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## LAWYER ASSISTANCE PROGRAM

### *Functions and Responsibilities*

The Lawyer Assistance Program (LAP), a statutory program, was established under section 6230 of the Business and Professions Code, and is authorized by Rule 3.240 of the Rules of the State Bar of California.<sup>19</sup> LAP became operational in March 2002; its mission is, “To support recovering attorneys in their rehabilitation and competent practice of law; enhance public protection; and, maintain the integrity of the legal profession.”

LAP provides confidential help to Bar members, former members, and applicants with issues affecting their personal or professional life. The LAP provides consultation, counseling, referrals for treatment, and recovery support and monitoring groups addressing stress, anxiety, depression, and substance abuse. LAP program operations are funded by the imposition of a \$10 fee to each Bar member.

The 2015-2016 LAP goals include the following:<sup>20</sup>

- Ensure that funding dedicated for the LAP is effectively deployed in support of the mission of the program;
- Continuously evaluate the effectiveness and cost-effectiveness of LAP services;
- Develop and promote currently relevant MCLE courses and material for members, bar associations, and law firms;
- Develop multiple forms of effective program promotional material targeting members of and candidates for the Bar; and
- Develop and maintain a robust and effective online and social media presence.

According to the 2011 State Auditor findings,<sup>21</sup> the LAP evidenced:

- Poor monitoring procedures and failure to appropriately record and report program participant noncompliance;
- Disparate treatment of noncompliance by program participants; and
- Program outcomes and effectiveness measured solely by percentages of program completion.

### *The Current Process*

The LAP phases consist of an intake process, an interview and evaluation of needs, referral to immediate services and assignment to a group meeting that occurs for multiple weeks, review by an evaluation committee, referral to formal, structured program services, and establishment of ongoing monitoring.

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<sup>19</sup> [http://rules.calbar.ca.gov/Portals/10/documents/Rules\\_Title3\\_Div2-Ch5-LAP.pdf](http://rules.calbar.ca.gov/Portals/10/documents/Rules_Title3_Div2-Ch5-LAP.pdf)

<sup>20</sup> Source: State Bar Committee Matrix, dated January 29, 2016, provided by the Bar’s Chief Operating Officer.

<sup>21</sup> California State Auditor Report dated May 26, 2011, pages 1-2.

LAP processes are triggered by an initial call from the Bar member or employer, a referral from the Committee of Bar Examiners, or a pending or completed disciplinary action. During the telephone intake process, an Administrative Assistant obtains specific demographic and background information, including identifying information, contact information, employer information, the type of law practice, the nature of the problem, the source of the referral and the status of any disciplinary action. The Administrative Assistant refers the call to a Case Manager, assigned by geographic region, who first determines if there is an urgent need for service referral and, if so, makes appropriate referrals. If the matter is not urgent, the Case Manager schedules an in person evaluation meeting with the program applicant.

During the personal interview with the applicant, which may last as long as two hours, the Case Manager gathers additional information, including mental health, substance abuse and medical history, work and spiritual history and any financial issues being encountered by the applicant. The Case Manager notes diagnostic and clinical impressions and updates LAPIS, the LAP case management system. The Case Manager determines if the applicant requires a Program Substance Test and, if so, makes a referral.

Should the participant demonstrate financial need, LAP offers a financial assistance program or loan to the program participant to cover LAP costs for up to 12 months, with interest and monthly payments. LAP monitors loan payments and if the attorney become delinquent, the invoice is referred to the Bar's Finance Department for collection.

Two different plans are prepared for the applicant, as described below:

*Evaluation Plan:* The Case Manager prepares an LAP Evaluation Plan during the application stage. It includes introductory information about the LAP and the applicant; expectations of the participant; deadlines for progress reports to be submitted by physicians, therapists, and any testing facilities; confidentiality provisions; and participant confirmation of expectations. It is signed by the participant, Case Manager and LAP director. Following creation of the Evaluation Plan, the applicant is assigned to a weekly facilitated group meeting, during which an ongoing applicant assessment is conducted by the group facilitator (a licensed mental health professional) and Case Manager. Throughout the application phase and group meetings, the group facilitator reports status updates in LAPIS, as well as to the Case Manager. The Case Manager also observes and monitors the case, possibly observing and enters data into LAPIS about the program applicant.

The applicant begins participation in weekly group meetings, each led and facilitated by a contracted group facilitator. During the meetings, the group facilitator observes and reports, via LAPIS, on the progress of applicant group participation. The facilitator may have discussions with the Case Manager, and the Case Manager may contact the facilitator or conduct personal observations of the session. Throughout, information and updates are made into LAPIS.

*Participation Plan:* After the application stage, the Case Manager presents the case to an Evaluation Committee comprised of the LAP Director, the clinical consultant, a mental health professional and an attorney in recovery (often a prior LAP participant). They review the records, information and status of the applicant to make a determination on whether the program applicant is approved for formal program acceptance. If approved by the Evaluation Committee, the applicant is accepted into a Support LAP program, with minimal program oversight, or into a three-year Monitored LAP program. Based upon the attorney's diagnosis and individual recovery needs, a LAP Participation Plan is drafted by the Evaluation Committee that details the attorney's structured recovery program, including ongoing LAP group meetings, drug testing, and often individual therapy/treatment. Those attorneys being monitored by the SBC or OP must enter the LAP Monitored program. Attorneys in Monitored LAP sign a Release of Information form directing the LAP to provide the SBC or OP with regular Participation Reports detailing their compliance with their LAP Participation Plan.

The average time that a participant is in an LAP Support Program is 773 days. The average time that a participant is in Monitored LAP is 553 days. Appendix D outlines program steps and events.

#### *Organization, Workload and Resources*

According to the 2011 California State Auditor report on the LAP,<sup>22</sup> program data indicates that between program inception and January 2011, the LAP closed 1,302 participant cases which had been open for more than 14 days. Of those, 76 percent were closed due to participant withdrawal, 11 percent were for successful participation, 7 percent were terminated from program, and 3 percent were denied program admittance.

LAP statistics are maintained on the number of intakes, successful program completions, number of attorneys terminated or denied program participation, and the number of LAP outreach presentations. Participants accepted into Monitored LAP are expected to complete 3 years under monitoring. LAP annual reports<sup>23</sup> indicate the statistics on the following pages:

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<sup>22</sup> California State Auditor Report dated May 26, 2011, page 23.

<sup>23</sup> Sources: LAP Annual Reports, 2010, 2012, 2013, 2014, and 2015. Report for 2011 was not available.

**LAP Intake Statistics**

Year	Participants Completing Intake	Participants Completing 3 Years of Program	Participants Denied Program Admittance	Participants Terminated from Program
2010	202	58	9	8
2011	174	n/a	n/a	n/a
2012	179	32	12	4
2013	176	19	4	2
2014	179	10	15	2
2015	127	14	13	2
<b>Total</b>	<b>1,037</b>	<b>133</b>	<b>53</b>	<b>18</b>

Regarding program participants, the following diagnosis areas were represented:<sup>24</sup>

**Program Participant Diagnosis Areas 2010-2015**

Year	Mental Health	Substance Abuse	Dual Diagnosis: Mental Health and Substance
2010	25%	42%	33%
2012	38%	35%	27%
2013	39%	37%	24%
2014	33%	47%	30%
2015	35%	41%	24%

**LAP Referral Sources and Referral Source Caseloads**

	January 2015	June 2015	January 2016	April 2016
State Bar Court – Alternative Discipline Program	25	23	25	27
Committee of Bar Examiners – Bar Applicant	53	51	41	37
Self-Referred – Discipline Pending	35	34	27	24
Self-Referred – No Discipline	19	20	12	16
Self-Referred – Bar Applicant Prior to Submitting Application	8	15	23	21
Disbarred	2	2	2	2
Status Not Yet Determined	14	13	10	9
<b>Total</b>	<b>156</b>	<b>158</b>	<b>140</b>	<b>136</b>

**LAP Case Manager Caseloads**

Case Manager	January 2015	June 2015	January 2016	April 2016
CM 1	34	32	36	35
CM 2	35	41	37	30
CM 3	54	51	39	43
CM 4	33	34	28	28
<b>Total</b>	<b>156</b>	<b>158</b>	<b>140</b>	<b>136</b>

<sup>24</sup> Sources: LAP Annual Reports, 2010, 2012, 2013, 2014, and 2015. Report for 2011 was not available.

**Current Participation:** LAP currently has 136 active participants, 130 of whom are participating in a Monitored program. 31 of the participants have been officially accepted into the Alternative Discipline Program. LAP has approximately 15 successful graduates per year.

#### *Committee Oversight*

The LAP is overseen by a 12-member Oversight Committee<sup>25</sup> composed of:

- Six individuals appointed by the Board of Trustees;
- Four individuals appointed by the Governor (two attorneys and two public members);
- One appointed by the Senate Committee on Rules; and
- One appointed by the Speaker of the Assembly.

#### *Current Staffing Levels*

LAP is managed by a program Director under general oversight of a Bar Senior Director. The Senior Director reports to the Bar's Chief Operating Officer.

**Lawyer Assistance Program Staff**

Position	No. of Positions
Administrative Assistant II	1
Case Manager	4
Court Systems Analyst	1
Director of LAP	1
TOTAL	7

LAP staff members are located in the Los Angeles office. Case assignments are made by geographical regions. A part time, contracted case manager is available to assist with intake in Northern California. The work of all contractors is supervised by the LAP Director.

A Clinical Consultant (board certified psychiatrist and addictionologist) chairs all Evaluation Committee meetings and is available to the LAP Director and case managers between meetings on an as-needed basis for consultation regarding challenging clinical issues with attorney program participants. Interview feedback indicated that most program issues are program related and not clinical in nature.

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<sup>25</sup> The composition of the LAP oversight committee is governed by Business and Professions Code section 6231.

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## OBSERVATIONS AND RECOMMENDATIONS<sup>26</sup>

**OBSERVATION: *Lack of Clarity Regarding Program Purpose.*** The LAP was adopted over twelve years ago, being modeled after a medical professional monitoring program. Over recent years, LAP work volumes have decreased, applicant screening and review processes have created interest in the level of and need for increased rigor, and program services and delivery mechanisms have caused Bar leaders to question both program functions and relevance. Further, the LAP client base has shifted to one that is comprised of a significant number of those seeking admission to the Bar, as opposed to licensed attorneys. As a result, interest has developed in revamping and revitalizing program operations or considering the feasibility of outsourcing operations, modifying the manner of monitoring, or some other variation in the operation of LAP. It appears that there is merit in reviewing how the LAP is structured and potentially modifying its operations. However, key questions exist, including whether or not LAP should proactively seek clients, or only monitor cases that come its way, and which clients the program most appropriately serves.

**RECOMMENDATION: *The Bar should engage in a strategic planning process for the LAP to determine whether LAP is to be reactive, responsive, and corrective to issues faced, or proactive, by advertising services and sponsoring workshops and orientations about attorneys' stress, addiction, and mental health issues.*** This planning process should include an assessment of the current monitoring approach undertaken by the program, which is more administrative than clinical. Lastly, a determination regarding the target client population for the program is needed.

**RECOMMENDATION: *Once program purpose is established, reassess delivery model to include analysis of feasibility of contracting out LAP services.*** This would entail determining which functions should go to one or more contracted providers for program operations, participant oversight, ongoing monitoring, and reporting to a designated Bar manager. It would also require clear definition of which administrative and support tasks would remain within the Bar, if any. If clear performance expectations are embedded in a contract, it may make it easier for the Bar to hold contracted staff to a performance standard. A full risk assessment and review needs to occur, coupled with a cost-benefit analysis, and determination to what degree Bar executive leaders will be able to oversee work of one or more LAP contractors.

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<sup>26</sup> Specific LAP recommendations follow; however NCSC recommends, in another section of this report, better coordination between LAP and OP. To improve coordination, NCSC recommends that the Bar create a supervisor over LAP and a supervisor over OP, while creating a manager position that supervises both OP and LAP.

During this workforce evaluation, it also became clear that the monitoring functions of LAP are parallel with those of OP. Both provide oversight and examination of attorney behavior, program compliance, and as ordered, substance abuse testing and monitoring. The comparable monitoring functions have created the potential for greater alignment and efficiencies in program operations.

**OBSERVATION: *Management of the Lawyer Assistance Program.*** Currently, LAP is overseen by a Senior Executive and a Director; there is a significant difference between the job classification of the LAP Director (grade 55) and the next highest grade level position in LAP, that of the Case Manager, at grade 9. The LAP Director is housed in San Francisco, while all of the program staff are located in the Los Angeles office. The previously existing Case Management Supervisor position, which was based in Los Angeles, was recently vacated via the demotion of that position to Case Manager.

Though there are two levels of high-level management over the program, staff reports a need for more direct supervision of casework, as well as attention to operational reorganization and enhancements, and adherence to Bar policy and operational goals. In order to determine whether or not the supervisor need be a clinician, the current management structure of LAP should be maintained for a period of months, during which time an assessment should be made regarding the utilization of existing contract clinical support.

**OBSERVATION: *Case Manager Caseloads and LAP Staffing Levels.*** The Senior Director, LAP Director, Program Coordinator and four Case Managers are responsible for 136 active participants in the program. This aggregate level statistic translates to individual Case Manager caseload levels ranging from 28-42 cases, with an average caseload size, across all four Case Managers, of 34 cases. Cases are at different stages or phases, which can be best described as being pre- and post- Evaluation Committee. Case stage may indicate variations in the amount of Case Manager rigor, time and effort necessary to monitor. In addition, cases are either in Monitoring or Support status. As discussed below, this status corresponds with a variance in the staffing and resource level needed. LAP Case Manager caseloads are significantly less than those of OCTC Investigators or Probation deputies, two classifications which perform similar work at the Bar.

**RECOMMENDATION: *Adjust staffing based on caseload requirements.*** Application of drug court staffing standards suggests that the recommended range for a Case Manager caseload is 45 to 50 cases.<sup>27</sup> These caseload levels can be achieved by reducing one Case Manager position. In lieu of elimination, however, this position should be converted to a Case Manager Supervisor. The Supervisor position should be based in Los Angeles. The size of the program does not warrant both a Supervisor and a Director; the Director position should be eliminated or re-purposed accordingly.

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<sup>27</sup> Drug Court best practices indicate the maximum/optimal size of a clinical caseload is 50. While there may be differences between Clinical Supervision and the current Case Manager functions, the objective of working toward the 45-50 range will allow the Bar to seek greater economies of scale in the LAP.

In addition, one Case Manager position should be redeployed to San Francisco to address delays in serving clients in the Northern part of the state.

**OBSERVATION: *Clinical versus Monitoring Case Management Functions.*** All LAP staff appear to do a significant amount of paperwork and other administrative tasks as part of the LAP monitoring function. It is not clear how much of the work of the LAP Case Managers is actually clinical in nature, aside from Evaluation and Participation Plan development. Currently, Case Managers must hold clinical degrees.

**RECOMMENDATION: *Identify what within LAP is clinical and what is monitoring, ensuring that Case Managers perform clinical, as opposed to monitoring, activities wherever possible.*** If the program design does not require the current level of clinical staffing, transition away from a requirement that all Case Management staff hold clinical degrees.

**OBSERVATION: *Differentiated Case Management.*** Currently, LAP operates two tracks – Monitored and Support. Monitored LAP involves a plan of structured recovery activities typically including attendance at LAP monitoring group, regular participation in self-help peer support groups and, when appropriate, random drug testing and/or individual therapy. Compliance with this Participation Plan is monitored by a LAP Case Manager. Successful completion of monitored LAP requires a minimum of three years of participation in the program and three years of continuous documented sobriety/recovery. Support LAP includes a similar plan of recovery activities but the participant’s compliance with their Support Plan is not monitored by a LAP case manager nor is any compliance documentation maintained by the program. The LAP will not provide verification of a participant’s time in Support LAP because their participation and compliance with their Plan has not been documented by the program. For this reason, participants who believe that they may at some point in time need to provide documentation of a period of time in the LAP generally do not opt for Support LAP

The average time for participation in Monitored LAP is 2.12 years; for Support, it is 1.75 years. A review of LAP intake and three-year completion data provided in the introductory section to this chapter suggests that, since 2010, of the 1,037 clients completing LAP intake, only 12.8 percent, or 133, have successfully participated in the program.

**RECOMMENDATION: *LAP should evaluate the differences in monitoring actions required for cases in various phases, and consider establishing differentiated monitoring practices.*** A three-tiered program is specifically recommended as follows:

1. Expedited LAP (or “LAP light”) – a simplified and expedited program to provide information and resources for those applicants with less risk. Include initial intake and personal meeting, and referral for self-directed support, with no ongoing staff interaction. Key objective of this track: simple information provision.

2. Modified LAP – a program to provide information, resources and support activities (e.g., group meetings, program referrals) with minimal LAP oversight. Key objective of this track: summary oversight.
3. Monitored LAP – a program to provide the full array of LAP support and monitored functions to include ongoing group participation, testing and reporting. Key objective of this track: structured oversight and accountability by the participant.

For Modified and Monitored LAP, the duration of time in the program should be identified based on assessed needs; a blanket participation period of three years should be discontinued.

**OBSERVATION: *Streamlining of Forms and Processes.*** Initial intake is currently handled in two stages. First, an Administrative Assistant obtains demographic and background information regarding a client; the client is then referred to a Case Manager for additional intake-related activity. LAP Case managers prepare an LAP Evaluation Plan for clients during the intake interview. Subsequent to consideration by the Evaluation Committee, a Participation Plan is completed.

**RECOMMENDATION: *Combine processes and forms for LAP intake, interviews, and program plans.*** Move manual process to automated actions. Program administrative and clerical support functions should be evaluated to determine which are best conducted by the Case Managers, which are best conducted by the Program Coordinator, and which are best conducted by the Administrative Assistant.

In addition, technological solutions are needed. For example, a quality assurance report should be developed in LAPIS in which cases with approaching or elapsed deadlines are automatically flagged for action by the Case Manager.

**OBSERVATION: *Committee Structure.*** The Evaluation Committee has served as the LAP review and approval entity. Staff report that the Evaluation Committee provides a needed level of seriousness to LAP; a significant amount of time and effort is needed to prepare materials for the Committee accordingly, an effort shared by the LAP Director, Case Managers, Program Coordinator, Administrative Assistant, and contract clinical consultant. It is unclear what concrete impact the work of the Evaluation Committee has on individual participant plans or outcomes.

**RECOMMENDATION: *A thorough review should be conducted of the use of the Evaluation Committee, to determine if it needed as a review entity, or whether it can be eliminated, including:***

- Assessment of whether the time and preparation activity required to support it justifies its use and demonstrates a return on investment for program operations;

- To what degree it performs a role of review and monitoring support for program participants;
- The need to have the Committee provide a level of gravity and seriousness to approval for program participation;
- The degree to which it is following clear policies and objectives; and
- The level to which the Evaluation Committee has any direct ownership or responsibility for participant outcomes.

Data on the number of Evaluation Committee meetings held and the number of cases heard at each meeting should be tabulated and published along with the number of cases with sufficient information for program conclusion and the number of cases in which the Evaluation Committee requested or required further action by a) the program participant, b) the Case Manager, or c) some other requested follow up.

**OBSERVATION: *Data Collection and Reporting.*** The current set of metrics used by the LAP is a useful beginning however additional work in this area is needed.

**RECOMMENDATION: *Data Collection and Reporting.***

- Specific case issues should be tracked, including the reasons for referral (substance, mental health, crisis), the numbers of incoming calls to the LAP phone lines, the sources of referral to LAP (voluntary-Bar member, voluntary-Bar applicant, SBC ordered, CBX referred) senior or elder lawyer needs, needs by active/inactive/suspended status, and the number of cases assigned to each case manager and to any contract case management staff, as well as any additional categories related to client needs identified by staff.
- Performance targets for task completion should be developed (e.g., case manager return call to applicant within one hour, conduct of face-to-face intake meeting within one week, referral to weekly support meeting with participant attendance within one week of intake meeting).
- Information on outreach activities should be documented and published (e.g., presentations and briefings for parties external to the Bar) to include the number of events, the audiences, and the nature of inquiries and topics discussed.

**RECOMMENDATION: *Improve payment compliance.*** Attentiveness to financial assistance program payment compliance should be increased through a quality assurance program to run reports on cases either coming due or with upcoming payment deadlines.

## OFFICE OF PROBATION

### *Functions and Responsibilities*

The Office of Probation's (OP) primary responsibility is to monitor respondent attorneys' compliance with court-ordered or agreement-supported conditions of probation. Fulfilling this responsibility is beneficial to the public and to the attorneys. Through probation, respondents are given an opportunity to keep their license to practice law while improving their knowledge and skills in how to professionally practice. Under probation, respondents in need of various types of treatment are required to obtain that care. Complaining witnesses entitled to restitution and protected legal rights have an opportunity to be made whole as respondents adhere to probation conditions.

Disciplined attorneys are required to comply with probation conditions set by the Supreme Court and the SBC. Probation conditions are generally set in accordance with Supreme Court findings associated with Rule 9.20 of the California Rules of Court under which attorneys are suspended, disbarred, or allowed to resign. In addition, the OP monitors attorney compliance with Agreements in Lieu of Discipline and conditions established through the Alternative Discipline Program. Pursuant to Rules of Procedure 5.380-5.388, the OP can initiate probation revocation motions and probation modification requests subject to SBC approval.

### *The Current Process*

The terms and conditions of probation for respondent attorneys are determined by the Supreme Court or by Supreme Court-authorized actions of the SBC. Court orders are forwarded to the OP on a daily basis from which probation cases are established. OP cases may also be established by stipulation and contractual agreements through the Alternative Discipline Program and Agreements in Lieu of Discipline.

The administrative assistant for the OP enters initial case opening information into the AS 400 CMS and creates a paper file for each respondent attorney. OP cases are assigned to probation deputies (PDs) based on the first letter of the respondent's last name. PDs carry an average caseload of 160 to 175 cases. PDs are also referred to as probation monitors in various court orders and probation related documents.

Attorneys subject to discipline requirements are required to self-regulate their compliance with the conditions of probation. As stated in the conditions, respondents must report their compliance progress on a quarterly basis. Within 30 days from the effective date of discipline, respondents are required to contact the OP.

PDs schedule the initial probation meeting with the respondent as soon as possible after the initial contact is made and all probation condition documents have been received. PDs meet with

the respondent either in person or via telephone. When the respondent and PD meet, the importance of complying with probation conditions is discussed along with the requirement to submit quarterly reports with proof of compliance, when required. Proof of compliance is generally provided in the form of a receipt, verification of attendance, or some other official documentation stating the respondent has complied with a particular condition.

There are standard probation conditions for which respondents must prove compliance. Other conditions are based on the individual actions and violations for which the respondent was disciplined. As sworn court officers of the State of California, attorneys must, under the penalty of perjury, prove their compliance with all conditions of probation. Conditions may include participation in substance abuse testing; mental health treatment; payment of restitution; and participation in professional education classes dealing with ethics, professional conduct, law office management, client and/or trust account management; meeting MCLE requirements, and passing the Multistate Professional Responsibility Examination. Respondents are responsible for all associated costs of complying with probation conditions.

There is no supervision or monitoring fee charged to the respondent. PDs do not, as a rule, conduct field work monitoring. All contact with the respondent is either in the office, over the phone, or through written correspondence.

Throughout the period of probation, the PD monitors the compliance level of the respondent. When necessary, PDs may contact other State Bar offices involved with the respondent and discuss the respondent's efforts related to probation condition compliance. Collaborative contacts are often initiated with OCTC, LAP, MRC, SBC, and CSF.

As monitoring checkpoints, PDs contact service, treatment, or testing providers along with agencies or individuals conducting continuing education classes in which the respondent has reported participation or attendance. Release certificates for respondent information are often required. PDs may also contact complaining witnesses (CW) particularly when there is a question regarding restitution payments. Because respondents are required to make restitution payments directly to CWs, PDs may assist respondents in locating CWs.

A respondent, under penalty of perjury, must submit to the OP a written quarterly report on specific dates as set forth in the conditions of probation. It is the responsibility of the PD to review the reports and to determine any areas of non-compliance or questionable compliance for which additional proof may be required. Issues of questionable compliance are reviewed with the Senior Deputy Trial Counsel (SA).<sup>28</sup>

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<sup>28</sup> The Office of Probation is managed by a DTC position originally located in OCTC.

As a quality assurance measure, the SA pulls ten percent of the open case files on a monthly basis and reviews quarterly reports along with the CMS actions logged by the PD assigned to the case. Should a respondent demonstrate non-compliance with his or her conditions of probation, the PD will review the matter with the SA and send a non-compliance letter to the respondent. Should the respondent fail to address the issue of non-compliance, the SA will contact the OCTC Enforcement Unit. The Enforcement Unit may elect to file a new disciplinary case against the respondent or may advise the OP to file a motion to revoke probation.

Depending on the seriousness of the complaint for which discipline was determined necessary, a period of probation can generally last from one to five years. Cases involving substantial restitution payments may last longer.

PDs and the SA reported that documented procedures exist outlining OP performance expectations. Staff also reported that regularly scheduled meetings occur in which ideas are discussed that could improve the overall monitoring efforts of the OP.

#### *Organization, Workload and Resources*

The OP is organizationally associated with the SBC, but is operationally independent of the SBC. Overall management of the OP is performed by the Chief Administrative Officer/Chief Court Counsel for the SBC. Day-to-day supervision is performed by an assigned SA. The SA directs and supervises the performance of PDs and the administrative staff support employee. In addition, the SA monitors the quality of the overall monitoring process and reviews the daily functions of the office while serving as the OP liaison with other Bar departments.

Daily monitoring for compliance with court ordered or agreement authorized conditions of probation and the review of written compliance reports consume the majority of the typical workday. On average, from 10 to 12 probation revocation motions are filed annually. Should a question of compliance arise, a letter of non-compliance forwarded to the respondent attorney generally resolves the issue.

The Supervising Attorney produces a monthly report indicating the number of cases currently in inventory, the number of cases filed by source, and the number of cases closed. The report is reviewed by the Chief Administrative Officer/Chief Court Counsel for the SBC who subsequently reviews the report with the Board of Trustees' Regulation and Discipline Oversight Committee.<sup>29</sup>

The following table provides data from year-end reports for 2015 and 2014, which indicate a level workload for each year.

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<sup>29</sup> Source: Monthly Statistical Reports provided by the Office of Probation

**Office of Probation Caseloads**

	2015		2014	
	Opened	Closed	Opened	Closed
Rule 9.20 <sup>30</sup>	714	681	713	704
Alternative Discipline Program	11	15	17	16
Agreements in Lieu of Discipline <sup>31</sup>	57	53	55	30
Probation/Suspension	247	231	244	293
Reproval	59	60	60	62
Other	1	2	3	4
<b>Total</b>	<b>1,089</b>	<b>1,042</b>	<b>1,092</b>	<b>1,109</b>

- The SA reported that it may take up to three weeks to receive all documents related to court orders and discipline agreements. The objective of the OP is to have the probation case entered into the CMS and catalogued in a paper file within three weeks of the date of ordered discipline or agreement. The SA stated that this objective is achieved in 80 percent of probation cases.
- One hundred percent of new cases are reviewed by the SA and discussed with the assigned PD.
- Respondents routinely contact the OP within the prescribed 30 days of the effective date of the discipline and schedule a meeting with the assigned PD.
- Prior to the closure of a probation case, the SA reviews the probation file for any final compliance need of the respondent. Unresolved compliance issues may be justification for extension of probation.

*Current Staffing Levels*

The OP is currently staffed with eight employees. All staffing positions are filled with non-contract full time employees.

**Office of Probation Staff**

Position	No. of Positions
Administrative Assistant II	1
Probation Deputy	6
Senior Attorney	1
<b>TOTAL</b>	<b>8</b>

<sup>30</sup> Rule 9.20 of the California Rules of Court provides that the Supreme Court may order attorneys subject to disbarment, suspension or resignation to: (1) notify clients, co-counsel, opposing counsel and tribunals of their disqualification to practice law as of the effective date; (2) return to clients any papers, property and unearned fees; and (3) file with the Bar proof of compliance with this rule.

<sup>31</sup> Agreements in lieu of discipline frequently include probationary requirements, which are monitored by OP.

Of the eight OP staff responses to the Workforce Staff Survey statement “Staffing levels for my area of responsibility are appropriate,” one responded “yes” and seven responded “no.” Workforce Staff Survey responses of OP staff cite the need for at least one additional Probation Deputy. The Chief Administrative Officer/Chief Court Counsel for the SBC, and the OP SA believe the current staffing level could be adequate with the installation of a new CMS that enables probation monitoring to be more efficient. At this time, there is no recommendation to increase the number of staff for the OP.

## OBSERVATIONS AND RECOMMENDATIONS

**OBSERVATION. *High Caseloads Limits In-depth Monitoring.*** Individual PDs are tasked with monitoring respondent compliance for approximately 170 cases each. In response to the Workforce Staff Survey statement: “I have sufficient on-the-job time to successfully complete my daily responsibilities,” PO staff had the lowest aggregate response score (2.13) of any Bar program area.<sup>32</sup> Staff interviews and discussions confirmed that staff believe they need more time for compliance monitoring.

**RECOMMENDATIONS: *In order to increase time for staff to monitor compliance with probation conditions, particularly in complex cases, or cases in which specific respondents require a higher level of monitoring, the Bar should reduce the overall number of cases subject to monitoring.*** Taking the following steps will assist in reducing caseload numbers:

- Eliminate the requirement to monitor attorneys whose resignations have been approved by the California Supreme Court.

Once resigned from the Bar, a former attorney is no longer allowed to practice law. Should an attorney request reinstatement, any pending disciplinary action at the time of resignation should be reviewed.

- Eliminate the requirement to monitor compliance with agreements for attorneys who do not have pending disciplinary charges.

Monitoring the conduct of attorneys who are not subject to probation conditions should not be a responsibility of the OP.

- Assign a level of seriousness to each case (e.g. low-level discipline, mid-level discipline, complex high-level discipline) and align the amount and time of monitoring with that level. By devoting less monitoring time to lower level discipline cases, more time will be available to monitor more complex and serious cases. Monitoring levels should correspond with the level discipline imposed by the SBC.

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<sup>32</sup> The average score across all program areas was 3.20.

- Develop a monitoring compliance policy that allows for reduced monitoring based on compliance success. As a recognized evidence-based business practice, probation departments often use a reduction in the need to provide compliance reports and compliance proof as an incentive for consistent successful compliance. In addition to these steps to reduce caseloads, the OP should transition to a process where case assignments are based on level of seriousness of the case and the corresponding level of monitoring required. Equalizing the assignment of complex cases or cases involving recalcitrant respondents would assist PDs in managing other case monitoring tasks, and may allow them to begin actual field-work, as appropriate. Knowing the number of complex type cases could also lead to consideration of other assignment options as currently being recommended for the LAP.<sup>33</sup>

**OBSERVATION. *Use of Technology.*** As reported by OP staff, the OP heavily relies on paper records and files. Utilizing electronic tools would modernize the monitoring process of the OP and assist PDs in daily records monitoring. The increased use of technology would also assist attorney respondents by allowing a greater opportunity to electronically communicate and correspond with DPs.

**RECOMMENDATION: *Increase the use of technology in the daily use of electronic records and the need to correspond with respondents.*** In particular:

- The CMS should be upgraded to better support the services of OP and its staff. Use of an updated CMS will provide electronic access to increased information beneficial in creating metric and workload reports. Business decisions can be evidence-based through the convenient use of electronic records tracking. Case assignments could be automated ensuring an equalized assignment of a variety of cases.
- An electronic monitoring portal, through which respondents and PDs can communicate in a secure electronic environment, should be developed. Having such a communication tool would allow important correspondence to quickly pass between respondent and PD. Lengthy reports could be electronically sent, stored, and easily reviewed as an electronic probation record. Reminder notices and questions related to proof of compliance would be provided and addressed in a timely manner. The portal can be developed as part of the upgraded CMS.
- An online or portal capacity, through which treatment and continuing education providers can electronically report the participation of respondents, should be developed. Utilizing this portal, service providers could be asked to efficiently provide proof of compliance, thereby reducing the time and need for contact by a PD questioning compliance.

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<sup>33</sup> OP is working with the SBC to develop a system for early notification of violations, to allow the SBC to modify probation requirements, as appropriate. Attorneys may petition the SBC for early termination of probation upon satisfaction of probation conditions.

Electronic compliance histories could be established and archived for possible future use, if required.

- The use of social media should be tested to remind respondents of the need to comply or provide report information.
- Paper PO records and case files should be converted to electronic records and files as soon as possible. Modern records management practices are best achieved through the use of electronic case files. Access is quicker, easily updated, and much easier to store.

**OBSERVATION. *Need for Exchange of Information.*** PO records need to be shared with other Bar Departments and units. Likewise, the OP needs to have access to other records within the Bar that will assist with daily monitoring responsibilities.

**RECOMMENDATION: *OP staff should be provided electronic monitoring and investigation access to court records, OCTC investigation records, and people-finding software.*** Having this level of access will reduce monitoring time that is often spent in records searches or investigation efforts to obtain information readily available through other Bar resources and online programs.

**RECOMMENDATION: *Discussions with the SBC should be held to determine how best to share information needed by either SBC or the OP.*** Whenever possible, the easiest way to share information is through electronic access and electronic communicate. Discussions with the SBC involving the use of such methods of sharing information would be mutually beneficial.

**OBSERVATION. *Management and Supervision of the Office of Probation.*** The section of this report discussing the LAP includes the recommendation that there should be one overall manager for monitoring activities by both LAP and OP staff. That recommendation is reaffirmed here. The OP is currently managed by a Senior Trial Counsel repurposed from OCTC, rather than a Supervising Probation Deputy. This position currently spends a significant amount of time reviewing the work of PD's. A pattern of routine errors suggests training and performance management needs; supervisors should not routinely spend substantial amounts of time auditing the work product of subordinate staff.

**RECOMMENDATION: *The OP SA position should be converted to a Supervising Probation Deputy.*** The current SA position should be reassigned to an OCTC intake or enforcement team.

**RECOMMENDATION: *In conjunction with management recommendation in the LAP section, a a manager position should be established with the responsibility for managing both OP and LAP.*** Management duties shared between the two departments would result in personnel savings as well as efficiencies of scale in high level oversight of compliance monitoring. Probation conditions may include active participation in LAP sponsored programs and treatment services

resulting in a level of shared monitoring for specific cases. Centralized management may lead to more opportunities to have a form of centralized monitoring.

**OBSERVATION. *Measurements of Compliance and Effectiveness.*** Use of metrics associated with OP process objectives appears limited. Adding the measuring methods discussed in the following recommendations may assist with determining the overall success of current monitoring methods and practices. Having such information will assist with daily monitoring and management duties and complies with the elements of evidence based decision making.

**RECOMMENDATIONS: *Tracking the amount of restitution paid to CWs through the efforts of the OP will help measure the benefit of monitoring.*** Restitution payments are extremely important to the victims of disciplined attorneys. Knowing the impact of monitoring payments would be beneficial when considering if improved monitoring techniques are needed.

**RECOMMENDATION: *Survey respondents to determine how monitoring practices could be more beneficial to respondents and CWs.*** Though it may appear antithetical in concept, knowing what respondent attorneys think of OP's monitoring process may lead to improved relations and improved processes.

**RECOMMENDATION: *Track recidivism rates of past respondents to help determine if more effective monitoring methods can be developed.***

**RECOMMENDATION: *PDs should be provided with subpoena authority in order to timely obtain records validating compliance.***

## THE LAWYER ASSISTANCE PROGRAM AND THE OFFICE OF PROBATION

The NCSC has identified similarities in the work that the LAP and the OP perform. Both the LAP and the OP are responsible for assisting and supporting attorneys in their rehabilitation and for enhancing public protection and maintaining the integrity of the legal profession. While LAP participants enter the program voluntarily and OP participants enter the program primarily pursuant to discipline and as mandated by the Court, both the LAP and the OP provide counseling, referrals, and consultation, make arrangements for treatment, and monitor compliance.

### Organization, Workload and Resources

**Comparison – Probation and LAP Operations**

<b>Program Features or Elements</b>	<b>Office of Probation (OP)</b>	<b>LAP</b>
<b>Staffing and Caseload</b>	6 Probation Deputies (grade 7) 960-1,050 cases 160-175 cases/deputy	4 Case Managers (grade 9) 145 active participants 36 cases per case manager
<b>Source of Program Cases</b>	<ul style="list-style-type: none"> <li>• Court Order</li> <li>• Negotiated Agreement</li> </ul>	<ul style="list-style-type: none"> <li>• Self-Referral or Employer Referral</li> <li>• SBC Ordered</li> <li>• CBX Directed</li> <li>• OCTC Referral</li> </ul>
<b>Program Conditions Set By:</b>	<ul style="list-style-type: none"> <li>• Court Order</li> <li>• Negotiated Agreement Terms</li> </ul>	<ul style="list-style-type: none"> <li>• Direct Interview/Interaction with Case Manager</li> <li>• Set by Case Manager; approved by Evaluation Committee</li> </ul>
<b>Program Services</b>	<ul style="list-style-type: none"> <li>• Monitors respondent’s compliance with conditions ordered by the Court or agreed to within OCTC</li> </ul>	<ul style="list-style-type: none"> <li>• Immediate “crisis” referral</li> <li>• Assignment to facilitated group</li> <li>• Referral to Services                             <ul style="list-style-type: none"> <li>○ Mental Health</li> <li>○ Psychiatric</li> <li>○ Medical</li> <li>○ Addiction Treatment</li> <li>○ Substance Testing</li> <li>○ Support Groups</li> </ul> </li> </ul>
<b>Monitoring Conducted By</b>	Probation Deputy, with input and supervision by Supervising Attorney re legal issues, etc.	Case Manager w/input from Group Facilitator
<b>Monitoring Methods</b>	<ul style="list-style-type: none"> <li>• Compliance reports                             <ul style="list-style-type: none"> <li>○ Quarterly for compliance with State Bar Act, Rules of Professional Conduct, probation in underlying criminal matter, etc.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Compliance reports</li> <li>• Group Facilitator Input</li> <li>• Participant quarterly Reporting</li> <li>• Case manager input</li> </ul>

**Comparison – Probation and LAP Operations**

Program Features or Elements	Office of Probation (OP)	LAP
	<ul style="list-style-type: none"> <li>○ Monthly or as ordered for AA meetings, therapy, etc.</li> <li>● No Field Monitoring or Work</li> <li>● Verification with doctors, banks, labs, restitution payees, criminal courts, AA, banks, other Bar departments</li> </ul>	

**Department Head Responsibilities**

Probation Senior Attorney – Grade 17 <sup>34</sup>	LAP Director – Grade 55 <sup>35</sup>
<ul style="list-style-type: none"> <li>● Helps the Senior Director with budget issues and expenses</li> <li>● Reviews time cards to include leave taken</li> <li>● Reviews overtime</li> <li>● Audits a 10% sample of PD files each month</li> <li>● Handles facility issues</li> <li>● Does occasional department plan review</li> <li>● Coordinates with other departments – SBC, OCTC, MRC, OGC etc.</li> <li>● Trains new staff</li> <li>● Works with IT</li> <li>● Does performance evaluations</li> <li>● Maintains documents in hard copy and electronically related to case progress and office operations (shared drive with PDs)</li> <li>● Creates monthly and annual reports</li> <li>● Reviews new and to-be closed cases</li> <li>● Reviews or creates respondent correspondence</li> <li>● Prepares motions related to amended probation conditions and revocations</li> <li>● Reviews PDs activity notes in AS 400</li> <li>● Handles complaints about PDs</li> <li>● Maintains probation manual</li> <li>● Meets with staff to discuss methods by which the OP can improve</li> <li>● Assigns new cases and directs PDs</li> <li>● Sets priorities for the office</li> </ul>	<ul style="list-style-type: none"> <li>● Serves under direction of Sr. Director</li> <li>● Serves as member of Bar Executive Staff</li> <li>● Directs and manages the boards, commissions, committees, contractors, experts and others associated with LAP</li> <li>● Maintains effective working relationships with external constituencies</li> <li>● Administers the LAP Oversight Committee</li> <li>● Assists in budget preparation</li> <li>● Develops and maintains funding sources for LAP programs</li> <li>● Manages and directs LAP resources and operations</li> <li>● Plans, organizes, directs the LAP</li> <li>● Supervises, hires, and terminates assigned staff</li> <li>● Conducts reviews of LAP staff</li> <li>● Manages and directs administrative staff support</li> <li>● Develops and implements policies, procedures, plans for LAP operations</li> <li>● Formulates and implements short-term and long term goals for LAP efficiency and efficacy</li> <li>● Initiates inter-office projects, programs and activities</li> <li>● Provides clinical and policy guidance and staff assistance to Board of Trustees, LAP Oversight Committee, facilitators, and staff</li> </ul>

<sup>34</sup> Based on interview alone as this position is filled by a G17 Senior Attorney, which is not a PO-specific classification.

<sup>35</sup> Based on job description.

While the two units perform different types of assessment and monitoring activities, there is a significant level of similarity to the work as well as to the job duties of the individuals responsible for unit management; this nexus suggests that better coordination and integration of the units could lead to efficiencies, including improved distribution of work across a combined group of staff.

As noted in the respective separate LAP and OP chapters of this report, recommendations applicable to both units include:

- Establishment of Supervising Case Manager and Supervising Probation Deputy positions;
- Elimination of Director of LAP position;
- Transfer of Senior Attorney position from OP to OCTC; and
- Establishment of a Manager position responsible for both LAP and OP.

**Once LAP and OP are integrated, the Bar should:**

- Determine appropriate caseload levels for Case Managers and Probation Deputies;
  - Does the variance in the work support the significant differences in current per FTE caseload levels?
- Determine whether the nature of the work of the two units supports the continuation of a two grade level variance between Case Managers and PD's;
- Determine how and whether workload can be shared across Case Manager, Probation Deputy and support staff, such that some staff support both units' activities;
- Create standard and parallel monitoring protocols and check lists for both OP and LAP to include standard periodic reporting, electronic compliance report submittal;
- Determine whether field monitoring responsibilities should be added to PD duties to increase levels of oversight for high-need or high-risk clients;
- Assess the current use of evidence based assessment and supervision (or lack thereof) in both units. Evidence based management (or supervision) refers to the use of data, metrics and statistics to make evaluative, risk based and treatment decisions. The Bar should take immediate actions to implement evidence based practices. This will entail expanding upon current evaluation techniques, and creating new protocols to assess client, probationer, and program participants. The Bar should consider adopting techniques also used in drug court operations:<sup>36</sup>
  - Complementary array and provision of treatment and services;
  - Comprehensive use of substance testing and monitoring;
  - Responsive supervision and the use of sanctions and rewards;
  - Use of a multidisciplinary teams; and
  - Processes for ongoing review, monitoring and evaluation (to include intermediate "check points").

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<sup>36</sup> From *Adult Drug Court Best Practices, Volume II*, National Association of Drug Court Professionals, 2015.