



# The State Bar of California

## LAWYER ASSISTANCE PROGRAM

---

Date: December 8, 2023

To: Lawyer Assistance Program Oversight Committee

From: Bridget Gramme, Deputy Chief of Programs

Subject: Item III.D - Introduction and Discussion of the Recommendations from the Ad Hoc Commission on the Discipline System Regarding the Alternative Discipline Program

---

### EXECUTIVE SUMMARY:

The Board of Trustees established the Ad Hoc Commission on the Discipline System in November 2020 to assess reforms implemented by the State Bar to further the efficiency, effectiveness, and fairness of the discipline system and to identify any additional improvements needed. The Board received the commission's final report and recommendations, along with staff's recommendations at its [January 19, 2023, meeting](#). Of relevance to the Lawyer Assistance Program Oversight Committee, the commission recommended that the State Bar study and clarify all applicable rules involving referrals to the Alternative Discipline Program (ADP), specifically concerning whether moral turpitude has resulted in significant harm to a client(s) or the administration of justice. After researching the history of the ADP program and conferring with various stakeholders, staff provided the following background and recommendations to the Board at its [September 23, 2023, meeting](#), which the Board adopted.

Specifically, recognizing that the ADP program has been operating for over 20 years and its rules have not been substantially changed in 15 years, the Board has tasked the Oversight Committee with conducting a comprehensive review of the program, given its expertise in the field, and making recommendations to the Board as to any potential rule changes by November 2024. This work should be informed by data including demographic data, recidivism rates of program participants, and best practices in other settings, including the collaborative court model.

Staff recommends that the Oversight Committee spend time at its December meeting to plan for this comprehensive review process in 2024.

## **BACKGROUND**

In 2002, following the Legislature's establishment of the Attorney Diversion and Assistance Program, Business and Professions Code section 6230, et seq, the State Bar established two programs to implement the legislation: the ADP, a State Bar Court (SBC)-run program that addresses the substance abuse and mental health problems of attorneys against whom formal disciplinary proceedings have been initiated in the SBC; and the Lawyer Assistance Program (LAP), which helps attorneys, State Bar applicants, and law students who are struggling with stress, anxiety, depression, substance use issues, or personal and career concerns, was also established to implement the legislation. ADP participants must also be enrolled and participating in the LAP program, but the two programs otherwise operate independently with the SBC operating the ADP program, and the State Bar operating the LAP program. Decisions as to an ADP participant's progress, completion, or termination are made by SBC judges.

In 2007, the Supreme Court raised a number of concerns about the ADP program, including: (1) the amount of time and State Bar resources expended on ADP cases; (2) the lack of eligibility criteria for participation in the ADP; (3) the lack of any opportunity to seek de novo review of State Bar Court Hearing Department decisions and orders in ADP proceedings; and (4) the lack of timely public access to approved stipulations as to facts and conclusions of law.

In response to these concerns, in 2008 the Board considered a revised set of rules governing the operations of the ADP program which remain in effect today. The memo to the Board summarizing the changes provided the following rationale for adding a moral turpitude eligibility requirement: "The failure of the State Bar and the Supreme Court to impose significant discipline upon attorneys who have committed serious acts of misconduct which has resulted in significant harm to the attorneys' clients and/or to the administration of justice not only undermines the public's confidence in the legal profession but also erodes the high professional standards rightfully expected of attorneys."

In 2022, the Ad Hoc commission considered feedback from respondents' counsel regarding Rule of Procedure 5.382(C)(3), which provides that an attorney is ineligible to participate in ADP if the attorney's misconduct involves acts of moral turpitude, dishonesty, or corruption that have resulted in significant harm to one or more clients or the administration of justice; and rule 5.382(A)(2), which makes participation in ADP contingent upon the court's approval of a stipulation of facts and conclusions of the law signed by the parties. Specifically, some members of the commission were concerned that when the parties dispute whether there was moral turpitude committed resulting in significant harm to a client or to the administration of justice, a stipulation cannot be reached thereby precluding participation without the opportunity to litigate the moral turpitude issue. Others were concerned that adding any kind of prerequisite for an evidentiary hearing and judicial determination of eligibility would be time and resource

Click here to enter text.

Click to enter document date.

Page 3

intensive for OCTC and SBC, and cause significant delay in the discipline process to the detriment of public protection.

Accordingly, the commission's recommendation, which the Board adopted, directed staff to work with stakeholders in studying and clarifying all applicable rules regarding referral to the ADP program.

### **OVERSIGHT COMMITTEE ASSIGNMENT**

The ADP program has been operating for over 20 years and its rules have not been substantially changed in 15 years. Staff held a series of discussions and received input from the State Bar Court, the Office of Chief Trial Counsel, the Association of Discipline Defense Counsel, the LAP staff, and Oversight Committee leadership regarding the ADP program and the existing rules. Generally speaking, the various stakeholders appear to be in agreement that the existing eligibility requirements—particularly regarding moral turpitude determination—have caused considerable confusion and difficulty over the years and require clarification.

The Board has tasked the Oversight Committee with conducting a comprehensive review of the program, given its expertise in the field. This work should be informed by data including demographic data, recidivism rates of program participants, and best practices in other settings, including the collaborative court model. The Board has directed the Oversight Committee to present its recommendations at the Board's November 2024 meeting.

The existing rules governing the ADP program are attached here for the committee's reference.

### **ATTACHMENTS**

- A. Rules of Procedure of the State Bar of California, Chapter 5. Alternative Discipline Program