

# AGENDA ITEM

November 2009  
MIRS Agenda Item IIIA

Date: October 27, 2009

To: Members of the Board Committee on Member Involvement, Relations & Services

From: The Oversight Committee of the Lawyer Assistance Program

Re: **PROPOSED LAWYER ASSISTANCE PROGRAM RULES:  
REQUEST FOR PUBLIC COMMENT**

## Executive Summary

Authorization is requested to release for public comment proposed newly rewritten rules for the Lawyer Assistance Program ("LAP"). This proposal is part of the State Bar's rules revision project that began in 2006.

The new rules reflect proposed changes in the LAP itself which have been developed to make the program more effective and efficient, to reduce program costs, and to reduce the amount of and establish greater control over funds loaned to program participants.

If the Board of Governors subsequently adopts the proposed program changes and rules, the new rules would become part of Title 3 of the Rules of the State Bar, which deals with Programs and Services.

A public comment period of 45 days is suggested. The comment period would run from November 16, 2009, to December 30, 2009. If no substantive revisions are required by the comment received, the Board could consider adoption of the rewritten rules and the related program changes at its January 2010 meeting, with the rules and program changes to take effect January 8, 2010.

Board members with questions about the proposal may contact Janis Thibault at (916) 564-5222 ([Janis.Thibault@calbar.ca.gov](mailto:Janis.Thibault@calbar.ca.gov)).

## ISSUE

Should the Committee authorize the circulation of the proposed Lawyer Assistance Program Rules ("Rules") for a forty-five (45) day period of Public Comment?

## BACKGROUND

In 2006 the State Bar undertook a rules revision project to integrate the organization's more than two dozen sets of rules into a comprehensive structure of seven titles and to make the rules simpler, clearer, and more uniform. The

Board adopted the organizational scheme for the Rules of the State Bar at the July 20, 2007 meeting. Of the seven titles, the board has adopted three in their entirety and two in part. At its July 2009 meeting, the Board adopted new rules for the Commission on Judicial Nominees Evaluation, which became Title 7.

Titles adopted or pending adoption

Title 1: Global Provisions

Title 2: Member Rights and Responsibilities

Title 4: Admissions and Educational Standards

Title 7: Miscellaneous (Judicial Nominees Evaluation)

Titles adopted in part

Title 3: Programs and Services

Title 6: Governance

The Rules and Regulations Governing the Lawyer Assistance Program were originally adopted by the Board of Governors effective October 10, 2002, in response to the enactment by the Legislature of the Attorney Diversion and Assistance Act,<sup>1</sup> and were amended once effective December 10, 2005.

The Rules Governing the Financial Assistance Plan of the State Bar of California Lawyer Assistance Program were originally adopted by the Board of Governors effective December 7, 2002, and have been amended three times, most recently effective March 7, 2008.

The Lawyer Assistance Program rules proposed here, which were drafted by State Bar rules revision staff working closely with staff of the Lawyer Assistance Program and the Office of General Counsel, would be in the Consumers Division of Title 3, Programs and Services.

Changes to the proposed rules are summarized below. The proposals substantially change the Rules and Regulations Governing the Lawyer Assistance Program and the Rules Governing the Financial Assistance Plan of the State Bar of California Lawyer Assistance Program by combining them into a single set of rules and by reflecting significant proposed program changes. The revisions are completely consistent with the spirit and programmatic purpose of the Attorney Diversion and Assistance Act (Business and Professions Code §§6230 *et seq.*), the statute which created the Lawyer Assistance Program.

Copies of the current and the proposed rules are attached. To enable readers to compare current and proposed rules, source rules are footnoted in italics. These footnotes are drafting devices that would be deleted in a Board-adopted version. Footnotes in Roman type, which are citations or cross-references to other rules, would be retained.

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<sup>1</sup> SB 479 (Burton), Chapter 129, Statutes of 2001, effective January 1, 2002.

## ORGANIZATIONAL AND STYLISTIC CHANGES

The proposed rules consolidate the two sets of current rules regulating the operations of the LAP, the Rules and Regulations Governing the Lawyer Assistance Program and the Rules Governing the Financial Assistance Plan of the State Bar of California Lawyer Assistance Program, and eliminate duplicative provisions. The proposed rules would be called the Lawyer Assistance Program rules.

Provisions relating to criteria for acceptance and denial of acceptance, termination from, and completion of the LAP, which formerly were to be found only in an appendix to the LAP annual report, have been incorporated into proposed rules themselves.

Provisions of the current rules that duplicate or simply re-state provisions of the Attorney Diversion and Assistance Act or the Rules of the State Bar have been deleted.

Usage has been modernized. In addition to updating general conventions, such as expressing obligation by “must” rather than “shall,” the proposed rules modernize dated expressions.

## PROGRAMMATIC CHANGES REFLECTED IN THE PROPOSED RULES

1. The most significant change proposed for the LAP is the creation of an alternative program element – the Support LAP – which will be available for program participants who do not need, or do not wish to pay for, the level of oversight, monitoring, and verification of program compliance provided under the current program. **The creation of the Support LAP will enable the program to provide services to an expanded pool of participants without increasing existing staffing levels.** The Support LAP is designed for attorneys and former attorneys who self-refer to the program with no discipline charges pending, and who therefore do not require monitoring or verification of compliance to comply with an agreement in lieu of discipline or order of the State Bar Court, or to satisfy other externally-imposed requirements. In addition to the support of LAP group participants and professional group facilitators, the LAP will develop and coordinate the activities of a network of volunteers who will also provide ongoing support to Support LAP participants in their recovery efforts.
2. The proposed changes would also establish a Monitored LAP for members and former members who do have to satisfy a specific monitoring or verification requirement imposed by the Office of Chief Trial Counsel, State Bar Court, or other entity. The Monitored LAP also will be available to self-referred attorneys who wish to participate and who are willing to pay the additional costs. The Monitored LAP substantially duplicates the existing LAP.
3. The proposed changes also would create a distinct Orientation and Assessment (O&A, Rule 3.245), which would be available to all attorneys, former attorneys

and candidates for admission to the Bar prior to their election to participate in either the Support LAP or the Monitored LAP. Although orientation and assessment is already an element of the current LAP, it is generally regarded as inseparable from the full program, and therefore not available without a commitment to the longer term program. By identifying the O&A as a stand-alone program, LAP staff hope to encourage more attorneys to seek assistance at the earliest possible time and prior to personal or professional ramifications.

4. The Rules Governing the Financial Assistance Plan of the State Bar of California Lawyer Assistance Program, which currently include a Policy Statement, a detailed explication of income eligibility criteria, a detailed explication of the contents of the application, verification, and numerous other, equally detailed provisions, are proposed to be replaced by Rule 3.252 relating to Financial Assistance. The detailed provisions of the current rules would be replaced, with the Board's approval, by new guidelines and a substantially revised application form.

The new proposed rule relating to financial assistance provides only an outline of the financial assistance program, which is proposed to be changed in one significant respect—**loans will be for a period of one year only, and not renewable. The object of this proposed change is to further slow the growth of the outstanding loan obligation owed to the State Bar and to enhance repayment of the funds loaned to participants.**

#### **OTHER SUBSTANTIVE CHANGES AND CLARIFICATIONS**

- The proposed rules specifically make the LAP (but not financial assistance) available to current candidates for admission to the State Bar, consistent with current practice. For several years, the Committee of Bar Examiners has referred candidates for admission to the LAP, in furtherance of its statutory directive to ensure the good moral character of all prospective admittees. This practice is consistent with the statutory and programmatic purposes of the LAP, but currently is not specifically authorized by either statute or rule.
- The second paragraph of the "Scope and Purpose" section of the current rules, relating to the establishment of a Lawyer Assistance Program Oversight Committee, has been moved to new proposed Rule 3.241 relating to the Lawyer Assistance Program Oversight Committee.
- Provisions of current Rule I that duplicate the provisions of B&P Code §6231 or State Bar Rules 6.60-6.63 have been deleted and the language of the replacement rules (3.241 and 3.242) streamlined.
- A new provision (3.242(C)) explaining the establishment and authority of the Evaluation Committees to determine acceptance or denial of admission to the LAP, and termination from or completion of the program, has been added.

- Former Rule IV relating to confidentiality has been elevated in importance to proposed new Rule 3.243, and provisions of the former rule duplicating the provisions of B&P Code §6234 replaced by a reference to the governing statute.

### **SUMMARY OF PROPOSAL**

In addition to simplifying and consolidating the various rules governing the operation of the LAP, the proposed rules reflect proposed changes in the LAP which have been developed to make the program more effective and efficient, to reduce program costs, and to reduce the amount of and establish greater control over funds loaned to program participants.

### **FISCAL AND PERSONNEL IMPACT**

The programmatic changes reflected in the proposed rules are designed to allow the program to serve an expanded pool of participants without increasing existing staffing levels. The proposed rules related to the loan plan are designed to further slow the growth of the outstanding loan obligation owed to the State Bar and to enhance repayment of the funds loaned to participants.

### **LENGTH OF PUBLIC COMMENT PERIOD**

The Board Committee on Member Involvement, Relations & Services is being asked to authorize the circulation of this proposal for the regular public comment period of forty-five (45) days, pursuant to Rule 1.10 of Division 2 of Title 1 of the Rules of the State Bar of California.<sup>2</sup>

### **BOARD BOOK IMPACT**

None.

### **RULE AMENDMENT**

The proposed rules would replace the Rules and Regulations Governing the Lawyer Assistance Program which were originally adopted by the Board of Governors effective October 10, 2002, and amended once, effective December 10, 2005, and the Rules Governing the Financial Assistance Plan of the Lawyer Assistance Program, which were originally adopted by the Board of Governors effective December 7, 2002, and have been amended three times, most recently effective March 7, 2008.

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<sup>2</sup> **Rule 1.10** *Public comment*

*(A) Proposals for the Rules of the State Bar of California are circulated for public comment before adoption, amendment, or repeal by the Board of Governors. The State Bar also makes available for public comment its proposals for the California Rules of Court. Proposals are circulated for a forty-five day period, which can be shortened to a minimum of 30 days or extended to a maximum of 90 days, as designated by the board.*

**STRATEGIC IMPACT**

None.

**RECOMMENDATION**

The LAP Oversight Committee recommends that the proposed rules, in the form attached hereto as Exhibit A, be circulated for public comment for a period of forty-five (45) days. If the members of the Board Committee concur with the Oversight Committee's recommendation, it should adopt the following resolution:

**RESOLVED**, that the Board Committee on Member Involvement, Relations & Services authorizes the proposed modified Lawyer Assistance Program Rules, in the form attached hereto as Exhibit A, to be circulated for public comment for a period of forty-five (45) days, as provided for by Rule 1.10 of Division 2 of Title 1 of the Rules of the State Bar of California.

Attachment

Exhibit A: Proposed Lawyer Assistance Program rules—annotated.