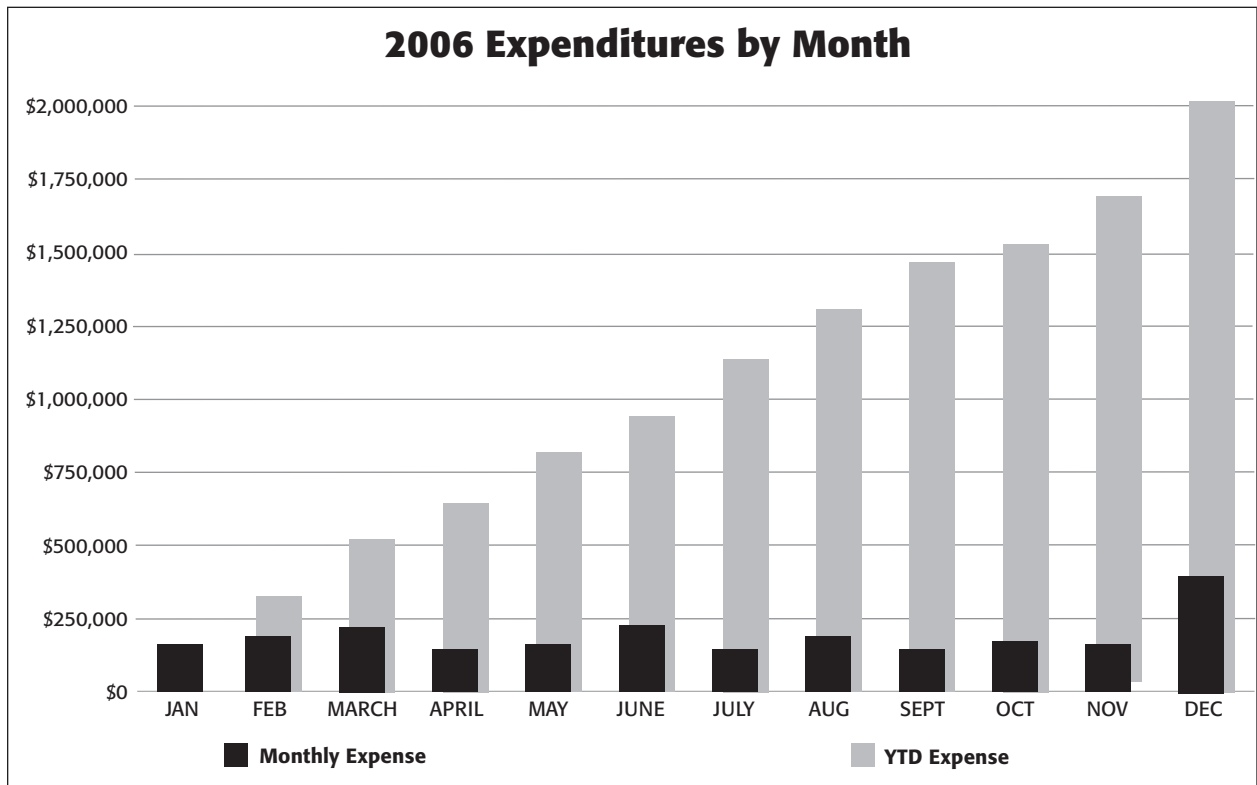


Chart E: 2006 Expenditures by Month.

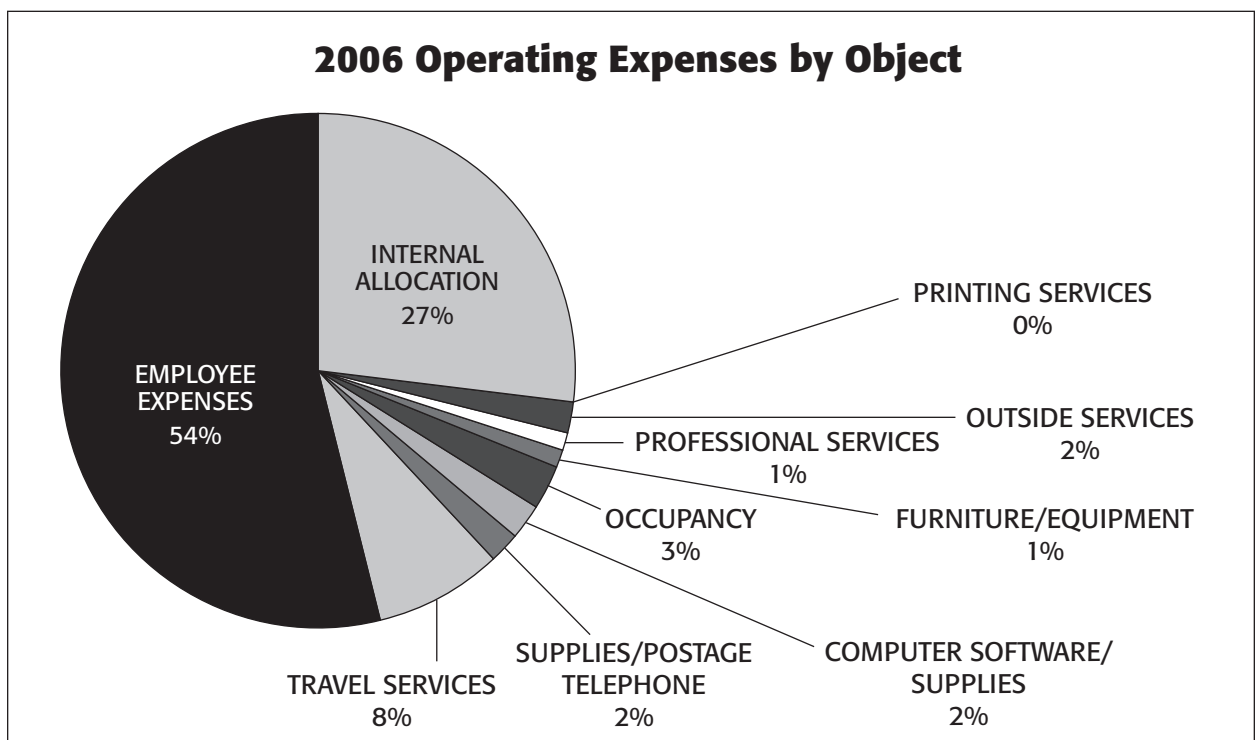


Chart F: 2006 Operating Expenses by Object.





2006 Statement of Revenue and Expenses											
LAP Fund (Unaudited)	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov
Revenue											
Expenses	\$150,167	\$159,399	\$190,710	\$137,653	\$144,567	\$192,822	\$136,967	\$155,919	\$133,516	\$142,317	\$141,424
YTD Total Expenses	\$238,704	\$375,165	\$500,159	\$624,980	\$759,814	\$934,178	\$1,066,264	\$1,200,301	\$1,364,992	\$1,505,903	\$1,726,787
Net Operating Surplus/(Deficit)											
Fund Balance January 1, 2006											
Capital Assets Transferred to the Fixed Assets Fund											
Fund Balance December 31, 2006											
In 2006 the Lawyer Assistance Program was funded by proceeds generated from the State Bar sponsored Professional Liability Insurance Program.											

Chart G: 2006 Statement of Revenue and Expenses.

Appendix A

ATTORNEY DIVERSION AND ASSISTANCE ACT

Business And Professions Code
§§6140.9, 6230-6238

Added by SB 479 (Burton), Chapter 129, Statutes of 2001;
Amended by AB 1708 (Assembly Judiciary Committee),
Chapter 334, Statutes of 2003

SECTION 1. Section 6140.9 of the Business and Professions Code is amended to read:

6140.9 Moneys for the support of the program established pursuant to Article 15 (commencing with Section 6230) and related programs approved by the committee established pursuant to Section 6231 shall be paid in whole or part by a fee of ten dollars (\$10) per active member per year.

The board may seek alternative sources for funding the program. To the extent that funds from alternative sources are obtained and used for the support of the program, and provided that at least ten dollars (\$10) per active member is available for support of the program each year, funds provided by the fee established by this section may be applied to the costs of State Bar general fund programs.

SECTION 2. Article 15 (commencing with Section 6230) is added to Chapter 4 of Division 3 of the Business and Professions Code, to read:

Article 15. Attorney Diversion and Assistance Act

6230. It is the intent of the Legislature that the State Bar of California seek ways and means to identify and rehabilitate attorneys with impairment due to abuse of drugs or alcohol, or due to mental illness, affecting competency so that attorneys so afflicted may be treated and returned to the practice of law in a manner that will not endanger the public health and safety.

6231. (a) The board shall establish and administer an Attorney Diversion and Assistance Program, and shall establish a committee to oversee the operation of the program. The committee shall be comprised of 12 members who shall be appointed as follows:

- (1) Six members appointed by the Board of Governors, including the following:
 - (A) Two members who are licensed mental health professionals with knowledge and expertise in the identification and treatment of substance abuse and mental illness.
 - (B) One member who is a physician with knowledge and expertise in the identification and treatment of alcoholism and substance abuse.
 - (C) One member of the board of directors of a statewide nonprofit organization established for the purpose of assisting lawyers with alcohol or substance abuse problems, which has been in continuous operation for a minimum of five years.
 - (D) Two members who are attorneys, at least one of which is in recovery and has at least five years of continuous sobriety.
- (2) Four members appointed by the Governor, including the following:
 - (A) Two members who are attorneys.
 - (B) Two members of the public.
- (3) One member of the public appointed by the Speaker of the Assembly.
- (4) One member of the public appointed by the Senate Rules Committee.

(b) Committee members shall serve terms of four years, and may be reappointed as many times as desired. The board shall stagger the terms of the initial members appointed.

(c) Subject to the approval of the board, the committee may adopt reasonable rules and regulations as may be necessary or advisable for the purpose of implementing and operating the program.

6232. (a) The committee shall establish practices and procedures for the acceptance, denial, completion, or termination of attorneys in the Attorney Diversion and Assistance Program, and may recommend rehabilitative criteria for adoption by the board for acceptance, denial, completion of, or termination from, the program.

(b) An attorney currently under investigation by the State Bar may enter the program in the following ways:

- (1) By referral of the Office of the Chief Trial Counsel.
- (2) By referral of the State Bar Court following the initiation of a disciplinary proceeding.



- (3) Voluntarily, and in accordance with terms and conditions agreed upon by the attorney participant with the Office of the Chief Trial Counsel or upon approval by the State Bar Court, as long as the investigation is based primarily on the self-administration of drugs or alcohol or the illegal possession, prescription, or nonviolent procurement of drugs for self-administration, or on mental illness, and does not involve actual harm to the public or his or her clients. An attorney seeking entry under this paragraph may be required to execute an agreement that violations of this chapter, or other statutes that would otherwise be the basis for discipline, may nevertheless be prosecuted if the attorney is terminated from the program for failure to comply with program requirements.

(c) Neither acceptance into nor participation in the Attorney Diversion and Assistance Program shall relieve the attorney of any lawful duties and obligations otherwise required by any agreements or stipulations with the Office of the Chief Trial Counsel, court orders, or applicable statutes relating to attorney discipline.

(d) An attorney who is not the subject of a current investigation may voluntarily enter, whether by self-referral or referral by a third party, the diversion and assistance program on a confidential basis. Confidentiality pursuant to this subdivision shall be absolute unless waived by the attorney.

6233. An attorney entering the diversion and assistance program pursuant to subdivision (b) of Section 6232 may be enrolled as an inactive member of the State Bar and not be entitled to practice law, or may be required to agree to various practice restrictions, including, where appropriate, restrictions on scope of practice and monetary accounting procedures. Upon the successful completion of the program, attorney participants who were placed on inactive status by the State Bar Court as a condition of program participation and who complied with any and all conditions of probation may receive credit for the period of inactive enrollment towards any period of actual suspension imposed by the Supreme Court, and shall be eligible for reinstatement to active status and a dismissal of the underlying allegations or a reduction in the recommended discipline. Those attorneys who participated in the program with practice restrictions shall be eligible to have those restrictions removed and to a dismissal of the underlying allegations or a reduction in the recommended discipline.

6234. Any information provided to or obtained by the Attorney Diversion and Assistance Program, or any subcommittee or agent thereof, shall be as follows:

- (a) Confidential and this confidentiality shall be absolute unless waived by the attorney.
- (b) Exempt from the provisions of Section 6086.1.
- (c) Not discoverable or admissible in any civil proceeding without the written consent of the attorney to whom the information pertains.
- (d) Not discoverable or admissible in any disciplinary proceeding without the written consent of the attorney to whom the information pertains.
- (e) Except with respect to the provisions of subdivision (d) of Section 6232, the limitations on the disclosure and admissibility of information in this section shall not apply to information relating to an attorney's noncooperation with, or unsuccessful completion of, the Attorney Diversion and Assistance Program, or any subcommittee or agent thereof, or to information otherwise obtained by the Office of the Chief Trial Counsel, by independent means, or from any other lawful source.

6235. (a) Participants in the Attorney Diversion and Assistance Program shall be responsible for all expenses relating to treatment and recovery. In addition, the State Bar may charge a reasonable administrative fee to participants for the purpose of offsetting the costs of maintaining the program.

(b) Notwithstanding subdivision (a), the State Bar shall establish a financial assistance program to ensure that no member is denied acceptance into the program solely due to the lack of ability to pay.

6236. The State Bar shall actively engage in outreach activities to make members, the legal community, and the general public aware of the existence and availability of the Attorney Diversion and Assistance Program. Outreach shall include, but not be limited to, the development and certification of minimum continuing legal education courses relating to the prevention, detection, and treatment of substance abuse, including no-cost and low-cost programs and materials pursuant to subdivision (d) of Section 6070, informing all members of the State Bar of the program's existence and benefits through both direct communication and targeted advertising, working in coordination with the judicial branch to inform the state's judges of the program's existence and availability as a disciplinary option, and working in cooperation with organizations that provide services and support to attorneys with issues related to substance abuse.

6237. It is the intent of the Legislature that the authorization of an Attorney Diversion and Assistance Program not be construed as limiting or altering the powers of the Supreme Court of this state to disbar or discipline members of the State Bar.

6238. The committee shall report to the Board of Governors and to the Legislature not later than March 1, 2003, and annually thereafter, on the implementation and operation of the program. The report shall include, but is not limited to, information concerning the number of cases accepted, denied, or terminated with compliance or noncompliance, and annual expenditures related to the program.



Appendix B

Rules and Regulations Governing the Lawyer Assistance Program

Scope and Purpose

The Lawyer Assistance Program (LAP) was established by the Legislature as a means of identifying and rehabilitating attorneys with impairments due to the abuse of drugs or alcohol, or due to mental illness.

Pursuant to the Business & Professions Code section 6231, the board will establish a committee to oversee the operation of the Lawyer Assistance Program. Section 6231 I further provides that with the approval of the State Bar's Board of Governors "the committee may adopt reasonable rules and regulations as may be necessary or advisable for the purpose of implementing and operating the Program."

Rule I

Oversight Committee: General Powers

Section 1. The Oversight Committee appointed by the State Bar of California, the Governor, the Speaker of the Assembly and the Senate Rules Committee pursuant to the provisions of the State Bar Act will be known as the Lawyer Assistance Program Oversight Committee ("Committee")

Section 2. The members of the Committee will serve terms of four (4) years and may be reappointed as many times as desired. The board will stagger the terms of the initial members appointed.

Section 3. The State Bar's Board of Governors will, on an annual basis, appoint a Chair and Vice-Chair for the Committee.

Section 3.1. Eligible candidates must have served at least one (1) full year of their term on the Committee and have at least one (1) full year of their term remaining.

Section 3.2. Any Committee member who is interested and eligible may submit his or her name, along with a one page written statement of qualification, no later than November 1. The current Chair will forward these names and statements to the designated Board of Governor's Committee for consideration.

Section 4. Meetings of the Committee may be held at such places in California and at such times as may be fixed by the Committee. Meetings may also be held at the offices of the State Bar, either in San Francisco or Los Angeles, at the call of the Chairperson or the Vice-Chairperson. Notice of the time and place of all meetings will be given in accordance with the Board of Governors of the State Bar of California's Policies Governing Open Meetings, Closed Sessions, and Records of Regulatory Committees.

Section 5. For the transaction of business, a quorum of the Committee will consist of one-half of all members appointed and sitting, plus one. However, less than that number may adjourn from day to day.

Section 6. The Committee is empowered to appoint subcommittees to facilitate the purpose and administration of these Rules. The Committee may act in any matter by a subcommittee composed of not less than two Committee members.

Section 7. Subject to the approval of the Board of Governors, the Committee may adopt reasonable rules and regulations as may be necessary or advisable for the purpose of implementing and operating the Program.

Section 8. The Committee will establish practices and procedures for the acceptance, denial, completion, or termination of attorneys participation in the Program, and it may recommend rehabilitative criteria for adoption by the Board of Governors.

Section 9. Written notice may be given by personal service or sent by mail, postage prepaid, addressed to the participant at the participant's official membership records address, and if sent by mail, will be deemed to have been received by the addressee five (5) days after deposit in the mail if the address is within the State of California, ten (10) days after deposit in the mail if the address is outside the State of California but within the United States, and twenty (20) days after deposit in the mail if the address is outside the United States.

Section 10. Unless specified otherwise in these rules, any forms, letters, applications or documents will be deemed filed with the Committee at the earlier of the following:

- (a) When actually received in substantially complete form as defined by the Committee, by the Committee at the State Bar offices in either San Francisco or Los Angeles;



- (b) On the date of the first postmark thereon if the form, letter, application or document is substantially complete as defined by the Committee and was placed in the United States mail postage prepaid and addressed to the Committee at either the State Bar's San Francisco or Los Angeles Offices.

Rule II

Eligibility for Admission to the Lawyer Assistance Program: General Requirements

Section 1. Any attorney may voluntarily enter the Program, for treatment purposes, on a confidential basis. Confidentiality pursuant to this section will be absolute unless waived in writing by the attorney.

Section 2. An attorney currently under investigation by the State Bar or following the initiation of a disciplinary proceeding, may also enter the Program by:

- (a) referral of the Office of Chief Trial Counsel;
- (b) by referral of the State Bar Court;

Section 3. Acceptance into, or participation in, the Program will not relieve an attorney who voluntarily enters the Program while under investigation, or following the initiation of a disciplinary proceeding, of any lawful duties or obligations otherwise required by any agreements or stipulations with the Office of the Chief Trial Counsel, court orders, or applicable statutes relating to attorney discipline.

Rule III

Administrative Costs and Fees

Section 1. Attorneys will be responsible for payment of all expenses relating to treatment and recovery, including but not limited to the costs of hospitalization, drug testing, group meetings, individual therapy, etc.

Section 2. A reasonable administrative fee may also be charged to attorneys for the purpose of offsetting the costs of administering the Program.

Section 3. To ensure that no member attorney is denied acceptance into the Program solely due to the lack of ability to pay, member attorneys may apply for financial assistance from the fund established for this purpose by the State Bar.

Section 4. Former members may apply to participate in the Program. Former members are not eligible for program sponsored financial assistance.

Rule IV

Confidentiality

Section 1. An attorney who is not the subject of a current investigation may voluntarily enter the Program on a confidential basis. This confidentiality will be absolute unless waived by the attorney.

Section 2. Any information provided to or obtained by the Program, or any subcommittee or agent thereof, will be:

- (a) confidential, and this confidentiality will be absolute unless waived in writing by the attorney;
- (b) exempt from the provisions of Business and Professions Code section 6086.1;
- (c) not discoverable and/or not admissible in any civil proceeding, without the written consent of the attorney to whom the information relates;
- (d) not discoverable and/or not admissible in any disciplinary proceeding, without the written consent of the attorney to whom the information relates to;
- (e) except with respect to the provisions of subsection I of Business and Professions Code section 6231, the limitations on the disclosure and admissibility of information set forth in this section will not apply to information relating to an attorney's failure to cooperate with the Program, or with an attorney's unsuccessful completion of the Program.

Rule V

Impact on Discipline

Section 1. Acceptance into or participation in the Program will not relieve the attorney of any lawful duties and obligations otherwise required by any agreements or stipulations with the Office of the Chief Trial Counsel, court orders and applicable statutes relating to attorney discipline.

Section 2. The extent to which an investigation is terminated, formal charges are dismissed, or the level of discipline is reduced as a result of an attorney's participation in the Program, will be entirely dependant upon the terms of the attorney's agreement with the Office of the Chief Trial Counsel or the decisions or orders issued by the State Bar Court.



Appendix C

Criteria for Acceptance, Denial, Completion of, or Termination from the Lawyer Assistance Program

Pursuant to Business & Professions Code section 6232(a): “The committee . . . may recommend rehabilitative criteria for adoption by the board for acceptance, denial, completion of, or termination from, the program.”

I. Criteria for Acceptance

An applicant shall meet the following criteria for acceptance into the Program:

1. The applicant shall be an active or inactive member, or former member of the State Bar of California;
2. The applicant shall be found to have a substance-related disorder or a mental health disorder;
3. The applicant shall voluntarily agree to participate in the Program;
4. The applicant shall agree in writing to comply with all of the elements of the participation agreement; and
5. The applicant shall cooperate with the Program by providing access to medical information, disclosure authorizations and releases of liability as may be necessary for participation in the Program.

II. Criteria for Denial

An applicant may be denied participation in the Program in cases where any of the following conditions exist:

1. The applicant does not meet the criteria for acceptance into the Program;
2. The applicant will not substantially benefit from participation in the Program; and
3. The applicant’s participation in the Program is inconsistent with the Program’s mission of public protection.

III. Criteria for Completion

Participants will be deemed to have completed the Program when all of the following conditions have been met:

1. The participant has maintained three years of continuous sobriety or, in cases of mental health, stability;
2. The participant has made lifestyle changes sufficient to maintain ongoing recovery or stability;
3. The participant has satisfied the terms of the participation agreement; and
4. The participant has participated in the Program for a period of five years, or as otherwise deemed appropriate by the Evaluation Committee.

IV. Criteria for Termination

Participants may be terminated from Program participation when any of the following conditions exist:

1. The participant has failed to comply with the participation agreement, including but not limited to:
 - (a) Failure to comply with the prescribed monitoring or treatment recommendations, or
 - (b) Use of alcohol or other unauthorized drug;
 - (c) Any cause for denial of participation; and
 - (d) Failure to meet the criteria for acceptance to the Program.



Appendix D

Rules Governing the Financial Assistance Plan of The State Bar of California Lawyer 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 will 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 6231I 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 will 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 will determine eligibility as follows:

(A) The Applicant will 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 will 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** will 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 an income of the Applicant will 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 will 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, will be separate and apart from any other obligation herein.

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

(A) The Applicant will duly execute an Application, seeking financial assistance, executing the same under penalty of perjury. The Application will 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 will 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 will 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 will have the right by which to approve, deny, or condition any Application, and to determine the veracity of all statements therein.

(D) The COMMITTEE will 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, will have the right to request review of that denial by the COMMITTEE. Any such request for review will 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 will constitute the final action of the State Bar.

4. LOAN AGREEMENT.

(A) The Applicant will 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, will 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 will 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 will 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) TREATMENT COSTS. When inpatient or outpatient treatment is recommended by the Evaluation Committee or by staff, the Applicant may be entitled to a loan to cover the cost of this treatment, up to a lifetime cap of \$5,000 toward such expenses.

(D) The decision to grant or deny financial assistance will 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 will be immediately due and payable by the Applicant. Interest will 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 will 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 will 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) Within sixty (60) days of earning a certificate of completion, or otherwise satisfying the COMMITTEE that he or she has successfully completed the PROGRAM, an Applicant may submit a written application requesting a waiver of this obligation on the basis that he or she is employed by or providing free legal services to a qualified legal service provider as defined below. The State Bar may waive and forgive any amount due and payable at the sole discretion of the PROGRAM Oversight Committee following a twenty four (24) month period of continued verifiable, full-time employment. In the event an Applicant is providing free legal services, or employed less than twenty four (24) months, or less than full-time in that capacity, the amount of such employment shall be deemed qualifying for no more than a pro-rata reduction of any amount due. Full-time employment means employment of at least thirty five (35) hours per week, and for no less than a full calendar year, allowing for normal and regular vacations, and may include self-employment if described services are verifiable.

(C) A "qualified legal service provider" for the purposes of this rule is a not-for-profit legal services organization which is receiving or is eligible to receive funds from the Legal Services Program as either a "qualified legal services project" as defined in Business and Professions Code sections 6214 and 6214.5, or a "qualified support center" as defined in Business and Professions Code section 6215.

(D) The loan repayment obligation shall be suspended up to twenty four (24) months, but only during the time the Applicant is engaged in an eligible capacity. Applicant's eligibility shall be reconfirmed on a monthly basis in the form of a written declaration submitted under penalty of perjury to the PROGRAM Oversight Committee.

(E) The decision to grant or deny an application for relief under this section is within the sole discretion of the State PROGRAM Oversight Committee. Any Applicant whose request for waiver is denied by the Oversight Committee shall have the right to request review of that denial by the Board Committee responsible for Member Oversight. However, the decision of the PROGRAM Oversight Committee shall not be overturned except upon a finding by the Board Committee responsible for Member Oversight that the PROGRAM Oversight Committee abused its discretion in making said decision.



10. DUTY TO MAKE ANNUAL REPORTS.

The COMMITTEE will, 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 will 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 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 will 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.



Appendix E

LAP Evaluation Committees—Duties, Terms of Service, and Criteria for Committee Membership

I. DUTIES AND RESPONSIBILITIES

Each Evaluation Committee shall have the following duties and responsibilities:

1. Evaluating those applicants who are referred to or request acceptance into the Program;
2. Receiving and reviewing information, including reports from professional evaluators and treatment providers, regarding applicants and participants;
3. Establishing the terms of the participation agreement for each participant; and
4. Evaluating participants in the Program to determine completion or termination from the Program.

II. TERMS OF COMMITTEE SERVICE

1. Appointments to Evaluation Committees shall be at the pleasure of the Program Oversight Committee.
2. Evaluation Committee members shall serve terms of four years, and may be reappointed as many times as desired. The Oversight Committee shall stagger the terms of the initial membership appointed.
3. Evaluation Committee members shall receive reimbursement for travel expenses.
4. Each Evaluation Committee shall consist of three to four members. Three members shall constitute a quorum for conducting business, the Director and the Deputy Director may substitute for purposes of achieving a quorum. Each Committee shall include at least one physician member. Committee composition shall be as follows:
 - One physician member, who specializes in the practice of psychiatry; a psychologist may serve as an alternate in this position;
 - One of two clinical members: Physician, Marriage Counselor, Marriage and Family Therapist, Psychologist, Drug and Alcohol Counselor, or Registered Nurse;
 - One Attorney member.

III. CRITERIA FOR COMMITTEE MEMBERSHIP

Evaluation Committee members shall meet the following criteria:

1. If a physician member, must possess a current, unrestricted medical license in good standing with no current accusation pending.
2. If a clinician/therapist member, must possess a current, unrestricted license in good standing with no current accusation pending from the Board of Behavioral Science or the Board of Psychology, or be certified alcohol & drug counselor or specialist.
3. All physician and clinician/therapist members must have experience in providing assessment or treatment of addictions or involvement in programs monitoring professionals in recovery.
4. If a former participant in a professionals monitoring program, must have successfully completed the program at least two years prior to appointment.
5. If recovering from a substance-related disorder, must have a minimum of five years uninterrupted recovery.



Appendix F

Members of the Oversight Committee—2006			
Name	Background	Appointed by	Statutory Role
Philip Belleville, J.D., M.S.	Attorney in private practice in Los Angeles; President, House of Hope	Board of Governors	Attorney
James E. Blancarte, J.D.	Attorney in private practice in Los Angeles; former member LA City Fire Commission	Governor	Attorney
Lyman H. Boynton, M.D.	Physician, former Chair, Department of Addiction Medicine, KPMG	Board of Governors	Physician
Honorable John Burton	Former Senator, California State Senate	Senate Rules Committee	Public Member
Richard Carrillo	Investigator, California DMV; former teacher and police officer	Governor	Public Member
Kellie M. Condon, Ph.D.	Clinical psychologist, Veteran Affairs, Greater Los Angeles Health Care System	Board of Governors	Mental Health Professional
Richard Ewaniszyk, J.D.	Attorney in private practice in Victorville	Board of Governors	Board of Directors of the Other Bar
David S. Hobler, J.D.	Attorney in private practice in Mill Valley; founder and director Fit in Recovery	Governor	Attorney
Stewart Hsieh, J.D.	Attorney in private practice in Los Angeles; former President of the Medical Board of California	Board of Governors	Attorney
John H. Shale, M.D., J.D.	Former medical director of the San Diego County Adult Mental Health Services	Board of Governors	Mental Health Professional
Dorothy Tucker, Ph.D., Ph.D.	Psychologist; Los Angeles Police Department; former member, State Bar Board of Governors	Governor	Public Member



Appendix G

Evaluation Committee Member Roster

- Tim Aspinwall, JD
- Gerry Belleville, MFT
- Cary Caruso, JD
- Shannon Chavez, MD
- Scott O. Harris, PhD
- Betsy Johnson, JD
- Nancy K. Otterness, PhD
- Michael S. Parr, MD
- Robert Stewart, JD
- Robert J. Sullivan, JD
- Jim Tracy, DDS, CADC



Appendix H

Group Facilitator Roster

- Paul Booth, MFT, NCAC II, CADC – Agoura
- Claudia Brennan, MFT, CATC – Santa Rosa
- Larry Collins, MFT, CADC – Chico
- Jim Conway, MFT – Culver City
- James Driscoll, CADC II – Fresno
- Morris Gelbart, PhD – Torrance
- Susan Gillespie, MFT – Oakland
- Donna Gugliotta, MFT – Tustin and Laguna Niguel
- Kim Haveson, LCSW – San Jose
- Paula Heegaard, MFT – Palo Alto
- Gail Hromadko, MFT – Palm Springs
- Dean Janoff, PhD – Santa Barbara
- Kim Nakae, MFT – North Hollywood, Pasadena, Tarzana and Woodland Hills
- Kirby Palmer, LCSW – Claremont and Riverside
- Lisa Spendlove, MFT – Seal Beach
- Lee Ann Teaney, MFT – Los Angeles
- Len Wegiel, MFT – San Diego
- Tim Willison, MFT, CADC – San Francisco, Sacramento and Davis



Appendix I

LAP Staff Roster—2006

Division of Member Services

Starr Babcock, JD – *Senior Executive, Member Services Division*

Janis Thibault, MFT, CADC – *Director*

Pam Poley, MFT, CADC – *Clinical Director*

Richard Carlton, MPH – *Special Assistant, Education and Research*

Alex Yufik, JD, PhD – *Case Management Supervisor*

Michelle Baumann, LCSW – *Case Manager (So. California)*

Louis Buchhold, MFT – *Case Manager (So. California)*

Anna Gray, MFT – *Case Manager (No. California)*

Kara Keane, LCSW – *Case Manager (So. California)*

Michael Richmond, MFT – *Case Manager (So. California)*

Justin Ewert – *Program Coordinator*

Gary Greene, CAARR – *Case Management Intern*

Office of General Counsel

Patricia Scotlan, JD – *Assistant General Counsel*



Getting Help When You Need it

If a lawyer has significant personal problems, who should he call for professional consultation and help?

By Richard Carlton

Here is a scenario frequently presented to those of us who work in the field of lawyer assistance:

A colleague or attorney friend is having major problems with his or her practice. You suspect or know that these problems result from substance abuse, depression, other psychological problems, or a combination of these conditions. You know that the road this person is on is downhill all the way, but you feel powerless. You're concerned about your friend's welfare, but you don't want to do anything that will get your attorney-friend in more trouble. Where can you call for free, strictly confidential, knowledgeable advice and assistance with such a situation?

The answer is the Lawyer Assistance Program (LAP). Established by the California Legislature (B&P Code §§6140.9, 6230-6238), the Lawyer Assistance Program is a confidential service of the State Bar of California. Staffed by professionals with many years of experience assisting the legal community with personal issues, the LAP provides assistance to attorneys whose personal or professional life is being detrimentally impacted by substance abuse, other compulsive behaviors, and/or mental health concerns such as depression and anxiety.

The statute that created the program (SB 479, Burton) states that it is the "intent of the legislature that the State Bar of California seek ways and means to identify and rehabilitate attorneys with impairment due to abuse of drugs or alcohol, or due to mental illness, affecting competency so that attorneys so afflicted may be treated and returned to the practice of law in a manner that will not endanger the public health and safety."

The LAP is a comprehensive program offering support and structure from the beginning stage of recovery through continuing care. It includes:



- individual counseling;
- expert assessment and consultation;
- assistance with arrangements for intensive treatment;
- monitored continuing care;
- random lab testing;
- professionally facilitated support groups; and
- peer support groups.

The program also works with family members, friends, colleagues, judges and other court staff who wish to obtain help for an impaired attorney. Financial assistance is available so that no one is prevented from participating in the program due to financial limitations.

Attorneys may self-refer into this program or may be referred as the result of an investigation or disciplinary proceeding. In some cases, monitored participation may result in a lower level of disciplinary action. When requested by an attorney who is facing disciplinary charges and whose practice has been impaired by personal problems, the LAP can monitor the attorney's continuing recovery for the State Bar Court's alternative discipline program and for the probation unit.

One of the unique characteristics of this program is that the confidential nature of participation in the program is mandated in the statute that created the program. The fact that an attorney is participating in the LAP is strictly and absolutely confidential. No information concerning participation in the program will be released without the attorney's prior written consent.

The creation of attorney-only assistance programs is an outgrowth of years of experience in addressing substance-related disorders and mental health issues in professional populations and the unique challenges associated with such efforts. Most licensed professionals in California have some type of assistance resource available through their regulatory agency. The Physician Diversion Program of the California Medical Board was created by the legislature more than two decades ago and served as one of the models for the Lawyer Assistance Program.



Why do attorneys need their own assistance program?

Substance-related Disorders—The Disease Model

Substance dependence has been accepted as a disease since the 1960s. Substance dependence has these following disease-model characteristics:

1. Chronic—it is a permanent condition that can be arrested but not cured;
2. Progressive—if left untreated, the condition gets worse;
3. Fatal—if left untreated, the condition can be and often is fatal;
4. Recognizable symptoms—the symptoms are clearly recognizable without the aid of tests;
5. Treatable—while the condition cannot be cured, the progression of the disease can be arrested and people live happy, healthy and productive lives in recovery.

Brain Disease

Substance abuse is often referred to as a “brain disease.” Although the disease has a profound impact on many of the major organ systems in the body, it is altered brain chemistry that creates the craving for mood-altering substances and explains the loss of control that occurs. The differences in brain chemistry that lead to substance abuse occur in the core of the brain where the autonomic nervous system is regulated—not in the frontal lobe area where conscious, rational decision-making takes place. This altered brain chemistry produce an obsessive, compulsive and irrational need to drink or use drugs despite adverse consequences to the user’s own life and health.

The later stages of the disease are accompanied by the experience of pain (both physical and emotional) after the effects of the alcohol or drugs have faded, and those afflicted begin to use substances in order to avoid the pain rather than to experience pleasure. In the final stages of the disease, total loss of control over the use of alcohol or drugs is common, and this loss is progressive and permanent.

Denial

Denial is an important characteristic of the progression of the disease of substance abuse. As the disease develops, the afflicted individual becomes increasingly unable to accurately perceive what is happening. Perception becomes distorted. The individual denies symptoms of abuse and continues to use. Denial is often mistaken for deceit or dishonesty instead of the distorted perception that it represents.



Denial, rationalization and euphoric recall are natural ego-defense mechanisms that all of us utilize. These mechanisms are used in the mind of the addict/alcoholic to avoid facing the embarrassment and shame that would otherwise be overwhelming. The individual also begins to need to defend against the criticism of others and avoid admitting that he or she has a problem that cannot be overcome alone. This powerful defense develops subtly and denial strengthens as the disease progresses.

Substance-related disorders in the legal profession: the challenge

Substance-related disorders appear to be a more common problem in the legal profession than it is in most other occupations. While household studies indicate that roughly 10 percent of the adult population experiences a problem at some point in life as a result of the abuse of alcohol or drugs, several studies suggest that the incidence of this abuse among legal professionals may be as much as 50 percent higher than the general adult population. This apparent occupational hazard is most often attributed to the stress of legal practice, though there may be a natural self-selection process at work as well. The same personality traits that are over-represented in the population of adults who are recovering from substance-related disorders—high achievement orientation, perfectionistic, obsessive-compulsive—also are common in the legal community.

A substance-dependent attorney in the throes of denial presents a challenge, even for the most skillful treatment professional. Many require or expect a greater level of “proof” that the problem exists or that they are no longer in control of their use. They are more inclined to argue these points with concerned colleagues and friends, and even with treatment professionals. In addition, lawyers with these problems typically:

- have outstanding verbal skills;
- expect to be looked to for answers rather than seeking answers or advice from others;
- have a strong resistance to showing weakness or needing help; and
- need to be in control.

Getting help

The tragic result of these particularly strong ego defenses in the population of substance abusing legal professionals is that only a small percentage of those attorneys who need help with their problems are aware of their need; accordingly, few seek help. Contrary to popular myth, it is not necessary for those close to a substance dependent attorney to wait for the attorney to hit his or her own proverbial “bottom” before help can be successfully



rendered. It is neither necessary nor advisable to wait until the attorney, his or her clients, colleagues or family, suffer irreparable harm.

Intervening to present an impaired attorney with a caring and compassionate message about the impact of his or her behavior is often effective. This can be achieved informally in personal conversation with the attorney or formally when professionals facilitate a formal meeting. The goal of any “intervention,” whether it be a friend expressing concern or an employer extending an ultimatum, is for the individual to obtain proper assessment and appropriate treatment.

Do not underestimate the value of expressing your concern. Many people who are currently in recovery from this disease are able to reflect back with gratitude toward those who demonstrated the courage to speak up. Many report that this courage helped to save their life. Programs like the Lawyer Assistance Program are available to help with expressing concern and finding appropriate assessment and treatment. You do not have to address these issues alone.

Peer support

Having the support of a group of peers struggling with the same issues and challenges tends to break through the denial and reduce the shame associated with having this disease. Substance-dependent attorneys therefore respond better and experience a higher success rate when at least a part of their treatment occurs within their peer group. In recognition of this, attorney-only peer-support group meetings called The Other Bar began forming in many California communities more than two decades ago and now exist in nearly every community in the state. The Lawyer Assistance Program also offers professionally facilitated process groups for attorneys with both substance abuse and mental health issues. These groups are an important component of recovery for attorneys participating in the LAP, many of whom also attend The Other Bar meetings.

Depression and stress

The practice of law is a challenging experience for many legal professionals. Studies indicate that attorneys experience extraordinarily high levels of stress and depression and have a higher than normal level of job dissatisfaction with their chosen career:

- At least a quarter of attorneys surveyed in multiple studies report suffering from stress so severe it impairs their practice.
- A Florida study revealed that 32 percent of the attorneys reported feeling depressed at least once a week.



- A Maryland Bar Association study found that one in three of the lawyers who responded intended to leave the practice of law within five years.
- A study by the ABA found that 40 percent of the lawyers responding were dissatisfied with their jobs.
- A study of 12,000 adults by a team of researchers from Johns Hopkins University discovered that among all the occupational groups represented in that large sample, attorneys had the highest prevalence of signs and symptoms of clinical depression. The rate of depression among the attorneys studied was 3.6 times the norm for all occupations.

Studies indicate that attorneys are less likely to take care of themselves than medical doctors and other professionals. Psychologists have observed that attorneys, who are trained to be impersonal and objective, often apply the same approach to their personal problems and are reluctant to focus on their inner emotional lives. Some attorneys believe they should be able to handle their personal problems just as effectively as they handle their client's problems.

Emotional distress, if not managed or treated, can lead to adverse impacts on an attorney's professional practice, clients, colleagues and personal life. Concerned colleagues and friends, therefore, should encourage a depressed attorney to seek professional help from available resources such as the Lawyer Assistance Program.

Depressed and potentially suicidal individuals often exhibit changes in their mood, appetite and energy level, which can be noticed by colleagues, friends and family members and should be a matter of concern. Common symptoms of depression include:

- feelings of hopelessness;
- restlessness and irritability;
- fatigue or weakness;
- inability to concentrate;
- loss of appetite; and
- diminished interest in sex and recreation.

Treatment usually consists of psychotherapy, medication or a combination of the two. Often, people with depression will begin to see positive results within a month of beginning treatment.



Personal and career counseling

Free short-term counseling (up to three sessions) is available through the LAP for any member of the State Bar who is experiencing stress, burnout or depression that is negatively impacting their work performance. Similarly, attorneys facing career challenges may avail themselves of free career counseling through the LAP. To access either of these free services, please call (800) 341-0572. The confidentiality of attorneys accessing these resources is protected by statute.

Seeking help for a troubled friend?

Clearly, legal professionals need an assistance program specifically geared to the unique pressures of legal practice and to the unique recovery support needs of attorneys. The Lawyer Assistance Program is that resource for all legal professionals licensed by the State Bar. Call toll-free 877-LAP 4 HELP (877-527-4435) for confidential assistance for yourself, a friend, colleague or a family member.

Richard Carlton is in charge of program development, research, MCLE presentations and short-term counseling for the Lawyer Assistance Program.

Certification

- This self-study activity (including the enclosed audio tape) has been approved for Minimum Continuing Legal Education credit by the State Bar of California in the amount of one hour in the prevention of substance abuse.
- The State Bar of California certifies that this activity conforms to the standards for approved education activities prescribed by the rules and regulations of the State Bar of California governing minimum continuing legal education.

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