



# The State Bar of California

---

## **OPEN SESSION AGENDA ITEM 5.10 JULY 2024 BOARD OF TRUSTEES**

**DATE:** July 18, 2024

**TO:** Members, Board of Trustees

**FROM:** Melanie J. Lawrence, Program Director, Office of Professional Support & Client Protection  
Michelle Harmon, Program Supervisor, Office of Professional Support & Client Protection

**SUBJECT:** Proposed Amendments to Rules of the State Bar Regarding the Lawyer Assistance Program: Request to Circulate for Public Comment

---

### **EXECUTIVE SUMMARY**

This agenda item requests the Board's approval to release for a 60-day public comment period, proposed amendments to the existing State Bar Rules governing the Lawyer Assistance Program, Title 3, Division 2, Chapter 5, Rule 3.240–Rule 3.252.

The proposed draft changes are meant to reflect the programs and services the Lawyer Assistance Program actually provides, simplify and ensure the rules are consistent with the authorizing statutes (Business and Professions Code sections 6230 et seq), and change the form of financial assistance available to monitored participants from a loan to a grant.

---

### **RECOMMENDED ACTION**

Passage of a resolution directing staff to make available for public comment for a period of 60-days, the draft changes to the existing State Bar Rules governing the Lawyer Assistance Program, as set forth in Attachments A and B.

### **DISCUSSION**

The Lawyer Assistance Program Oversight Committee under Business and Professions Code section 6231(c) has authority to adopt reasonable rules and regulations to implement and operate the "Attorney Diversion and Assistance Program" (the relevant portion of which is

known as the Lawyer Assistance Program, hereinafter LAP), subject to the approval of the Board of Trustees. The committee established a working group to review the current iteration of the rules and to make recommendations to redraft the rules in order to reflect the programs and services LAP actually provides, to simplify and ensure the rules are consistent with the authorizing statutes, and to change the form of financial assistance provided to qualifying participants of the monitored program from a loan to a grant.

On May 31, 2024, the committee voted to recommend to the Board of Trustees proposed amendments to the rules and that the proposed amendments be placed on the July 2024 Board of Trustees' meeting agenda and circulated for public comment.

**Proposed amendments to Rule 3.240 (Lawyer Assistance Program)**

The proposed amendments simplify the rule and set forth the authority under which LAP is established (Business and Professions Code sections 6230 et seq).

**Proposed amendments to Rule 3.241 (Definitions)**

The proposed amendments create definitions for key terms used throughout the rules and eliminates language already governed by statute. Further, the language setting forth how the Board appoints a chair and vice-chair is moved to rule 3.242, which as proposed, discusses the committee itself.

**Proposed amendments to Rule 3.242 (Lawyer Assistance Program Oversight Committee)**

The proposed amendments eliminate language that is unnecessary, redundant, or outdated because the requirements or authority is reflected in other rules or statutes and instead focus the rule on the authority given to the committee by statute and moves how the Board appoints a chair and vice-chair from existing rule 3.241.

**Proposed amendments to Rule 3.243 (Confidentiality)**

The proposed amendments clarify that a participant can waive confidentiality to limited information by signing a waiver provided by LAP.

**Proposed amendments to Rule 3.244 (Monitored LAP)**

The proposed amendments clarify who is eligible to participate in the Monitored LAP, broadly what services are provided in Monitored LAP, that the committee will establish minimum requirements to successfully complete Monitored LAP that will be available to participants upon enrollment, and when a participant may be terminated from Monitored LAP.

**Proposed repeal of Rules 3.245 and 3.246 (Orientation and Assessment, Application)**

The proposed amendments would repeal these two rules to align with the processes reflected in the new proposed rules 3.244 and 3.245, addressing Monitored LAP and Support Services LAP, respectively.

**Proposed amendments to Rule 3.247 (renumbered to Rule 3.245) (Support Services LAP)**

The proposed amendments serve to streamline the rules related to Support Services LAP.

**Proposed repeal of Rules 3.248 - 3.250 (Monitored LAP, Completion of LAP)**

The proposed amendments would repeal these two rules as relevant portions are incorporated into proposed rule 3.244.

**Proposed amendments to Rule 3.251 (renumbered to Rule 3.246) (Costs and Fees)**

Minor changes to this rule are sought to incorporate the term “Eligible Participant” — a term which is defined in the newly proposed rule 3.241.

**Proposed amendments to Rule 3.252 (renumbered to 3.247) (Financial Assistance)**

The most significant amendments proposed to this rule are to change the form of financial assistance available to participants of Monitored LAP from a loan to a grant.

In 2023, the committee established a working group to consider the criteria being used to determine eligibility for financial assistance, the repayment rate, and concerns some stakeholders had raised about cost being a potential barrier to participation.

Business and Professions Code section 6235 allows the State Bar to use funds collected pursuant to Business and Professions Code section 6140.9 for the Attorney Diversion and Assistance Program for treatment and recovery services for participants who demonstrate an inability to pay. The funding for financial assistance is to be drawn exclusively from the ten-dollar (\$10) fee paid by each active licensee under Business and Professions Code section 6140.9. There is nothing in the statute that directs the form of the assistance. One limitation is that the amount of funding allocated for the purpose of providing financial assistance shall not be allowed to compromise the financial needs of effectively administering the program (Business and Professions Code section 6235(b)(3)).

Historically, financial assistance is given to eligible participants generally to cover up to one year of LAP group expenses and one year of laboratory testing expenses. It is estimated that the total amount that would be granted to an individual would be a maximum of approximately \$7,500. In 2022 there were fewer than 10 people who were approved for a full year of financial assistance. Based on that number, grants to eligible participants for one year could cost the program up to an estimated maximum total of \$75,000 per year.

Historically the rate of loan repayments has been low, and LAP currently carries an outstanding debt of about \$2 million from financial assistance loans since the inception of the program approximately twenty-two years ago. Approximately \$288,000 has been repaid over the years. Thus, while the assistance is termed a “loan” in the rules, effectively, the loan assistance has taken the form of a grant in many instances, over time. Further, the State Bar does not have statutory authority to collect on this debt or to send it to the Franchise Tax Board as it does with other matters such as disciplinary cost recovery or reimbursements to the Client Security Fund. As a result of these considerations, the committee endorsed changing the form of the assistance from a loan to a grant.

The proposed amendments also strike the loan financial eligibility guidelines and instead state that the committee will establish grant eligibility criteria that will be publicly available on the

State Bar website. This will allow the committee more flexibility to change the guidelines as appropriate, whether to keep pace with economic indicators, such as federal poverty guidelines, or if the assistance jeopardizes the administration of LAP generally.

## **PREVIOUS ACTION**

- May 31, 2024, LAP Oversight Committee meeting, Working Group, [Recommendation for LAP Rule Changes](#).
- December 8, 2023, LAP Oversight Committee meeting, [Memo](#) from Financial Assistance Working Group.

## **FISCAL/PERSONNEL IMPACT**

Changing the form of financial assistance, as proposed, from a loan to a grant is likely to have a negligible impact given the historically low rate of repayment of loan assistance. The total annual revenue budgeted for 2024 is \$2.249 million and the estimated year-end reserve level is 8 percent. While this is below the 17 percent minimum target reserve level, the proposed amendments, which would not be effective until 2025, do require the Committee to periodically review the eligibility guidelines and to ensure, as required by the statute, that the assistance program not compromise the financial needs of effectively administering the program.

## **AMENDMENTS TO RULES**

Title 3, Division 2, Chapter 5

## **AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL**

None

## **STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS**

Goal 3. Protect the Public by Regulating the Legal Profession

- b. 3. Provide effective support for attorneys experiencing practice management and other challenges that affect competency.

## **RESOLUTIONS**

**Should the Board of Trustees sitting as the Regulation and Discipline Committee concur, it is:**

**RESOLVED**, that the Board of Trustees sitting as the Regulation and Discipline Committee authorizes staff to make available for public comment for a period of 60 days the proposed revisions to Title 3, Division 2, Chapter 5 of the State Bar Rules as provided in Attachment A (clean) and Attachment B (redline); and it is

**FURTHER RESOLVED**, that this authorization for release of public comment is not, and shall not be construed as, a statement or recommendation of approval of the proposed revised rules.

#### **ATTACHMENTS LIST**

- A.** Proposed Rules of the State Bar, Title 3, Division 2, Chapter 5 (clean version)
- B.** Proposed Rules of the State Bar, Title 3, Division 2, Chapter 5 (redline version)