



WEST VIRGINIA JUDICIARY

Rules of the West Virginia Lawyer Assistance Program

Search Search

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TABLE OF CONTENTS

Preamble

- Rule 1.** Establishment of the West Virginia Judicial and Lawyer Assistance Program (WVJLAP)
 - Rule 2.** Board of Directors
 - Rule 3.** Executive Director of the Program
 - Rule 4.** Volunteers
 - Rule 5.** Services
 - Rule 6.** Referrals
 - Rule 7.** Confidentiality
 - Rule 8.** Privilege and Immunity
 - Rule 9.** Costs
 - Rule 10.** Miscellaneous
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Preamble

The Supreme Court recognizes that a wide range of influences can detrimentally affect the performance of a Member of the Legal Profession ("Member"). Members of the legal profession shall hereafter be defined as lawyers, judges as defined by Application I of the West Virginia Code of Judicial Conduct, bar applicants and law students. Prominent among such influences are the effects of chemical dependence or mental conditions that result from disease, disorder, trauma or other infirmity that impair the ability of a Member of the profession to practice or serve. A Member's impairment is detrimental to the interests of clients, litigants, our legal system, the general public, and the health and quality of life of the impaired Member. The vast majority of States have responded to the issue of Member impairment by creating funded Judge and Lawyer assistance programs as contemplated by these rules, acknowledging the principle that every member of the bar has an obligation to the public to participate in an appropriate response to a Member's impairment. The Supreme Court finds that the West Virginia Judicial and Lawyer Assistance Program is an appropriate method for addressing the issue of Member impairment

and that the program will promote the integrity of the legal profession, thereby directly benefitting the people of West Virginia.

Rule 1. Establishment of the West Virginia Judicial and Lawyer Assistance Program (WVJLAP)

(a) Establishment. — There is hereby established a statewide judicial and lawyer assistance program to be known as the West Virginia Judicial and Lawyer Assistance Program (WVJLAP), which shall provide immediate and continuing help to members who suffer from any physical or mental and/or emotional health conditions that affect their ability to practice or serve.

(b) Purpose. — WVJLAP has four primary purposes:

- (1) To protect the interests of clients and the general public from harm caused by impaired members of the legal profession;
- (2) To assist impaired members of the legal profession to begin and continue recovery;
- (3) To educate the bench, the bar, and the public to the causes of and remedies for impairments affecting members of the legal profession; and
- (4) To develop programs that emphasize prevention of conditions that might negatively affect members of the legal profession.

(c) Funding and Administration. —

- (1) The salary of the executive director, and staff, if any, their expenses, administrative costs, and the expenses of the members of WVJLAP shall be paid from funds provided by The West Virginia State Bar. Each year WVJLAP shall submit a proposed annual budget for the next fiscal year to the Board of Governors detailing the projected revenues and expenses.
 - (2) WVJLAP shall seek to establish additional private and public sources of funding that may include gifts or bequests from any source and earnings on investments of the WVJLAP fund, which may be used to supplement the annual salaries, costs, and expenses of the program.
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Rule 2. Board of Directors

(a) Management. — The West Virginia Judicial and Lawyer Assistance Program shall be administered by a board of directors appointed by the Board of Governors of the West Virginia State Bar. The WVJLAP officers may make recommendations and nominations to the Board of Governors for appropriate persons to be appointed to the Board of Directors which shall be given due consideration by the Board of Governors. Officers of the Board of Directors shall consist of a chair, a vice-chair and a secretary. The officers shall be annually elected by the Board of Directors.

(b) Composition. — The Board shall consist of fifteen (15) members, which shall include three (3) members of the judiciary; one (1) Circuit Court Judge, one (1) Family Court Judge and one (1) Magistrate. Board members shall be selected from the membership of the West Virginia State Bar and/or the judiciary, except that the Board may include up to four (4) persons who are not members of the West Virginia State Bar and/or the judiciary. The members shall have diverse experience, knowledge and demonstrated competence in the problems of chemical dependency, or physical, mental and/or emotional health conditions that affect members of the legal

profession. Geographic location of the Board membership shall be taken into consideration, and the membership shall be geographically diverse.

(c) Terms —

(1) The Board of Governors shall appoint Board members for initial terms as follows: five members for one-year terms; five members for two-year terms; and five members for three-year terms.

(2) Subsequent appointments shall be for a term of three years.

(3) No member may serve more than two successive three-year terms, provided, however, that this limitation may be waived as to any member upon the affirmative vote of two-thirds of the Board and approval of the Board of Governors.

(d) Duties of the Board. — The members of the Board shall have the following powers and duties:

(1) To establish WVJLAP's policies and procedures, consistent with the intents and purposes of these rules, that shall be established after reasonable notice to the Board of Governors and opportunity for comment;

(2) To operate the program to achieve its purpose and goals;

(3) To select, retain and supervise the WVJLAP executive director and staff;

(4) To prepare, approve and present an annual budget to the Board of Governors;

(5) To make annual reports to the Supreme Court and Board of Governors.

(e) Meetings. — The Board shall meet quarterly. It shall also meet upon call of the chair, vice chair or upon the request of five (5) or more members upon reasonable notice to all members. A quorum for any meeting shall be a majority of the Board then existing.

Rule 3. Executive Director of the Program

(a) Qualifications. — The executive director shall have sufficient experience and training to identify and assist impaired members of the legal profession and to work well with the volunteers, plus any additional qualifications deemed necessary by the Board.

(b) Duties and Responsibilities. — The executive director's duties and responsibilities shall include but not be limited to the following:

(1) To work with the Board to develop a vision and plan to ensure that the WVJLAP becomes a vital and credible resource for the West Virginia legal community;

(2) To act as the initial contact point for all referrals to the WVJLAP, whether voluntary or involuntary. The executive director should always remain accessible to current members seeking help, and should never be insulated from the telephone or from personal contact. The position will require that the executive director be ready, either alone or together with a program volunteer, to travel within the State to meet with any Member in need of assistance;

(3) To help members of the legal profession and the judiciary and their families to secure evaluation, counseling and/or treatment for chemical dependency, physical and mental and/or emotional health conditions, by maintaining current information on available treatment services, both those that are available without charge as well as paid services. In this regard the executive director will be responsible for evaluating

referral resources such as individual health care providers (physicians, counselors, therapists, etc.) and treatment programs, and developing a resource listing that is available for Members and others using the services of WVJLAP;

- (4) Establish and maintain regular contact with other bar associations, agencies and committees that serve either as sources of referral or resources in providing help;
- (5) To help lawyers, judges, law firms, courts, law schools and others, with the advice and assistance of a health care professional, identify and intervene with impaired members of the legal profession;
- (6) To recruit, select, train and coordinate the activities of volunteer lawyers and judges who will provide assistance, and to maintain a current contact list of those volunteers. In furtherance of this duty the executive director should assist in coordinating volunteer support meetings for Members and attend the meetings on a periodic basis to address questions or concerns of the volunteers;
- (7) To recruit, select, train and coordinate the activities of volunteer judges ("Judicial Assistance Groups") who will provide assistance, and to maintain a current contact list of those judicial volunteers and assist in coordinating volunteer support meetings for Judges and attend the meetings on a periodic basis to address questions or concerns of the judicial volunteers;
- (8) To work to establish and maintain a policy that ensures confidentiality, as required by these rules, as an essential component of the WVJLAP. Included in this duty will be the establishment of rules or policies relating to maintaining the confidentiality of those seeking assistance (whether voluntary or involuntary), as well as the confidentiality of WVJLAP volunteers;
- (9) To plan and deliver educational programs to inform the public, the judiciary, state and local bar associations, law firms, civic and educational organizations of the advocacy of early intervention and prevention and the assistance that is available to those in need;
- (10) To be responsible for the day-to-day administration of the WVJLAP, including the development of job descriptions for WVJLAP staff personnel, and the hiring, training, and assessing of such individuals, including clinicians, assistants, and office personnel, as budgetary considerations allow. The executive director will also be responsible, with the oversight of the Board, for development of the WVJLAP's annual budget and oversight of its fiscal management;
- (11) To act as the WVJLAP's liaison with the American Bar Association Commission on Lawyer Assistance Programs and with judge and lawyer assistance programs throughout the country;
- (12) To network with other professional assistance organizations located in West Virginia;
- (13) To establish private and public sources of funding for WVJLAP; and
- (14) To perform such other duties and responsibilities as may be established by the Board.

Rule 4. Volunteers

The program shall enlist volunteer lawyers and judges whose responsibilities may include:

- (a) Assisting in interventions planned by WVJLAP;

- (b)** Serving as twelve-step program sponsors and/or recovery mentors;
- (c)** Acting as a local contact for members of the legal profession seeking help from the WVJLAP;
- (d)** Acting as a contact between WVJLAP and the courts, the Lawyer Disciplinary Board, the Office of Lawyer Disciplinary Counsel, Board of Law Examiners, Judicial Investigation Commission, and other State bar organizations, committees, and law schools;
- (e)** Providing compliance monitoring as may be appropriate;
- (f)** Performing any other function deemed appropriate and necessary by the Board to fulfill its purposes; and
- (g)** Any lawyer volunteers who may be providing assistance to a judge shall not regularly appear in front of the judge and any judicial volunteers who may be providing assistance to a lawyer shall not regularly be presiding over cases involving the lawyer.

Volunteers shall act on behalf of WVJLAP only in accordance with these rules and the policies and procedures of the WVJLAP, and shall be bound by the confidentiality provisions of these rules.

Rule 5. Services

WVJLAP may provide the following services as the Board determines feasible based upon the available financial, volunteer, and other resources:

- (a)** Immediate and continuing assistance to members of the legal profession who suffer from the effects of chemical dependency, physical or mental and/or emotional health conditions that result from disease, disorder, trauma or other infirmity and that affects their ability to practice or serve;
 - (b)** Planning and presentation of educational programs to increase the awareness and understanding of members of the legal profession to recognize problems in themselves and in their colleagues; to identify the problems correctly; to reduce stigma; and to convey an understanding of appropriate ways of interacting with affected individuals;
 - (c)** Investigation, planning, and participation in interventions, assessments and/or evaluations with members of the legal profession in need of assistance;
 - (d)** Sponsoring and maintaining substance abuse and/or mental health support meetings for members of the legal profession;
 - (e)** Aftercare services upon request, by order, or under contract that may include but are not limited to, the following: assistance in structuring aftercare and discharge planning; assistance for entry into appropriate aftercare and professional peer support meetings; and assistance in obtaining a primary care physician or local peer counselor; and
 - (f)** Monitoring services that may include, but are not limited to, the following: alcohol and/or drug screening programs; tracking aftercare, peer support and twelve-step meeting attendance; providing documentation of compliance; and providing such reports concerning compliance by those participating in a monitoring program as may be required by the terms of that program.
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Rule 6. Referrals

- (a) Self-referral.** — Any Member may voluntarily contact the WVJLAP seeking assistance.
- (b) Referrals from Third-Parties.** — WVJLAP shall receive referrals concerning any member of the legal profession from any source. The identity of the referring third-party shall be held in confidence by WVJLAP unless the third-party consents to disclosure.
- (c) Disciplinary Authority Referrals.** — WVJLAP shall receive referrals from the West Virginia Supreme Court, the Lawyer Disciplinary Board, the Office of Lawyer Disciplinary Counsel, Judicial Investigation Commission, Judicial Disciplinary Counsel, Judicial Hearing Board or the Board of Law Examiners (individually referred to hereafter as a "referring authority") of any Member whom the referring authority determines or believes should be contacted by WVJLAP.
- (d) Member Resistance.** — In the event an impaired Member resists all efforts of assistance by WVJLAP, the executive director or the Board may notify the initial referral source of the Members' resistance for the sole purpose of allowing the referral source to pursue other recourse or reporting obligations.
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Rule 7. Confidentiality

- (a)** Except as required by law, or to prevent the commission of a crime, or to prevent a person from committing serious harm to self or others, all information provided to or gathered by WVJLAP, and actions taken by WVJLAP, shall be privileged and held in strictest confidence and shall not be disclosed, subject to discovery, subpoena or required to be disclosed to any person or entity outside of WVJLAP, unless such disclosure is authorized by both WVJLAP and the Member to whom it relates, or as provided in Rule 6.
- (b)** The executive director, board members, employees, and agents, including volunteers recruited and covered under Rule 4, shall be deemed to be agents of WVJLAP for purposes of the privilege and confidentiality provisions of this Rule.
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Rule 8. Privilege and Immunity

Except as otherwise provided in these rules all information provided with respect to any referral, investigation, monitoring or follow-up under these rules shall be privileged. The executive director, board members, employees, and agents, including, but not limited to, referring third-parties under Rule 6 and volunteers acting on behalf of WVJLAP under Rule 4, shall be absolutely immune from civil suit in the same manner as members of the judiciary in this state for any conduct undertaken on behalf of the WVJLAP.

Rule 9. Costs

Payment for all services provided under these Rules shall be the responsibility of the Member receiving such services and WVJLAP shall not be liable for the costs of any services provided under these Rules; provided, however, that WVJLAP shall have discretion to financially or otherwise assist Members on a case by case basis, to obtain services anticipated under these Rules.

Rule 10. Miscellaneous

(a) At any time it deems reasonable and feasible, and without the necessity of amending these rules, the Board of Directors may, through its policies and procedures approved pursuant to Rule 2(d)(1), expand the assistance contemplated herein to encompass others in the legal profession.

(b) Any diversion or other program which requires involvement of WVJLAP in rehabilitative efforts on the part of the Member that is a result of an agreement with the Office of Lawyer Disciplinary Counsel, Lawyer Disciplinary Board, Board of Examiners, Judicial Investigation Commission, Judicial Disciplinary Counsel, Judicial Hearing Board or otherwise imposed by order of the Supreme Court of Appeals, shall govern the extent and scope of confidentiality which may be asserted by the Member. To the extent such agreement and/or order may require WVJLAP to violate a confidentiality protection granted under these rules, the order or agreement shall control and any disclosure made pursuant thereto shall not be deemed a breach of confidentiality otherwise imposed by these rules.

(c) At any time it deems reasonable and feasible, and without the necessity of amending these Rules, the WVJLAP and the Office of Lawyer Disciplinary Counsel, Board of Law Examiners or Judicial Investigation Commission may, through written agreement between them, establish a program of monitoring and diversion from discipline and, subsequent entry into rehabilitation for those Members deemed candidates for such a program.

(d) An impaired Member's successful completion of rehabilitation in conjunction with WVJLAP may be considered as a mitigating factor with respect to any disciplinary action arising out of the impairment for which rehabilitation was completed.