

OPEN SESSION AGENDA ITEM

54-122.2 NOVEMBER 2018 REGULATION AND DISCIPLINE COMMITTEE ITEM II.C.2.

DATE: November 15, 2018

TO: **Members, Regulation and Discipline Committee
Members, Board of Trustees**

FROM: Michelle Harmon, Program Supervisor, Lawyer Assistance Program

SUBJECT: Participant Eligibility for Financial Assistance – Return From Public Comment and Request for Approval

EXECUTIVE SUMMARY

Business and Professions Code section 6235(b) directed the State Bar's Lawyer Assistance Program to "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." Likely as a result of the statute's reference to "member," Rule 3.252 of the Rules of the State Bar limits eligibility to active and inactive licensees, and expressly provides that attorneys who have been disbarred or resigned, and law students and those who have applied to take the Bar Examination are not eligible. At the July, 2018 meeting, the Regulation and Discipline Committee (RAD) approved a 45-day public comment period regarding the proposal to amend Rule 3.252 to expand eligibility for financial assistance. The public comment period ended on September 8, 2018. No public comments were received on this proposal.

BACKGROUND

Senate Bill 36 amended Business and Professions Code section 6232, effective January 1, 2018, to provide that "[b]y rules subject to the approval of the board and consistent with the requirements of this article, applicants who are in law school or have applied for admission to the State Bar may enter the program." On January 5, 2018, the LAP Oversight Committee recommended that the Board of Trustees amend State Bar Rule 3.244 to conform to the statute by specifying that "applicants who are in law school" as well as those applying for the Bar, may participate in LAP. That amendment was adopted by the Board at its January 2018 meeting.

Business and Professions Code section 6235(b) directs the State Bar to "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." Rule 3.252 of the Rules of the State Bar provides that "[a] LAP participant who is an active or inactive member of the State Bar may be eligible for financial assistance in the form of a loan from the State Bar. Former members of the State Bar and candidates for admission to the practice of law are not eligible for financial assistance."

On May 16, 2018, the Bar's annual licensing fee bill, AB 3249 (Stats. 2018, Ch. 659) was amended to include, among other things, an amendment to B&P 6235 to provide that any LAP participant may be eligible for financial assistance.

On May 19, 2018, the LAP Oversight Committee (LAP OC) approved a recommendation to seek amendments to Rule 3.252 to permit all LAP participants to apply for the financial assistance program. On July 19, 2018, RAD approved the recommendation to make available for public comment the proposed revisions to State Bar Rules, rule 3.252. The 45-day public comment period closed on September 8, 2018. No comments from the public were received.

The LAP staff administer the financial assistance program and the LAP Oversight Committee reviews the applications and determines the level of assistance to be provided. Pursuant to Rule 3.252(B), the maximum amount of financial assistance currently available to an applicant is equivalent to one year of participation in the LAP group and one year of urine testing fees. The financial assistance is in the form of a loan which comes due when the participant withdraws or graduates from the Program.

DISCUSSION

Rule 3.244 of the Rules of the State Bar allows active, inactive, former members of the State Bar, and candidates for admission (defined as applicants who are in law school or who have applied for admission to the State Bar) to participate in the LAP. Under rule 3.245, all attorneys, former attorneys and candidates for admission are eligible to participate in the Orientation and Assessment, and to receive transition assistance services. Rules 3.247 and 3.248 provide that Support LAP and Monitored LAP are open to all attorneys, former attorneys, and candidates for admission.

However, presumably out of deference to the language of Business and Professions Code section 6235, and in an attempt to be prudent about the expenditure of LAP resources, the financial assistance program is not open to all who are eligible for LAP, but rather is limited to active and inactive attorneys.

Rule 3.252 explicitly provides that “[f]ormer members of the State Bar and candidates for admission to the practice of law are not eligible for financial assistance.” An amendment to this rule would be necessary to make such participants eligible for financial assistance. It is possible that concerns about resources may have been a consideration in limiting the availability of the financial assistance program in prior years; the current financial condition of LAP makes this a less pressing concern.

Although the statute expressly directed the Bar to create a financial assistance program to ensure that “members” (now referred to as licensees) are not denied acceptance into LAP solely due to their inability to pay, it does not prohibit the Bar from offering such financial assistance to other LAP participants. In other words, the statutory language serves as a floor, rather than a ceiling for the Bar's financial assistance program. As part of this year's licensing fee bill, section 6235 was amended, effective January 1, 2019, to make all individuals eligible for LAP services eligible for financial assistance.

In addition to this statutory change, the Bar successfully pursued amendments to Business and Professions Code sections 6140.9 and 6235 to allow the use of LAP funds to cover costs of treatment and recovery services for LAP participants who demonstrate the inability to pay. Until now, LAP funds have been expressly prohibited from being used for these purposes. This change is also effective January 1, 2019. As a result, the LAP Oversight Committee will need to discuss whether a further amendment to Rule 3.252 would be appropriate to expand the

financial assistance program from covering only costs for group meetings and laboratory testing to also include costs for treatment and recovery services. Any such recommendation of the Oversight Committee will be brought back to RAD.

Finally, the State Bar is undertaking an effort to develop a comprehensive approach to determine “ability to pay” in various settings Bar-wide. Given that that review is pending, we are not proposing changes to the LAP financial eligibility criteria at this time. We anticipate that the broad approach developed will apply to determinations of whether a participant has the ability to pay for LAP services or would qualify for the financial assistance program.

FISCAL/PERSONNEL IMPACT

It is unknown how many additional financial assistance applications would be submitted if the eligibility is expanded. The Oversight Committee will determine the amount distributed. As LAP staff have historically administered the financial assistance program, there will be no personnel impact.

RULE AMENDMENTS

Title 3, Division 2, Chapter 5, Rule 3.252

BOARD BOOK AMENDMENTS

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: None - core business operations

RECOMMENDATION

It is recommended that the Regulation and Discipline Committee and Board of Trustees approve the following resolution:

RESOLVED, that following the 45 day public comment period, the Board of Trustees hereby adopts the amendments to Rule 3.252, as set forth in Attachment A; and it is

FURTHER RESOLVED, that the amendments to Rule 3.252 are effective immediately.

ATTACHMENT(S) LIST

- A. Proposed amendment to Rule 3.252

Attachment A

Proposed amendment to Rule 3.252:

- (A) A LAP participant who is an active or inactive California attorney, ~~member of the State Bar, former California attorney~~~~member of the State Bar~~, or candidate for admission, may be eligible for financial assistance in the form of a loan from the State Bar. ~~Former members of the State Bar and candidates for admission to the practice of law are not eligible for financial assistance~~