

LAWYER ASSISTANCE PROGRAM OVERSIGHT COMMITTEE OPEN SESSION AGENDA ITEM

DATE: May 19, 2018

TO: Members, Lawyer Assistance Program Oversight Committee

FROM: Michelle Harmon, Program Supervisor

SUBJECT: Participant Eligibility for Financial Assistance

EXECUTIVE SUMMARY

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.” 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. This agenda item proposes an amendment to Rule 3.252 to expand eligibility for financial assistance, recommends this proposal be sent out for public comment, and recommends that technical amendments to Business and Professions Code section 6235 be pursued to clarify eligibility for financial assistance.

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 made 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.”

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. The maximum amount of financial assistance 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

The Rules of the State Bar, Rule 3.244, 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 receive the 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 in 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. As discussed in detail at the March LAP Oversight Committee meeting, current budget projections project a year-end reserve in the Lawyer Assistance Fund of 154 percent of operating expenditures, well in excess of the Board of Trustees’ reserve policy of 17 – 30 percent of operating expenditures. Although concern about resources may have been a consideration in limiting the availability of the financial assistance program in prior years, the current fund balance gives the committee leeway to reconsider the rule.

A statutory change would also be in order. Although the statute expressly directs 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. However, a statutory change would be appropriate to avoid any future confusion.

Typically, it would be appropriate to await the statutory change before pursuing the conforming rule change. However, since the statute does not prohibit the expansion of

the financial assistance program to former attorneys or candidates for admission, a rule change would not be inconsistent with statute, and can be advanced prior to effecting a statutory change.

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

Amend Title 3. Programs and Services. Division 2. Attorney Members. Chapter 5. Lawyer Assistance Program. Rule 3.252 Financial Assistance.

BOARD BOOK IMPACT

None

RECOMMENDATION:

Staff recommend that the Lawyer Assistance Program Oversight Committee approve the following motion:

IT IS MOVED, that,

- 1) A recommendation shall be made to the Regulation and Discipline Committee that amendments to Rule 3.252, as set forth in Attachment C, be circulated for public comment;
- 2) A recommendation shall be made that the Bar should seek an amendment to Business and Professions Code section 6235 to delete “member” and insert “person eligible for services” to spell out clearly that the financial assistance program is open to all LAP participants.

ATTACHMENT(S) LIST:

- A. Business and Professions Code section 6235
- B. Rules of the State Bar, Rules 3.244, 3.246, 3.247, 3.248, and 3.252, as currently adopted
- C. Proposed amendment to Rule 3.252