

## Rule 5.25 Service of Initial Pleading

- (A) **By Whom.** The initiating party must serve the initial pleading on all other parties, except in matters where the Clerk serves the initial pleading.
- (B) **Service on a Member.** When serving a member who is the subject of a proceeding, the initiating party or Clerk must address the service to the member's address in the State Bar's membership records. If it is in the United States, service must be made by certified mail, return receipt requested. If it is outside the United States, service must be made by certified mail or other conforming method that confirms delivery~~recorded delivery~~.
- (C) **Service on a Nonmember.** When serving a nonmember, the initiating party or Clerk may use any method for service of process permitted under the Code of Civil Procedure.
- (D) **Service on Counsel.** When a party files and serves a signed, written notice to serve counsel for the party, the Office of the Chief Trial Counsel and the Clerk may serve only counsel for that party.
- (E) **Service on the State Bar.** To serve the State Bar, the initiating party must serve the Office of the Chief Trial Counsel in the appropriate venue by certified mail, return receipt requested – unless another method of service is specified in the rules governing a particular type of proceeding.

## Rule 5.46 Disqualifying a Judge

- (A) **Disqualification under CCP § 170.1.** When Code of Civil Procedure § 170.1 applies, the judge must be disqualified.
- (B) **Judge Pro Tempore.** A judge pro tempore must be disqualified if the judge pro tempore or the judge pro tempore's office is affiliated with or represents:
  - (1) a party to pending litigation that involves any party, counsel, or law office affiliated with any party or counsel; or
  - (2) a party represented by any party, counsel, or law office affiliated with any party or counsel.
- (C) **Applicable Provisions; Recusal.** Only the provisions of Code of Civil Procedure §§ 170.1, 170.2, 170.3(b), 170.4, and 170.5(b)–(g) apply to judicial disqualification in State Bar Court proceedings.
- (D) **Notice of Recusal.** Judges who recuse themselves must promptly give notice of the recusal to the judge who has authority to assign the matter to another judge.

- (E) **Review of Stipulation.** An assigned judge's consideration or rejection of a stipulation in a proceeding is not a basis to disqualify the judge from the proceeding.
- (F) **Settlement Judge.** Unless the parties stipulate otherwise, a settlement judge is disqualified from presiding over the trial of the matter.
- (G) **Proceeding Involving Relief from Default.** When a party seeks relief from default, the judge may not be disqualified on the basis that the judge heard evidence or filed a decision before the party filed the motion for relief.
- (H) **Motion to Disqualify.** If a judge refuses or fails to disqualify himself or herself, any party may file a motion to disqualify. The motion must contain a verified statement setting forth the facts constituting the grounds for disqualification. Copies of the motion must be served on the opposing party and must be personally served upon the judge the party seeks to disqualify or on his or her case administrator if the judge is present in the State Bar's office or in chambers.
- (I) **When to File Motion.** If the party seeking disqualification did not know the matter was assigned to the judge or of the ground for disqualification in time to file the motion under the other provisions of this rule, the party must file the motion promptly and make an oral motion when the next hearing, trial, conference, or argument begins. Otherwise, a party must move to disqualify within the earliest of:
- (1) 10 days after the party or the party's counsel learns of the ground for disqualification;
  - (2) before the trial begins; or
  - (3) 20 days before oral argument is held before the Review Department.
- (J) **Consent or Answer to Motion.** After a motion to disqualify is filed, the judge may:
- (1) consent to disqualification within 10 days after the motion is served and promptly notify the judge who has authority to assign the matter to another judge;
  - (2) file a verified answer within 10 days after the motion is served, admitting or denying any or all the allegations in the motion and setting forth any additional facts material or relevant to the question of disqualification, and the Clerk must transmit a copy of the judge's answer to each party;
  - (3) fail to expressly consent or timely answer, in which case the judge's consent to disqualification is presumed, and the Clerk must promptly notify the judge who has authority to assign the matter to another judge.
- (K) **Ruling on Disqualification.** A judge who refuses to recuse himself or herself may not rule on his or her own disqualification. The presiding or supervising judge must assign another judge to decide the motion. If the judge hearing the

motion decides that the judge is disqualified, the judge must promptly notify the judge who has authority to assign the matter to another judge.

- (L) **Petition for Review.** A ruling on a motion for disqualification is reviewable under rule 5.150. The party must file the petition within 10 days of service of the ruling. The Review Department must expedite action on the petition.

## **Rule 5.65 Discovery Procedures**

- (A) **Generally.** The procedures in this rule constitute the exclusive procedures for discovery. No other form of discovery is permitted without prior Court order under rules 5.66 or 5.68.
- (B) **Timing of Discovery Requests.** All requests for discovery must be made in writing and served on the other sideparty within 10 days after service of the answer to the notice of disciplinary charges, or within 10 days after service of any amendment to the notice.
- (C) **Scope of Discovery.** Upon request, a party must provide to the other party:
- (1) the name, the address and telephone number of each individual likely to have discoverable information – along with the subjects of that information – that the disclosing party may use to support its allegations or defenses, including in mitigation and aggravation;
  - (2) the name (and, if not previously provided, the address and telephone number) of each individual the disclosing party then intends to call as a witness, including expert witnesses and those it may call if the need arises, including in mitigation and aggravation;
  - (3) a copy – or description by category and location – of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its allegations or defenses, including in mitigation and aggravation.  
This includes:
    - (a) all statements about the subject matter of the proceedings, including any impeaching evidence, made by any witness then intended to be called or may be called if the need arises by the disclosing party;
    - (b) all statements about the subject matter of the proceedings made by a person named or described in the notice, or amendment to the notice, other than the member when it is claimed that an act or omission of the member as to the person named or described is a basis for the discipline proceeding;
    - (c) all investigative reports made by or on behalf of the disclosing party about the subject matter of the proceeding;
    - (d) all reports of mental, physical, and blood examinations, then intended to be offered in evidence by the disclosing party.

- (D) **Definition of Statement.** For purposes of these procedures, statement means either:
- (1) a written statement that the person has signed or otherwise adopted or approved; or
  - (2) a contemporaneous stenographic, mechanical, electrical, or other recording – or a transcription of it – that recites substantially verbatim the person’s oral statement.
- (E) **Form and Time of Response.** All responses under subdivision (C) must be in writing, signed and served within 20 days after service of the request. All documents and tangible things described but not served with the responses must be made available for inspection and copying by the requesting party within the same time period.
- (F) **Basis for Initial Disclosure; Unacceptable Excuses.** A party must make its disclosures based on the information then reasonably available to it. A party is not excused from making its disclosures because it has not fully investigated the case or because it challenges the sufficiency of another party’s disclosures or because another party has not made its disclosures.
- (G) **Continuing Duty.** If a party receives a written request for discovery, the party receiving the request has a continuing duty to provide discovery of items listed in the request until proceedings before the Court are concluded. When a written request for discovery is made in accordance with these rules, discovery must be provided within a reasonable time after any discoverable items become known to the party obligated to provide discovery.
- (H) **Failure to Comply with Discovery Request.**
- (1) Inadmissible. If any party fails to comply with a discovery request as authorized by these procedures, the items withheld are inadmissible or, if the items have been admitted into evidence, may be stricken from the record. If testimony is elicited during direct examination and the party eliciting the testimony withheld any statement of the testifying witness in violation of these discovery procedures, the testimony may be ordered stricken from the record.
  - (2) Reasonable Continuance. Upon a showing of good cause for failure to comply with a discovery request, the Court may admit the items withheld or direct examination testimony of a witness whose statement was withheld upon condition that the party against whom the evidence is sought to be admitted is granted a reasonable continuance to prepare against the evidence, or may order the items or testimony suppressed or stricken from the record.
- (I) **Privileged or Protected Material.**
- (1) Applicable. Nothing in these procedures authorizes the discovery of any writing or thing which is privileged from disclosure by law or is otherwise protected. Statements of any witness interviewed by the deputy trial counsel, by any investigators for either sideparty, by the

member, or by the member's attorney are not protected as work product.

- (2) **Information Withheld.** When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or otherwise protected, the party must make the claim expressly and must describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable the other party to assess the applicability of the privilege or protection.

- (J) **Protective Orders.** The Court may, upon application supported by a showing of good cause, issue protective orders to the extent necessary to maintain in effect such privileges and other protections as are otherwise provided by law.

## Chapter 4. Defaults

### Rule 5.80 Default Procedure for Failure to File Timely Response

- (A) **Motion for Entry of Default.** When a member fails to timely file a response, the deputy trial counsel must file and serve on the member a motion for entry of default. The motion must contain:

- (1) the filing date of notice and date of service of disciplinary charges;
- (2) a statement that the member did not timely file a response under rule 5.43;
- (3) the following language in prominent type:

"If you do not file a response with the State Bar Court within 10 days of service of this motion, the Court will enter your default, deem the facts in the notice of disciplinary charges admitted by you, and may admit evidence against you that would otherwise be inadmissible. You will lose the opportunity to participate further in these proceedings, unless you timely make—and the Court grants—a motion to set aside your default. If your default is entered, and you fail to timely move to set it aside, this Court will enter an order recommending your disbarment without further hearing or proceeding. See Rule 5.80 et seq., Rules of Procedure of the State Bar of California."

- (B) **Declaration of Reasonable Diligence.** The motion must be supported by a declaration establishing that the deputy trial counsel acted with reasonable diligence to notify the member of the proceedings. The declaration must:

- (1) state whether a signed return receipt for the notice of disciplinary charges was received from the member;
- (2) if a signed return receipt is not received from the member, show that the deputy trial counsel or agent took those additional steps a reasonable person would have taken under the circumstances to provide notice.

- (C) **Service of Default Motion.** The deputy trial counsel must serve the motion under rule 5.25.
- (D) **Order Entering Default.** If the member fails to file a written response within 10 days after the motion is served, the Court may order the entry of the member's default. Service of the default order must comply with rule 5.25. The order must include this language in prominent type:

"Because you did not timely file a response to the notice of disciplinary charges filed in this proceeding, the Court has entered your default and deemed the facts alleged in the notice of disciplinary charges admitted. Except as ordered by the Court, ~~Y~~you may participate in these proceedings only if the Court sets aside your default. If you fail to timely move to set aside your default, this Court will enter an order recommending your disbarment without further hearing or proceeding. See rule 5.80 et seq., Rules of Procedure of the State Bar of California."

#### **Rule 5.81 Default Procedure for Failure to Appear at Trial**

- (A) **Default for Failure to Appear at Trial.** If the member fails to appear in person or by counsel at the trial, the Court must order the entry of the member's default, if:
- (1) the notice of disciplinary charges was served on the member under rule 5.25; and
  - (2) notice of trial was served by the Court by first class mail, postage paid, on:
    - (a) the member's counsel;
    - (b) the member at the address provided in the response or in a change-of-address notice filed by the member (if the member has no counsel);
    - (c) the member's address in the State Bar's membership records (if the member has no counsel and has not provided any other address); or
    - (d) an address allowed by rule 5.26.
- (B) **Order Entering Default.** The Court must order the Clerk to promptly file and serve the default order on all parties. Service must comply with rule 5.25. The order must include the following language in prominent type:

"Because you failed to appear at trial, the Court has entered your default and deemed the facts alleged in the notice of disciplinary charges admitted. Except as ordered by the Court, ~~Y~~you may participate in these proceedings only if the Court sets aside your default. If you fail to timely move to set aside your default, this Court will enter an order recommending your disbarment without further hearing or proceeding. See rule 5.80 et seq., Rules of Procedure of the State Bar of California."



- (C) **Effects of Default on Trial.** If the Court determines that the perpetuation of evidence is pertinent to any future inquiry into the member's conduct or qualification to practice law, or if other good cause is shown, the trial may proceed for such limited purpose.

#### **Rule 5.82 Effects of Default**

If the Court enters a member's default:

- (1) the member will be enrolled as an inactive member of the State Bar and will not be permitted to practice law;
- (2) the facts alleged in the notice of disciplinary charges will be deemed admitted;
- (3) except as allowed by these rules or ordered by the Court, the member will not be permitted to participate further in the proceeding and will not receive any further notices or pleadings unless the default is set aside on timely motion or by stipulation; and
- (4) the Court will recommend that the member be disbarred.

#### **Rule 5.83 Vacating or Setting Aside Default**

- (A) **Stipulation.** A stipulation to vacate a default must be approved by the Court.
- (B) **Motion to Vacate Improperly Entered Default.** By motion of any party or on the Court's own motion, an improperly entered default may be vacated at any time while the Court has jurisdiction over the matter. Any default entered while the member is on active duty in the armed forces of the United States is improperly entered.
- (C) **Motion to Set Aside Default.** A member may move to set aside a default because of mistake, inadvertence, surprise, or excusable neglect. Those grounds will be interpreted under Code of Civil Procedure § 473. The member must file the motion as soon as practical but no later than:
- (1) ~~180~~90 days after the default order is served under rule 5.80, or
  - (2) ~~90~~45 days after the default order is served under rule 5.81.
- (D) **Late-Filed Motion.** If the member files the motion beyond the time required in subdivision (C), the member must prove by clear and convincing evidence that:
- (1) the member did not receive or learn of the notice of disciplinary charges until after the required period expired;
  - (2) the member filed the motion promptly after learning of the notice; and
  - (3) the member's failure to file a timely response and failure to file a timely motion are excused by compelling circumstances beyond the member's control.
- (E) **Response to Notice of Charges.** Unless the member already filed a response, a copy of the proposed response to the notice of disciplinary

charges must accompany the motion. The proposed response must be verified and comply with rule 5.43.

- (F) **Support for Motion to Set Aside Default.** The member must support the motion with one or more declarations showing:
- (1) the date that the member first learned of the disciplinary charges;
  - (2) the reason why the member did not file a response to the notice of disciplinary charges, or why the member failed to appear at trial;
  - (3) the date that the member first learned of the entry of default; and
  - (4) the grounds to set aside the default.
- (G) **Expedited Ruling on Motion.** The Court will decide a motion to set aside or vacate a default on an expedited basis. It may stay the proceedings pending its ruling.
- (H) **Rulings on Motions to Vacate Default After Decision Entered.** If a member files a motion to vacate or set aside a default ~~after the judge files a disbarment recommendation~~, the judge may:
- (1) grant the motion upon a showing of good cause;
  - (2) vacate the default subject to appropriate conditions;
  - (23) set aside the default for limited purposes only; or
  - (34) deny the motion if the judge decides that the member has not made the required showing.
- (I) Discovery. To the extent not previously requested or provided, the Court may order discovery pursuant to rule 5.65 as a condition of vacating or setting aside a default.**

#### **Rule 5.84 Interlocutory Review of Orders Denying or Granting Relief from Default**

An order on a motion to vacate or set aside default is reviewable under rule 5.150.

#### **Rule 5.85 Petition for Disbarment After Default**

- (A) **Petition.** If the member fails to have the default set aside or vacated, the Office of the Chief Trial Counsel must file a petition requesting the Court to recommend the member's disbarment to the Supreme Court. The petition must be supported by one or more declarations stating whether:
- (1) any contact with the member has occurred since the default was entered;
  - (2) any other investigations or disciplinary charges are pending against the member;
  - (3) the member has a prior record of discipline; and
  - (4) the Client Security Fund has paid out claims as a result of the member's misconduct.



**(B) Support for Petition.** All documents referenced in a petition, including prior records of discipline, must be filed with the petition and supported by declaration.

**(C) Timing of Petition.** The earliest a petition may be filed is:  
(1) ~~18~~491 days after the default order is served under rule 5.80, or  
(2) ~~9~~46 days after the default order is served under rule 5.81.

**(D) Service.** The Office of the Chief Trial Counsel must serve the petition under rule 5.25.

**(E) Response.** Within 20 days of service of the petition, the member may file and serve a motion to set aside or vacate the default.

**(F) Ruling.**

- (1) If the member fails to file a response, or the Court denies a motion to set aside or vacate the default and all other relief from default, the Court must recommend the member's disbarment if the evidence shows:
  - (a) the notice of disciplinary charges was served on the member properly;
  - (b) the member had actual notice or reasonable diligence was used to notify the member of the proceedings prior to the entry of default;
  - (c) the default was properly entered; and
  - (d) the factual allegations deemed admitted in the notice of disciplinary charges or pursuant to the notice of hearing on conviction support a finding that the member violated a statute, rule or court order that would warrant the imposition of discipline.
- (2) If the Court determines that any of the factors set forth under subdivision (1) is not established, it must deny the petition, vacate the default, and take other appropriate action to ensure that the matter is promptly resolved.

## **Rule 5.86 Review of Orders on Petitions for Disbarment**

An order on a petition for disbarment is reviewable under rule 5.150.

## **Rule 5.124 Grounds for Dismissal**

**(A) Voluntary Dismissal for Insufficiency of Evidence.** The party that began a proceeding may move to voluntarily dismiss the proceeding, in whole or in part, because evidence is unavailable or insufficient. Unless the Court, in its discretion, determines otherwise, a dismissal is without prejudice.

**(B) Dismissal for Defective Service.** A proceeding may be dismissed without prejudice because of a defect in the initial pleading's service, but the Court may allow a specified time for filing proof of proper service. If a timely motion

is not filed, an alleged defect in service will not be grounds for dismissal. A motion to dismiss because of a defect in the initial pleading's service must be made no later than:

- (1) the date on which the moving party's response must be filed;
- (2) if the moving party's default is entered, the time to move for relief from default expires; or
- (3) if no response is provided for, within 20 days after the date the allegedly defective service was made.

**(C) Dismissal for Defective Initial Pleading.** A proceeding may be dismissed without prejudice if the initial pleading does not state a legally sufficient basis for the action proposed, or, in a disciplinary proceeding, if the initial pleading does not state a disciplinable offense or give sufficient notice of the charges. In either event, the Court may order dismissal without prejudice but must allow at least one opportunity to amend the pleading within 20 days after the dismissal order is served or 20 days after the Review Department's decision on the order is served, whichever is later. The Court may extend the time to amend. If the amended pleading does not cure the defects identified in the previous dismissal, the Court may dismiss the proceeding with prejudice.

**(D) Motion to Dismiss for Inadequate Notice.** If a timely motion to dismiss is not filed, an alleged defect in the pleading will not be grounds for dismissal but the party may still assert inadequate notice for other purposes. A motion to dismiss because the initial pleading fails to give sufficient notice of the charges must be made no later than:

- (1) the date on which the moving party's response must be filed; or
- (2) if no response is provided for, within 20 days after the initial pleading was served.

**(E) Motion to Dismiss for Failure to State a Disciplinable Offense.** A motion to dismiss for failure of the initial pleading to state a disciplinable offense may be made at any time before the Court finds culpability.

**(F) Proceeding Barred by Statute or Rule.** A proceeding may be dismissed if it is barred by any applicable statute or rule.

**(G) Dismissal to Further Justice.**

- (1) The party that began a proceeding may move to dismiss in the furtherance of justice. A dismissal is without prejudice unless the motion shows good cause for dismissal with prejudice.
- (2) The Court may move on its own to dismiss to further justice but must give the parties notice, state its reasons for dismissal, and order the parties to show cause why it should not dismiss the proceeding. Within 10 days after the Court's order to show cause is served, the parties may file a response that may include declarations, an offer of proof, and points and authorities either in support of or in opposition to the Court's intended action. In its response the State Bar may include information concerning prior investigation matters that were closed with warning

letters, resource letters, agreements in lieu of disciplinary prosecution, other agreements resolving investigations, and impositions of discipline (including private reprovals), or any other evidence of prior conduct tending to establish a common plan, scheme, or device. If the Court dismisses the proceeding, its written order will state its reasons and whether the dismissal is with or without prejudice.

- (H) **Agreement in Lieu of Discipline.** If the State Bar and the member make an agreement in lieu of discipline under Business and Professions Code § 6092.5(i), a disciplinary proceeding may be voluntarily dismissed without prejudice. But if the member successfully performs the agreement, the State Bar cannot reopen the proceeding or bring a new one based on the misconduct charged in the dismissed proceeding.
- (I) **Discovery Sanction.** Dismissal may be ordered as a discovery sanction. Unless the Court orders otherwise for good cause shown, dismissal is with prejudice.
- (J) **Future Consolidation.** The State Bar may move to dismiss a proceeding so it may be refiled and consolidated with another proceeding involving the same member that is not yet ready for prosecution. A dismissal is without prejudice. The Court may not dismiss a proceeding on its own motion.
- (K) **Resignation or Disbarment.** If the member who is the subject of a pending proceeding resigns or is disbarred, the Court will take judicial notice of the Supreme Court's order accepting the resignation or ordering the disbarment, and dismiss the proceeding without prejudice.

#### **Rule 5.131 Award of Costs to Respondent Exonerated of All Charges After Trial**

- (A) **Motion for Costs.** If a member in a disciplinary proceeding is exonerated of all charges, the member may move for reimbursement of costs under Business and Professions Code § 6086.10(d). Exoneration may occur following trial in the Hearing Department, or, after review, by decision of the Review Department or by decision or order of the Supreme Court.
- (B) **Reasonable Expenses.** Under Business and Professions Code § 6086.10(d), only the following items are reasonable hearing preparation expenses:
  - (1) taking, videotaping, and transcribing necessary depositions – including an original and one copy of depositions taken by the member and one copy of depositions taken by the State Bar – and travel expenses to attend depositions;
  - (2) service of process by a public officer, registered process server, or other means under Code of Civil Procedure § 1033.5(a)(4);
  - (3) ordinary witness fees – but not expert-witness fees – under Government Code § 68093;

- (4) models and blowups of exhibits and photocopies of exhibits (if, in the Court's discretion, they were reasonably helpful to the Court as the trier of fact);
  - (5) transcripts of Court proceedings ordered by the Court;
  - (6) copies of the State Bar Court Clerk's audiotape recordings of the proceeding in which the hearing is held;
  - (7) investigation expenses incurred to prepare the case for hearing after filing the notice of disciplinary charges (if, in the Court's discretion, the expenses were reasonably necessary);
  - (8) computerized legal research (if, in the Court's discretion, the research was reasonably required by the issues involved in the hearing and other less expensive means of research were not reasonably available); and
  - (9) photocopying (except exhibits), postage, and telephone and fax transmission charges (capped at \$150 for the entire proceeding).
- (C) **Expenses of Seeking Reimbursement.** An exonerated member cannot recover costs incurred in seeking reimbursement.
- (D) **"Exoneration" Defined.** Under Business and Professions Code § 6086.10(d) "exonerated of all charges" means the Court found the member not culpable of the charged misconduct and dismissed the entire proceeding with prejudice. A respondent is not "exonerated of all charges" if the Court imposes an admonition.
- (E) **Time to File Motion and Response.** A motion for reimbursement of costs must be filed within 30 days after finality service of the ~~final~~ ruling exonerating the member of all charges after all proceedings in the matter end, including any Supreme Court review. Appropriate documentation of the costs for which reimbursement is requested must accompany the motion. A response may be filed within 20 days after it is served.
- (F) **Hearing.** The motion will be decided by the hearing judge who was assigned to the underlying proceeding. If there is no such judge or that judge is unavailable or disqualified, the motion will be assigned to another hearing judge. A hearing will be held only if the Court, in its discretion, determines that it will materially contribute to the consideration of the motion.
- (G) **Decision.** The judge will decide the motion by written order, and may grant or deny the motion in whole or in part. The judge will determine the reasonable expenses to be reimbursed.
- (M) **Review.** A party may file a petition for review under rule 5.150 within 15 days after the order on the motion is served.

## Rule 5.226 Application for Involuntary Enrollment

- (A) **Beginning Proceeding.** The Office of the Chief Trial Counsel must file with the Clerk a verified application with supporting documents. A request for a hearing must be stated in the application or it will be waived.
- ~~(B)~~ **Service.** The application must be served on the member under rule 5.25.
- (BC) **Stating Facts.** The application must state with particularity facts showing that the member's conduct poses a substantial threat of harm to the member's clients or to the public as required under Business and Professions Code § 6007(c)(2)(A)-(C). It should must be supported by declarations, transcripts, or requests for judicial notice.
- (CD) **Alleging Violations.** If ~~any transactions or occurrences relied on in the application are also part of any investigation matters or relates to~~ pending or concurrently filed notices of disciplinary charges disciplinary proceedings, then those must be identified by case number and ~~complaining witness name (if any) copies of all notices must be attached to the application. If there is no pending disciplinary proceeding. Otherwise,~~ the application itself must:  
(1) -cite the statutes, rules, or court orders allegedly violated, or that warrant involuntary inactive enrollment, and. It must also  
(2) state the particular acts or omissions that constitute the alleged violation or violations, or that form the basis for warranting involuntary inactive enrollment.
- (DE) **Notice to Member; Member's Response and Request for Hearing.** The application must contain a notice to the member, in prominent type, stating that the member must file a verified response to the application and request a hearing as provided in rule 5.227; otherwise, the right to a hearing will be waived.
- ~~(E) — Chief Trial Counsel's Request for Hearing.~~ The Office of the Chief Trial Counsel may request a hearing in its application.  
~~(1) — Notice of Hearing. If a hearing is requested, the Clerk will set the hearing on an expedited basis, and notify the deputy trial counsel of the hearing date.~~  
~~(2) — Service of Application. Within three court days after the application is filed, the deputy trial counsel will serve on the member, under rule 5.25, a copy of the application with supporting documents, together with a notice of the hearing date.~~

## Rule 5.229 Expedited Hearing

The Court will conduct the hearing if timely requested by any party or if the Court determines that the hearing will materially contribute to its consideration of the application. The Clerk will set the hearing date and serve notice on the parties. The

hearing will be expedited and completed as soon as practicable and may not be interrupted or continued except for good cause.

#### **Rule 5.230 Evidence**

- (A) **Types of Evidence.** At a hearing, evidence will be received by declaration, request for judicial notice, and transcripts. Declarations on information and belief are hearsay and generally insufficient as evidence. Conclusions of law in a declaration are not evidence. No testimony or cross-examination will be allowed, unless a party shows good cause.
- (B) **Submitting Evidence.** Evidence to be offered at the hearing should be attached to and served with either the State Bar's application under rule 5.226 or the member's response under rule 5.227. Any additional proposed evidence must be filed with the Court and served on the opposing party at least three court days before the hearing. If the proposed evidence is filed within five court days before the hearing, the filing party must ensure that the other party actually receives copies at least two calendar days before the hearing.
- (C) **Oral Testimony.** If a party wants to offer oral testimony (except in rebuttal to oral testimony presented by the other party), then, at least three court days before the hearing, the party must file and serve a written statement containing the substance of the proposed testimony, the names and addresses of witnesses, and a reasonable time estimate for the testimony. If the statement is filed within five court days before the hearing, the filing party must ensure that the other party actually receives copies at least two calendar days before the hearing.
- (D) **Hearing; Admissibility of Evidence.** At a contested hearing, the hearing judge will rule on whether the declarations in support of the application are admissible as evidence, and will also rule on objections and motions to strike material in the declarations.
- (E) **No Hearing Held.** If no hearing is held, the Court will consider and weigh only the evidence in and attached to the application and the member's response.

#### **Rule 5.231 Decision; Denial Without Prejudice**

- (A) **Time of Decision.** If no hearing is held, the Court will issue an order submitting the matter and must file its decision within ~~40 court~~30 days after submission. If a hearing is held, the Court must file its decision within ~~40 court~~30 days after the hearing ends.
- (B) **Findings of Fact.** The Court's decision must include findings of fact about whether:
  - (1) the member was given notice of the proceeding under rule 5.226; and
  - (2) each factor required by Business and Professions Code § 6007(c)(2) has been established by clear and convincing evidence; ~~and~~

~~(3) — the member's conduct poses a substantial threat of harm to the member's clients or the public.~~

- (C) **Remedies Ordered.** The decision may order that the member be enrolled as an inactive member under § 6007(c)(2), or may order that interim remedies be imposed under § 6007(h).
- (D) **Effective Date.** The decision takes effect on the earlier of personal service or three days after service by mail, unless otherwise ordered by the Court.
- (E) **Application Denied.** If an application is denied without prejudice, a new application based on additional facts may be filed and may incorporate the facts alleged in prior applications.

### **Rule 5.345 Hearing Department Proceedings**

- (A) **Referred Proceeding; Notice.** When a conviction proceeding is referred under rule 5.344, the Clerk will file and serve under rule 5.25 a notice of hearing on conviction. A copy of the order of referral must be attached to the notice as an exhibit. The notice must include the following language in capital letters:

“IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT THE STATE BAR COURT TRIAL:

- (1) YOUR DEFAULT WILL BE ENTERED;
- (2) YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU WILL NOT BE PERMITTED TO PRACTICE LAW;
- (3) YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION AND THE DEFAULT IS SET ASIDE; AND
- (4) YOU WILL BE SUBJECT TO ADDITIONAL DISCIPLINE. SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN ORDER RECOMMENDING YOUR DISBARMENT WITHOUT FURTHER HEARING OR PROCEEDING. (SEE RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA, RULE 5.80 ET SEQ.).

UNDER THE RULES OF PROCEDURE OF THE STATE BAR, YOU MUST FILE YOUR WRITTEN RESPONSE TO THIS NOTICE WITHIN 20 DAYS AFTER THIS NOTICE IS SERVED.”

- (B) **Response to Notice.** The member must file and serve a response to the notice within 20 days after it is served, unless the Court grants an extension. The response must state the member's position on the issues stated in the order of referral and must contain an address for service on the member.



~~(C) — **Applicable Rules if No Response Filed.** If the member does not file a response to the notice or fails to appear at trial, the default procedures in rules 5.80-5.86 apply, with the following exceptions:~~

- ~~(1) — References in those rules to “notice of disciplinary charges” will be treated as references to “notice of hearing on conviction” and the wording of the notices required by the rules will be modified accordingly. References to factual allegations deemed admitted will be treated as references to the factual allegations set forth in the Office of the Chief Trial Counsel’s statements of facts and circumstances surrounding the conviction filed under subsection (C)(2) of this rule.~~
- ~~(2) — In addition to the items specified in rule 5.80, the motion for entry of default must recite the facts and circumstances surrounding the conviction that the Office of the Chief Trial Counsel contends it has clear and convincing evidence to prove.~~
- ~~(3) — Upon entry of the member’s default, the factual allegations in the Office of the Chief Trial Counsel’s statement of facts and circumstance surrounding the conviction will be treated as admitted by the member, unless the Court orders otherwise based on contrary evidence. No further proof will be required to establish the truth of those facts.~~

**(CD) State Bar Court Record.** The State Bar Court record includes all court orders and documents on file with the Clerk of the State Bar Court in the proceeding, whether or not introduced in evidence. The evidence may include that permitted by Business and Professions Code § 6102(g).

### **Rule 5.346 Defaults**

**(A) Procedure.** If the member does not file a response to the notice of hearing on conviction or fails to appear at trial, the default procedures in rules 5.80-5.86 apply as modified by this rule.

**(B) Definitions.** References in the default rules to “notice of disciplinary charges” will be treated as references to “notice of hearing on conviction.” References to factual allegations deemed admitted will be treated as references to the factual allegations set forth in the Office of the Chief Trial Counsel’s statement of facts and circumstances surrounding the conviction filed under section (C) of this rule. The wording of the notices required by the default rules will be modified accordingly.

**(C) Statement of Facts and Circumstances.** The Office of the Chief Trial Counsel must recite the facts and circumstances surrounding the conviction that it contends warrant the imposition of discipline and it has clear and convincing evidence to prove as follows:

- (1) When the default is based on a failure to file a timely response, the statement must be included in the motion for entry of default under rule 5.80.
- (2) When the default is based on a failure to appear at trial, the statement must be filed and served on the member under rule 5.25 no later than

five days after the default order is served. The statement must include the following language in prominent type: "Because you failed to appear at trial, the Court has entered your default and will deem the following statement of facts deemed admitted."

- (D) Upon entry of the member's default under rule 5.80, or 10 days after service of the Office of the Chief Trial Counsel's statement of facts and circumstances surrounding the conviction under subsection (C)(2) of this rule, the factual allegations in the statement will be treated as admitted by the member, unless the Court orders otherwise based on contrary evidence. No further proof will be required to establish the truth of those facts.

### **Rule 5.347 Applicable Rules**

All rules of procedure apply except the following:

- (A) **General.** Rules that by their terms apply only to other specific proceedings do not apply in conviction proceedings; and
- (B) **Conditional.** Rules 5.80-5.86 (default) apply as modified by these conviction proceedings rules.

### **Rule 5.371 Inapplicable Rules**

The following rules do not apply in a proceeding on an inactive enrollment motion under these rules:

- (A) **General.** Rules that by their terms apply only to disciplinary proceedings or to other specific proceedings.
- (B) **Specific.** Rules 5.44(A), (C), and (D) (amended pleadings); 5.50 (abatement); rules 5.60-5.71 (subpoenas and discovery); rules 5.80-5.102 (default; obligation to appear at trial; pretrial; notice of trial); rules 5.105-5.107 (admission of certain evidence); rules 5.151-5.157 (review).

### **Rule 5.381 Eligibility to Apply for Participation in Program**

- (A) **Before Proceeding Begins.** Before a proceeding in the State Bar Court begins, a judge assigned to conduct an Early Neutral Evaluation Conference under rule 5.30 may ~~refer a member to a Program Judge to determine~~ discuss the member's eligibility to participate in the Program. If formal charges are filed, the Early Neutral Evaluation judge may be the Program Judge. ~~Additionally, either the Office of the Chief Trial Counsel or the member may ask the Court to make a referral to a Program Judge for an evaluation.~~

- (B) **After Proceeding Begins.** At any time after a proceeding in the State Bar Court begins, at the request of either the member or the Office of the Chief Trial Counsel or on the court's own motion, a member may be referred to a judge whom the Presiding Judge has designated a Program Judge to determine the member's eligibility to participate in the Program. A referral by the Court must be made at least 45 days before the first scheduled trial date in the proceeding.

#### **Rule 5.382 Acceptance for Participation in Program**

- (A) **Conditions for Participation.** Except as limited by subsections (B) and (C), the Program Judge has the discretion to accept a member for participation in the Program. Participation is contingent on:
- (1) the member's acceptance into the State Bar's Lawyer Assistance Program;
  - (2) the Court's approval of a stipulation of facts and conclusions of law signed by the parties;
  - (3) evidence that the member's substance abuse or mental health issue causally contributed to the misconduct; and
  - (4) any additional conditions that the Program Judge may impose.
- (B) **Stipulation Not Submitted.** If the parties do not sign and submit a stipulation of facts and conclusions of law to the Program Judge for approval within ~~120~~90 days after the date the member was referred to the Program to determine eligibility, the Program Judge may return the proceeding for processing as a standard discipline proceeding.
- (C) **Grounds for Ineligibility.** A member will not be accepted to participate in the Program if:
- (1) the stipulation of facts and conclusions of law, including aggravating factors, signed by the member and the Office of the Chief Trial Counsel shows that the member's disbarment is warranted, despite mitigating circumstances;
  - (2) the member has been convicted of a criminal offense that subjects him or her to summary disbarment under Business and Professions Code § 6102 (c);
  - (3) the member's current misconduct involves acts of moral turpitude, dishonesty, or corruption that has resulted in significant harm to one or more clients or to the administration of justice;
  - (4) there is a finding, based on expert testimony, that:
    - (a) the member will not substantially benefit from treatment for his or her substance abuse or mental health problem; or
    - (b) the substance abuse or mental health problem cannot be overcome or controlled to the extent that it is unlikely to cause further misconduct; or
  - (5) the member has previously participated in the Program and has either successfully completed the Program or been terminated from the Program.

- (D) **Effect of Nonacceptance.** Unless otherwise agreed by the parties, if the member is not accepted into the Program or refuses to sign the written agreement of the terms and conditions for participating in the Program, then any stipulation of facts and conclusions of law signed by the parties in the pending disciplinary proceeding and entered into as a condition for participating in the Program will be rejected and will not be binding on either the member or the Office of the Chief Trial Counsel.

#### **Rule 5.403 Response; Request for Hearing**

- (A) **Timing of Response.** Within 45 days after the petition is served, the Office of the Chief Trial Counsel must file and serve a response, which may be accompanied by declarations, exhibits, and requests for judicial notice.
- (B) **Position Taken.** The response will either:
- (1) oppose the petition;
  - (2) state that the Office of the Chief Trial Counsel does not oppose the petition; or
  - (3) state that the Office of the Chief Trial Counsel does not possess sufficient facts to determine whether or not it opposes the petition.
- (C) **Hearing.** A hearing will be set within 35 days after the response is served, and 15 days notice will be given, under the following circumstances:
- (1) the Office of the Chief Trial Counsel opposes the petition or states that it does not possess sufficient facts to determine whether or not it opposes the petition;
  - (2) any party requests a hearing; or
  - (3) the Court is considering denying the petition.
- (D) **No Hearing.** If the Office of the Chief Trial Counsel's response states that it does not oppose the petition, and no party has requested a hearing, the Court may consider and grant the petition without a hearing.
- (E) **Withdrawal of Petition.** The petitioner may elect to withdraw the petition without prejudice at any time before the matter is submitted.

#### **Rule 5.427 Procedure for Consideration and Transmittal of Resignations with Disciplinary Charges Pending**

- (A) **Filing and Serving Resignation.** The written resignation of a member against whom disciplinary charges are pending must be submitted to the Clerk of the State Bar Court in Los Angeles. The Clerk will file the resignation if it is dated, bears the member's signature, and is in the form required by California Rules of Court, rule 9.21(b). When the resignation is filed, the Clerk will serve a copy on the Office of the Chief Trial Counsel.

- (B) **Stipulation Regarding Pending Investigations, Complaints or Proceedings.** Within 60 days from the date the resignation is filed, the member and the Office of the Chief Trial Counsel must enter into a written stipulation as to facts and conclusions of law regarding any disciplinary complaints, investigations or proceedings that are pending against the member at the time his or her resignation was filed. If the member and the Office of the Chief Trial Counsel have not entered into such stipulation, the Office of the Chief Trial Counsel must report that fact and the reasons therefor to the Review Department in its report under subsection (C).
- (C) **Report by the Office of the Chief Trial Counsel.** Within 60 days from the date the resignation is filed, the Office of the Chief Trial Counsel must file with the Review Department and serve upon the member pursuant to rule 5.25, a report setting forth the extent, if any, to which any of the factors enumerated in rule 9.21(d) of the California Rules of Court are present and whether, in light of the application of those factors, the member's resignation should be accepted. All documents referenced in the report, including notices of disciplinary charges and prior records of discipline, must be filed with the report and supported by declaration.
- (D) **Response to Report.** Within 30 days of service of the Office of the Chief Trial Counsel's report, the member may file a response with the Review Department and must serve it on the Office of the Chief Trial Counsel.
- (E) **Decision or Order.** Within 30 days of the filing of the member's response to the report of the Office of the Chief Trial Counsel's report or the expiration of the period for filing such response, whichever occurs first, the Review Department will file an order or decision pursuant to rule 9.21(c) of the California Rules of Court recommending, in light of the factors enumerated in rule 9.21(d), whether the member's resignation should be accepted by the Supreme Court and the reasons for the Review Department's recommendation.
- (F) **Transmittal of Resignation.** Within 15 days of the filing of the Review Department's order regarding the member's resignation, the Clerk of the State Bar Court shall transmit the member's resignation to the Clerk of the Supreme Court, together with the Review Department's order or decision regarding acceptance or rejection of the resignation.

#### **Rule 5.443 Investigation and Discovery**

- (A) **Investigation.** For 120 days after the petition is filed with the Court, the Office of the Chief Trial Counsel will investigate the petition to determine whether to oppose it. For good cause, the Court may extend the investigation period.

- (B) Response to Petition.** Within ~~20~~10 days after the investigation period ends, the Office of the Chief Trial Counsel will file and serve a response to the petition stating, for each issue set forth in rule 5.444 (A) and (B), whether it opposes the petition. If it opposes the petition, the Office of the Chief Trial Counsel will state in its response its grounds for opposition.
- (C) Discovery.** Except as set forth in subsection (D), after the investigation ends, discovery may be conducted under rule 5.65. Requests for discovery must be made within 15 days after service of the Office of the Chief Trial Counsel's response.
- (D) Petitioner's Deposition.** The Office of the Chief Trial Counsel may take the petitioner's deposition. It must be held no later than 45 days after the date the response is due under subsection (B). A petitioner for reinstatement who resides outside California must appear in California at his or her own expense for his or her deposition, on 30 days' written notice of the time and place of the deposition.