

OPEN SESSION

AGENDA ITEM

54-121.3 SEPTEMBER 2018

REGULATION AND DISCIPLINE COMMITTEE ITEM II.A.3

DATE: September 13, 2018

TO: **Members, Regulation and Discipline Committee**
Members, Board of Trustees

FROM: Melanie J. Lawrence, Interim Chief Trial Counsel, Office of Chief Trial Counsel

SUBJECT: Rules Pertaining To the Investigation of Reinstatement Cases (Proposal to Amend Rules 5.400, 5.403, 5.405, 5.408, 5.409, 5.411, 5.440, and 5.443, Rules Proc. of State Bar) – Return From Public Comment and Request for Approval

EXECUTIVE SUMMARY

This proposal would: (1) delete any requirement that reinstatement proceedings be expedited and expressly state that reinstatement proceedings do not take precedence over disciplinary proceedings; (2) expand the time that the Office of Chief Trial Counsel (OCTC) has to conduct follow-up investigation after the deposition of a disbarred or resigned attorney who is seeking reinstatement to the practice of law; and (3) broaden OCTC's ability to obtain pertinent information concerning suspended attorneys who are petitioning to return to active practice based on a claim that they are rehabilitated and possess current learning and ability in the law.

At the May 2018 meeting, the Regulation and Discipline Committee resolved to send out for public comment the proposed amendments to rules 5.400, 5.403, 5.405, 5.408, 5.409, 5.411, 5.440, and 5.443. The close of public comment was July 31st. One comment was received during the 60-day public comment period.

BACKGROUND

Prior to 2011, the Rules of Procedure of the State Bar provided for discovery that was generally consistent with civil discovery rules. In 2011, the Rules of Procedure were amended to implement an abbreviated administrative discovery model. The purpose was to simplify discovery in general State Bar disciplinary cases; however, these changes have negatively impacted the Office of Chief Trial Counsel in reinstatement cases. For example, prior to 2011, former rule 663 of the Rules of Procedure provided for a 120-day investigation period followed by a 120-day discovery period in reinstatement cases. After the rule change, OCTC is given only 120 days to conduct the investigation and 15 days to serve all discovery requests.

After the rule change, OCTC also lost the ability to perform meaningful follow-up discovery and investigation based on information received at the petitioner's deposition.¹

In reinstatement cases, an attorney who was disbarred or resigned with charges pending has a history of ethical violations that sometimes includes deceit and dishonesty. The deposition is an important discovery tool in these matters. Statements under oath made by the deponent must then be verified via follow-up investigation and discovery. On occasion, deponents in these matters testify differently than the information contained in their petition or provide information not previously anticipated. In many instances, considerable follow-up discovery is needed to confirm or disprove the additional information. With the abbreviated discovery period, it is next to impossible for us to perform this important work. The result is that the full truth never comes to light and public protection suffers.

During Admissions and Discipline System Training, some members of the Board of Trustees expressed concern about the short discovery period in reinstatement cases and the impact that has on the effectiveness of the investigation. The Board invited further discussion about proposed rule changes that would increase public protection.

At the May 2018 meeting, in Item III.A.3., the Regulation and Discipline Committee resolved to send out for public comment the proposed amendments to rules 5.400, 5.403, 5.405, 5.408, 5.409, 5.411, 5.440, and 5.443. The close of public comment was July 31st. One comment was received during the 60-day public comment period. The public comment is reproduced in Attachment E.

DISCUSSION

There are two types of reinstatement proceedings:

First, to be reinstated, disbarred or resigned attorneys must establish by clear and convincing evidence that they are rehabilitated (see rule 5.445(A), Rules Proc. of State Bar)², and their reinstatement is not effective until it is approved by the California Supreme Court (see rule 9.10(f), Cal. Rule of Ct.). These proceedings are called "full" reinstatement proceedings.

Second, attorneys who receive lengthy suspensions must prove by a preponderance of the evidence that they are rehabilitated and possess current learning and ability in the general law

¹ Rules 5.66(A) and 5.443(A) permit a motion to extend discovery/investigation period in reinstatement proceedings; however, both require a showing of good cause. The requirement to show good cause implies that post-deposition discovery or investigation is rare. However, in every case, OCTC must conduct appropriate investigation and discovery, which frequently requires additional time after the deposition of the petitioner.

² "In seeking reinstatement, petitioner bears a heavy burden of proving rehabilitation. (*Calaway v. State Bar* (1986) 41 Cal.3d 743, 745, 225 Cal.Rptr. 267, 716 P.2d 371; *Tardiff v. State Bar* (1980) 27 Cal.3d 395, 403, 165 Cal.Rptr. 829, 612 P.2d 919.) He must show by the most clear and convincing evidence that efforts made towards rehabilitation have been successful. (*Feinstein v. State Bar* (1952) 39 Cal.2d 541, 546–547, 248 P.2d 3.) The evidence presented is to be considered in light of the moral shortcomings that previously resulted in discipline. (*Tardiff*, *supra*, 27 Cal.3d at p. 403, 165 Cal.Rptr. 829, 612 P.2d 919; *Roth v. State Bar* (1953) 40 Cal.2d 307, 313, 253 P.2d 969.)"

(*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1091–1092.)

before they may return to active status. (Std. 1.2(c)(1), Standards for Atty. Sanctions for Prof. Miscond.) These proceedings are colloquially known as “mini-reinstatement” proceedings.

1. REINSTATEMENT PROCEEDINGS SHOULD NOT TAKE PRECEDENCE OVER DISCIPLINARY PROCEEDINGS.

Reinstatement proceedings should be completed within a reasonable period of time. However, because public protection is the State Bar's highest priority (Bus. & Prof. Code, § 6001.1), reinstatement cases should not take precedence over disciplinary and regulatory cases pending in the State Bar Court. To the contrary, in order to assure public protection, OCTC should be given sufficient time to locate, evaluate and present the evidence that is necessary for a determination as to whether the reinstatement applications should be granted.

(a). Full Reinstatement Proceedings (Disbarred and Resigned Attorneys) Should Not Be Expedited.

The State Bar Court's time-pendency guidelines provide that all proceedings should be completed within eight months:

The Hearing Department's decision or order regarding complete disposition in a proceeding should ordinarily be filed by the Clerk within eight (8) months of the filing of the initial pleading, unless a shorter time is set forth in the Rules of Procedure.

(Rule 1130(B), Rules of Practice of the State Bar Court). However, it is far more difficult to complete a reinstatement proceeding in eight months than it is to complete a disciplinary case in eight months. The investigation of a disciplinary matter occurs *before* the Notice of Disciplinary Charges is filed and therefore the time spent investigating a disciplinary case does not count against the eight-month clock. On the other hand, pursuant to Rule 5.443(A) of the Rules of Procedure of the State Bar, OCTC is permitted only 120 days to conduct an investigation after a petition for reinstatement is filed and the 120-day investigation period counts against the eight-month clock.

Trial dates in reinstatement cases are frequently set so close in time to the deposition cut-off date that OCTC must routinely request expedited service to obtain the deposition transcript prior to the start of trial. In a number of instances, trial was scheduled to begin within days of the deposition, thus rendering the deposition virtually meaningless.

The eight-month deadline gives reinstatement proceedings undue calendaring priority compared to disciplinary proceedings. This proposal, if implemented, would change the rules to expressly deprioritize full reinstatement proceedings.

(b). Mini-Reinstatement Proceedings (Suspended Attorneys) Should Not Be Expedited.

The rules of procedure require that proceedings for reinstatement of suspended attorneys “will be expedited.” (Rule 5.400(B), Rules Proc. of State Bar.) The rules implement this by: (1) limiting OCTC's investigation to 45 days (rule 4.403(A)); (2) requiring the court to schedule a hearing within 35 days after OCTC files its response to the petition for reinstatement (rule 5.403(C)), (3) requiring the court to issue its decision within 15 days after the hearing (rule

5.408), and (4) requiring that the Review Department decide any appeal within 30 days after submission (rule 4.409). This proposal, if implemented, would deprioritize reinstatement proceedings and modify these deadlines.

2. THE TRIAL OF A FULL REINSTATMENT PROCEEDING (DISBARRED OR RESIGNED ATTORNEY) SHOULD NOT OCCUR UNTIL OCTC HAS HAD SUFFICIENT TIME TO ANALYZE AND INVESTIGATE THE REPRESENTATIONS MADE AT THE PETITIONER'S DEPOSITION.

After a reinstatement petition is filed, OCTC has 120 days to investigate the matter. (Rule 5.443(A), Rules Proc. of State Bar.) Within 10 days after the investigation period ends, OCTC must file a response to the application. (Rule 5.443(B), Rules Proc. of State Bar.) OCTC then has an additional 15 days to serve a discovery request ((Rule 5.443(C)), Rules Proc. of State Bar) and 45 days to schedule the petitioner's deposition (Rule 5.443(D)), Rules Proc. of State Bar).

As a result of the eight-month time-pendency rule, the State Bar Court frequently schedules the trial to occur shortly after the petitioner's deposition. When this happens, OCTC does not have sufficient time to investigate the veracity of the statements made by the petitioner at the deposition. OCTC therefore requests that rule 5.443 of the Rules of Procedure of the State Bar be changed to allow an additional 120-day period during which OCTC may take the applicant's deposition, request written discovery, and conduct follow-up investigation.

3. OCTC's AUTHORITY TO INVESTIGATE MINI-REINSTATEMENT PETITIONS (SUSPENDED ATTORNEYS) SHOULD BE STRENGTHENED.

Unlike the full reinstatement proceedings applicable to disbarred or resigned attorneys, the rules governing reinstatement proceedings for suspended attorneys: (1) prescribe a lower burden of proof (Rule 5.404); (2) allow for very limited discovery and investigation by OCTC (Rule 5.405); (3) provide for trial by written declaration rather than live testimony (Rule 5.406); (4) allow limited appellate rights (Rule 5.409); and (5) do not provide for direct review by the California Supreme Court (see Rule 5.410).

OCTC has only 45 days to conduct its investigation in this type of reinstatement proceeding. (Rule 5.403(A).) OCTC may take the petitioner's deposition (Rule 5.405(A)), but is not allowed any other discovery unless the State Bar Court so orders (Rule 5.405(B)). It can be difficult for OCTC to obtain such an order because the current rules require that these proceedings be expedited (Rule 5.400(B)) and because a showing of good cause is required (Rule 5.405(B)).

In order to protect the public, OCTC needs both a longer discovery period and the ability to subpoena necessary records for the hearing. The evidence contained in mini-reinstatement petitions (declarations and exhibits) must be analyzed and investigated.

First, OCTC needs to interview the witnesses who have submitted declarations on the petitioner's behalf, and possibly other witnesses with knowledge of the issues raised in the petition. This takes time and effort, and should not be done in an hurried manner.

Second, to fully assess or evaluate petitioner's rehabilitation, OCTC also needs the ability to issue subpoenas related to the facts, declarations, or exhibits supporting the petition. For example, if a petitioner presents medical evidence of rehabilitation, OCTC may need to obtain additional medical records from the doctors identified in the petition. The Legislature intended for OCTC to have such authority:

In the conduct of investigations, the chief trial counsel or his or her designee, may compel, by subpoena, the attendance of witnesses and the production of books, papers, and documents pertaining to the investigation.

(Bus. & Prof. Code, § 6049(b).)

Finally, OCTC must conduct its own independent investigation to ascertain whether the reinstatement petitioner has rehabilitated himself or herself during the years in which he or she was on suspension. The issues include: whether the petitioner has committed new misconduct; whether the petitioner has complied with his or her disciplinary probation; and whether the petitioner has made required reports to the State Bar. If, for example, we learn that petitioner has convictions that were not disclosed, OCTC may need to obtain law enforcement or court records.

Public Comment

The only public comment received during the 60-day public comment period was from Zachary Wechsler, President of the Association of Discipline Defense Counsel (ADDC). The comment was in opposition to the proposed rule modifications. The entire comment submitted by the ADDC is included as Attachment E.

In summary, the arguments made by the ADDC against the proposal are as follows:

1. Reinstatement of disbarred / resigned attorneys are not given priority over disciplinary cases because the rule that proceedings should conclude within eight months applies equally to reinstatement and disciplinary proceedings.
2. Extending discovery in reinstatement cases by 120 days would unfairly extend the period of disbarment beyond the time required (5 years).
3. OCTC does not need 120 days to investigate reinstatement cases because:
 - a. the prior misconduct that resulted in disbarment or resignation is well documented,
 - b. OCTC only has to investigate what the petitioner has been doing for the last five years, and
 - c. the petitioner has already provided the information about what they have been doing for the last five years in the petition for reinstatement.
4. Prioritization of returning a suspended attorney to active status ("mini-reinstatement") is justified in order to complete the proceeding before the period of actual suspension ends.
5. Current rules regarding mini-reinstatement proceedings permit additional discovery where good cause exists.
6. Additional discovery is unnecessary in mini-reinstatement proceedings because it is the petitioner's burden to demonstrate rehabilitation and, as a result, they voluntarily provide documents to meet this burden.
7. Additional discovery about other misconduct in mini-reinstatement proceedings is unnecessary because the petitioner is being monitored by the Office of Probation.

As an alternative, the ADDC proposes that if OCTC is given an additional 120 days to investigate, disbarred and resigned attorneys should be permitted to apply for reinstatement 120 days early (i.e., four years and 245 days after disbarment or resignation).

Response to Public Comment

Reinstatements:

1. Rule 1130(B) of the Rules of Practice of the State Bar Court provides that State Bar Court cases should be resolved within eight months of the filing of the initial pleading. While this rule, on its face, applies equally to reinstatement cases and disciplinary cases, the practical effect of the rule is to prioritize reinstatement cases. The prioritization occurs because OCTC investigates disciplinary matters *before* the initial pleading (the Notice of Disciplinary Charges) is filed. In reinstatement cases, however, the petition for reinstatement triggers the eight-month time clock and the investigation period must occur within that time frame. As a result, following the investigation period, reinstatement cases that are ready for trial have an earlier “last day” and therefore take precedence over disciplinary cases.
2. Rule 5.442(b) of the Rules of Procedure of the State Bar provides a minimum five-year period before a disbarred or resigned attorney may apply for reinstatement. The five-year period is measured from the effective date of the petitioner’s disbarment, interim suspension following a disbarment recommendation, interim suspension following criminal conviction, or the filing date of the petitioner’s resignation with charges pending (i.e., the beginning of the period of inactive status resulting from the tender of his or her resignation with charges pending).

No rule, statute, or Supreme Court precedent specifies that the disbarment is limited to five years. Further, altering the reinstatement rules to allow additional discovery would not delay a significant number of reinstatements from the minimum five years to something beyond five years. For example, from 2000 to 2018, attorneys who previously resigned with charges pending filed 137 petitions for reinstatement and previously disbarred attorneys filed 68 petitions for reinstatement. On average, the petitions filed by these attorneys were submitted 3286 days, or slightly more than nine years, after the resignation or the disbarment of the attorney. In fact, in the last 18 years, only 10 petitions have been submitted within the 120 day period following the expiration of the minimum five-year period following a disbarment or resignation with charges pending.³

3. This proposal essentially restores the 120 day discovery period to the reinstatement rule and returns the rule to the way it was for decades prior to 2011. The 120-day discovery period will allow OCTC to conduct meaningful discovery after investigation and prior to trial - especially the ability to vet the statements made by the petitioner under oath during their deposition.

³ Two additional petitions, filed in the early 2000s, were filed prior to the expiration of the five-year period. It is unclear whether the respondents were relying on an earlier version of the rule defining the earliest time for filing a reinstatement petition (prior rule 662). Prior to 2001, rule 662(a) stated, in pertinent part, “Except as provided in subsection (b), no petition for reinstatement shall be filed within five years...” The then operative subsection (b) of rule 662 provided that respondents could petition the court to shorten the time for filing the first petition for reinstatement to a time less than five years, but not less than three years. The respondents may also have simply filed the petitions early. One respondent filed the petition 24 days prior to the expiration of the five-year period. The other respondent filed the petition 290 days early.

It is important to note that reinstatement investigations cases are much broader than most disciplinary investigations. Disciplinary investigations are generally focused on specific allegations raised by a complainant. In contrast, reinstatement investigations are open-ended background investigations to determine whether a petitioner is truly rehabilitated and possess present moral qualifications for reinstatement. This involves numerous areas of inquiry and a great deal of investigation. OCTC frequently reaches out to employers, courts, schools, banks, and other entities to verify the application statements and to determine whether relevant information was not included in the petition. This can also generate significant follow-up investigation, including witness interviews and requests for documents.

As discussed above, the majority of reinstatement cases involve a period of time far greater than the five years immediately preceding the filing of the Petition. This is true for a variety of reasons, including where petitioners have suffered serious criminal convictions involving either lengthy periods of incarceration and/or probationary periods.

In addition to misconduct that may have been documented prior to the filing of the petition, there may also be other complaints the investigation of which were suspended at the time of the petitioner's disbarment or additional complaints that came in after the petitioner was disbarred. These matters must be fully investigated as well.

Further, while OCTC accepts that some previously disbarred attorneys have reformed their behavior, many petitioners are not forthcoming about their misconduct. Many State Bar Court decisions demonstrate that petitioners omit information and make misrepresentations in their petition as to their activities since disbarment.

Mini-Reinstatements:

4. Attorneys who receive lengthy suspensions are suspended not just for a specific period of time, but instead are ordered to "remain suspended until" they have met the requirements of Standard 1.2(c)(1) (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct). To be relieved of suspension, they must prove by a preponderance of the evidence that they are rehabilitated and possess current learning and ability in the general law (mini-reinstatements). It is understandable that respondents as well as the Association of Discipline Defense Counsel would prefer that respondents be returned to practice at the earliest possible time. Public protection nonetheless requires that a thorough investigation not be sacrificed to expedite the return of a disciplined attorney.

Further, suspended attorneys do not always petition to be relieved of suspension prior to the expiration of the actual suspension period. Since 2000, approximately thirty-four percent of petitions were filed after the expiration of the actual suspension period. In one recent mini-reinstatement case, decided in June of 2018, the petitioner sought to meet the requirements of Standard 1.2(c)(1) more than 20 years after being placed on disciplinary suspension.

5. Current rules regarding mini-reinstatement proceedings do permit additional discovery where good cause exists; however, the combined effect of the requirement to seek a good cause ruling and the 45-day limit to file OCTC's responsive pleading makes obtaining additional discovery difficult. The time it takes to evaluate the case for additional discovery, make the motion for additional discovery, receive the opposition, have the motion heard and granted, and subsequently seek and receive the requested

evidence makes the additional discovery process challenging. While the mini-reinstatement investigations are not generally as wide-ranging as full reinstatements, OCTC should be permitted to conduct any investigation necessary to verify the statements in the petition and to discover other relevant information.

6. Again, while OCTC agrees that some petitioners are forthcoming and will volunteer documents, many disciplined attorneys do not volunteer access to documents that they perceive to be contrary to their interests. Further, as OCTC has only 45-days to file the response, it is very difficult to obtain the petitioner's signed release, subsequently seek and receive the requested documents, and meaningfully analyze the documents in time to be included in the response.
7. While many attorneys petitioning for relief from suspension have been on disciplinary probation, the Office of Probation only monitors compliance with quarterly and final reporting requirements, rule 9.20 compliance, drug testing, etc. The Office of Probation relies on the respondent to self-report violations of the Rules of Professional Conduct. The monitoring performed by the Office of Probation is not currently designed to discover the commission of additional misconduct. Further, many suspended attorneys choose not to report violations of their probation or additional misconduct proactively.

Court Comment

While the State Bar Court may still be guided by disposition time standards, State Bar Court staff has reviewed this proposal and raised no objection to the language.

FISCAL/PERSONNEL IMPACT

None

RULE AMENDMENTS

Title 5, Division 7, Chapter 1, Rule 5.400, Rules of Procedure of the State Bar
Title 5, Division 7, Chapter 1, Rule 5.403, Rules of Procedure of the State Bar
Title 5, Division 7, Chapter 1, Rule 5.405, Rules of Procedure of the State Bar
Title 5, Division 7, Chapter 1, Rule 5.408, Rules of Procedure of the State Bar
Title 5, Division 7, Chapter 1, Rule 5.409, Rules of Procedure of the State Bar
Title 5, Division 7, Chapter 1, Rule 5.411, Rules of Procedure of the State Bar
Title 5, Division 7, Chapter 3, Rule 5.440, Rules of Procedure of the State Bar
Title 5, Division 7, Chapter 3, Rule 5.443, Rules of Procedure of the State Bar

BOARD BOOK AMENDMENTS

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: 2. Ensure a timely, fair, and appropriately resourced admissions, discipline, and regulatory system for the more than 250,000 lawyers licensed in California.

RECOMMENDATION

It is recommended that the Board of Trustees approve the following resolution:

RESOLVED, that following a 60-day public comment period, the Board of Trustees hereby adopts the amendments to:

Title 5, Division 7, Chapter 1, Rule 5.400, Rules of Procedure of the State Bar,
Title 5, Division 7, Chapter 1, Rule 5.403, Rules of Procedure of the State Bar,
Title 5, Division 7, Chapter 1, Rule 5.405, Rules of Procedure of the State Bar,
Title 5, Division 7, Chapter 1, Rule 5.408, Rules of Procedure of the State Bar,
Title 5, Division 7, Chapter 1, Rule 5.409, Rules of Procedure of the State Bar,
Title 5, Division 7, Chapter 1, Rule 5.411, Rules of Procedure of the State Bar,
Title 5, Division 7, Chapter 3, Rule 5.440, Rules of Procedure of the State Bar,
Title 5, Division 7, Chapter 3, Rule 5.443, Rules of Procedure of the State Bar; as set forth in Attachment A; and it is

FURTHER RESOLVED, that the amendment to rules 5.400, 5.403, 5.405, 5.408, 5.409, 5.411, 5.440, and 5.443 of the Rules of Procedure of the State Bar is effective immediately and will apply to all pending and future matters.

ATTACHMENT(S) LIST

- A.** Proposed amended rules 5.400, 5.403, 5.405, 5.408, 5.409, 5.411, 5.440, and 5.443 (Clean Version)
- B.** Proposed amended rules 5.400, 5.403, 5.405, 5.408, 5.409, 5.411, 5.440, and 5.443 (Redline Version)
- C.** Title 5, Division 7, Chapter 1, as proposed (Redline Version)
- D.** Title 5, Division 7, Chapter 3, as proposed (Redline Version)
- E.** Public comment on proposed amendments to the rules governing reinstatements and “mini” reinstatements

Attachment A

Proposed Amended Rules 5.400, 5.403, 5.405, 5.408, 5.409, 5.411, 5.440, 5.443 (Clean Version)

Rule 5.400 Scope and Expedited Nature of Proceeding

(A) Scope. These rules apply when a petitioner seeks relief from actual suspension under a disciplinary order that requires compliance with standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct.

(B) Service. The petition and all pleadings, decisions and other documents must be served by personal delivery or by overnight mail.

Rule 5.403 Response; Request for Hearing

(A) Timing of Response. Within 90 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:

- (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, 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 5.405 Discovery

(A) Deposition. The Office of the Chief Trial Counsel may take the petitioner's deposition promptly after the petition is filed. Unless the Court orders an extension for good cause, the timing of the deposition will not extend any time limits required under these rules. A petitioner for reinstatement who does not reside in California must be given 30 days' written notice of the time and place of the deposition, and must appear for it in California at his or her own expense.

(B) Other Discovery. The Office of Chief Trial Counsel may issue subpoenas duces tecum after the petition is filed. Unless the Court orders an extension for good cause, receipt of documents pursuant to a subpoena duces tecum will not extend any time limits required under these rules. All responses to subpoenas received by the Office of Chief Trial Counsel must be provided to petitioner within three court days of receipt. No other discovery will be allowed unless ordered by the Court for good cause. The Court's order will set forth the permitted extent and conditions for additional discovery.

Rule 5.408 Decision

Unless the petitioner waives the time or additional time is otherwise justified by the circumstances, the Court will file its decision within 30 days after the hearing ends. If no hearing is held, the Court will file its decision within 30 days after the Office of the Chief Trial Counsel files its response, or if none was filed, within 30 days from the date the response was due. The decision granting or denying the petition must contain findings of fact and conclusions of law.

Rule 5.409 Review

A decision is reviewable under rule 5.150. The Review Department's decision must be filed within 60 days after the matter is submitted.

Rule 5.411 Applicable Rules

(A) Inapplicable Rules. The following rules do not apply to proceedings on a petition for relief from actual suspension under standard 1.2(c)(1):

- (1) rules that by their terms apply only to disciplinary proceedings or to other specific proceedings, and
- (2) rules 5.80-5.100 (default; obligation to appear at trial) and rules 5.151-5.157 (review).

(B) Conditionally Applicable. All other rules apply, except that:

- (1) Rules 5.25 (service of initial pleading) and 526 (service of subsequent pleadings) apply subject to the provisions of rule 5.400(B), and
- (2) Rules 5.65-5.71 (discovery) apply only if and to the extent that the Court permits additional discovery.

Rule 5.440 Beginning Proceeding

(A) Applicability of Rules. These rules apply to proceedings for reinstatement to membership in the State Bar after resignation with or without charges pending and after disbarment.

(B) Reinstatement Proceedings Do Not Have Calendar Preference. Reinstatement proceedings are not to be expedited and will not receive calendar preference over disciplinary proceedings that are ready for trial.

(C) Petition. The party seeking reinstatement begins the reinstatement proceeding by filing and serving a petition for reinstatement and paying the required fee.

Rule 5.443 Investigation and Discovery

(A) Initial 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 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 5.445 (A) or (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 and Subsequent Investigation. For 120 days after its response to the petition is filed, the Office of Chief Trial Counsel may conduct discovery and complete its investigation of the matter. Except as set forth in subsection (D), 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.

Attachment B

Proposed Amended Rules 5.400, 5.403, 5.405, 5.408, 5.409, 5.411, 5.440, 5.443 (Redline Version)

Rule 5.400 Scope and Expedited Nature of Proceeding

(A) Scope. These rules apply when a petitioner seeks relief from actual suspension under a disciplinary order that requires compliance with standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct.

(B) ~~Expedition; Service.~~ ~~Proceedings under these rules will be expedited.~~ The petition and all pleadings, decisions and other documents must be served by personal delivery or by overnight mail.

Rule 5.403 Response; Request for Hearing

(A) Timing of Response. Within ~~45~~⁹⁰ 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:

- (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 5.405 Discovery

(A) Deposition. The Office of the Chief Trial Counsel may take the petitioner's deposition promptly after the petition is filed. Unless the Court orders an extension for good cause, the timing of the deposition will not extend any time limits required under these rules. A petitioner for reinstatement who does not reside in California must be given 30 days' written notice of the time and place of the deposition, and must appear for it in California at his or her own expense.

(B) Other Discovery. The Office of Chief Trial Counsel may issue subpoenas duces tecum after the petition is filed. Unless the Court orders an extension for good cause, receipt of documents pursuant to a subpoena duces tecum will not extend any time limits required under these rules. All responses to subpoenas received by the Office of Chief Trial Counsel must be provided to petitioner within three court days of receipt. No other discovery will be allowed unless ordered by the Court for good cause. The Court's order will set forth the permitted extent and conditions for additional discovery.

Rule 5.408 Decision

Unless the petitioner waives the time or additional time is otherwise justified by the circumstances, the Court will file its decision within ~~45~~30 days after the hearing ends. If no hearing is held, the Court will file its decision within ~~45~~30 days after the Office of the Chief Trial Counsel files its response, or if none was filed, within ~~45~~30 days from the date the response was due. The decision granting or denying the petition must contain findings of fact and conclusions of law.

Rule 5.409 Review

A decision is reviewable under rule 5.150. The Review Department's decision must be filed within ~~30~~60 days after the matter is submitted.

Rule 5.411 Applicable Rules

(A) Inapplicable Rules. The following rules do not apply to proceedings on a petition for relief from actual suspension under standard 1.2(c)(1):

- (1) rules that by their terms apply only to disciplinary proceedings or to other specific proceedings, and
- (2) rules 5.80-5.100 (default; obligation to appear at trial) and rules 5.151-5.157 (review).

(B) Conditionally Applicable. All other rules apply, except that:

- (1) Rules 5.25 (service of initial pleading) and 526 (service of subsequent pleadings) apply subject to the provisions of rule 5.400(B), and
- (2) Rules 5.65-5.71 (discovery) apply only if and to the extent that the Court permits additional discovery.

Rule 5.440 Beginning Proceeding

(A) Applicability of Rules. These rules apply to proceedings for reinstatement to membership in the State Bar after resignation with or without charges pending and after disbarment.

(B) Reinstatement Proceedings Do Not Have Calendar Preference. Reinstatement proceedings are not to be expedited and will not receive calendar preference over disciplinary proceedings that are ready for trial.

(C) Petition. The party seeking reinstatement begins the reinstatement proceeding by filing and serving a petition for reinstatement and paying the required fee.

Rule 5.443 Investigation and Discovery

(A) Initial 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 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 5.445 (A) or (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 and Subsequent Investigation. For 120 days after its response to the petition is filed, the Office of Chief Trial Counsel may conduct discovery and complete its investigation of the matter. 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.

Attachment C

Title 5, Division 7, Chapter 1, as proposed (Redline Version)

Rule 5.400 Scope and Expedited Nature of Proceeding

(A) Scope. These rules apply when a petitioner seeks relief from actual suspension under a disciplinary order that requires compliance with standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct.

(B) ~~Expedition; Service. Proceedings under these rules will be expedited.~~ The petition and all pleadings, decisions and other documents must be served by personal delivery or by overnight mail.

Rule 5.401 Petition for Relief from Actual Suspension

(A) Verification; Statements. The petitioner must verify the petition for relief and state with particularity the facts alleged to demonstrate the petitioner's rehabilitation, present fitness to practice, and present learning and ability in the general law.

(B) Attachments. The petition must be supported by declarations, exhibits, or requests for judicial notice to establish the alleged facts.

(C) Filing and Service. No filing fee will be charged to file the petition. The petitioner must serve a copy of the verified petition and supporting documents on the Office of the Chief Trial Counsel by personal delivery or overnight mail.

Rule 5.402 Earliest Time for Filing

The earliest a petition may be filed is six months before the actual suspension may be terminated. If a prior petition was denied, a subsequent petition may be filed six months after the order is final, unless the Court orders a shorter period for good cause.

Rule 5.403 Response; Request for Hearing

(A) Timing of Response. Within ~~45~~⁹⁰ 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:

- (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 5.404 Burden of Proof

The petitioner has the burden of proving by a preponderance of the evidence that the petitioner has satisfied the conditions of standard 1.2(c)(1).

Rule 5.405 Discovery

(A) Deposition. The Office of the Chief Trial Counsel may take the petitioner's deposition promptly after the petition is filed. Unless the Court orders an extension for good cause, the timing of the deposition will not extend any time limits required under these rules. A petitioner for reinstatement who does not reside in California must be given 30 days' written notice of the time and place of the deposition, and must appear for it in California at his or her own expense.

(B) Other Discovery. The Office of Chief Trial Counsel may issue subpoenas duces tecum after the petition is filed. Unless the Court orders an extension for good cause, receipt of documents pursuant to a subpoena duces tecum will not extend any time limits required under these rules. All responses to subpoenas received by the Office of Chief Trial Counsel must be provided to petitioner within three court days of receipt. No other discovery will be allowed unless ordered by the Court for good cause. The Court's order will set forth the permitted extent and conditions for additional discovery.

Rule 5.406 Documentary Evidence

Except on Court order for good cause, no party may submit documentary evidence other than that filed with the application or the response. A request to submit additional documentary evidence must be written, have a copy of the proposed documentary evidence attached, and be filed and served at least 10 days before the hearing.

Rule 5.407 Testimonial Evidence

(A) Petitioner; Rebuttal. The petitioner may testify at the hearing. Any party may present oral testimony to rebut oral testimony presented by the opposing party.

(B) Other Oral Testimony. Other oral testimony is not permitted unless ordered by the Court for good cause shown. A party who wants to present oral testimony for purposes other than rebuttal must file a written statement summarizing the proposed testimony and stating the reasons why the testimony cannot be presented by declaration. The statement must be filed and served at least 10 days before the hearing.

Rule 5.408 Decision

Unless the petitioner waives the time or additional time is otherwise justified by the circumstances, the Court will file its decision within ~~15~~30 days after the hearing ends. If no

hearing is held, the Court will file its decision within ~~45~~³⁰ days after the Office of the Chief Trial Counsel files its response, or if none was filed, within ~~45~~³⁰ days from the date the response was due. The decision granting or denying the petition must contain findings of fact and conclusions of law.

Rule 5.409 Review

A decision is reviewable under rule 5.150. The Review Department's decision must be filed within ~~30~~⁶⁰ days after the matter is submitted.

Rule 5.410 Termination of Actual Suspension

While the petition is pending before the Court, the petitioner will remain on actual suspension. If the petition is granted, the petitioner will remain on actual suspension until the actual suspension period expires, and until the petitioner satisfies any other requirements for terminating actual suspension under the disciplinary order.

Rule 5.411 Applicable Rules

(A) Inapplicable Rules. The following rules do not apply to proceedings on a petition for relief from actual suspension under standard 1.2(c)(1):

- (1) rules that by their terms apply only to disciplinary proceedings or to other specific proceedings, and
- (2) rules 5.80-5.100 (default; obligation to appear at trial) and rules 5.151-5.157 (review).

(B) Conditionally Applicable. All other rules apply, except that:

- (1) Rules 5.25 (service of initial pleading) and 5.26 (service of subsequent pleadings) apply subject to the provisions of rule 5.400(B), and
- (2) Rules 5.65-5.71 (discovery) apply only if and to the extent that the Court permits additional discovery.

Attachment D

Title 5, Division 7, Chapter 3, as proposed (Redline Version)

Rule 5.440 Beginning Proceeding

(A) Applicability of Rules. These rules apply to proceedings for reinstatement to membership in the State Bar after resignation with or without charges pending and after disbarment.

(B) Reinstatement Proceedings Do Not Have Calendar Preference. Reinstatement proceedings are not to be expedited and will not receive calendar preference over disciplinary proceedings that are ready for trial.

(C) Petition. The party seeking reinstatement begins the reinstatement proceeding by filing and serving a petition for reinstatement and paying the required fee.

Rule 5.441 Filing Requirements

(A) Filing Petition, Disclosure Statement, and Authorization and Release. A petitioner must complete and verify a petition and disclosure statement on the forms approved by the Court and in compliance with the instructions therein. The original and three copies of the petition must be filed with the Clerk of the State Bar Court. The disclosure statement is not filed with the Court but must be served on the Office of the Chief Trial Counsel. In addition, a petitioner must complete an authorization and release approved by the State Bar. The authorization and release is not filed with the Court but must be served on the Office of the Chief Trial Counsel.

(B) Pre-Filing Requirements and Proof. Prior to filing the petition, the petitioner must satisfy the following requirements and must attach proof of compliance to the petition:

(1) Fingerprints Submitted. Under Business and Professions Code § 6054, the petitioner must have submitted fingerprints to the California Department of Justice via Live Scan technology, or if the petitioner resides outside the state, two sets of original fingerprints on record cards furnished by the State Bar must have been submitted to the Office of the Chief Trial Counsel;

(2) Discipline Costs Paid and Client Security Fund Payments Reimbursed. Petitioner must have paid all discipline costs imposed under § 6086.10(a) and reimbursed all payments made by the Client Security Fund as a result of the petitioner's conduct, plus applicable interest and costs, under Business and Professions Code § 6140.5(c).

(3) Passage of the Attorneys' Examination.

(a) Resigned with Charges Pending or Disbarred. Petitioners who resigned with charges pending or who were disbarred must establish that they have taken and passed the Attorneys' Examination by the Committee of Bar Examiners within three years prior to the filing of the petition for reinstatement.

(b) Resigned without Charges Pending. Petitioners who resigned without charges pending more than five years before filing the petition for reinstatement must establish that they have taken and passed the Attorneys' Examination administered by the Committee of Bar Examiners within five years prior to the filing of the application for readmission or reinstatement.

(C) Filing Fee. The petition must include a filing fee of \$1,600, which will be given to the Office of the Chief Trial Counsel to defray incurred costs. The Clerk will reject the petition for filing if the fee is not included.

(D) Service. The petition and disclosure statement must be served on the Office of the Chief Trial Counsel under rule 5.25.

(E) Dismissal. Failure to comply with any of the requirements of this rule will be grounds to dismiss the petition.

Rule 5.442 Earliest Time for Filing Reinstatement Petition

(A) Filing after Resignation without Charges Pending. After resignation without charges pending, a first or subsequent petition for reinstatement may be filed at any time.

(B) Filing after Resignation with Charges or Disbarment. Except as provided in the order of disbarment, no petition for reinstatement will be filed within five years after the effective date of the petitioner's disbarment, interim suspension following a disbarment recommendation, or interim suspension following criminal conviction, or the filing date of the petitioner's resignation with charges pending, whichever occurred earliest. No petitioner who has been disbarred by the Supreme Court on two previous occasions may apply for reinstatement.

(C) Subsequent Petitions. If a petitioner received an adverse decision on a prior petition following disbarment or resignation with charges pending, a subsequent petition cannot be filed for two years after the effective date of the adverse decision, unless a shorter period is ordered by the Court for good cause.

Rule 5.443 Investigation and Discovery

(A) Initial 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 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 5.445 (A) or (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 and Subsequent Investigation. For 120 days after its response to the petition is filed, the Office of Chief Trial Counsel may conduct discovery and complete its investigation of the matter. 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.

Rule 5.444 Notice of Hearing; Publication

The Clerk will serve notice of the hearing on the parties. The Office of the Chief Trial Counsel may publish the fact that a petition for reinstatement has been filed with the State Bar Court, the petitioner's identity, and other relevant information identifying the proceeding.

Rule 5.445 Burden of Proof

(A) Reinstatement after Resignation with Charges Pending or Disbarment. Petitioners for reinstatement must:

- (1) pass a professional responsibility examination within one year prior to filing the petition;
- (2) establish their rehabilitation;
- (3) establish present moral qualifications for reinstatement; and
- (4) establish present ability and learning in the general law by providing proof that they have taken and passed the Attorneys' Examination by the Committee of Bar Examiners within three years prior to the filing of the petition.

(B) Reinstatement after Resignation without Charges Pending. Petitioners for reinstatement must:

- (1) pass a professional responsibility examination within one year prior to filing the petition;
- (2) establish their present moral qualifications for reinstatement; and
- (3) establish present ability and learning in the general law. If the petitioner resigned without charges pending more than five years before filing the petition, the petitioner must establish present ability and learning in the general law by providing proof that he or she has taken and passed the Attorneys' Examination administered by the Committee of Bar Examiners within five years prior to the filing of the petition.

Rule 5.446 Inapplicable Rules.

The following rules do not apply in a reinstatement proceeding:

(A) General. Rules that by their terms apply only to disciplinary proceedings or to other specific proceedings, and

(B) Specific. Rules 5.80-5.100 (default; obligation to appear at trial) and rules 5.105-5.108 (admission of certain evidence).

Public Comment on proposed amendments to the rules governing reinstatements and “mini” reinstatements.

ASSOCIATION OF DISCIPLINE DEFENSE COUNSEL

July 24, 2018

VIA EMAIL: OCTC Rules@calbar.ca.gov

Re: Public Comment – Reinstatement Cases

Dear State Bar of California:

On behalf of the Association of Discipline Defense Counsel (“ADDC”), we thank you for the opportunity to comment on the Reinstatement Cases proposal.

Expanded Discovery for Reinstatement Proceedings:

The Association of Discipline Defense Counsel (“ADDC”) disagrees with the State Bar’s Office of Chief Trial Counsel’s (“OCTC”) position that reinstatement proceedings receive priority over disciplinary proceedings under the current rules. Rule 1130(B) of the State Bar Rules of Practice, which provides that proceedings should be concluded within eight (8) months, applies equally to reinstatement and disciplinary proceedings. Simply because OCTC would prefer more time to conduct discovery and investigation in reinstatement proceedings does not necessarily lead to the conclusion that reinstatement proceedings currently receive priority over other types of cases.

In addition to waiting at least five (5) years before petitioning for reinstatement, disbarred attorneys must also wait many months after commencement of those proceedings until the conclusion of the case. The proposal would, in effect create a new rule, by preventing an attorney reapplying from disbarment to wait 6 years or even longer to be reinstated. This extended period would unduly prejudice those attorneys by extending the period of their disbarment beyond that which is required by statute.

OCTC’s request for an additional 120 days to investigate and conduct discovery is based on its unproven claim that the 120 days it currently is provided by the statute does not provide it with sufficient time. We disagree. Although the investigation into the attorney covers at least a span of five years, reinstatement proceedings are less complex than most standard disciplinary investigations because the misconduct which resulted in the attorney’s disbarment or resignation has already been documented and is not in itself the subject of the proceeding. All the OCTC must investigate is what the petitioner has been doing for the past five years. That information has already been presented in the petition for reinstatement. OCTC does not need 240 days to confirm or refute the petitioner’s statements and evidence.

In the alternative, if the rules are modified to permit OCTC an additional 120 days to conduct its investigation and discovery, the applicable rules should be modified to permit the

disbarred or resigned petitioning attorney to file the petition for reinstatement 120 days earlier than currently permitted. The attorney would still need to remain disbarred or “resigned” for at least five (5) years, but this change would allow the petitioner to file for reinstatement 120 days earlier so the effective term of the disbarment or resignation is not extended by administrative necessity.

Expanded Discovery for “Mini” Reinstatements:

The State Bar’s current Rules of Procedure prioritize proceedings for relief from suspension pursuant to Standard 1.2(c), also known as “mini” reinstatement proceedings, because it is important to complete the proceeding before the period of actual suspension that was imposed as part of the discipline expires. Otherwise, assuming the attorney timely filed a petition for relief from inactive status, that attorney would be unduly prejudiced by remaining on suspension longer than necessary. Thus, mini-reinstatement proceedings naturally must take priority over disciplinary proceedings in general, as there is urgency in returning a suspended attorney back to active status upon completion of the period of actual suspension. Such urgency generally is not generally present when disciplining an attorney for misconduct that often may arise from an isolated or remote incident, or issues that do not generally pose an immediate threat to the public.

We believe OCTC’s rationale for requesting more expansive discovery in mini-reinstatement proceedings is not compelling. The current rules already permit additional discovery not expressly permitted, by way of a motion granted by the State Bar Court. OCTC takes the position that obtaining an order from the court for additional discovery can be difficult because a showing of good cause is required. But that is as it should be. By this proposal, OCTC apparently seeks authority to conduct discovery even in the absence of demonstrable good cause.

For example, OCTC cites its need to subpoena further medical records when a petitioner presents medical evidence of rehabilitation. However, because the burden is on the petitioner to demonstrate rehabilitation, the petitioner often will voluntarily provide the documents requested by OCTC to assist in establishing he or she has fulfilled the requirements to be relieved from actual suspension.

OCTC’s assertion that it needs more time to conduct its own investigation into a petitioner’s rehabilitation is also not compelling. Although it cites its need to determine whether petitioner has engaged in other misconduct, complied with terms of probation, and made the required reports to the State Bar, those issues can be easily and promptly determined, since the petitioner is on disciplinary probation during the pendency of the suspension and is already being monitored by the Office of Probation.

ADDC believes that the current rules for reinstatement and “mini” reinstatement proceedings operate well. Any change to those rules to accommodate OCTC’s need for additional time to investigate, without providing the subject attorney with a corresponding reduction of time within which to file the petition, will have a negative effect upon the subject attorney of the proceeding.

Sincerely,



Zachary D. Wechsler
President, ADDC