

**AMERICAN BAR ASSOCIATION  
COMMISSION ON LAWYER ASSISTANCE PROGRAMS  
COMMISSION ON MENTAL & PHYSICAL DISABILITY LAW  
STANDING COMMITTEE ON SUBSTANCE ABUSE**

**MODEL LAWYER ASSISTANCE PROGRAM  
ADOPTED BY THE ABA HOUSE OF DELEGATES - FEBRUARY 2004**

**RULE 1. ESTABLISHMENT OF LAWYER ASSISTANCE PROGRAM**

- A. *Establishment.* The [state's highest court] [bar association] hereby establishes a state-wide lawyer assistance program (LAP) that will provide immediate and continuing help to lawyers, judges and law students, or the legal community as defined by the LAP, who are affected by any physical or mental health conditions that affect their competent practice of their profession, quality of life, or study of law.
- B. *Purpose.* The LAP has four primary purposes:
1. to assist lawyers, judges, and law students, or the legal community as defined by the LAP, in pursuing their recovery from chemical dependency or abuse, mental health, or physical issues;
  2. to protect the interests of clients from harm that might result from lawyers impaired by substance abuse or dependency, physical, or mental health conditions;
  3. to educate the bench, bar, and law school community about the issues and concerns that negatively affect the legal profession; and
  4. to develop programs that emphasize prevention of conditions that might negatively affect legal professionals or law students.
- C. *Funding.* The [state's highest court] [bar association] should insure stable and continual funding, either from dues or assessments of the bar generally. Appropriate accounting of all funds is essential.<sup>1</sup>

**RULE 2. GOVERNING BODY**

- A. *Members.* The [state's highest court] [bar association] should appoint the members of a governing body to administer or provide advice regarding the management of the lawyer assistance program. A chair of the governing body should be selected by the creating agency or the members of the governing body, as the case may be.
- B. *Composition.* The members of the governing body should be chosen on the basis of geographic convenience and size of the state bar. They should have diverse experience, knowledge, and demonstrated competence in the areas of substance abuse and mental health issues, as well as those other issues that may negatively

affect the quality of life and practice of legal professionals. A percentage of the members of the governing body may be non-lawyers who are experienced in the fields of addictionology and/or mental health disorders.

- C. *Terms.* Members of the governing body should be appointed on a staggered basis so that the number of terms expiring will be approximately the same each year.
- D. *Duties.* The members of the governing body should have the following powers and duties:
  - 1. Establishing the LAP's policy and procedures and providing ongoing advice regarding the same.
  - 2. General administrative and management responsibility to operate the program to achieve its purpose and goals.
  - 3. Responsibility to hire and fire the LAP director and review the budget prepared by the LAP staff. In the event the LAP director is an employee of the state bar or other entity, the members of the governing body shall consult with such entity with respect to the individual to be employed, as well as in regard to budgetary matters.
  - 4. The duties listed under Rule 3C would be assumed by the members of the governing body in the absence of a director of the program.
- E. *Meetings.* The governing body should meet on a periodic basis or upon call of the chair with adequate notice to all members. The actions of the governing body should be in compliance with these regulations, the by-laws of the governing body or the creating entity, applicable state or federal law, and the rules of discipline of the state bar.
- F. *Quorum.* A majority of the members of the governing body must be present to constitute a quorum at any meeting. The governing body acts on a majority vote of members in attendance at any meeting where a quorum is present.<sup>2</sup>

### **RULE 3. DIRECTOR OF THE PROGRAM**

- A. *Appointment/Hire.* The governing body shall have the responsibility of hiring a director. In the event the director is an employee of the state bar or other entity, the governing body shall participate in the selection and hiring of the director.
- B. *Qualifications.* The director should be either a person with experience in attorney impairment, quality of life issues, and recovery, or a qualified health care professional with addiction and mental health treatment experience. In either case, the director should have sufficient experience and training to enable him/her to identify and assist lawyers, judges, and law students affected by the conditions described in Paragraph 1A above, as well as sufficient administrative expertise to competently manage a human services organization.

- C. *Duties and Responsibility.* The director's job will require that he/she:
1. Provide initial response to most help line calls.
  2. Help lawyers, judges, law firms, law schools, and courts to identify and intervene with impaired lawyers, judges, and law students.
  3. Furnish members of the legal community and their families with information regarding resources available to provide counseling and treatment for chemical dependency, mental health disorders, and other disabilities, including those available without charge as well as paid services.
  4. Establish and maintain cooperative relationships with the state's disciplinary agency, bar examiners, courts, law schools, and other bar agencies and committees that serve either as sources of referral or resources in providing help.
  5. Establish and oversee monitoring services pursuant to the policies and procedures of the ABA Model Monitoring Program.
  6. Develop and present educational programs for the legal community (including law schools) with respect to the sources of potential lawyer impairment, including quality of life issues, as well as treatment and preventative measures.
  7. Develop and implement marketing materials and strategies to inform the bar, the courts, law schools, and the families of legal professionals about the types of mental health, substance abuse, and other problems confronting the legal profession, as well as the availability of LAP services.
  8. Recruit, select, and train lawyer, health care, and other volunteers.
  9. Develop job descriptions for LAP staff personnel, and hire, train, and assess such individuals, including clinicians, assistants, and office personnel, as budgetary considerations allow.
  10. In appropriate situations, i.e. where no issue of confidentiality exists, appear at bar disciplinary, court, or bar admission proceedings to provide testimony regarding a legal professional's progress or lack of progress in recovery.<sup>3</sup>

**RULE 4. VOLUNTEERS**

- A. The governing body shall enlist and utilize volunteer peer counselors whose work may include:
1. assisting in interventions planned by the LAP;
  2. acting as a local contact for legal professionals seeking help from the LAP;
  3. acting as recovery mentors;
  4. acting as monitors for attorneys under LAP rehabilitation contracts;
  5. providing testimony related to recovery for the impaired lawyer at the request of the lawyer; and

6. appearing at seminars and presentations on behalf of the LAP at law schools, courts and bar organizations.<sup>4</sup>

## **RULE 5. SERVICES PROVIDED BY THE LAWYER ASSISTANCE PROGRAM**

- A. The Lawyer Assistance Program may provide the following services through its director, staff, and volunteers:
  1. Provide immediate and continuing help to lawyers, law students, and judges who are affected by any physical or mental health conditions that impact upon their quality of life, competent practice of their profession, or study of law. The LAP should endeavor to provide these services at minimal or no cost. Such services may include, without limitation:
    - a. Mental health and/or substance abuse counseling by appropriately trained and credentialed members of the LAP staff;
    - b. Sponsoring and maintaining substance abuse and facilitated mental health legal support meetings;
    - c. Assessing and listing qualified programs for substance abuse or mental health treatment of affected legal professionals;
    - d. Performing assessment and referral services for affected legal professionals, and;
    - e. Seek to assure the quality and accountability of services rendered by those professional clinicians to whom the LAP refers legal professionals
  2. Plan and present educational programs to:
    - a. increase the awareness and understanding of members of the bench, bar, law schools, and general public about problems of substance abuse and dependence, mental health disorders, and quality of life issues affecting the legal profession;
    - b. enable members of the profession to identify these issues in their own lives and those of their colleagues;
    - c. reduce the stigma associated with substance abuse and mental health disorders;
    - d. teach appropriate methodology to interact with and assist affected individuals, and;
    - e. increase awareness in and outside the legal profession of resources available to treat these conditions.
  3. In appropriate circumstances, to provide evaluation, intervention, treatment referral, and monitoring of bar applicants, law students, judges, lawyers, including lawyers or bar applicants who have been ordered by a court, the state bar, or bar admissions to participate in the LAP.<sup>5</sup>

## **RULE 6. REFERRALS**

- A. *Self-referral.* Any lawyer, judge, or law student may voluntarily call the LAP seeking assistance for him or herself.

- B. *Referrals from Third Parties.* Policies and procedures should be developed to accept information and referrals from third parties including, without limitation, other lawyers, judges, law school professors and administrators, family members, and friends.
- C. *Referrals from External Agencies.* Policies and procedures should be developed by the LAP, bar disciplinary agencies, the courts, and the bar admissions entity that will facilitate referrals to the LAP from these agencies.<sup>6</sup>

## **RULE 7. AFTERCARE AND MONITORING**

- A. The LAP may provide aftercare and monitoring services to assist in a LAP participant's recovery and to protect and preserve the integrity of the LAP. Services will include:
  - 1. Assisting the treatment provider in structuring aftercare and discharge planning for legal professionals receiving substance abuse, mental health, or other treatment.
  - 2. Facilitating the legal professional's entry into appropriate aftercare and peer support meetings.
  - 3. Assisting the legal professional in obtaining a primary care physician, therapist, counselor, or psychiatrist.
  - 4. Establishing a random urine screening program.
  - 5. Tracking the legal professional's aftercare, peer support, and twelve step meeting attendance.
  - 6. Helping the legal professional locate LAP volunteers in their geographic area.
  - 7. Providing documentation of compliance by the legal professional to those persons and/or agencies as required.
  - 8. Providing testimony regarding the legal professional's compliance or non-compliance with the requirements of the program.<sup>7</sup>

## **RULE 8. RECORDS**

- A. The LAP should maintain such records as to the names of the participants and the nature of their participation as may be appropriate given the level of confidentiality protection provided by bar rule and/or state statute, except when the lawyer is part of a court or disciplinary referred monitoring program, in which case such records are mandatory.
- B. Actual records, whether hard copy or electronic, should be maintained in a manner to insure access only by individuals authorized to maintain and review such records.<sup>8</sup>

## **RULE 9. CONFIDENTIALITY AND IMMUNITY**

- A. *Confidentiality.* The state's highest court and the state legislature should provide that any person seeking voluntary assistance from the LAP will be guaranteed

confidentiality as to all communications directed to LAP staff, volunteers [counselors], and persons providing information or other assistance, pursuant to Guiding Principle 2, which states, “Appropriate protection should be furnished for the confidentiality of those who seek and provide help through authorized programs.”

- B. *Immunity.* The state’s highest court and the state legislature should arrange for an appropriate form of immunity from civil liability for all persons participating in the LAP, including its volunteers and those making good faith reports of lawyer impairment.<sup>9</sup>

**RULE 10. FACILITY**

- A. The LAP office should be located outside the state bar association building and maintain a toll-free confidential hotline number to which only the LAP staff has access.<sup>10</sup>

**RULE 11. PERIODIC PROGRAM REVIEW**

- A. The lawyer assistance program should be reviewed periodically by the governing body, state bar, or the ABA Commission on Lawyer Assistance Programs.<sup>11</sup>

## Appendix: Commentaries to the Model LAP

1. Paragraph A is a restatement of Principle 1, *Guiding Principles for a Lawyer Assistance Program*, approved by the ABA House of Delegates in February 1991. (“Guiding Principles”) Paragraph B(3) is derived from Guiding Principle 8, which provides that an educational element should be developed to inform the public, the judiciary, the bar, law students and the disciplinary agencies of the assistance that is available for those in need.

A legal professional’s or law student’s performance and quality of life may be negatively affected by physical, mental, or other illnesses, including substance abuse and dependence, pathological gambling and other compulsive disorders, depression, bi-polar disorder, and personality disorders, as well as problems related to family, finances, or other areas.

Lawyers, judges, and law students, at least as often as members of other professions, fail to seek professional help for these problems. Denial plays a role in these problems, especially in the areas of substance abuse and dependence. Identification of and intervention on legal professionals in the early stages of these disorders may be missed due to the lawyer’s, judge’s, or student’s ability perform in a seemingly normal fashion, although at decreasing effectiveness. In many cases, the remedy can be as simple as peer support; others, however, require professional medical or other health care.

Lawyer assistance programs are designed to address these problems in a remedial fashion, as well as to promote educational and preventive programs to minimize their severity in order to improve the quality of lawyers’ lives and to minimize the harm to clients. LAP’s are designed to provide confidential services, including prevention, intervention, evaluation and counseling (both peer and professional), as well as referral to professional help and on-going monitoring.

2. Different states have different legal structures for their programs. Some LAP’s are programs within the framework of their mandatory or voluntary bar associations, while others are independent corporations, either with or without tax exempt status, or are under the umbrella of their court system. The LAP structure will influence the structure of the governing body. The above rule has been drawn broadly in order to assure that the governing body have authority to provide oversight, establish goals and policies, raise funds, advocate for the needs of the program and its clients, and be accountable for fiscal matters.

While it is suggested that members of the governing body be individuals with knowledge and experience in the fields of substance abuse and mental health disorders, it is not imperative that *all* members of the governing body have such qualifications. It is, however, important for the members to believe in and support the mission of the LAP, or to have experience, knowledge and demonstrated competence serving on governing bodies of non-profit corporations or human service agencies, or with raising funds.

3. The position of director is of the highest importance and a qualified person should be carefully selected. Experience has shown that lawyers who have been in active recovery from chemical dependency or a mental health disorder for at least five years may be well suited to serve in such a position, but the Commission in no way suggests limiting the selection to this group, as a number of existing state programs have highly effective non-lawyer directors who are credentialed as employee assistance, mental health, or chemical dependency professionals, to name a few. The primary consideration when hiring a LAP director should be that individual's understanding of and concern for legal professionals who may be dealing with the conditions described in Paragraph 1A above. That individual should have a demonstrated ability to manage and administer a program of the LAP's size, budget, and structure. Consideration must be given by the governing body to the director's salary and benefits in order to assure that qualified individuals will be attracted to the position.

The LAP director should maintain current and varied information concerning qualified and available resources for its clients. Such resources should include local and national community based (sliding scale) and private treatment resources, including, without limitation, self-help support groups, individual therapists and counselors, physicians, hospitals, and free-standing treatment programs.

The Commission believes that one of the most important functions undertaken by the LAP director is to enlist and utilize as many volunteers as possible to assist in a variety of functions for the LAP. Volunteers may be drawn from the recovering and non-recovering legal community, as well as health care professionals knowledgeable in substance abuse and mental health areas.

The LAP director is often the individual primarily responsible for providing testimony before a bar or legal tribunal regarding a client's progress or lack of progress in the program. Such testimony should only be provided where an issue regarding confidentiality does not exist, either by a waiver by the client or an order of the appropriate court. In order for such testimony, and the LAP itself, to be credible, the director must be prepared to discuss a client's failure as readily as a client's success.

While in some jurisdictions, the governing body will select and hire the LAP director and staff members, in many states, the director will have this responsibility. In either case, it is important that job descriptions be drawn with sufficient clarity to insure the hiring and retention of qualified individuals, and that the director be provided with sufficient financial resources to attract such personnel.

4. Volunteer counselors are lawyers, judges, law students, and health care providers who usually are in recovery from chemical dependency, mental health disorders, or other medical problems or have training in the art of counseling and are willing to volunteer their time and assistance to suffering fellow lawyers. These functions are all performed under written guidelines established and drafted by the LAP director. Volunteer activities may include serving as recovery mentors or monitors, assisting with or taking

over the practice of impaired or newly recovering attorneys, or appearing before bar, legislative, and lay entities as examples of successful rehabilitation. Development and maintenance of a strong volunteer network is one of the most important functions of the LAP. To insure quality service and outreach, the LAP should provide periodic training and education to all volunteers regarding LAP guidelines, policies and procedures, monitoring services, applicable state and federal statutes, and bar rules.

5. The services provided by a LAP will vary from state to state, therefore the above described services are suggestive only. In order to perform these functions, the LAP must work cooperatively with state and local bar organizations, courts, disciplinary agencies, bar admission committees, existing lawyer assistance committees, and law schools and other bar and court related organizations. This Model LAP envisions cases in which evaluation, treatment, or monitoring may be required by court order, as a condition of probation or employment, or as a condition of admission to the bar, but providing such services, as well as the decision whether to charge an additional fee for the same, will be dependent upon the structure, character, and philosophy of each individual LAP.
6. Optimally, participation in the LAP will be voluntary, and affected lawyers will be identified and contacted prior to coming to the attention of a disciplinary or judicial entity. There are instances where legal professionals will call the LAP directly to ask for assistance, while at other times the contact will be made by a colleague, judge, family member, or friend. In these instances, the confidential nature of communications with the LAP should be stressed, and the peer assistance nature of the LAP should be emphasized. Voluntary cases may require evaluation, referral to treatment, attendance at attorney support meeting, self-help meetings, or contact by a local volunteer.

In addition to voluntary contacts and if authorized by the LAP's governing body, the program may be used by various referring entities as an evaluation and monitoring agency. Disciplinary agencies and law firms frequently receive complaints that may be the result of impairment problems. With proper educational, identification, and referral procedures in place, many lawyers may be assisted before the need for formal disciplinary proceedings are necessary. As stated in Guiding Principle 7, "Impairment programs and disciplinary agencies should establish and maintain a system for the referral of lawyers with impairment problems to the assistance program."

When a lawyer has asserted a mitigating factor of substance abuse or a mental health disorder in responding to a complaint of misconduct, or it appears to the referring agency that there may be such a problem, the lawyer-respondent may be referred to the LAP or to a LAP certified professional to assess whether such a condition was a contributing factor to the misconduct. In such cases, the referring agency may allow for participation in the LAP in lieu of more severe discipline, as a probationary measure, or as a condition precedent for reinstatement or admission.

The philosophy and mission of LAPs vary from state to state, with some perceiving no conflict in reporting the results of such referrals to the referring agency or providing periodic reports regarding the lawyer's progress or lack thereof, while other LAP's may find such monitoring services to be contrary to their primary purpose. In the event monitoring and reporting services are to be provided, each lawyer who is referred to the LAP must be informed that the LAP is authorized to report to the referring agency and the lawyer will be asked to sign the appropriate release of information forms providing for such disclosure. See diversion mechanism in Model Rules for Lawyer Disciplinary Enforcement, Rule 21F.

Upon entry into the LAP, the individual may be asked to sign a contract incorporating such terms as completion of recommended treatment and aftercare programs, random alcohol and drug testing, participation in support groups, regular contact with a monitor, regular therapy with a counselor, therapist, facilitated support group, or psychiatrist, and contact with the LAP staff.

Unless mandated by the court order imposing discipline, the LAP staff will not have contact with any member of the referring agency with regard to the monitoring of a lawyer (including whether the lawyer has contacted the LAP) unless the lawyer has consented to such disclosure in the appropriate manner. If mandated by court order, the Director shall report to the referring agency if a lawyer fails to adhere to the requirements of the LAP contract and/or the court's disciplinary order.

7. This Rule is derived from Guiding Principle 6, which states, "A program for monitoring attorneys who have been brought to the attention of the disciplinary system as a result of an impairment problem should be maintained with the appropriate disciplinary agency."

The LAP should maintain a list of specialized monitors and maintain a case management file system on each lawyer, judge, or law student being monitored (subject to Rule 8) that should include: the monitoring agreement; medical assessments, monitor's reports, urinalysis results, periodic LAP evaluations, notes, correspondence, etc.

The Monitoring Agreement should include such terms as: consents to disclosure; duration; treatment plan, including meetings to be attended, therapy to be obtained, aftercare or outpatient treatment, and frequency of urinalysis testing; verification of compliance; confidentiality; authorizations; financial responsibilities; revisions; liability; release and indemnification notifications; withdrawal; termination; and provisions of agency. The LAP may recommend revisions to individual monitoring agreements that may include: change of monitor; increased recovery meeting attendance; medical or psychiatric evaluation and treatment; aftercare counseling; urinalysis screens; etc.

8. Various jurisdictions provide different levels of protection of LAP records (see Rule 9). Procedures should be developed by the LAP for record keeping, taking into consideration the level of protection provided by that LAP's jurisdiction. Obviously, the greater the protection, the more comfortable the LAP will be with keeping more detailed records of

its participants. In cases where the lawyer has been sent to the LAP for probation monitoring, records must be kept in compliance with the referring court or agency's requirements.

9. Experience demonstrates that fear of disclosure and discipline keeps many legal professionals and those close to them from seeking help from agencies that may be perceived to be court or bar related. Not only must the LAP guarantee confidentiality, but this aspect of the LAP function also must be widely advertised. The LAP must emphasize that it will not forward any voluntary communications to a disciplinary agency. No voluntary communication between the LAP (or anyone functioning on its behalf) and any bar or court agency will be made unless the LAP client has signed a standard form of release in advance. Sample state confidentiality rules and statutes are available from the ABA Commission on Lawyer Assistance Programs (CoLAP).

Paragraph B is derived from Guiding Principle 3, which states, "Members of the profession who serve in lawyer assistance programs should be immune from civil liability, except for willful or wanton acts." Volunteers who give of their time and efforts to assist legal professionals should not be liable in damages for acts done in good faith. Sample state immunity rules and statutes are available from the ABA Commission on Lawyer Assistance Programs.

10. Experience demonstrates that lawyers, judges and law students may be hesitant about visiting a LAP office located in the state bar building (often where the disciplinary agency is located). If the LAP must be located within the bar facility, it should be in a private area without heavy traffic (and as far from the office of disciplinary counsel as possible), and the director should be prepared to meet some of his or her clients outside the building. Such physical separateness should be maintained in keeping with the program's commitment to confidentiality and anonymity.
11. Guiding Principle 10 states that: "Periodic review of the programs by the bar responsible for its sponsorship is essential to the proper functioning of the program. This review should assure that the programs are effective, are staying current with new developments for handling impaired lawyers and are functioning in accordance with the ABA Guiding Principles and those established locally for the LAP's operation."

The ABA Commission will provide site visits and evaluations of state and local programs, as well as assistance in recommending methods for carrying out the objectives and strategies discussed in this proposal, upon request.