

OPEN SESSION AGENDA ITEM

50-5 JAN 2018

DATE: January 27, 2018

TO: Members, Regulation and Discipline Committee (RAD Agenda Item 3.A.)
Members, Board of Trustees

FROM: Michelle Harmon, Acting Program Manager I, Lawyer Assistance Program

SUBJECT: Adoption of Proposed Revisions to State Bar Rule 3.244 regarding
Eligibility to Participate in the Lawyer Assistance Program

EXECUTIVE SUMMARY

At its January 5, 2018 meeting, the Lawyer Assistance Program Oversight Committee adopted amended State Bar Rule 3.244, subject to the Board of Trustees' approval, in order conform the Lawyer Assistance Program rules to amended Business and Professions Code section 6232, which became effective on January 1, 2018. The change to State Bar Rule 3.244 will allow applicants who are in law school to be eligible for the Program. It is recommended that the Board of Trustees approve amended State Bar Rule 3.244.

BACKGROUND

Senate Bill 36 amended Business and Professions Code section 6232, which is one of the statutes that governs the Attorney Diversion and Assistance Program, also known as the Lawyer Assistance Program (LAP). Specifically, SB 36 added subdivision (e), which states:

By 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.

The revision is effective Jan. 1, 2018. Under Business and Professions Code section 6231 (c), the Lawyer Assistance Program ("LAP") Oversight Committee may adopt reasonable rules subject to the approval of the Board of Trustees.

Title 3, Division 2, Chapter 5 of the Rules of the State Bar (Rule 3.244 et seq.) already allows "current candidates for admission who have submitted an Application for Registration" to participate in the LAP. Because SB 36 refers to "applicants who are in law school," the LAP Oversight Committee has adopted an amendment to Rule 3.244 to conform to the statute, and it is recommended that the Board of Trustees approve this change to add "applicants who are in law school" to the definition of "candidates for admissions."

DISCUSSION

The Rules of the State Bar, Rules 3.244 through 3.247, allow active, inactive, former members of the State Bar, and “candidates for admission” to participate in the LAP. The term “candidates for admission” is defined in Rule 3.244 as current candidates for admission to the State Bar who have submitted an Application for Registration. To revise the rules to conform to amended Business and Professions Code section 6232(e), proposed amended Rule 3.244 includes “applicants who are in law school” in the definition of “candidates for admission,” as shown below:

Rule 3.244 Eligibility

- (A) The LAP is open to active, inactive, and former members of the State Bar, and ~~current candidates for admission to the State Bar (“candidates for admission.”) who have submitted an Application for Registration.~~ For purposes of this Chapter, “candidates for admission” means applicants who are in law school or have applied for admission to the State Bar. To participate in the LAP, an applicant must
- (1) voluntarily agree to participate;
 - (2) provide medical information and disclosure authorizations as required; and
 - (3) sign a participation agreement that includes a promise to comply with all LAP recommendations
- (B) Participation in the LAP does not relieve a participant of any duty required by agreement or stipulation with the Office of Chief Trial Counsel, by court order, or by any law relating to attorney conduct or discipline.

Attachment A is a copy of proposed amended Rule 3.244 (Eligibility).

Attachment B is a copy of Chapter 5 of the State Bar Rules, which includes the current Rules referring to “candidates for admission.”

Pursuant to Board Book Rule 1.10, public comment on proposed rules is not required to conform rules to specific changes in a law.

FISCAL/PERSONNEL IMPACT

The change to the Rule will allow for LAP funds to be used for law students and may result in increased utilization of the LAP, but will not affect the Bar’s General Fund.

RULE AMENDMENTS

Title 3, Division 2, Chapter 5.

BOARD BOOK IMPACT

None.

STRATEGIC PLAN GOALS & OBJECTIVES 2017-2022

Goal: 1. Successfully transition to the “new State Bar”— an agency focused on public protection, regulating the legal profession, and promoting access to justice.

Objective: Although not aligned with a specific Objective, the adoption of this rule change is consistent with two aspects of Goal 1:

- The rule change will maintain the alignment between State Bar rules and statute, a fundamental element of regulating the legal profession;
- The rule change will allow the LAP to use its funds to proactively address the mental health and chemical dependence needs of future attorneys. Early identification and intervention with this population will allow the LAP to more effectively protect the public.

RECOMMENDATION

It is recommended that the Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees approves the proposed amendment to State Bar Rule 3.244 regarding eligibility for the LAP as drafted above.

ATTACHMENT(S) LIST

- A. Attachment A is a copy of proposed amended Rule 3.244 (Eligibility).
- B. Attachment B is a copy of Chapter 5 of the Rules of the State Bar, which includes the current rules referring to “candidates for admission.”

Proposed Amendment to
Rules of the State Bar
Title 3. Programs and Services
Division 2. Attorney Members
Chapter 5. Lawyer Assistance Program

Rule 3.244 Eligibility

- (A) The LAP is open to active, inactive, ~~[deleted text begins] and [deleted text ends]~~ former members of the State Bar, and ~~[deleted text begins]current candidates for admission to the State Bar [deleted text ends]~~(“candidates for admission.”) ~~[deleted text begins]who have submitted an Application for Registration.” [deleted text ends]~~ [inserted text begins]For purposes of this Chapter, “candidates for admission” means applicants who are in law school or have applied for admission to the State Bar. [inserted text ends]To participate in the LAP, an applicant must
- (1) voluntarily agree to participate;
 - (2) provide medical information and disclosure authorizations as required; and
 - (3) sign a participation agreement that includes a promise to comply with all LAP recommendations
- (B) Participation in the LAP does not relieve a participant of any duty required by agreement or stipulation with the Office of Chief Trial Counsel, by court order, or by any law relating to attorney conduct or discipline.

Rule 3.244 adopted effective January 9, 2010.

TITLE 3. PROGRAMS AND SERVICES

Adopted July 2007

DIVISION 2. ATTORNEY MEMBERS

Chapter 5. Lawyer Assistance Program

(Formerly Chapter 6; renumbered effective November 4, 2011.)

Rule 3.240 Purpose of the Lawyer Assistance Program

The Board of Trustees of the State Bar of California ("Board") has established a Lawyer Assistance Program ("LAP") to enhance public protection by rehabilitating members and former members of the State Bar and candidates for admission to the practice of law who are impaired by abuse of alcohol or drugs, or by mental illness, so that they are able to practice law competently.

Rule 3.240 adopted effective January 9, 2010; amended effective January 1, 2012.

Rule 3.241 Lawyer Assistance Program Oversight Committee

- (A) A Lawyer Assistance Program Oversight Committee ("committee") of twelve members, six of whom are appointed by the Board as required by statute,¹ is authorized to establish and implement criteria for LAP participation and completion, and to otherwise oversee LAP operation.
- (B) The Board annually appoints a committee chair and vice chair. To be eligible for appointment, a committee member must have served on the committee for at least one year and have at least one year remaining in his or her term. A member seeking appointment or reappointment must provide a written statement of qualifications in accordance with instructions of the current chair.

Rule 3.241 adopted effective January 9, 2010.

Rule 3.242 Duties of oversight committee

- (A) The committee is to meet regularly at locations within California. Special meetings may be called by the chair or vice chair and must be held at the State Bar offices in San Francisco or Los Angeles. Meetings must comply with State Bar requirements.²
- (B) The committee may authorize subcommittees of two or more members of the committee to transact business on its behalf.

¹ Business & Professions Code § 6231.

² See State Bar Rules 6.60-6.65.

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- (C) The committee may establish one or more Evaluation Committees in both the Northern and Southern regions of the state. Each three-member Evaluation Committee consists of a physician, a clinician, and a local member of the State Bar experienced in recovery. Evaluation Committees are authorized to accept or deny applications for admission to the LAP,³ to determine completion of the LAP,⁴ and to terminate individuals from LAP participation.⁵
- (D) The committee must maintain records that enable it to respond promptly to State Bar requests for information regarding financial assistance loans and collections and must report annually to the Board and Legislature on the operation of the LAP.

Rule 3.242 adopted effective January 9, 2010; amended effective March 2, 2012.

Rule 3.243 Confidentiality

Except as permitted by law or these rules, participant information provided to or obtained by the LAP or any of its agents is confidential unless confidentiality is waived in writing by the participant.⁶

Rule 3.243 adopted effective January 9, 2010.

Rule 3.244 Eligibility

- (A) The LAP is open to active, inactive, and former members of the State Bar and current candidates for admission to the State Bar (“candidates for admission”) who have submitted an Application for Registration. To participate in the LAP, an applicant must
 - (1) voluntarily agree to participate;
 - (2) provide medical information and disclosure authorizations as required; and
 - (3) sign a participation agreement that includes a promise to comply with all LAP recommendations.
- (B) Participation in the LAP does not relieve a participant of any duty required by agreement or stipulation with the Office of the Chief Trial Counsel, by court order, or by any law relating to attorney conduct or discipline.

Rule 3.244 adopted effective January 9, 2010.

Rule 3.245 Orientation and Assessment

³ Rule 3.246

⁴ Rule 3.249

⁵ Rule 3.250

⁶ Business & Professions Code § 6234.

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All attorneys, former members of the State Bar and candidates for admission are eligible to participate in the Orientation and Assessment ("O&A"). The O&A is also a prerequisite for participation in the Support LAP or the Monitored LAP. The O&A includes one or more of the following:

- (A) assessment by a LAP case manager;
- (B) referral to external resources and treatment providers;
- (C) up to four sessions in a LAP-facilitated support group;
- (D) up to two sessions of personal, career, or financial counseling; and
- (E) volunteer support.

Rule 3.245 adopted effective January 9, 2010.

Rule 3.246 Application

An eligible member, former member, or candidate for admission who wishes to continue participating in the LAP must apply for either the Support LAP or the Monitored LAP. The Evaluation Committee reviews the applications and may deny an application if it determines that

- (A) the applicant does not meet eligibility criteria;
- (B) the applicant will not substantially benefit from the LAP; or
- (C) the applicant's participation would be inconsistent with public protection.

Rule 3.246 adopted effective January 9, 2010.

Rule 3.247 Support LAP

- (A) The Support LAP is open to members and former members of the State Bar, and candidates for admission who have completed the O&A and do not require the LAP to verify their participation or provide any other monitoring report.
- (B) For the first six months, the Support LAP includes
 - (1) a plan of structured rehabilitation activities;
 - (2) oversight and support by LAP staff;
 - (3) participation in a LAP-facilitated support group, if directed; and

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- (4) laboratory testing as directed.
- (C) After six months, the Support LAP includes
 - (1) a plan of structured rehabilitation activities;
 - (2) oversight and support from a LAP volunteer; and,
 - (3) participation in a LAP-facilitated group if desired.

Rule 3.247 adopted effective January 9, 2010.

Rule 3.248 Monitored LAP

- (A) The Monitored LAP is open to members and former members of the State Bar or candidates for admission who have completed the O&A and who require the LAP to verify their participation in the LAP for the Office of Chief Trial Counsel, the State Bar Court, the Committee of Bar Examiners, or any other entity.
- (B) The applicant for the Monitored LAP must have a diagnosed substance-related or mental health disorder to participate.
- (C) The Monitored LAP includes
 - (1) a plan of structured rehabilitation activities;
 - (2) oversight and support by LAP staff;
 - (3) participation in a LAP-facilitated support group, if directed;
 - (4) laboratory testing as directed; and
 - (5) verification of participation and compliance by the LAP.

Rule 3.248 adopted effective January 9, 2010.

Rule 3.249 Completion of LAP

A participant is deemed to have completed the LAP when the Evaluation Committee determines that the participant:

- (A) has maintained three years of continuous sobriety or, in cases of mental health, stability;
- (B) has made lifestyle changes sufficient to maintain ongoing sobriety or stability; and

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- (C) has satisfied the terms of the participation agreement.

Rule 3.249 adopted effective January 9, 2010.

Rule 3.250 Termination from the LAP

A participant may be terminated from the LAP if the Evaluation Committee determines that:

- (A) the participant will not substantially benefit from the LAP;
- (B) further participation would be inconsistent with the LAP's mission of public protection; or
- (C) the participant failed to satisfy the terms of the participation agreement.

Rule 3.250 adopted effective January 9, 2010.

Rule 3.251 Costs and Fees

A participant is responsible for all LAP-related expenses and may be charged a reasonable fee for administrative costs. Financial assistance is available to eligible participants as provided by these rules.

Rule 3.251 adopted effective January 9, 2010.

Rule 3.252 Financial Assistance

- (A) 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.
- (B) The loan covers no more than one year of participation in the LAP per member. Loan proceeds are dispersed directly to approved service providers. Unless determined otherwise by the committee, covered services are limited to LAP group fees and laboratory testing fees.
- (C) To obtain a loan, the participant must submit a completed application provided by the LAP and provide all requested information. Eligibility is based upon a current income formula determined by the committee. Loans are made solely on the basis of financial need.
- (D) The loan recipient is liable for all sums distributed to service providers on his or her behalf. If a loan recipient ceases to be a LAP participant, the total amount loaned on behalf of the participant becomes immediately due and payable to the

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State Bar by the participant. Arrangements may be made to repay the loan, with interest, in installment payments.

- (E) A LAP participant who received financial assistance before the effective date of this rule is bound by the terms of any agreement applicable to that assistance.

Rule 3.252 adopted effective January 9, 2010.