

OPEN SESSION AGENDA ITEM

JULY 2018

REGULATION AND DISCIPLINE COMMITTEE ITEM III.H.

DATE: July 19, 2018

TO: **Members, Regulation and Discipline Committee**

FROM: Donna S. Hershkowitz, Chief of Programs

SUBJECT: Appendix I Review – Lawyer Assistance Program Oversight Committee

EXECUTIVE SUMMARY

The Board of Trustees will begin the July meeting with a presentation on the framework for discussion and analysis of the subentity review conducted consistent with Appendix I of the May 2017 Governance in Public Interest Task Force report (the Appendix I review). Later that same day, the Regulation and Discipline Committee (RAD) will be receiving an update on the progress and current thinking related to the review of the Lawyer Assistance Program Oversight Committee. The input of RAD will help shape the final recommendations developed for Board consideration at the September 2018 meeting.

BACKGROUND

The Lawyer Assistance Program (LAP) and the Lawyer Assistance Program Oversight Committee (LAPOC) were established by the Legislature in 2002, to provide a means to rehabilitate lawyers with substance use disorders or mental health impairments, so that their law practice does not endanger the public. The LAPOC is unique among Bar sub-entities—it is the only sub-entity whose establishment, membership and structure are specified in statute. The LAP is designed to offer rehabilitative programs for active, inactive and former attorneys of the State Bar as well as law students and applicants for admission to the Bar. The statute also directs the State Bar to engage in outreach and education about the program and to create MCLE programs on the topic of substance abuse.

The structure of the Lawyer Assistance Program Oversight Committee (LAPOC) is defined by Business and Professions Code section 6231. The LAPOC is composed of twelve members, six appointed by the State Bar, four by the Governor (two of whom are attorneys, two of whom are members of the public), and one member of the public each by the Speaker of the Assembly and the Senate Rules Committee. Qualifications of members specified in statute include public members (4), licensed mental health professionals (2), attorneys (4, 1 of whom must be in recovery for at least 5 years), a physician with expertise in alcohol and substance abuse (1), and 1 member of the board of directors of a statewide nonprofit assisting lawyers dealing with alcohol or substance abuse issues. Members serve four-year terms that are renewable without limit.

LAP is comprised of two primary components, Support LAP and Monitored LAP. Support LAP (also referred to as voluntary LAP) is designed for attorneys who are interested in participating in a weekly group with other lawyers and would like the support of a qualified mental health professional. Monitored LAP offers long-term structure and the support of a professional case manager. Attorneys may be referred as the result of disciplinary proceeding, a moral character investigation by the Committee of Bar Examiners, or a requirement by an employer. Monitored LAP is also available to self-referred attorneys who wish to participate and who want the additional structure and support that this component of the program provides. To be eligible for Monitored LAP, participants must have a diagnosed substance related disorder or a mental health disorder. This is not a requirement for Support LAP.

The Alternative Discipline Program (ADP) is a form of diversion program in which the State Bar Court, OCTC, and the attorney agree to a reduced level of discipline - in cases in which there evidence that the member's substance abuse or mental health issue causally contributed to the misconduct – in exchange for the attorney receiving necessary treatment for the substance use or mental health disorder. To be eligible for ADP, the attorney must be accepted into LAP. The State Bar Court retains jurisdiction the attorney and makes all appropriate judicial decisions, including any determination regarding the attorney's eligibility to practice law while participating in the ADP. The LAP sets the terms and conditions for the attorney's participation in the LAP, monitors compliance, and reports back to the State Bar Court.

The State Bar contracted with Patrick Krill, a national expert on substance use disorders in the attorney population, to help frame some of the issues in the Appendix I review of the work of the Lawyer Assistance Program and the LAPOC. Krill's report, based in part on observations, conversations, and the results of a survey of LAPs across the country, and attorneys within California, will be available at the July 19 meeting. Krill met with the LAPOC in June to discuss his preliminary findings and recommendations and seek their feedback. However, since the report was just finalized, the LAPOC has not yet had an opportunity to react to the report in its entirety.

DISCUSSION

The issues raised regarding the LAP in Appendix I of the Governance in the Public Interest Task Force focused first not on what the role of the LAPOC should be, but on the much broader question of whether "LAP is appropriately situated within the State Bar." The report went on to note:

The program goal is not in doubt, but the State Bar lacks expertise in matters of substance abuse and mental illness, making it an unusual host. Moreover, concerns have been raised that attorneys might be disinclined to seek assistance from the same entity responsible for attorney discipline, a concern that may explain LAP's low attorney participation rate. A review of other state practices also suggested that many jurisdictions have chosen to structure their parallel programs as separate entities from the regulatory body precisely because of these types of concerns.

Because this is a foundational issue, the presentation to RAD will focus on the topic of whether the voluntary part of LAP - described above - is best served by being part of the State Bar, and whether the State Bar, as a primarily regulatory entity, should properly be engaged in that function.¹ Feedback on this issue from RAD will help staff structure recommendations about the secondary question of the appropriate structure and role of the LAPOC. Both topics will be addressed in the Appendix I report to the Board in September.

FISCAL/PERSONNEL IMPACT

Unknown

RULE AMENDMENTS

None at this time, although recommendations that will come to the Board in September may require changes to State Bar Rules or statutes.

BOARD BOOK AMENDMENTS

None

STRATEGIC PLAN GOALS & OBJECTIVES

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: No later than September 30, 2018, determine the appropriate role of, and Board responsibility for, State Bar Standing Committees, Special Committees, Boards, and Commissions in the new State Bar.

RECOMMENDATION

None

ATTACHMENT LIST

None

¹ It is anticipated that Monitored LAP, especially as it relates to the Alternative Discipline Program, would remain a State Bar responsibility even if Support LAP were no longer a State Bar program.