

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: State Bar Legislative Priorities

EXECUTIVE SUMMARY

This agenda item is informational to the Lawyer Assistance Program Oversight Committee regarding pending legislation. AB 3249, the annual State Bar licensing fee legislation, contains two provisions which relate specifically to the Lawyer Assistance Program. The first would authorize LAP funds to be used for treatment services for those who cannot afford to pay for treatment. The second would require one dollar (\$1) of the ten dollars (\$10) paid by each active member as part of the licensing fee that funds LAP to be transferred by the State Bar to a non-profit organization that provides peer support for lawyers with substance use issues.

BACKGROUND

Business and Professions Code section 6231 requires the State Bar to establish and administer an Attorney Diversion and Assistance Program. Pursuant to section 6140.9, the program is funded by \$10 of the annual licensing fee from every active attorney, and \$5 from every inactive attorney. The statute provides these fees are for the support of the program and related programs, as provided. The act requires participants in the program to be responsible for all expenses related to treatment and recovery and requires the State Bar to establish a financial assistance program to ensure “no member is denied acceptance into the program solely due to lack of ability to pay.”

AB 3249, as amended on May 3, 2018, would require \$1 of the \$10 fee paid by active licensees, to be transferred to a statewide nonprofit corporation, established by attorneys that has, for the last 25 years or more, provided peer support to attorneys recovering from alcohol and substance abuse in a confidential and anonymous manner, to fund the support and recovery efforts of the nonprofit corporation.

The bill also proposes to amend Business and Professions Code section 6235 to authorize the fee revenue to be used for treatment services for those who cannot afford to pay for treatment.

DISCUSSION

On March 9, the Board of Trustees approved a staff recommendation to seek to adopt as one of the Bar's legislative priorities to pursue an amendment to "Business and Professions Code Section Code section 6235 to allow Lawyer Assistance Program funds to be used for treatment services for those who cannot afford to pay." (See Attachment A.) That provision has been amended into the annual State Bar licensing fee legislation, AB 3249.

On April 16, the Board of Trustees discussed a proposed amendment to Business and Profession Code section 6140.9. The Board agenda item provided as follows:

A proposal, initially sponsored by the Other Bar, seeks to redirect \$1 of that \$10 fee to support an independent third-party drug-alcohol program. The basis for this proposal is a belief that voluntary LAP participants will be better served by a non-Bar related program, and that, given the history of annual surpluses in the LAP Fund, a \$1 redirection is fiscally viable.

Bar staff understands that there is significant legislative support for this proposal, which will likely be incorporated in to the State Bar's 2019 fee bill. In addition, the proposal is aligned with the charge of the Governance in the Public Interest Task Force, Appendix I review of the LAP, which anticipates that voluntary LAP services may be best provided by non-Bar entities.

(See Attachment B.) The Board of Trustees voted to support that proposal, and the provision was amended into AB 3249. The analysis of AB 3249 prepared by the Assembly Judiciary Committee for its May 8, 2018, bill hearing included the following analysis of this provision:

This bill seeks to provide better support for attorneys struggling with substance abuse or mental health issues. A landmark 2016 study conducted by the Hazelden Betty Ford Foundation and the American Bar Association Commission on Lawyer Assistance Programs revealed that fully 21 percent of attorneys qualify as problem drinkers, 28 percent struggle with depression, and 19 percent have symptoms of anxiety. (Patrick Krill, et al., *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, Journal of Addition Medicine, Vol. 10, Issue 1, pp. 46-52.) The report concludes that greater resources are needed for lawyer assistance programs, and attorney-specific prevention and treatment interventions are sorely needed.

California has long recognized attorneys' substance abuse and mental health concerns and required the Bar to administer the LAP 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.” (Section 6230 *et seq.*) According to the Bar’s website, the LAP seeks to help “lawyers and State Bar applicants who are grappling with stress, anxiety, depression, substance abuse or concerns about their career.”

The LAP is supported by a mandatory \$10 annual fee from active licensees and a \$5 fee from inactive licensees. It provides services to both attorneys and applicants to the Bar. But given the very troubling statistics on attorney substance abuse and mental health, it is clear that more must be done. This bill seeks to provide additional help in two ways. First, it allows LAP services to be provided free of charge to those who cannot afford to pay for those services. Second the bill proposes to transfer \$1 of the \$10 fee paid by active attorneys to a statewide, nonprofit corporation that has, for at least 25 years, provided peer support to attorneys recovering from alcohol and substance abuse. The peer support provided by such an organization appears to provide needed additional support to struggling attorneys that is supplemental to, and enhances, the services offered by the LAP. The \$1 transfer will not impact the services offered by the LAP, since that program has not been able to fully spend its annual funding and has, as a result, built up a reserve over the years. The \$1 transfer serves the public purpose of providing attorneys and applicants with a peer-to-peer counseling program that compliments the services offered by the Bar’s LAP, without undermining the services offered by the LAP.

FISCAL/PERSONNEL IMPACT

Transfer of \$1 of the LAP fee on active, licensed attorneys would result in the loss of approximately \$190,000 annually in LAP revenue.

RULE AMENDMENTS

None

BOARD BOOK IMPACT

None

RECOMMENDATION:

None

ATTACHMENT(S) LIST:

- A.** Open Session Agenda Item 705 MARCH 2018
- B.** Open Session Agenda Item 701 APRIL 2018
- C.** Proposed amendment to Business and Professions Code Sections 6140.9 and 6235