

ATTORNEY DIVERSION AND ASSISTANCE ACT
Business And Professions Code
§§6230-6238

(Added by SB 479 (Burton), Chapter 129, Statutes of 2001;
Amended by AB 1708 (Assm. Judiciary Committee,
Chapter 334, Statutes of 2003)

6230. It is the intent of the Legislature that the State Bar of California seek ways and means to identify and rehabilitate attorneys with impairment due to abuse of drugs or alcohol, or due to mental illness, affecting competency so that attorneys so afflicted may be treated and returned to the practice of law in a manner that will not endanger the public health and safety.

6231. (a) The board shall establish and administer an Attorney Diversion and Assistance Program, and shall establish a committee to oversee the operation of the program. The committee shall be comprised of 12 members who shall be appointed as follows:

- (1) Six members appointed by the Board of Governors, including the following:
 - (A) Two members who are licensed mental health professionals with knowledge and expertise in the identification and treatment of substance abuse and mental illness.
 - (B) One member who is a physician with knowledge and expertise in the identification and treatment of alcoholism and substance abuse.
 - (C) One member of the board of directors of a statewide nonprofit organization established for the purpose of assisting lawyers with alcohol or substance abuse problems, which has been in continuous operation for a minimum of five years.
 - (D) Two members who are attorneys, at least one of which is in recovery and has at least five years of continuous sobriety.
 - (2) Four members appointed by the Governor, including the following:
 - (A) Two members who are attorneys.
 - (B) Two members of the public.
 - (3) One member of the public appointed by the Speaker of the Assembly.
 - (4) One member of the public appointed by the Senate Rules Committee.
- (b) Committee members shall serve terms of four years, and may be reappointed as many times as desired. The board shall stagger the terms of the initial members appointed.

(c) Subject to the approval of the board, the committee may adopt reasonable rules and regulations as may be necessary or advisable for the purpose of implementing and operating the program.

6232. (a) The committee shall establish practices and procedures for the acceptance, denial, completion, or termination of attorneys in the Attorney Diversion and Assistance Program, and may recommend rehabilitative criteria for adoption by the board for acceptance, denial, completion of, or termination from, the program.

(b) An attorney currently under investigation by the State Bar may enter the program in the following ways:

(1) By referral of the Office of the Chief Trial Counsel.

(2) By referral of the State Bar Court following the initiation of a disciplinary proceeding.

(3) Voluntarily, and in accordance with terms and conditions agreed upon by the attorney participant with the Office of the Chief Trial Counsel or upon approval by the State Bar Court, as long as the investigation is based primarily on the self-administration of drugs or alcohol or the illegal possession, prescription, or nonviolent procurement of drugs for self-administration, or on mental illness, and does not involve actual harm to the public or his or her clients. An attorney seeking entry under this paragraph may be required to execute an agreement that violations of this chapter, or other statutes that would otherwise be the basis for discipline, may nevertheless be prosecuted if the attorney is terminated from the program for failure to comply with program requirements.

(c) Neither acceptance into nor participation in the Attorney Diversion and Assistance Program shall relieve the attorney of any lawful duties and obligations otherwise required by any agreements or stipulations with the Office of the Chief Trial Counsel, court orders, or applicable statutes relating to attorney discipline.

(d) An attorney who is not the subject of a current investigation may voluntarily enter, whether by self-referral or referral by a third party, the diversion and assistance program on a confidential basis. Confidentiality pursuant to this subdivision shall be absolute unless waived by the attorney.

6233. An attorney entering the diversion and assistance program pursuant to subdivision (b) of Section 6232 may be enrolled as an inactive member of the State Bar and not be entitled to practice law, or may be required to agree to various practice restrictions, including, where appropriate, restrictions on scope of practice and monetary accounting procedures. Upon the successful completion of the program, those attorney participants on inactive status who complied with any and all conditions of probation shall be eligible for reinstatement to active status and a dismissal of the underlying allegations or a reduction in the recommended discipline. Those attorneys who participated in the program with practice restrictions shall be eligible to have those restrictions removed and to a dismissal of the underlying allegations or a reduction in the recommended discipline.

6234. Any information provided to or obtained by the Attorney Diversion and Assistance Program, or any subcommittee or agent thereof, shall be as follows:

(a) Confidential and this confidentiality shall be absolute unless waived by the attorney.

(b) Exempt from the provisions of Section 6086.1.

(c) Not discoverable or admissible in any civil proceeding without the written consent of the attorney to whom the information pertains.

(d) Not discoverable or admissible in any disciplinary proceeding without the written consent of the attorney to whom the information pertains.

(e) Except with respect to the provisions of subdivision (d) of Section 6232, the limitations on the disclosure and admissibility of information in this section shall not apply to information relating to an attorney's noncooperation with, or unsuccessful completion of, the Attorney Diversion and Assistance Program, or any subcommittee or

agent thereof, or to information otherwise obtained by the Office of the Chief Trial Counsel, by independent means, or from any other lawful source.

6235. (a) Participants in the Attorney Diversion and Assistance Program shall be responsible for all expenses relating to treatment and recovery. In addition, the State Bar may charge a reasonable administrative fee to participants for the purpose of offsetting the costs of maintaining the program.

(b) Notwithstanding subdivision (a), the State Bar shall establish a financial assistance program to ensure that no member is denied acceptance into the program solely due to the lack of ability to pay.

6236. The State Bar shall actively engage in outreach activities to make members, the legal community, and the general public aware of the existence and availability of the Attorney Diversion and Assistance Program. Outreach shall include, but not be limited to, the development and certification of minimum continuing legal education courses relating to the prevention, detection, and treatment of substance abuse, including no-cost and low-cost programs and materials pursuant to subdivision (d) of Section 6070, informing all members of the State Bar of the program's existence and benefits through both direct communication and targeted advertising, working in coordination with the judicial branch to inform the state's judges of the program's existence and availability as a disciplinary option, and working in cooperation with organizations that provide services and support to attorneys with issues related to substance abuse.

6237. It is the intent of the Legislature that the authorization of an Attorney Diversion and Assistance Program not be construed as limiting or altering the powers of the Supreme Court of this state to disbar or discipline members of the State Bar.

6238. The committee shall report to the Board of Governors and to the Legislature not later than March 1, 2003, and annually thereafter, on the implementation and operation of the program. The report shall include, but is not limited to, information concerning the number of cases accepted, denied, or terminated with compliance or noncompliance, and annual expenditures related to the program.