



The State Bar of California

OPEN SESSION

AGENDA ITEM

54-121 NOVEMBER 2020

REGULATION AND DISCIPLINE COMMITTEE III.A

DATE: November 19, 2020

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

FROM: Suzanne Grandt, Attorney IV, Office of General Counsel

SUBJECT: Proposed New and Amended State Bar Rules of Procedure: (1) Rule 5.137;
(2) Rules to Implement Rule 5.137; and (3) Rule to Clarify When Court Orders
May Require Reimbursement to the Client Security Fund: Return from Public
Comment and Request for Approval

EXECUTIVE SUMMARY

At its July 2020 meeting, the State Bar Regulation and Discipline Committee (RAD) authorized a 60-day public comment period for two proposed and 23 amended State Bar Rules of Procedure.¹ These proposals fell into three different categories: (1) new and amended rules necessary to implement rule 5.137, the recently enacted rule setting forth guidelines for the imposition and collection of monetary sanctions; (2) amendments to rule 5.136 to clarify when court orders may require reimbursement to the Client Security Fund (CSF); and (3) amendments to rule 5.137. The State Bar received one public comment.

The new and amended rules regarding the implementation of monetary sanctions pursuant to rule 5.137 are necessary, *inter alia*, to ensure consistent notification to attorneys regarding the imposition of the sanctions; to provide a process for both parties to present evidence to State Bar Court regarding the amount of monetary sanctions to be imposed; to provide a process for attorneys to seek reduction, waiver, or extension of time to pay imposed sanctions; and to specify that an agreement regarding monetary sanctions must be included in stipulated dispositions. The amendments to rule 5.136 are necessary to ensure consistency with case law regarding the nature of CSF payouts. Staff recommends approval of these proposed and amended State Bar rules, with an effective date of January 1, 2021.

¹ All further references to rules are to the State Bar Rules of Procedure unless indicated otherwise.

Amendments to rule 5.137 are necessary to provide clarity regarding the definition of terms, specify the inclusion of sanctions in stipulations, and to provide an effective date for the Rule. Staff recommends authorization to submit the Rule 5.137 amendments to the California Supreme Court for approval pursuant to Business and Professions Code section 6086.13(c). Unlike all the other rule proposals, the amendments to Rule 5.137 will not become effective until approved by the California Supreme Court.

BACKGROUND

Effective January 1, 1993, Business and Professions Code section 6086.13, allows monetary sanctions to be ordered against attorney respondents in disciplinary proceedings. The amounts collected must be deposited into the Client Security Fund (Bus. & Prof. Code § 6086.13(b)). The statute states that “the State Bar shall, with the approval of the Supreme Court, adopt rules setting forth guidelines for the imposition and collection of monetary sanctions under this section” (Bus. & Prof. Code, § 6086.13(c)).

On March 23, 2020, the California Supreme Court approved rule 5.137, which sets forth guidelines for the imposition of monetary sanctions pursuant to Business and Professions Code section 6086.13(c), with an effective date of April 1, 2020.

As noted above, a 60-day public comment period was authorized for two proposed and 23 amended State Bar Rules of Procedure, all but one relating to the implementation of rule 5.137. The one proposed amendment unrelated to rule 5.137 involves clarification of rule 5.136, a rule regarding court orders concerning CSF payments. Detailed information regarding the rule proposals is contained in the RAD July agenda item III.D, provided as Attachment B.

The public comment period ran from July 17, 2020 to September 11, 2020. The full text of the proposed rules is provided as Attachment A.

DISCUSSION

I. Public Comment Received

One comment was received during the public comment period from the Association of Discipline Defense Counsel (ADDC). The full text of the public comment is provided as Attachment C. The comment did not address the substance of the rules. Rather, ADDC urges the State Bar to convince the legislature to repeal Business and Professions Code section 6086.13, providing that disciplinary orders of the Supreme Court may include an order that the licensee pay monetary sanctions and mandating that the State Bar, with the approval of the Supreme Court to “adopt rules setting forth guidelines for the imposition and collection of monetary sanctions under this section.” ADDC also points out that imposing monetary sanctions will increase the workload of the State Bar Court, drive up the cost of litigation, and slow down the discipline process. Lastly, ADDC argues that the imposition of sanctions will

exacerbate the disparities in the discipline system and are incompatible with the State Bar's Strategic Plan.

ADDC's concerns should be directed to the legislature rather than the State Bar. The State Bar cannot ignore a current statutory obligation. Business and Professions Code section 6086.13 mandates that the State Bar adopts rules "setting forth guidelines for the imposition and collection of monetary sanctions," unless and until this statute is repealed. The State Bar must follow this directive and move forward with its rule proposals.

For these reasons, State Bar staff recommends approval of the proposed new and amended rules set forth in Attachment A, with an effective date of January 1, 2021.²

II. Proposed Amendments to Rule 5.137

As indicated above, proposed amendments to rule 5.137 were part of the group of rules authorized for public comment by RAD at the July 2020 meeting. These amendments included adding language stating that rule 5.137 applies to disciplinary and criminal conviction proceedings commenced and stipulation signed after April 1, 2020, the effective date of the Supreme Court's order approving the rule (see Attachment B). This language was proposed to ensure respondents had adequate notification at the start of the proceeding of the potential for the imposition of monetary sanctions.

As the current version of rule 5.137 approved by the Supreme Court does not have an effective date, State Bar Court has rejected or modified proposed disciplinary stipulations entered after April 1, 2020 that contain agreements regarding monetary sanctions citing, among other things, that monetary sanctions are not applicable because the misconduct occurred prior to April 1, 2020, the effective date of rule 5.137. The State Bar Court has also entered orders rejecting the imposition of monetary sanctions in disciplinary cases commenced after—but concerning misconduct prior to—April 1, 2020. These rejections were based on the proposition that recommending sanctions would be a retroactive application of rule 5.137 (see *Matter of Braun* [Review Dept. Sept 18, 2020] Case No. 18-N-6608; 18-O-7277 [consolidated]).

Staff recommends moving forward with the language approved by RAD for public comment, which specifies that rule 5.137 applies to "all disciplinary and criminal conviction proceedings commenced and stipulations signed on or after April 1, 2020." While this may result in the imposition of sanctions in cases in which the misconduct at issue occurred prior to the effective date of rule 5.137, since 1993, Business and Professions Code section 6086.13 has been the law that authorizes the actual imposition of the sanctions. Rule 5.137 merely set forth *guidelines* for the sanctions imposition (i.e., recommended amounts and considerations to take into account). Accordingly, the State Bar could have been recommending sanctions since 1993, even without the promulgation of rule 5.137 (*Gozlon-Peretz v. United States* (1991) 498 U.S. 395, 404 ["It is well established that, absent a clear direction by Congress to the contrary, a law takes effect on the date of its enactment."])). As rule 5.137 is an implementing regulation, not a legislative

² January 1, 2021 was chosen to give staff sufficient time to prepare for implementation.

enactment setting forth a new legal obligation or duty, imposing sanctions on misconduct occurring prior to April 1, 2020 is not an impermissible retroactive application of a law (*Sweet v. Sheahan*, (2d Cir. 2000) 235 F.3d 80, 82 [the date of the legal obligation only arises from date of implementing regulation if the implementing regulation is “legislative,” i.e., imposing new legal obligations on private parties]).

There are also important policy reasons for allowing the imposition of monetary sanctions for cases in which misconduct occurred prior to April 1, 2020. It often takes years for disciplinary proceedings to commence after the underlying misconduct occurs, as the State Bar must receive a complaint and the case must be investigated. Accordingly, under the State Bar Court’s interpretation, no sanctions would be imposed for quite some time, possibly years from now in many cases. Yet, as indicated above, sanctions have been authorized as part of a disciplinary order since 1993, meaning the State Bar has already waited longer than 25 years to start recommending them as part of disciplinary orders (Bus. & Prof. Code § 6086.13(a)). Waiting even longer to impose the sanctions continues to frustrate the legislative intent that these sanctions be imposed as part of attorney discipline.

Lastly, the longer the State Bar waits to impose monetary sanctions, the longer CSF will go without getting additional funding from payment of these sanctions (Bus. & Prof. Code, § 6086.13(b)).

Staff’s recommended language regarding the effective date of the imposition of sanctions will provide clarification on this issue and ensure the consistent imposition of monetary sanctions going forward.

For these reasons, State Bar staff recommends authorization to submit the proposed amendments to rule 5.137 set forth in Attachment A to the California Supreme Court for approval.

FISCAL/PERSONNEL IMPACT

If adopted, these rules will allow the State Bar to effectively implement rule 5.137 and begin recommending monetary sanctions, which should result in increased funding to the CSF (Bus. & Prof. Code § 6086.13 (b) [“Monetary sanctions. . . shall be deposited into the Client Security Fund.”]). Adoption of these rules could also necessitate additional resources in the Office of Chief Trial Counsel to handle requests by attorneys for reduction, waiver, or extension of time for payment of monetary sanctions.

AMENDMENTS TO RULES OF THE STATE BAR

Title 5, Division 2, Chapter 1, Rule 5.30

Title 5, Division 2, Chapter 2, Rule 5.41

Title 5, Division 2, Chapter 2, Rule 5.44.1

Title 5, Division 2, Chapter 2, Rule 5.55

Title 5, Division 2, Chapter 2, Rule 5.56

Title 5, Division 2, Chapter 2, Rule 5.57
Title 5, Division 2, Chapter 4, Rule 5.80
Title 5, Division 2, Chapter 4, Rule 5.81
Title 5, Division 2, Chapter 4, Rule 5.82
Title 5, Division 2, Chapter 4, Rule 5.85
Title 5, Division 2, Chapter 5, Rule 5.101
Title 5, Division 2, Chapter 5, Rule 5.102.1
Title 5, Division 2, Chapter 6, Rule 5.132
Title 5, Division 2, Chapter 6, Rule 5.134
Title 5, Division 2, Chapter 6, Rule 5.136
Title 5, Division 2, Chapter 6, Rule 5.137
Title 5, Division 3, Rule 5.157
Title 5, Division 5, Chapter 2, Rule 5.312
Title 5, Division 6, Chapter 2, Rule 5.343
Title 5, Division 6, Chapter 2, Rule 5.345
Title 5, Division 6, Chapter 3, Rule 5.351
Title 5, Division 7, Chapter 2, Rule 5.427
Title 5, Division 7, Chapter 3, Rule 5.441

NEW RULES OF THE STATE BAR

Title 5, Division 2, Chapter 6, Rule 5.138
Title 5, Division 2, Chapter 6, Rule 5.139

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

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.

Objective: d. Support adequate funding of the Client Security Fund.

RECOMMENDATIONS

Should the Regulation and Discipline Committee concur in the proposed action, passage of the following resolution is recommended:

RESOLVED, that the proposed new and amended State Bar Rules of Procedure provided in Attachment A are approved, effective January 1, 2021.

FURTHER RESOLVED, that the proposed amendments to State Bar Rule of Procedure 5.137 provided in Attachment A are approved for submission to the California Supreme Court for approval.

Should the Board of Trustees concur in the proposed action, passage of the following resolution is recommended:

RESOLVED, that the proposed new and amended State Bar Rules of Procedure provided in Attachment A are approved, effective January 1, 2021.

FURTHER RESOLVED, that the proposed amendments to State Bar Rule of Procedure 5.137 provided in Attachment A are approved for submission to the California Supreme Court for approval.

ATTACHMENT(S) LIST

- A.** Proposed New and Amended State Bar Rules of Procedure
- B.** RAD July 2020 Agenda Item III.D
- C.** Public Comment from ADDC



Rules of Procedure of the State Bar of California

April 1, 2020

TITLE 5. DISCIPLINE

Rules of Procedure of the State Bar of California Adopted effective January 1, 2011 and amended as indicated below.

Division 2. Case Proceedings Chapter 1. Commencement of Proceedings

Rule 5.30 Prefiling; Early Neutral Evaluation Conference

- (A) **Early Neutral Evaluation Conference.** Prior to the filing of disciplinary charges, the Office of Chief Trial Counsel will notify the attorney in writing of the right to request an Early Neutral Evaluation Conference. The written notice must state that the attorney may be ordered to pay costs pursuant to Business and Professions Code section 6086.10, and monetary sanctions pursuant to Business and Professions Code section 6086.13 and rule 5.137 of the Rules of Procedure of the State Bar. Either party may request an Early Neutral Evaluation Conference. A party will have 10 days from the date of service of notice to request a conference. To schedule a conference, a requesting party must use the court-approved form located on the court's website and must submit it to the proper venue by personal delivery, facsimile, email, or mail. In the request, the party must supply multiple dates agreed to by opposing counsel for the conference. Failure to request a conference within that time is deemed a waiver of the right to request a conference. If proper notice is provided, failure to hold a conference will not be a basis for dismissal of a proceeding. A State Bar Court hearing judge will conduct the conference within 15 days of the request.
- (B) **Judicial Evaluation.** At the conference, the judge must give the parties an oral evaluation of the facts and charges and the potential for imposing discipline. If the parties then resolve the matter in a way that requires court approval, the Office of Chief Trial Counsel must document the resolution and submit it to the Evaluation judge for approval or rejection.
- (C) **Evidence.** The Office of Chief Trial Counsel must submit a copy of the draft notice of disciplinary charges, or other written summary to the judge no later than three court days prior to the conference. Failure to do so within the specified time may result in the conference being rescheduled for a later date. The documentation must include the rules and statutes alleged to have been violated by the attorney, a summary of the facts supporting each violation, and the Office of Chief Trial Counsel's settlement position, -including the amount of monetary sanctions being sought and the reasons. Each party may submit documents and information to support its position.
- (D) **Confidentiality.** The conference is confidential. A party may designate any document it submits for in camera inspection only.

- (E) **Trial Judge.** Unless otherwise stipulated by the parties, the Early Neutral Evaluation judge cannot be the trial judge in a later proceeding involving the same facts.

Chapter 2. Pleadings, Motions, and Stipulations

Rule 5.41 Notice of Disciplinary Charges

(A) **Initial Pleading.** A notice of disciplinary charges is the initial pleading in a disciplinary proceeding, unless specified otherwise in the rules.

(B) **Contents.** The notice of disciplinary charges must:

- (1) cite the statutes, rules, or Court orders that the attorney allegedly violated or that warrant the proposed action;
- (2) contain facts, in concise and ordinary language, comprising the violations in sufficient detail to permit the preparation of a defense; no technical averments or any allegations of matters not essential to be proved are required;
- (3) relate the stated facts to the statutes, rules, or Court orders that the attorney allegedly violated or that warrant the proposed action;
- (4) contain a notice that the attorney may be ordered to pay costs, pursuant to Business and Professions Code section 6086.10, and monetary sanctions pursuant to section 6086.13 and rule 5.137 of the Rules of Procedure of the State Bar; and
- ~~(4)~~(5) contain the following language in capital letters at or near the beginning of the notice:

“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 AND MAY RECOMMEND THE IMPOSITION OF MONETARY SANCTIONS- WITHOUT FURTHER HEARING OR PROCEEDING. (SEE RULES PROC. OF STATE BAR, RULES 5.80 ET SEQ. & 5.137, ~~RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA~~.)”

Rule 5.44.1 Status Conferences

- (A) **Initial Status Conference.** Following the filing of the initial pleading in a proceeding, the assigned judge shall order that a status conference be held in all proceedings. The conference may be held in court or by telephone or by other appropriate means.
- (B) **Subjects Covered by Initial Status Conference.** Parties participating shall be prepared to respond on the subjects specified in any order noticing the conference and, in addition, on the following items:
- (1) Jurisdiction and venue;
The substance of the parties' claims and defenses and the definition of genuinely controverted issues;
 - (2) [Whether monetary sanctions are being sought pursuant to Business and Professions Code section 6086.13 and rule 5.137 of the Rules of Procedure of the State Bar and the reasons;](#)
 - (3) Anticipated motions;
 - (4) Further proceedings, including setting of dates for discovery cut-off, further status conferences, settlement conferences, pretrial and trial, and compliance with rules;
 - (5) Modification of the standard pretrial procedures specified by this rule on account of the relative simplicity or complexity of the proceeding;
 - (6) Prospects for settlement; and
 - (7) Any other matters which may be conducive to the just, efficient, and economical determination of the proceeding.
- (C) **Additional status conferences.** Upon request of any party, or upon the assigned judge's own motion, additional status conferences may be held at any time.

Rule 5.55 Stipulations to Facts and Conclusions of Law

- (A) **Generally.** The parties in a disciplinary matter may stipulate to facts and conclusions of law regarding culpability but reserve the question of disposition.
- (B) **Required Elements.** A proposed stipulation to facts and conclusions of law must comprise:
- (1) a statement of the investigations or proceedings included;
 - (2) the attorney's acknowledgement of acts or omissions that are cause for discipline;
 - (3) conclusions of law drawn from, and specifically referring to, the admitted facts regarding the attorney's culpability;
 - (4) a statement that the attorney either:
 - (a) admits the truth of the facts comprising the stipulation and admits culpability for misconduct; or
 - (b) pleads nolo contendere to those facts and misconduct;
 - (5) an enumeration of any charges to be dismissed;

- (6) a statement of the extent to which the stipulation resolves the proceeding;
- (7) the attorney's acknowledgement of Business and Professions Code [sections ~~§§~~ 6086.10, 6086.13](#), and 6140.7, [and rule 5.137 of the Rules of Procedure of the State Bar](#);
- (8) a statement that the parties will or will not be bound by the stipulated facts even if the conclusions of law are rejected and regardless of the degree of discipline recommended or imposed; and
- (9) a statement that the attorney has been advised in writing of any pending investigations (except for any law enforcement agencies' criminal investigations) or proceedings not resolved by the stipulation.

(C) Plea of Nolo Contendere. If the attorney pleads nolo contendere, the stipulation must show that the attorney understands that the plea is treated as an admission of the stipulated facts and an admission of culpability.

(D) Unresolved Pending Investigations and Proceedings. These must be identified by investigation case number or proceeding case number and any complaining witness's name. The stipulation cannot contain the information but must show that all the information was provided to the attorney in a separate document within 30 days before the stipulation was filed.

(E) Partial Stipulation. Partial stipulations to facts concerning aggravation and mitigation are allowed. The parties may waive an evidentiary hearing on these issues by submitting a stipulation containing a complete statement of aggravating and mitigating circumstances.

Rule 5.56 Stipulations to Facts, Conclusions of Law, and Disposition

(A) Contents. A proposed stipulation to facts, conclusions of law, and disposition must comprise:

- (1) an acknowledgement that proposed stipulations for disposition do not bind the Supreme Court;
- (2) a statement of the investigations or proceedings included;
- (3) the attorney's acknowledgement of acts or omissions that are cause for discipline;
- (4) conclusions of law drawn from, and specifically referring to, the admitted facts regarding the attorney's culpability;
- (5) a statement that the attorney either:
 - (a) admits the truth of the facts comprising the stipulation and admits culpability for misconduct; or
 - (b) pleads nolo contendere to those facts and misconduct;
- (6) the deputy trial counsel's statement, if requested by the Court, that the factual stipulations are supported by evidence obtained in the State Bar investigation of the matter;
- (7) an enumeration of any charges to be dismissed;

- (8) a statement of the extent to which the stipulation resolves the proceeding;
- (9) a statement of aggravating and mitigating circumstances;
- (10) the stipulated disposition and, if the stipulated disposition is actual suspension or disbarment, an agreement to the amount of monetary sanctions pursuant to Business and Professions Code section 6086.13 and rule 5.137 of the Rules of Procedure of the State Bar, whether a payment plan or extension of time will be allowed and the specifics of such plan or extension, or whether a waiver of the monetary sanction is agreed to, and the reasons for the above;
- (11) the attorney's acknowledgement of Business and Professions Code sections ~~§§~~ 6086.10 and 6140.7;
- (12) a statement that the parties will or will not be bound by the stipulated facts even if the conclusions of law and/or stipulated disposition are rejected; and
- (13) a statement that the attorney has been advised in writing of any pending investigations (except for any law enforcement agencies' criminal investigations) or proceedings not resolved by the stipulation.

(B) Plea of Nolo Contendere. If the attorney pleads nolo contendere, the stipulation must also show that the attorney understands that the plea is treated as an admission of the stipulated facts and an admission of culpability.

(C) Unresolved Pending Investigations or Proceedings. These must be identified by investigation case number or proceeding case number and any complaining witness's name. The stipulation cannot contain the information but must show that all the information was provided to the attorney in a separate document within 30 days before the stipulation was filed.

Rule 5.57 Stipulations to Disposition

(A) Generally. The parties may stipulate to disposition after the Court decides – or the parties stipulate to – facts establishing culpability and conclusions of law.

(B) Attachments. If the stipulation to disposition is supported by any factual findings or legal conclusions that are not in a written decision filed by the Court or a previously filed stipulation, those findings and conclusions must be included in, or attached to, the stipulation to disposition.

(C) Required Elements. Stipulations to dispositions must comprise:

- (1) an acknowledgement that proposed stipulations for disposition do not bind the Supreme Court;
- (2) a statement of the investigations or proceedings included;
- (3) a statement of the extent to which the stipulation resolves the proceeding;
- (4) all factual stipulations regarding aggravation or mitigation that the parties wish to rely on;
- (5) the stipulated ~~imposed~~ disposition and, if the stipulated disposition is actual

suspension or disbarment, an agreement to the amount of monetary sanctions pursuant to Business and Professions Code section 6086.13 and rule 5.137 of the Rules of Procedure of the State Bar, whether a payment plan or extension of time will be allowed and the specifics of such plan or extension, or whether a waiver of the monetary sanction is agreed to, and the reasons for the above;

- (6) the attorney's acknowledgement of Business and Professions Code sections ~~§§~~ 6086.10 and 6140.7;
- (7) a statement that the parties will or will not be bound by the stipulated facts even if the conclusions of law and/or stipulated disposition are rejected; and
- (8) a statement that the attorney has been advised in writing of any pending investigations (except for any law enforcement agencies' criminal investigations) or proceedings not resolved by the stipulation.

(D) Unresolved Pending Investigations or Proceedings. These must be identified by investigation case number or proceeding case number and any complaining witness's name. The stipulation cannot contain the information but must show that all the information was provided to the attorney in a separate document within 30 days before the stipulation was filed.

Chapter 4. Defaults

Rule 5.80 Default Procedure for Failure to File Timely Response

- (A) Motion for Entry of Default.** When an attorney fails to timely file a response, the deputy trial counsel must file and serve on the attorney a motion for entry of default. The motion must be filed within 15 days after the response is due, absent an agreement or order extending the time for filing by the attorney of a response, and must contain:
- (1) The filing date of notice and date of service of disciplinary charges;
 - (2) A statement that the attorney 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 and may recommend the imposition of monetary sanctions without further hearing or proceeding. (See Rules Proc. of State Bar, rules 5.80 et seq. - and 5.137.)"
 - (4) An authenticated print-out of the certified mail tracking report of the United States Postal Service, showing that the mailing of the initiating pleadings or notice was sent by certified mail and the status of its delivery and possible receipt.

- (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 attorney of the proceedings. The declaration must:
- (1) State whether a signed return receipt for the notice of disciplinary charges was received from the attorney;
 - (2) If a signed return receipt is not received from the attorney, show 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 attorney fails to file a written response within 10 days after the motion is served, the Court may order the entry of the attorney'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, 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 and may recommend the imposition of monetary sanctions without further hearing or proceeding. (See Rules Proc. of State Bar, rules 5.80 et seq. ~~and~~ 5.137 ~~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 attorney fails to appear in person or by counsel at the trial, the Court must order the entry of the attorney's default, if:
- (1) the notice of disciplinary charges was served on the attorney under rule 5.25; and
 - (2) notice of trial was served by the Court by first class mail, postage paid, on:
 - (a) the attorney's counsel;
 - (b) the attorney at the address provided in the response or in a change- of- address notice filed by the attorney (if the attorney has no counsel);
 - (c) the attorney's address in the State Bar's attorney records (if the attorney 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, 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 and may recommend the imposition of monetary sanctions without further hearing or proceeding. (See Rules Proc. of State Bar, rules 5.80 et seq. and 5.137.)” ~~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 attorney’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 an attorney’s default:

- (1) the attorney will be enrolled as an inactive attorney 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 attorney 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 attorney be disbarred and may recommend the imposition of monetary sanctions.-

Rule 5.85 Petition for Disbarment After Default

- (A) **Petition.** If the attorney fails to have the default set aside or vacated, the Office of Chief Trial Counsel must file a petition requesting the Court to recommend the attorney’s disbarment to the Supreme Court. The petition must be supported by one or more declarations stating whether:
- (1) any contact with the attorney has occurred since the default was entered;
 - (2) any other investigations or disciplinary charges are pending against the attorney;
 - (3) the attorney has a prior record of discipline; and
 - (4) the Client Security Fund has paid out claims as a result of the attorney’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) 91 days after the default order is served under rule 5.80, or

- (2) 46 days after the default order is served under rule 5.81.
- (D) **Service.** The Office of Chief Trial Counsel must serve the petition under rule 5.25, and must file a petition for disbarment within 15 days after it becomes entitled to do so pursuant to this rule.
- (E) **Response.** Within 20 days of service of the petition, the attorney may file and serve a motion to set aside or vacate the default.
- (F) **Ruling.**
- (1) If the attorney 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 attorney's disbarment and may recommend the imposition of monetary sanctions if the evidence shows:
- (a) The notice of disciplinary charges was served on the attorney properly;
- (b) The attorney had actual notice or reasonable diligence was used to notify the attorney 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 attorney 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.

Chapter 5. Trials

Rule 5.101 Pretrial Statements and Pretrial Conferences

- (A) **Preparation of Pretrial Statements.** Unless the court orders that a pretrial statement need not be prepared, all counsel must meet in person or by telephone prior to the date on which the pretrial statement is due to be filed and discuss:
- (1) Preparation of a joint pretrial statement;
- (2) Coordination of pretrial statements if no agreement is reached on the filing of a joint pretrial statement; and
- (3) The factors set forth in paragraph (C).
- (B) **Time for Pretrial Statements.** The parties must file and serve pretrial statements at least 10 days before the pretrial conference, or as the court orders.
- (C) **Contents of Pretrial Statements and Exchange of Exhibits.** Unless otherwise ordered by the court, the pretrial statements shall include the following heading and information:

- (1) **Party.** The names of the party or parties on whose behalf the statement is filed.
- (2) **Attempts to comply:** If a joint pretrial statement is not submitted, the parties will summarize their efforts to comply with Rule 5.101(A)(1) and Rule 5.101 (A)(2).
- (3) **Substance of the proceeding.** A description of the substance of the charges or claims and defenses presented and of the issues to be decided.
- (4) **Undisputed facts.** A plain and concise statement of all material facts not reasonably disputable. Counsel are expected to make a good faith effort to stipulate to all facts not reasonably disputable for incorporation into the trial record without the necessity of supporting testimony or exhibits.
- (5) **Disputed issues.** A plain and concise statement of all disputed factual issues, evidentiary issues, and claims of work product or privilege.
- (6) **Disposition sought in disciplinary proceedings.** A statement as to the disposition sought if culpability is found and in other proceedings, a statement of the relief sought. If the disposition sought is actual suspension or disbarment, a statement as to each party's position regarding the amount of monetary sanctions pursuant to Business and Professions Code section 6086.13 and rule 5.137 of the Rules of Procedure of the State Bar, whether a payment plan or extension of time will be allowed and the specifics of such plan or extension, or whether a waiver of the monetary sanction is agreed to, and the reasons for the above. No party shall be bound by presentations as to disposition sought.
- (7) **Points of law.** A concise statement of each disputed point of law with respect to the issues in the proceeding, with reference to statutes, rules, and decisions relied upon.
- (8) **Witnesses to be called.** A list of all witnesses likely to be called at trial, together with a statement following each name describing the substance of the testimony to be given, any anticipated difficulty in scheduling the witness, and any special needs of the witness, such as a need for an interpreter.
- (9) **Further discovery or motions.** A statement of all remaining discovery or motions.
- (10) **Stipulations.** A statement of stipulations requested or proposed for pretrial or trial purposes.
- (11) **Amendments; dismissals.** A statement of requested or proposed amendments to pleadings or dismissals of parties, charges, claims, or defenses.
- (12) **Settlement discussion.** A statement summarizing the status, but not the substance settlement, of settlement negotiations and indicating whether further negotiations are likely to be productive.
- (13) **Bifurcation; separate trial of issues.** A statement whether bifurcation or a separate trial of specific issues is feasible and desired.
- (14) **Limitation of experts.** A statement whether limitation of the number of expert witnesses is feasible and desired.
- (15) **Estimate of trial time.** An estimate of the number of court days expected to be required for the presentation of each party's case. Counsel are expected to make a good faith effort to reduce the time required for trial by all means reasonably feasible, including stipulations, expedited means of presenting testimony and exhibits, and the avoidance of cumulative proof._

- (16) **Claim of privilege or work product.** A statement indicating whether any of the matters otherwise required to be stated by this rule is claimed to be covered by the work product or other privilege. Upon such indication, such matters may be omitted subject to further order at the pretrial conference.
 - (17) **Failure to cooperate.** A statement as to any failure of opposing counsel to cooperate in meeting and conferring on pretrial issues. If established, such failure may constitute grounds for such orders as the court deems proper, including, but not limited to, the exclusion of evidence and witnesses.
 - (18) **Miscellaneous.** Any other subjects relevant to the trial of the proceeding, or material to its just, efficient, and economical determination.
- (D) **Pretrial Conference Rulings.** At the pretrial conference, the court may rule on any objections to the pretrial statements and may order the pretrial statements to be amended or supplemented.
- (E) **Failure to File Pretrial Statements.** If a party fails to file a pretrial statement, the court may order sanctions it deems proper, including, but not limited to, excluding evidence or witnesses.

Rule 5.102.1 Order of Proof in Disciplinary Proceedings

In disciplinary proceedings, the parties shall present evidence as to culpability prior to presenting evidence as to aggravating or mitigating circumstances-, or monetary sanctions, except as ordered by the court.

Chapter 6. Dispositions and Costs

Rule 5.132 Stipulating to Relief from Payment of Costs or Extension of Time to Pay Costs

By written stipulation entered into between an attorney and the Office of Chief Trial Counsel, the court ~~approved by the Court, the Chief Trial Counsel~~ may relieve the attorney, in whole or in part, from the obligation to pay the costs of disciplinary proceedings, or, ~~with the approval of the Court,~~ the court may agree to extend the time to pay these costs on grounds of hardship, special circumstances, or other good cause.

Rule 5.134 Effect of Default on Installment Payments

In any disciplinary recommendation or order providing for installment payments of discipline costs, monetary sanctions, or restitution, the Court must recommend or order that if the attorney fails to timely make any installment payment, the unpaid balance is due and payable immediately unless relief is granted under these rules.

Rule 5.136 Reimbursement to Client Security Fund

In any disciplinary recommendation or order that includes payment to a third party, the Court must include a recommendation or order that the attorney reimburse the Client Security Fund to the extent the named payee receives reimbursement from the Client Security Fund ~~for any funds paid out~~ under Business and Professions Code section 5-6140.5 ~~because of the attorney's misconduct~~ for all or part of the recommended or ordered payment. Unless the Supreme Court orders otherwise or unless relief has been granted under these rules, the ordered reimbursement must be paid within 30 days after the effective date of the final disciplinary order or within 30 days after the date of the final Client Security Fund ~~determination~~ payment is disbursed, whichever is later.

Rule 5.137 Imposition and Payment of Monetary Sanctions (Bus. & Prof. Code, § 6086.13.)

(A) **The Supreme Court May Order Monetary Sanctions.** In any disciplinary proceeding in which the licensee is ordered actually suspended, disbarred, or resigns with charges pending, the Supreme Court may order the payment of a monetary sanction not to exceed \$5,000 for each violation, to a maximum of \$50,000 per disciplinary order.

(B) **Violation Defined.** For the purposes of this rule, "violation" means (1) each count (including its subparts) contained in a Notice of Disciplinary Charges for which the State Bar Court has found the licensee culpable; (2) or each violation of a rule or statute the attorney admits to have violated in a stipulation; or (3) each record of criminal conviction transmitted to State Bar Court pursuant to rule 5.341, regardless of the number of convictions contained in the transmittal ~~;~~

(C) **Monetary Sanctions Payable To Client Security Fund.** Imposed monetary sanctions collected under this rule shall be deposited into the Client Security Fund.

(D) **Monetary Sanctions and Criminal Penalties or Civil Judgments.** Monetary sanctions shall not be collected to the extent that collection would impair the collection of criminal penalties or civil judgments arising out of transactions connected with discipline of the licensee. If monetary sanctions are collected and such criminal penalties or civil judgments are otherwise uncollectible, those penalties or judgments may be reimbursed from the Client Security Fund to the extent of the monetary sanctions collected.

(E) **Guidelines for Imposition and Collection of Monetary Sanctions.**

(1) In any disciplinary proceeding described in subdivision (A), the State Bar Court shall make recommendations to the Supreme Court regarding monetary sanctions and shall provide reasons for its recommendation.

(2) To determine the appropriate monetary sanction to recommend pursuant to subdivision (A), the State Bar Court shall consider all facts and circumstances of the

discipline case and be guided by the following amounts as a total sanction per Supreme Court order:

- (a) For disbarment: up to \$5,000.
- (b) For an actual suspension: up to \$2,500.
- (c) For a resignation with charges pending: up to \$1,000.

(3) The State Bar Court may, in its discretion, deviate from the ranges set forth in subdivision (E)(2) to a maximum of \$5,000 for each violation, and \$50,000 for each disciplinary order.

- (a) Deviations from these ranges should be reasonably based on the facts and circumstances of each discipline case.
- (b) If the same conduct is encompassed by two or more separate violations, the Court generally should not impose more than one monetary sanction for that conduct. Instead, the Court should consider the most serious applicable violation for that conduct.

(4) The State Bar Court may, in its discretion, recommend that the monetary sanction be waived, in whole or in part, or be paid in installments, or the time to pay be extended based on a finding of financial hardship, special circumstances, whether a licensee's ability to pay criminal or civil judgments arising out of the discipline case is adversely affected, for good cause, or in the interests of justice. The burden of proof by preponderance of the evidence will be on the licensee to provide financial records and/or other proof to support any argument that the monetary sanction be waived, in whole or in part, or be paid in installments, or the time to pay be extended. The State Bar Court must state reasons for its ruling.

(5) The Office of Chief Trial Counsel of the State Bar may enter into a stipulation with the licensee regarding whether monetary sanctions should be ordered or waived; if ordered, in what amount; whether a payment plan or extension of time will be allowed, and the specifics of such plan or extension; -and the reasons for the stipulation to or waiver of the monetary sanctions. If a stipulation is to actual suspension or disbarment, the parties must agree as part of the stipulation whether (1) monetary sanctions should be ordered or waived; if ordered, in what amount; (2) a payment plan or extension of time has been agreed upon and the specifics of such plan or extension; and (3) the reasons for the agreement to or waiver of the monetary sanctions. All stipulations must be accepted and approved by the State Bar Court pursuant to rule 5.58.

~~-(6)~~ A licensee may seek relief from an order of monetary sanctions, an extension of time to pay the sanctions, or request a compromise of judgment, through a motion filed with the State Bar Court, following the motion procedure and based on the grounds set forth in the Rules of Procedure of the State Bar. The burden of proof by preponderance of the evidence will be on the licensee to provide financial records and/or other proof to support the motion. The State Bar Court must state reasons for its ruling.

(7) Payment of restitution must be made in full before payment of any monetary sanctions.

(F) **Reinstatement.** Monetary sanctions shall be paid in full as a condition of reinstatement or return to active status, unless time for payment is extended pursuant to this rule.

(G) **Collection.** Imposed monetary sanctions ordered under this rule are enforceable as a money judgment and may be collected through any means provided by law.

-(H) **Application.** This rule shall apply to all disciplinary and criminal conviction proceedings commenced and stipulations signed on or after April 1, 2020.

Rule 5.138 Motions for Relief from Complying or Extension of Time to Comply with Order Imposing Monetary Sanctions.

(A) Motion for Relief. If monetary sanctions have been assessed against an attorney under rule 5.137, the attorney may move for relief, in whole or in part, from the order imposing sanctions, for an extension of time to pay sanctions, or for the compromise of a judgment obtained under rule 5.137(G) on grounds of financial hardship, special circumstances, whether a licensee's ability to pay criminal or civil judgments arising out of the discipline case is adversely affected, for good cause, or in the interests of justice. The motion must be served on the Office of Chief Trial Counsel under rule 5.26. If the motion is based, in whole or in part, on financial hardship, it must be filed as soon as practicable after the circumstances giving rise to the financial hardship become known and be accompanied by the attorney's completed financial statement in the form prescribed by the court. Otherwise, the motion may be filed within 30 days after the filing of a Supreme Court disciplinary order.

(B) Response to Motion. The Office of Chief Trial Counsel may file and serve a response to the motion within 20 days after the motion is served.

(C) Hearing. No hearing on the motion is required. A hearing will be held only if the court, in its discretion, determines that it will materially contribute to the consideration of the motion.

(D) Review. An order of the court on the motion is reviewable only under rule 5.150 and on grounds of error of law or abuse of discretion.

Rule 5.139 Stipulating to Relief from Payment of Monetary Sanctions or Extension of Time to Pay Monetary Sanctions

By written stipulation entered into between an attorney and the Office of Chief Trial Counsel, the court may relieve an attorney, in whole or in part, from the obligation to pay monetary sanctions, or the court may extend the time to pay these monetary sanctions on grounds of financial

hardship, special circumstances, whether a licensee's ability to pay criminal or civil judgments arising out of the discipline case is adversely affected, for good cause, or in the interests of justice.

Division 3. Review Department and Powers Delegated by Supreme Court

Rule 5.157 Summary Review Program

- (A) **Scope for Summary Review.** The Review Department may summarily review matters raising legal issues on review that can be decided without a transcript of the entire record of State Bar hearings or the normal briefing schedule.
- (B) **Eligibility for Summary Review.** A matter is eligible for summary review if the requesting party does not challenge the hearing judge's findings of fact. The decision of the hearing judge will be the final State Bar Court decision on all material findings of fact and the parties will be bound by the facts as provided for under rule 5.54. The issues on review are limited to:

 - (1) contentions that the facts support conclusions of law different from those reached by the hearing judge;
 - (2) disagreement about the appropriate disposition, ~~or~~ degree of discipline, or monetary sanctions; or
 - (3) other questions of law.
- (C) **Issues Waived.** Any issue or contention not raised by the parties is waived.
- (D) **Inapplicable and Applicable Rules.** Rules 5.151 – 5.154 do not apply to summary review matters. Rules 5.155, 5.156, and 5.158 apply to summary review matters.
- (E) **Requests for Summary Review.**

 - (1) A party must ask the Review Department to designate the matter for summary review. The request must be filed within 30 days after the hearing judge's decision is served or, if a post-trial motion has been made, within 30 days after the hearing judge's ruling on the motion.
 - (2) If review is sought under rule 5.151, the Review Department may notify the parties on its own motion that it considers the matter eligible for summary review, and may invite the party seeking review to elect summary review. If the party declines to elect summary review, the matter will proceed under rules 5.151-5.154.
 - (3) If a request for summary review under this rule and a request for review under rule 5.151 are both timely filed in the same proceeding, the matter will proceed under rules 5.151-5.154. But the Review Department may apply subsection (E)(2) of this rule.
- (F) **Opening Memorandum.** Instead of an opening brief, the party seeking summary review must file an opening memorandum within 20 days after the order designating

the proceeding for summary review is served. The memorandum must not exceed 20 pages. It must include a copy of the decision from which review is sought and:

- (1) concisely state the issues for review, including, if applicable, how the conclusions of law or disposition or both should be modified;
- (2) list the supporting authorities cited for the contentions raised on review, and concisely state the proposition for which each authority is cited; and
- (3) state whether or not oral argument is requested.

(G) Responsive Memorandum. Within 15 days after the opening memorandum is served, the opposing party may file a responsive memorandum that does not exceed 20 pages and:

- (1) states whether the party disputes any issue raised or relief requested in the opening memorandum, and, if so, the party's position on the disputed issue or request for relief;
- (2) states whether the party believes summary review is not proper;
- (3) concisely states any additional issues for review, including, if applicable, how the conclusions of law or disposition or both should be modified;
- (4) lists the supporting authorities cited for the party's position, and concisely state the proposition for which each authority is cited; and
- (5) states whether or not oral argument is requested.

(H) Reply Memorandum. Within 10 days after the responsive memorandum is served, the party seeking summary review may file a reply memorandum not to exceed five pages addressing any new issues raised in the responsive memorandum.

(I) Oral Argument. Unless specifically requested by a party or ordered by the Review Department on its own motion, oral argument will not be heard in summary review proceedings. If requested or ordered, oral argument will be by telephone conference on 15 days' notice. The telephone conference will originate from one or more designated courtrooms that will be open to the public if the proceeding is public. The judges of the Review Department may participate from designated courtrooms at different locations. Each party may present its oral argument either by telephone or in person at one of the designated courtrooms.

(J) Full Record After Summary Review Granted.

- (1) When summary review is granted, nothing in this rule restricts the Review Department's authority to independently review the full record of State Bar proceedings or to require a full or partial transcript and briefing schedule before oral argument of any case.
- (2) If the Review Department determines that it needs to review the full record, it may order the matter reviewed under rules 5.151-5.154. In this event, the party requesting summary review may withdraw the request within 30 days after the Review Department's order is served.

- (K) **Denial of Summary Review.** If the Review Department determines that summary review is not appropriate, then within 10 days after the order is served, a party may request review under rule 5.151.
- (L) **Review by the Supreme Court.** After the Review Department files its opinion in a summary review matter, a party who intends to petition the Supreme Court for review must first file with the Review Department a certification that a trial transcript has been ordered and appropriate payment has been made. The certification must be filed within 15 days from service of the Review Department's opinion. The Supreme Court requires a complete record, including a trial transcript.

Division 5 Probation Proceedings

Chapter 2. Probation Revocation Proceedings

Rule 5.312 Discipline Recommended in Probation Revocation Proceedings

The ~~c~~ourt may recommend imposing an actual suspension equal to or less than the period of stayed suspension. It may also recommend staying all or part of the actual suspension and imposing a new period of probation, which may be of a different duration or under different conditions than the original probation or both. The court must also make a recommendation regarding monetary sanctions, if applicable, pursuant to rule 5.137 of the Rules of Procedure, and set forth its reasons for its recommendation.

Rule 5.343 Summary Disbarment

The Office of Chief Trial Counsel may file a motion for the attorney's summary disbarment under Business and Professions Code ~~§~~ section 6102, subdivision (c)(1) or (2). The Office of Chief Trial Counsel's motion must include the amount of monetary sanctions sought pursuant to Business and Professions Code section 6086.13 and rule 5.137 of the Rules of Procedure of the State Bar, whether a payment plan or extension of time will be allowed and the specifics of such plan or extension, or whether a waiver of the monetary sanction is agreed to, and the reasons for the above. The motion must be filed concurrently with the record of conviction showing that the conviction is final. The attorney's written response must be filed within 10 days after the motion is served. If the motion is pursuant to (c)(2), the Review Department may refer the case to the Hearing Department to determine if the facts and circumstances involve moral turpitude.

Division 6 Special Proceedings

Chapter 2. Conviction Proceedings

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 [state that the attorney may be ordered to pay costs pursuant to Business and Professions Code section 6086.10 and monetary sanctions pursuant to section 6086.13 and rule 5.137 of the Rules of Procedure of the State Bar](#), and 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 ~~AND MAY RECOMMEND THE IMPOSITION OF MONETARY SANCTIONS~~ WITHOUT FURTHER HEARING OR PROCEEDING. (SEE ~~RULES & PROC. OF STATE BAR, RULES~~ [RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA](#), RULE ~~5~~ 5.80 ET SEQ. ~~AND~~ [5.137](#)). 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 attorney must file and serve a response to the notice within 20 days after it is served, unless the ~~c~~ Court grants an extension. The response must state the attorney’s position on the issues stated in the order of referral and must contain an address for service on the attorney.

(C) **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 [section](#) ~~§~~ 6102, [subdivision](#) (g).

Chapter 3. Proceedings Based on Professional Misconduct in Another Jurisdiction

Rule 5.351 How Commenced; Notice of Disciplinary Charges; Response

(A) **Beginning Proceeding.** A proceeding begins when a notice of disciplinary charges is filed and served on the attorney.

- (B) **Notice.** A notice of disciplinary charges issued under these rules may state that its only basis is the findings and final order of the other jurisdiction that imposed discipline on the attorney. The notice must give sufficient detail to permit identification of the foreign disciplinary proceeding. The notice of disciplinary charges must also cite the California statutes or rules allegedly violated or that warrant the proposed action, and designate the specific finding(s) in the foreign proceeding supporting each allegation. The notice must state that the attorney may be ordered to pay costs pursuant to Business and Professions Code section 6086.10 and monetary sanctions pursuant to section 6086.13 and rule 5.137 of the Rules of Procedure of the State Bar, and must have attachments:
- (1) a certified copy of the foreign jurisdiction's findings and final order; and
 - (2) a copy of the statutes, rules, or court orders of the foreign jurisdiction found to have been violated by the attorney.
- (C) **Response.** Within 20 days after the notice of disciplinary charges is served, the attorney must file with the Clerk and serve on the Office of Chief Trial Counsel a response limited to the issues set forth in Business and Professions Code ~~§~~ section 6049.1, subdivision (b)(1)–(3).

Division 7 Regulatory Proceedings

Chapter 2. Resignation Proceedings

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

- (A) **Filing and Serving Resignation.** The written resignation of an attorney 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 attorney's signature, and is in the form required by California Rules of Court, ~~r~~Rule 9.21(b). When the resignation is filed, the Clerk will serve a copy on the Office of Chief Trial Counsel.
- (B) **Stipulation Regarding Pending Investigations, Complaints or Proceedings.** Within 60 days from the date the resignation is filed, the attorney and the Office of Chief Trial Counsel must enter into a written stipulation as to the facts and conclusions of law regarding any disciplinary complaints, investigations or proceedings that are pending against the attorney at the time his or her resignation was filed, and monetary sanctions pursuant to Business and Professions Code section 6086.13 and rule 5.137 of the Rules of Procedure. The stipulation as to monetary sanctions must include the amount, whether a payment plan or extension of time will be allowed and the specifics of such plan or extension, or whether a waiver of the monetary sanction is agreed to, and the reasons for the above. If the attorney and the Office of Chief Trial Counsel have not entered into such stipulation, the Office of 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 Chief Trial Counsel.** Within 60 days from the date the resignation is filed, the Office of Chief Trial Counsel must file with the Review Department and serve upon the attorney pursuant to ~~Rule 5.25~~, a report setting forth the extent, if any, to which any of the factors enumerated in ~~California Rules of Court, rule 9.21(d)~~ ~~Rule 9.21(d) of the California Rules of Court~~ are present and whether, in light of the application of those factors, the attorney'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 Chief Trial Counsel's report, the attorney may file a response with the Review Department and must serve it on the Office of Chief Trial Counsel.
- (E) Decision or Order.** Within 30 days of the filing of the attorney's response to the Office of 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 ~~California Rules of Court, rule 9.21(c)~~ ~~Rule 9.21(c) of the California Rules of Court~~ recommending, in light of the factors enumerated in ~~Rule 9.21(d)~~, whether the attorney's resignation should be accepted by the Supreme Court and the reasons for the Review Department's recommendation. The Review Department's order or decision must also set forth the State Bar Court's recommendation regarding monetary sanctions and the reasons for its recommendation.
- (F) Transmittal of Resignation.** Within 15 days of the filing of the Review Department's order regarding the attorney's resignation, the Clerk of the State Bar Court shall transmit the attorney'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.

Chapter 3. Reinstatement Proceedings

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 ~~c~~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 ~~c~~Court but must be served on the Office of 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 ~~c~~Court but must be served on the Office of 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 [section](#) ~~§~~ 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 Chief Trial Counsel;
- ~~(2)~~ (2) Discipline Costs Paid and [Monetary Sanctions Paid](#). ~~Client Security Fund Payments Reimbursed~~. Unless the petitioner files a motion for extension of time for payment under these rules, or has already been granted an extension which has not expired at the time of the filing of the petition, p ~~P~~etitioner must provide proof of payment of ~~have paid~~ all discipline costs imposed under [Business and Professions Code section § 6086.10 subdivision \(a\) and monetary sanctions imposed under Business and Professions Code section 6086.13, subdivision \(a\).](#) ~~(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) Client Security Fund Payments Reimbursed. Petitioner must have 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 section 6140.5, subdivision (c).
- ~~(2)~~ (4) 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 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 Chief Trial Counsel under [r](#) ~~R~~ule 5.25.
- (E) Dismissal.** Failure to comply with any of the requirements of this rule will be grounds to dismiss the petition.



The State Bar of California

OPEN SESSION

AGENDA ITEM

JULY 2020

REGULATION AND DISCIPLINE COMMITTEE III.D

DATE: July 13, 2020

TO: Members, Regulation and Discipline Committee

FROM: Suzanne Grandt, Attorney IV, Office of General Counsel

SUBJECT: Proposed New and Amended State Bar Rules of Procedure to (1) Implement State Bar Rule of Procedure, Rule 5.137 and (2) Clarify when Court Orders May Require Reimbursement to the Client Security Fund: Request to Circulate for Public Comment

EXECUTIVE SUMMARY

The State Bar of California Regulation and Discipline Committee is asked to authorize a 60-day public comment period for two proposed new State Bar Rules of Procedure and 23 amended State Bar Rules of Procedure.¹ These proposals fall into three different categories: (1) amendments to Rule 5.137, the recently enacted rule setting forth guidelines for the imposition and collection of monetary sanctions; (2) new and amended rules necessary to implement the imposition of monetary sanctions pursuant to Rule 5.137; and (3) amendments to Rule 5.136 to clarify when court orders may require reimbursement to the Client Security Fund (CSF).

The new and amended rules regarding monetary sanctions are necessary, *inter alia*, to ensure consistent notification to attorneys regarding the imposition of the sanctions, to provide a process for both parties to present evidence to State Bar Court regarding the amount of monetary sanctions to be imposed, to provide a process for attorneys to seek reduction, waiver, or extension of time to pay imposed sanctions, and to specify that an agreement regarding monetary sanctions must be included in stipulated dispositions.

The amendments to Rule 5.136 are necessary to ensure consistency with case law regarding the nature of CSF payouts.

¹ All further references to rules are to the State Bar Rules of Procedure unless otherwise indicated.

BACKGROUND

Business and Professions Code section 6086.13,² effective January 1, 1994, requires that the State Bar, with the approval of the California Supreme Court, adopt rules setting forth guidelines for the imposition and collection of monetary sanctions to be imposed in connection with the suspension or disbarment of attorneys.

At its November 14, 2019 meeting, the Board of Trustees approved a resolution authorizing staff to submit to the California Supreme Court for approval proposed Rule 5.137, which provides guidelines for the recommendation and imposition of monetary sanctions in attorney disciplinary proceedings and for collected monetary sanctions to be deposited into the CSF. The rule was approved by the California Supreme Court on March 23, 2020, with an effective date of April 1, 2020.

A number of new and amended rules are necessary to implement the requirements set forth in rule 5.137. While reviewing the rules, staff also determined that Rule 5.137 itself needed clarification and that amendments to Rule 5.136 were necessary to correct certain legal inaccuracies.

All proposed new and amended rules are attached in redline as Attachment A and presented in numerical order.

DISCUSSION

Proposed Amendments to Rule 5.137

Section 6086.13, subdivision (a) and Rule 5.137, subdivision (A) provide that monetary sanctions may not exceed “\$5,000 for each violation.” Rule 5.137, subdivision (B) defines a “violation” as “each count (including its subparts) contained in a Notice of Disciplinary Charges for which the State Bar Court has found the licensee culpable, or each violation of a rule or statute the attorney admits to have violated in a stipulation.” In conviction proceedings, however, there is no Notice of Disciplinary Charges. Rather, the proceeding is initiated by a certified copy of the conviction or sentencing record. (Rule 5.341.) To provide for monetary sanctions to be ordered in criminal conviction proceedings resulting in actual suspension or disbarment, or resignations with charges pending, staff recommends amending Rule 5.137, subdivision (B) to specify that the definition of “violation” includes each record of criminal conviction transmitted to State Bar Court.

Staff also recommends amending Rule 5.137, subdivision (E)(5) to specify that stipulations for actual suspension or disbarment must include an agreement regarding the imposition of monetary sanctions. This is necessary because a stipulated disposition must include an agreement regarding an attorney’s entire discipline, including monetary sanctions.

² All further references to section are to the Business and Professions Code unless otherwise indicated.

Staff has also added language to Rule 5.137, subdivision (G) specifying that, in addition to enforcement of a monetary sanctions order as a money judgment, monetary sanctions may be collected through any means provided by law. This language is necessary because the State Bar engages in a number of collections mechanisms besides the entry of money judgments, including participation in the Franchise Tax Board's debt collection programs.

Lastly, staff proposes language stating that the rule applies to disciplinary and criminal conviction proceedings commenced and stipulation signed after April 1, 2020, the effective date of the Supreme Court's order approving the rule.

Proposed New and Amended Rules Necessary to Implement Rule 5.137

Staff proposes a number of new and amended rules to implement Rule 5.137. These proposals are summarized in the below bullet points and segregated by category. Attachment A has the full language of the new and amended rules in numerical order.

Amendments to Rules Necessary to Provide Notice Regarding the Imposition of Monetary Sanctions

These proposed amendments notify the attorney of the potential imposition of monetary sanctions before an early neutral evaluation conference and before the commencement of the disciplinary proceeding, criminal conviction proceeding, or proceeding based on misconduct in another jurisdiction. These amendments also notify the attorney that monetary sanctions may be imposed as a consequence of an attorney's default, as well as in probation revocation proceedings.

- **Rule 5.30** (written notice of the early neutral evaluation conference must state that the attorney may be ordered to pay disciplinary costs and monetary sanctions);
- **Rule 5.41** (Notice of Disciplinary Charges must contain a statement that the attorney may be ordered to pay disciplinary costs and monetary sanctions);
- **Rule 5.80** (motion and order for entry of default for failure to file a timely response must include notice of the potential imposition of monetary sanctions);
- **Rule 5.81** (the court's order of default for failure to appear at trial must include notice of the potential imposition of monetary sanctions);
- **Rule 5.82** (adding the imposition of monetary sanctions as one of the consequences of an attorney's default);
- **Rule 5.85** (the court's ruling if the attorney fails to file a response to a petition for disbarment after default, or the court denies a motion to set aside or vacate the default, may recommend the imposition monetary sanctions);

- **Rule 5.312** (the court must make a recommendation regarding monetary sanctions, if applicable, in probation revocation proceedings);
- **Rule 5.345** (the notice commencing a criminal conviction proceeding must include a statement that the attorney may be ordered to pay disciplinary costs and monetary sanctions); and
- **Rule 5.351** (the Notice of Disciplinary Charges filed in proceedings based on professional misconduct in another jurisdiction must include a statement that the attorney may be ordered to pay disciplinary costs and monetary sanctions).

Amendments to Rules Necessary to Add Monetary Sanction to Stipulations

The amendments below add an acknowledgment of monetary sanctions in stipulations as to facts and conclusions of law, and clarify that stipulated disposition for actual suspension or disbarment must include an agreement regarding monetary sanctions. This is necessary because a stipulated disposition must include an agreement regarding an attorney's entire discipline, including monetary sanctions.

- **Rule 5.55** (an attorney must acknowledge the imposition of monetary sanctions, in addition to disciplinary costs, in a stipulation as to facts and conclusion of law);
- **Rules 5.56 and 5.57** (a stipulated disposition for actual suspension or disbarment must include an agreement on the amount of monetary sanctions, whether a payment plan or extension of time will be allowed and the specifics of such plan or extension, or whether a waiver of the monetary sanction is agreed to, and the reasons); and
- **Rule 5.427** (a stipulation regarding pending investigations, complaints, or proceedings filed in resignation with charges pending proceedings must include an agreement on the amount of monetary sanctions, whether a payment plan or extension of time will be allowed and the specifics of such plan or extension, or whether a waiver of the monetary sanction is agreed to, and the reasons).

Amendments to Rules Necessary to Provide Information and Evidence Regarding the Amount of Monetary Sanctions Sought by Both Parties

The amendments below set forth how and when the parties may present information and evidence to State Bar Court regarding the amount of monetary sanctions requested by each party, and the reasons therefor, as well as a process for the attorney to seek a waiver or extension of time for payment of these sanctions prior to disposition. (Rule 5.137(E)(4).)

- **Rule 5.44.1** (the initial status conference may include discussion regarding the amount of monetary sanctions sought and the reasons);

- **Rule 5.101** (each parties' positions as to the amount of monetary sanctions and/or details of waiver or payment plan must be included in the pretrial statement if the disposition sought is actual suspension or disbarment);
- **Rule 5.102.1** (the parties shall present evidence regarding monetary sanctions in disciplinary proceedings following evidence as to culpability);
- **Rule 5.157** (adding disagreement over monetary sanctions as a subject appropriate for summary review); and
- **Rule 5.343** (the Office of Chief Trial Counsel must include the amount of monetary sanctions, and/or details of a monetary sanctions payment plan or waiver in its motion for an attorney's summary disbarment).

New and Amended Rules Necessary for Relief from Monetary Sanctions

Rule 5.137, subdivisions (E)(5) and (6) allow attorneys to file a motion with State Bar Court and/or stipulate with the Office of Chief Trial Counsel for a reduction, waiver, or extension of time for payment of monetary sanctions after they have been ordered. New and amended rules are necessary to provide a process for attorneys to seek this relief. These rules were modeled after similar rules related to disciplinary costs (Rules 5.130-5.134).

Staff also recommends minor amendments to Rule 5.132 (stipulation regarding disciplinary costs) to make the language consistent with these new proposed rules.

- **Rule 5.132** (minor clarification of language regarding stipulation to waiver, reduction, or extension of time for payment of disciplinary costs);
- **Rule 5.134** (if attorney fails to make timely installment payment of monetary sanctions, the Court must recommend that the unpaid balance become due and payable immediately);
- **Rule 5.138** (new rule setting forth a process for the attorney to seek a reduction, waiver, or extension of time to pay monetary sanctions, modeled after Rule 5.130 [disciplinary costs]); and
- **Rule 5.139** (new rule setting forth a process for a stipulation between the attorney and the Office of Chief Trial Counsel for a reduction, waiver, or extension of time to pay monetary sanctions, modeled after Rule 5.132 [disciplinary costs]).

Amendments to Rule 5.441 to Add Payment of Monetary Sanctions as a Reinstatement Requirement

Rule 5.137(F) provides that "[m]onetary sanctions shall be paid in full as a condition of reinstatement or return to active status, unless time for payment is extended pursuant to this

rule.” Amendments are therefore necessary to **Rule 5.441**, subdivision (b)(2) to add proof of payment of monetary sanctions as a petition for reinstatement pre-filing requirement.

Proposed Amendments to Rule 5.136

Amendments to Rule 5.136 are necessary to avoid conflict with CSF authority and the CSF rules. Rule 5.136 currently states that “In any disciplinary recommendation or order, the Court must include a recommendation or order that the attorney reimburse the Client Security Fund for any funds paid out under Business and Professions Code section 6140.5 because of the attorney’s misconduct.” Section 6140.5 authorizes the CSF to reimburse victims of attorney misconduct, but is not limited to reimbursement of those specific victims or payees named in disciplinary orders.

While the State Bar Court may recommend or order that the attorney reimburse CSF for funds paid out under section 6140.5, if CSF reimburses those payees named in the disciplinary order, it may not recommend or order that the attorney reimburse CSF for additional payments made pursuant to section 6140.5 because of the attorney’s misconduct. This is because the CSF is a legislative remedy “*in addition to* disciplinary measures and civil actions to reimburse clients for losses caused by the wrongful conduct of attorneys.” (*Saleeby v. State Bar* (1985) 39 Cal.3d 547, 558–559 [emphasis in original].) Since reimbursement from CSF in a case that was not part of a disciplinary order “does not involve discipline . . . of attorneys” (*id.*), the State Bar Court does not have jurisdiction to recommend or order such CSF reimbursement.

An amendment to Rule 5.136 is also necessary to clarify when reimbursement to CSF must be made. The rule currently states that ordered reimbursement “must be paid within 30 days after the effective date of the final disciplinary order or within 30 days after the Client Security Fund payment is disbursed, whichever is later.” The CSF rules, however, provide a process for Superior Court review within 90 days of the final CSF decision. (State Bar Rule 3.450.) Staff recommends that Rule 5.136 be amended to clarify that the payment obligation runs from the date of the final CSF determination, rather than the date of payment disbursement.

FISCAL/PERSONNEL IMPACT

If adopted, these rules will allow the State Bar to effectively implement Rule 5.137 and begin recommending monetary sanctions, which should result in increased funding to the CSF. (Bus. & Prof. Code, § 6086.13 (b) [“Monetary sanctions. . shall be deposited into the Client Security Fund”].)

Adoption of these rules could also necessitate additional resources in the Office of Chief Trial Counsel to handle requests by attorneys for reduction, waiver, or extension of time for payment of monetary sanctions.

AMENDMENTS TO RULES OF THE STATE BAR

Title 5, Division 2, Chapter 1, Rule 5.30

Title 5, Division 2, Chapter 2, Rule 5.41

Title 5, Division 2, Chapter 2, Rule 5.44.1
Title 5, Division 2, Chapter 2, Rule 5.55
Title 5, Division 2, Chapter 2, Rule 5.56
Title 5, Division 2, Chapter 2, Rule 5.57
Title 5, Division 2, Chapter 4, Rule 5.80
Title 5, Division 2, Chapter 4, Rule 5.81
Title 5, Division 2, Chapter 4, Rule 5.82
Title 5, Division 2, Chapter 4, Rule 5.85
Title 5, Division 2, Chapter 5, Rule 5.101
Title 5, Division 2, Chapter 5, Rule 5.102.1
Title 5, Division 2, Chapter 6, Rule 5.132
Title 5, Division 2, Chapter 6, Rule 5.134
Title 5, Division 2, Chapter 6, Rule 5.136
Title 5, Division 2, Chapter 6, Rule 5.137
Title 5, Division 3, Rule 5.157
Title 5, Division 5, Chapter 2, Rule 5.312
Title 5, Division 6, Chapter 2, Rule 5.343
Title 5, Division 6, Chapter 2, Rule 5.345
Title 5, Division 6, Chapter 3, Rule 5.351
Title 5, Division 7, Chapter 2, Rule 5.427
Title 5, Division 7, Chapter 3, Rule 5.441

NEW RULES OF THE STATE BAR

Title 5, Division 2, Chapter 6, Rule 5.138
Title 5, Division 2, Chapter 6, Rule 5.139

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

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.

Objective: d. Support adequate funding of the Client Security Fund.

RECOMMENDATIONS

Should the Regulation and Discipline Committee concur in the proposed action, passage of the following resolution is recommended:

RESOLVED, that the Regulation and Discipline Committee authorizes staff to make available for a 60-day public comment period proposed new and amended State Bar Rules of Procedure, attached hereto as Attachment A.

ATTACHMENT(S) LIST

- A.** New and Amended State Bar Rules of Procedure



Rules of Procedure of the State Bar of California

April 1, 2020

TITLE 5. DISCIPLINE

Rules of Procedure of the State Bar of California Adopted effective January 1, 2011 and amended as indicated below.

Division 2. Case Proceedings Chapter 1. Commencement of Proceedings

Rule 5.30 Prefiling; Early Neutral Evaluation Conference

- (A) **Early Neutral Evaluation Conference.** Prior to the filing of disciplinary charges, the Office of Chief Trial Counsel will notify the attorney in writing of the right to request an Early Neutral Evaluation Conference. The written notice must state that the attorney may be ordered to pay costs pursuant to Business and Professions Code section 6086.10, and monetary sanctions pursuant to Business and Professions Code section 6086.13 and rule 5.137 of the Rules of Procedure of the State Bar. Either party may request an Early Neutral Evaluation Conference. A party will have 10 days from the date of service of notice to request a conference. To schedule a conference, a requesting party must use the court-approved form located on the court's website and must submit it to the proper venue by personal delivery, facsimile, email, or mail. In the request, the party must supply multiple dates agreed to by opposing counsel for the conference. Failure to request a conference within that time is deemed a waiver of the right to request a conference. If proper notice is provided, failure to hold a conference will not be a basis for dismissal of a proceeding. A State Bar Court hearing judge will conduct the conference within 15 days of the request.
- (B) **Judicial Evaluation.** At the conference, the judge must give the parties an oral evaluation of the facts and charges and the potential for imposing discipline. If the parties then resolve the matter in a way that requires court approval, the Office of Chief Trial Counsel must document the resolution and submit it to the Evaluation judge for approval or rejection.
- (C) **Evidence.** The Office of Chief Trial Counsel must submit a copy of the draft notice of disciplinary charges, or other written summary to the judge no later than three court days prior to the conference. Failure to do so within the specified time may result in the conference being rescheduled for a later date. The documentation must include the rules and statutes alleged to have been violated by the attorney, a summary of the facts supporting each violation, and the Office of Chief Trial Counsel's settlement position, -including the amount of monetary sanctions being sought and the reasons. Each party may submit documents and information to support its position.
- (D) **Confidentiality.** The conference is confidential. A party may designate any document it submits for in camera inspection only.

- (E) **Trial Judge.** Unless otherwise stipulated by the parties, the Early Neutral Evaluation judge cannot be the trial judge in a later proceeding involving the same facts.

Chapter 2. Pleadings, Motions, and Stipulations

Rule 5.41 Notice of Disciplinary Charges

(A) **Initial Pleading.** A notice of disciplinary charges is the initial pleading in a disciplinary proceeding, unless specified otherwise in the rules.

(B) **Contents.** The notice of disciplinary charges must:

- (1) cite the statutes, rules, or Court orders that the attorney allegedly violated or that warrant the proposed action;
- (2) contain facts, in concise and ordinary language, comprising the violations in sufficient detail to permit the preparation of a defense; no technical averments or any allegations of matters not essential to be proved are required;
- (3) relate the stated facts to the statutes, rules, or Court orders that the attorney allegedly violated or that warrant the proposed action;
- (4) contain a notice that the attorney may be ordered to pay costs, pursuant to Business and Professions Code section 6086.10, and monetary sanctions pursuant to section 6086.13 and rule 5.137 of the Rules of Procedure of the State Bar; and
- ~~(4)~~(5) contain the following language in capital letters at or near the beginning of the notice:

“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 AND MAY RECOMMEND THE IMPOSITION OF MONETARY SANCTIONS- WITHOUT FURTHER HEARING OR PROCEEDING. (SEE RULES PROC. OF STATE BAR, RULES 5.80 ET SEQ. & 5.137, ~~RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA~~.)”

Rule 5.44.1 Status Conferences

- (A) **Initial Status Conference.** Following the filing of the initial pleading in a proceeding, the assigned judge shall order that a status conference be held in all proceedings. The conference may be held in court or by telephone or by other appropriate means.
- (B) **Subjects Covered by Initial Status Conference.** Parties participating shall be prepared to respond on the subjects specified in any order noticing the conference and, in addition, on the following items:
- (1) Jurisdiction and venue;
The substance of the parties' claims and defenses and the definition of genuinely controverted issues;
 - (2) [Whether monetary sanctions are being sought pursuant to Business and Professions Code section 6086.13 and rule 5.137 of the Rules of Procedure of the State Bar and the reasons;](#)
 - (3) Anticipated motions;
 - (4) Further proceedings, including setting of dates for discovery cut-off, further status conferences, settlement conferences, pretrial and trial, and compliance with rules;
 - (5) Modification of the standard pretrial procedures specified by this rule on account of the relative simplicity or complexity of the proceeding;
 - (6) Prospects for settlement; and
 - (7) Any other matters which may be conducive to the just, efficient, and economical determination of the proceeding.
- (C) **Additional status conferences.** Upon request of any party, or upon the assigned judge's own motion, additional status conferences may be held at any time.

Rule 5.55 Stipulations to Facts and Conclusions of Law

- (A) **Generally.** The parties in a disciplinary matter may stipulate to facts and conclusions of law regarding culpability but reserve the question of disposition.
- (B) **Required Elements.** A proposed stipulation to facts and conclusions of law must comprise:
- (1) a statement of the investigations or proceedings included;
 - (2) the attorney's acknowledgement of acts or omissions that are cause for discipline;
 - (3) conclusions of law drawn from, and specifically referring to, the admitted facts regarding the attorney's culpability;
 - (4) a statement that the attorney either:
 - (a) admits the truth of the facts comprising the stipulation and admits culpability for misconduct; or
 - (b) pleads nolo contendere to those facts and misconduct;
 - (5) an enumeration of any charges to be dismissed;

- (6) a statement of the extent to which the stipulation resolves the proceeding;
- (7) the attorney's acknowledgement of Business and Professions Code [sections ~~§§~~ 6086.10, 6086.13](#), and 6140.7, [and rule 5.137 of the Rules of Procedure of the State Bar](#);
- (8) a statement that the parties will or will not be bound by the stipulated facts even if the conclusions of law are rejected and regardless of the degree of discipline recommended or imposed; and
- (9) a statement that the attorney has been advised in writing of any pending investigations (except for any law enforcement agencies' criminal investigations) or proceedings not resolved by the stipulation.

(C) Plea of Nolo Contendere. If the attorney pleads nolo contendere, the stipulation must show that the attorney understands that the plea is treated as an admission of the stipulated facts and an admission of culpability.

(D) Unresolved Pending Investigations and Proceedings. These must be identified by investigation case number or proceeding case number and any complaining witness's name. The stipulation cannot contain the information but must show that all the information was provided to the attorney in a separate document within 30 days before the stipulation was filed.

(E) Partial Stipulation. Partial stipulations to facts concerning aggravation and mitigation are allowed. The parties may waive an evidentiary hearing on these issues by submitting a stipulation containing a complete statement of aggravating and mitigating circumstances.

Rule 5.56 Stipulations to Facts, Conclusions of Law, and Disposition

(A) Contents. A proposed stipulation to facts, conclusions of law, and disposition must comprise:

- (1) an acknowledgement that proposed stipulations for disposition do not bind the Supreme Court;
- (2) a statement of the investigations or proceedings included;
- (3) the attorney's acknowledgement of acts or omissions that are cause for discipline;
- (4) conclusions of law drawn from, and specifically referring to, the admitted facts regarding the attorney's culpability;
- (5) a statement that the attorney either:
 - (a) admits the truth of the facts comprising the stipulation and admits culpability for misconduct; or
 - (b) pleads nolo contendere to those facts and misconduct;
- (6) the deputy trial counsel's statement, if requested by the Court, that the factual stipulations are supported by evidence obtained in the State Bar investigation of the matter;
- (7) an enumeration of any charges to be dismissed;

- (8) a statement of the extent to which the stipulation resolves the proceeding;
- (9) a statement of aggravating and mitigating circumstances;
- (10) the stipulated disposition and, if the stipulated disposition is actual suspension or disbarment, an agreement to the amount of monetary sanctions pursuant to Business and Professions Code section 6086.13 and rule 5.137 of the Rules of Procedure of the State Bar, whether a payment plan or extension of time will be allowed and the specifics of such plan or extension, or whether a waiver of the monetary sanction is agreed to, and the reasons for the above;
- (11) the attorney's acknowledgement of Business and Professions Code sections ~~§§~~ 6086.10 and 6140.7;
- (12) a statement that the parties will or will not be bound by the stipulated facts even if the conclusions of law and/or stipulated disposition are rejected; and
- (13) a statement that the attorney has been advised in writing of any pending investigations (except for any law enforcement agencies' criminal investigations) or proceedings not resolved by the stipulation.

(B) Plea of Nolo Contendere. If the attorney pleads nolo contendere, the stipulation must also show that the attorney understands that the plea is treated as an admission of the stipulated facts and an admission of culpability.

(C) Unresolved Pending Investigations or Proceedings. These must be identified by investigation case number or proceeding case number and any complaining witness's name. The stipulation cannot contain the information but must show that all the information was provided to the attorney in a separate document within 30 days before the stipulation was filed.

Rule 5.57 Stipulations to Disposition

(A) Generally. The parties may stipulate to disposition after the Court decides – or the parties stipulate to – facts establishing culpability and conclusions of law.

(B) Attachments. If the stipulation to disposition is supported by any factual findings or legal conclusions that are not in a written decision filed by the Court or a previously filed stipulation, those findings and conclusions must be included in, or attached to, the stipulation to disposition.

(C) Required Elements. Stipulations to dispositions must comprise:

- (1) an acknowledgement that proposed stipulations for disposition do not bind the Supreme Court;
- (2) a statement of the investigations or proceedings included;
- (3) a statement of the extent to which the stipulation resolves the proceeding;
- (4) all factual stipulations regarding aggravation or mitigation that the parties wish to rely on;
- (5) the stipulated ~~imposed~~ disposition and, if the stipulated disposition is actual

suspension or disbarment, an agreement to the amount of monetary sanctions pursuant to Business and Professions Code section 6086.13 and rule 5.137 of the Rules of Procedure of the State Bar, whether a payment plan or extension of time will be allowed and the specifics of such plan or extension, or whether a waiver of the monetary sanction is agreed to, and the reasons for the above;

- (6) the attorney's acknowledgement of Business and Professions Code sections ~~§§~~ 6086.10 and 6140.7;
- (7) a statement that the parties will or will not be bound by the stipulated facts even if the conclusions of law and/or stipulated disposition are rejected; and
- (8) a statement that the attorney has been advised in writing of any pending investigations (except for any law enforcement agencies' criminal investigations) or proceedings not resolved by the stipulation.

(D) Unresolved Pending Investigations or Proceedings. These must be identified by investigation case number or proceeding case number and any complaining witness's name. The stipulation cannot contain the information but must show that all the information was provided to the attorney in a separate document within 30 days before the stipulation was filed.

Chapter 4. Defaults

Rule 5.80 Default Procedure for Failure to File Timely Response

- (A) Motion for Entry of Default.** When an attorney fails to timely file a response, the deputy trial counsel must file and serve on the attorney a motion for entry of default. The motion must be filed within 15 days after the response is due, absent an agreement or order extending the time for filing by the attorney of a response, and must contain:
- (1) The filing date of notice and date of service of disciplinary charges;
 - (2) A statement that the attorney 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 and may recommend the imposition of monetary sanctions without further hearing or proceeding. (See Rules Proc. of State Bar, rules 5.80 et seq. - and 5.137.)"
 - (4) An authenticated print-out of the certified mail tracking report of the United States Postal Service, showing that the mailing of the initiating pleadings or notice was sent by certified mail and the status of its delivery and possible receipt.

- (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 attorney of the proceedings. The declaration must:
- (1) State whether a signed return receipt for the notice of disciplinary charges was received from the attorney;
 - (2) If a signed return receipt is not received from the attorney, show 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 attorney fails to file a written response within 10 days after the motion is served, the Court may order the entry of the attorney'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, 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 and may recommend the imposition of monetary sanctions without further hearing or proceeding. (See Rules Proc. of State Bar, rules 5.80 et seq. ~~and~~ 5.137 ~~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 attorney fails to appear in person or by counsel at the trial, the Court must order the entry of the attorney's default, if:
- (1) the notice of disciplinary charges was served on the attorney under rule 5.25; and
 - (2) notice of trial was served by the Court by first class mail, postage paid, on:
 - (a) the attorney's counsel;
 - (b) the attorney at the address provided in the response or in a change- of- address notice filed by the attorney (if the attorney has no counsel);
 - (c) the attorney's address in the State Bar's attorney records (if the attorney 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, 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 and may recommend the imposition of monetary sanctions without further hearing or proceeding. (See Rules Proc. of State Bar, rules 5.80 et seq. and 5.137.)” ~~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 attorney’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 an attorney’s default:

- (1) the attorney will be enrolled as an inactive attorney 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 attorney 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 attorney be disbarred and may recommend the imposition of monetary sanctions.-

Rule 5.85 Petition for Disbarment After Default

- (A) **Petition.** If the attorney fails to have the default set aside or vacated, the Office of Chief Trial Counsel must file a petition requesting the Court to recommend the attorney’s disbarment to the Supreme Court. The petition must be supported by one or more declarations stating whether:
- (1) any contact with the attorney has occurred since the default was entered;
 - (2) any other investigations or disciplinary charges are pending against the attorney;
 - (3) the attorney has a prior record of discipline; and
 - (4) the Client Security Fund has paid out claims as a result of the attorney’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) 91 days after the default order is served under rule 5.80, or

- (2) 46 days after the default order is served under rule 5.81.
- (D) **Service.** The Office of Chief Trial Counsel must serve the petition under rule 5.25, and must file a petition for disbarment within 15 days after it becomes entitled to do so pursuant to this rule.
- (E) **Response.** Within 20 days of service of the petition, the attorney may file and serve a motion to set aside or vacate the default.
- (F) **Ruling.**
- (1) If the attorney 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 attorney's disbarment and may recommend the imposition of monetary sanctions if the evidence shows:
- (a) The notice of disciplinary charges was served on the attorney properly;
- (b) The attorney had actual notice or reasonable diligence was used to notify the attorney 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 attorney 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.

Chapter 5. Trials

Rule 5.101 Pretrial Statements and Pretrial Conferences

- (A) **Preparation of Pretrial Statements.** Unless the court orders that a pretrial statement need not be prepared, all counsel must meet in person or by telephone prior to the date on which the pretrial statement is due to be filed and discuss:
- (1) Preparation of a joint pretrial statement;
- (2) Coordination of pretrial statements if no agreement is reached on the filing of a joint pretrial statement; and
- (3) The factors set forth in paragraph (C).
- (B) **Time for Pretrial Statements.** The parties must file and serve pretrial statements at least 10 days before the pretrial conference, or as the court orders.
- (C) **Contents of Pretrial Statements and Exchange of Exhibits.** Unless otherwise ordered by the court, the pretrial statements shall include the following heading and information:

- (1) **Party.** The names of the party or parties on whose behalf the statement is filed.
- (2) **Attempts to comply:** If a joint pretrial statement is not submitted, the parties will summarize their efforts to comply with Rule 5.101(A)(1) and Rule 5.101 (A)(2).
- (3) **Substance of the proceeding.** A description of the substance of the charges or claims and defenses presented and of the issues to be decided.
- (4) **Undisputed facts.** A plain and concise statement of all material facts not reasonably disputable. Counsel are expected to make a good faith effort to stipulate to all facts not reasonably disputable for incorporation into the trial record without the necessity of supporting testimony or exhibits.
- (5) **Disputed issues.** A plain and concise statement of all disputed factual issues, evidentiary issues, and claims of work product or privilege.
- (6) **Disposition sought in disciplinary proceedings.** A statement as to the disposition sought if culpability is found and in other proceedings, a statement of the relief sought. If the disposition sought is actual suspension or disbarment, a statement as to each party's position regarding the amount of monetary sanctions pursuant to Business and Professions Code section 6086.13 and rule 5.137 of the Rules of Procedure of the State Bar, whether a payment plan or extension of time will be allowed and the specifics of such plan or extension, or whether a waiver of the monetary sanction is agreed to, and the reasons for the above. No party shall be bound by presentations as to disposition sought.
- (7) **Points of law.** A concise statement of each disputed point of law with respect to the issues in the proceeding, with reference to statutes, rules, and decisions relied upon.
- (8) **Witnesses to be called.** A list of all witnesses likely to be called at trial, together with a statement following each name describing the substance of the testimony to be given, any anticipated difficulty in scheduling the witness, and any special needs of the witness, such as a need for an interpreter.
- (9) **Further discovery or motions.** A statement of all remaining discovery or motions.
- (10) **Stipulations.** A statement of stipulations requested or proposed for pretrial or trial purposes.
- (11) **Amendments; dismissals.** A statement of requested or proposed amendments to pleadings or dismissals of parties, charges, claims, or defenses.
- (12) **Settlement discussion.** A statement summarizing the status, but not the substance settlement, of settlement negotiations and indicating whether further negotiations are likely to be productive.
- (13) **Bifurcation; separate trial of issues.** A statement whether bifurcation or a separate trial of specific issues is feasible and desired.
- (14) **Limitation of experts.** A statement whether limitation of the number of expert witnesses is feasible and desired.
- (15) **Estimate of trial time.** An estimate of the number of court days expected to be required for the presentation of each party's case. Counsel are expected to make a good faith effort to reduce the time required for trial by all means reasonably feasible, including stipulations, expedited means of presenting testimony and exhibits, and the avoidance of cumulative proof._

- (16) **Claim of privilege or work product.** A statement indicating whether any of the matters otherwise required to be stated by this rule is claimed to be covered by the work product or other privilege. Upon such indication, such matters may be omitted subject to further order at the pretrial conference.
 - (17) **Failure to cooperate.** A statement as to any failure of opposing counsel to cooperate in meeting and conferring on pretrial issues. If established, such failure may constitute grounds for such orders as the court deems proper, including, but not limited to, the exclusion of evidence and witnesses.
 - (18) **Miscellaneous.** Any other subjects relevant to the trial of the proceeding, or material to its just, efficient, and economical determination.
- (D) **Pretrial Conference Rulings.** At the pretrial conference, the court may rule on any objections to the pretrial statements and may order the pretrial statements to be amended or supplemented.
- (E) **Failure to File Pretrial Statements.** If a party fails to file a pretrial statement, the court may order sanctions it deems proper, including, but not limited to, excluding evidence or witnesses.

Rule 5.102.1 Order of Proof in Disciplinary Proceedings

In disciplinary proceedings, the parties shall present evidence as to culpability prior to presenting evidence as to aggravating or mitigating circumstances- or monetary sanctions, except as ordered by the court.

Chapter 6. Dispositions and Costs

Rule 5.132 Stipulating to Relief from Payment of Costs or Extension of Time to Pay Costs

By written stipulation entered into between an attorney and the Office of Chief Trial Counsel, the court ~~approved by the Court, the Chief Trial Counsel~~ may relieve the attorney, in whole or in part, from the obligation to pay the costs of disciplinary proceedings, or, ~~with the approval of the Court,~~ the court may agree to extend the time to pay these costs on grounds of hardship, special circumstances, or other good cause.

Rule 5.134 Effect of Default on Installment Payments

In any disciplinary recommendation or order providing for installment payments of discipline costs, monetary sanctions, or restitution, the Court must recommend or order that if the attorney fails to timely make any installment payment, the unpaid balance is due and payable immediately unless relief is granted under these rules.

Rule 5.136 Reimbursement to Client Security Fund

In any disciplinary recommendation or order that includes payment to a third party, the Court must include a recommendation or order that the attorney reimburse the Client Security Fund to the extent the named payee receives reimbursement from the Client Security Fund ~~for any funds paid out~~ under Business and Professions Code section 5-6140.5 ~~because of the attorney's misconduct~~ for all or part of the recommended or ordered payment. Unless the Supreme Court orders otherwise or unless relief has been granted under these rules, the ordered reimbursement must be paid within 30 days after the effective date of the final disciplinary order or within 30 days after the date of the final Client Security Fund ~~determination~~ payment is disbursed, whichever is later.

Rule 5.137 Imposition and Payment of Monetary Sanctions (Bus. & Prof. Code, § 6086.13.)

(A) **The Supreme Court May Order Monetary Sanctions.** In any disciplinary proceeding in which the licensee is ordered actually suspended, disbarred, or resigns with charges pending, the Supreme Court may order the payment of a monetary sanction not to exceed \$5,000 for each violation, to a maximum of \$50,000 per disciplinary order.

(B) **Violation Defined.** For the purposes of this rule, "violation" means (1) each count (including its subparts) contained in a Notice of Disciplinary Charges for which the State Bar Court has found the licensee culpable; (2) ~~or~~ each violation of a rule or statute the attorney admits to have violated in a stipulation; or (3) each record of criminal conviction transmitted to State Bar Court pursuant to rule 5.341, regardless of the number of convictions contained in the transmittal ~~;~~

(C) **Monetary Sanctions Payable To Client Security Fund.** Imposed monetary sanctions collected under this rule shall be deposited into the Client Security Fund.

(D) **Monetary Sanctions and Criminal Penalties or Civil Judgments.** Monetary sanctions shall not be collected to the extent that collection would impair the collection of criminal penalties or civil judgments arising out of transactions connected with discipline of the licensee. If monetary sanctions are collected and such criminal penalties or civil judgments are otherwise uncollectible, those penalties or judgments may be reimbursed from the Client Security Fund to the extent of the monetary sanctions collected.

(E) **Guidelines for Imposition and Collection of Monetary Sanctions.**

(1) In any disciplinary proceeding described in subdivision (A), the State Bar Court shall make recommendations to the Supreme Court regarding monetary sanctions and shall provide reasons for its recommendation.

(2) To determine the appropriate monetary sanction to recommend pursuant to subdivision (A), the State Bar Court shall consider all facts and circumstances of the

discipline case and be guided by the following amounts as a total sanction per Supreme Court order:

- (a) For disbarment: up to \$5,000.
- (b) For an actual suspension: up to \$2,500.
- (c) For a resignation with charges pending: up to \$1,000.

(3) The State Bar Court may, in its discretion, deviate from the ranges set forth in subdivision (E)(2) to a maximum of \$5,000 for each violation, and \$50,000 for each disciplinary order.

- (a) Deviations from these ranges should be reasonably based on the facts and circumstances of each discipline case.
- (b) If the same conduct is encompassed by two or more separate violations, the Court generally should not impose more than one monetary sanction for that conduct. Instead, the Court should consider the most serious applicable violation for that conduct.

(4) The State Bar Court may, in its discretion, recommend that the monetary sanction be waived, in whole or in part, or be paid in installments, or the time to pay be extended based on a finding of financial hardship, special circumstances, whether a licensee's ability to pay criminal or civil judgments arising out of the discipline case is adversely affected, for good cause, or in the interests of justice. The burden of proof by preponderance of the evidence will be on the licensee to provide financial records and/or other proof to support any argument that the monetary sanction be waived, in whole or in part, or be paid in installments, or the time to pay be extended. The State Bar Court must state reasons for its ruling.

(5) The Office of Chief Trial Counsel of the State Bar may enter into a stipulation with the licensee regarding whether monetary sanctions should be ordered or waived; if ordered, in what amount; whether a payment plan or extension of time will be allowed, and the specifics of such plan or extension; -and the reasons for the stipulation to or waiver of the monetary sanctions. If a stipulation is to actual suspension or disbarment, the parties must agree as part of the stipulation whether (1) monetary sanctions should be ordered or waived; if ordered, in what amount; (2) a payment plan or extension of time has been agreed upon and the specifics of such plan or extension; and (3) the reasons for the agreement to or waiver of the monetary sanctions. All stipulations must be accepted and approved by the State Bar Court pursuant to rule 5.58.

~~-(6)~~ A licensee may seek relief from an order of monetary sanctions, an extension of time to pay the sanctions, or request a compromise of judgment, through a motion filed with the State Bar Court, following the motion procedure and based on the grounds set forth in the Rules of Procedure of the State Bar. The burden of proof by preponderance of the evidence will be on the licensee to provide financial records and/or other proof to support the motion. The State Bar Court must state reasons for its ruling.

(7) Payment of restitution must be made in full before payment of any monetary sanctions.

(F) **Reinstatement.** Monetary sanctions shall be paid in full as a condition of reinstatement or return to active status, unless time for payment is extended pursuant to this rule.

(G) **Collection.** Imposed monetary sanctions ordered under this rule are enforceable as a money judgment and may be collected through any means provided by law.

-(H) **Application.** This rule shall apply to all disciplinary and criminal conviction proceedings commenced and stipulations signed on or after April 1, 2020.

Rule 5.138 Motions for Relief from Complying or Extension of Time to Comply with Order Imposing Monetary Sanctions.

(A) **Motion for Relief.** If monetary sanctions have been assessed against an attorney under rule 5.137, the attorney may move for relief, in whole or in part, from the order imposing sanctions, for an extension of time to pay sanctions, or for the compromise of a judgment obtained under rule 5.137(G) on grounds of financial hardship, special circumstances, whether a licensee's ability to pay criminal or civil judgments arising out of the discipline case is adversely affected, for good cause, or in the interests of justice. The motion must be served on the Office of Chief Trial Counsel under rule 5.26. If the motion is based, in whole or in part, on financial hardship, it must be filed as soon as practicable after the circumstances giving rise to the financial hardship become known and be accompanied by the attorney's completed financial statement in the form prescribed by the court. Otherwise, the motion may be filed within 30 days after the filing of a Supreme Court disciplinary order.

(B) **Response to Motion.** The Office of Chief Trial Counsel may file and serve a response to the motion within 20 days after the motion is served.

(C) **Hearing.** No hearing on the motion is required. A hearing will be held only if the court, in its discretion, determines that it will materially contribute to the consideration of the motion.

(D) **Review.** An order of the court on the motion is reviewable only under rule 5.150 and on grounds of error of law or abuse of discretion.

Rule 5.139 Stipulating to Relief from Payment of Monetary Sanctions or Extension of Time to Pay Monetary Sanctions

By written stipulation entered into between an attorney and the Office of Chief Trial Counsel, the court may relieve an attorney, in whole or in part, from the obligation to pay monetary sanctions, or the court may extend the time to pay these monetary sanctions on grounds of financial

hardship, special circumstances, whether a licensee's ability to pay criminal or civil judgments arising out of the discipline case is adversely affected, for good cause, or in the interests of justice.

Division 3. Review Department and Powers Delegated by Supreme Court

Rule 5.157 Summary Review Program

- (A) **Scope for Summary Review.** The Review Department may summarily review matters raising legal issues on review that can be decided without a transcript of the entire record of State Bar hearings or the normal briefing schedule.
- (B) **Eligibility for Summary Review.** A matter is eligible for summary review if the requesting party does not challenge the hearing judge's findings of fact. The decision of the hearing judge will be the final State Bar Court decision on all material findings of fact and the parties will be bound by the facts as provided for under rule 5.54. The issues on review are limited to:

 - (1) contentions that the facts support conclusions of law different from those reached by the hearing judge;
 - (2) disagreement about the appropriate disposition, ~~or~~ degree of discipline, or monetary sanctions; or
 - (3) other questions of law.
- (C) **Issues Waived.** Any issue or contention not raised by the parties is waived.
- (D) **Inapplicable and Applicable Rules.** Rules 5.151 – 5.154 do not apply to summary review matters. Rules 5.155, 5.156, and 5.158 apply to summary review matters.
- (E) **Requests for Summary Review.**

 - (1) A party must ask the Review Department to designate the matter for summary review. The request must be filed within 30 days after the hearing judge's decision is served or, if a post-trial motion has been made, within 30 days after the hearing judge's ruling on the motion.
 - (2) If review is sought under rule 5.151, the Review Department may notify the parties on its own motion that it considers the matter eligible for summary review, and may invite the party seeking review to elect summary review. If the party declines to elect summary review, the matter will proceed under rules 5.151-5.154.
 - (3) If a request for summary review under this rule and a request for review under rule 5.151 are both timely filed in the same proceeding, the matter will proceed under rules 5.151-5.154. But the Review Department may apply subsection (E)(2) of this rule.
- (F) **Opening Memorandum.** Instead of an opening brief, the party seeking summary review must file an opening memorandum within 20 days after the order designating

the proceeding for summary review is served. The memorandum must not exceed 20 pages. It must include a copy of the decision from which review is sought and:

- (1) concisely state the issues for review, including, if applicable, how the conclusions of law or disposition or both should be modified;
- (2) list the supporting authorities cited for the contentions raised on review, and concisely state the proposition for which each authority is cited; and
- (3) state whether or not oral argument is requested.

(G) Responsive Memorandum. Within 15 days after the opening memorandum is served, the opposing party may file a responsive memorandum that does not exceed 20 pages and:

- (1) states whether the party disputes any issue raised or relief requested in the opening memorandum, and, if so, the party's position on the disputed issue or request for relief;
- (2) states whether the party believes summary review is not proper;
- (3) concisely states any additional issues for review, including, if applicable, how the conclusions of law or disposition or both should be modified;
- (4) lists the supporting authorities cited for the party's position, and concisely state the proposition for which each authority is cited; and
- (5) states whether or not oral argument is requested.

(H) Reply Memorandum. Within 10 days after the responsive memorandum is served, the party seeking summary review may file a reply memorandum not to exceed five pages addressing any new issues raised in the responsive memorandum.

(I) Oral Argument. Unless specifically requested by a party or ordered by the Review Department on its own motion, oral argument will not be heard in summary review proceedings. If requested or ordered, oral argument will be by telephone conference on 15 days' notice. The telephone conference will originate from one or more designated courtrooms that will be open to the public if the proceeding is public. The judges of the Review Department may participate from designated courtrooms at different locations. Each party may present its oral argument either by telephone or in person at one of the designated courtrooms.

(J) Full Record After Summary Review Granted.

- (1) When summary review is granted, nothing in this rule restricts the Review Department's authority to independently review the full record of State Bar proceedings or to require a full or partial transcript and briefing schedule before oral argument of any case.
- (2) If the Review Department determines that it needs to review the full record, it may order the matter reviewed under rules 5.151-5.154. In this event, the party requesting summary review may withdraw the request within 30 days after the Review Department's order is served.

- (K) **Denial of Summary Review.** If the Review Department determines that summary review is not appropriate, then within 10 days after the order is served, a party may request review under rule 5.151.
- (L) **Review by the Supreme Court.** After the Review Department files its opinion in a summary review matter, a party who intends to petition the Supreme Court for review must first file with the Review Department a certification that a trial transcript has been ordered and appropriate payment has been made. The certification must be filed within 15 days from service of the Review Department's opinion. The Supreme Court requires a complete record, including a trial transcript.

Division 5 Probation Proceedings

Chapter 2. Probation Revocation Proceedings

Rule 5.312 Discipline Recommended in Probation Revocation Proceedings

The ~~c~~ourt may recommend imposing an actual suspension equal to or less than the period of stayed suspension. It may also recommend staying all or part of the actual suspension and imposing a new period of probation, which may be of a different duration or under different conditions than the original probation or both. The court must also make a recommendation regarding monetary sanctions, if applicable, pursuant to rule 5.137 of the Rules of Procedure, and set forth its reasons for its recommendation.

Rule 5.343 Summary Disbarment

The Office of Chief Trial Counsel may file a motion for the attorney's summary disbarment under Business and Professions Code ~~§~~ section 6102, subdivision (c)(1) or (2). The Office of Chief Trial Counsel's motion must include the amount of monetary sanctions sought pursuant to Business and Professions Code section 6086.13 and rule 5.137 of the Rules of Procedure of the State Bar, whether a payment plan or extension of time will be allowed and the specifics of such plan or extension, or whether a waiver of the monetary sanction is agreed to, and the reasons for the above. The motion must be filed concurrently with the record of conviction showing that the conviction is final. The attorney's written response must be filed within 10 days after the motion is served. If the motion is pursuant to (c)(2), the Review Department may refer the case to the Hearing Department to determine if the facts and circumstances involve moral turpitude.

Division 6 Special Proceedings

Chapter 2. Conviction Proceedings

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 state that the attorney may be ordered to pay costs pursuant to Business and Professions Code section 6086.10 and monetary sanctions pursuant to section 6086.13 and rule 5.137 of the Rules of Procedure of the State Bar, and 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 -AND MAY RECOMMEND THE IMPOSITION OF MONETARY SANCTIONS WITHOUT FURTHER HEARING OR PROCEEDING. (SEE RULES & PROC. OF STATE BAR, RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA, RULES 5.80 ET SEQ. AND 5.137). 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 attorney 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 attorney’s position on the issues stated in the order of referral and must contain an address for service on the attorney.

(C) **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 section 6102, subdivision (g).

Chapter 3. Proceedings Based on Professional Misconduct in Another Jurisdiction

Rule 5.351 How Commenced; Notice of Disciplinary Charges; Response

(A) **Beginning Proceeding.** A proceeding begins when a notice of disciplinary charges is filed and served on the attorney.

- (B) **Notice.** A notice of disciplinary charges issued under these rules may state that its only basis is the findings and final order of the other jurisdiction that imposed discipline on the attorney. The notice must give sufficient detail to permit identification of the foreign disciplinary proceeding. The notice of disciplinary charges must also cite the California statutes or rules allegedly violated or that warrant the proposed action, and designate the specific finding(s) in the foreign proceeding supporting each allegation. The notice must state that the attorney may be ordered to pay costs pursuant to Business and Professions Code section 6086.10 and monetary sanctions pursuant to section 6086.13 and rule 5.137 of the Rules of Procedure of the State Bar, and must have attachments:
- (1) a certified copy of the foreign jurisdiction's findings and final order; and
 - (2) a copy of the statutes, rules, or court orders of the foreign jurisdiction found to have been violated by the attorney.
- (C) **Response.** Within 20 days after the notice of disciplinary charges is served, the attorney must file with the Clerk and serve on the Office of Chief Trial Counsel a response limited to the issues set forth in Business and Professions Code ~~§~~ section 6049.1, subdivision (b)(1)–(3).

Division 7 Regulatory Proceedings

Chapter 2. Resignation Proceedings

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

- (A) **Filing and Serving Resignation.** The written resignation of an attorney 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 attorney's signature, and is in the form required by California Rules of Court, ~~r~~Rule 9.21(b). When the resignation is filed, the Clerk will serve a copy on the Office of Chief Trial Counsel.
- (B) **Stipulation Regarding Pending Investigations, Complaints or Proceedings.** Within 60 days from the date the resignation is filed, the attorney and the Office of Chief Trial Counsel must enter into a written stipulation as to the facts and conclusions of law regarding any disciplinary complaints, investigations or proceedings that are pending against the attorney at the time his or her resignation was filed, and monetary sanctions pursuant to Business and Professions Code section 6086.13 and rule 5.137 of the Rules of Procedure. The stipulation as to monetary sanctions must include the amount, whether a payment plan or extension of time will be allowed and the specifics of such plan or extension, or whether a waiver of the monetary sanction is agreed to, and the reasons for the above. If the attorney and the Office of Chief Trial Counsel have not entered into such stipulation, the Office of 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 Chief Trial Counsel.** Within 60 days from the date the resignation is filed, the Office of Chief Trial Counsel must file with the Review Department and serve upon the attorney pursuant to ~~Rule 5.25~~, a report setting forth the extent, if any, to which any of the factors enumerated in ~~California Rules of Court, rule 9.21(d)~~ ~~Rule 9.21(d) of the California Rules of Court~~ are present and whether, in light of the application of those factors, the attorney'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 Chief Trial Counsel's report, the attorney may file a response with the Review Department and must serve it on the Office of Chief Trial Counsel.
- (E) Decision or Order.** Within 30 days of the filing of the attorney's response to the Office of 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 ~~California Rules of Court, rule 9.21(c)~~ ~~Rule 9.21(c) of the California Rules of Court~~ recommending, in light of the factors enumerated in ~~Rule 9.21(d)~~, whether the attorney's resignation should be accepted by the Supreme Court and the reasons for the Review Department's recommendation. The Review Department's order or decision must also set forth the State Bar Court's recommendation regarding monetary sanctions and the reasons for its recommendation.
- (F) Transmittal of Resignation.** Within 15 days of the filing of the Review Department's order regarding the attorney's resignation, the Clerk of the State Bar Court shall transmit the attorney'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.

Chapter 3. Reinstatement Proceedings

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 ~~c~~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 ~~c~~Court but must be served on the Office of 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 ~~c~~Court but must be served on the Office of 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 [section](#) ~~§~~ 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 Chief Trial Counsel;
- ~~(2)~~ (2) Discipline Costs Paid and [Monetary Sanctions Paid](#). ~~Client Security Fund Payments Reimbursed~~. Unless the petitioner files a motion for extension of time for payment under these rules, or has already been granted an extension which has not expired at the time of the filing of the petition, p ~~P~~etitioner must provide proof of payment of ~~have paid~~ all discipline costs imposed under [Business and Professions Code section § 6086.10 subdivision \(a\) and monetary sanctions imposed under Business and Professions Code section 6086.13, subdivision \(a\).](#) ~~(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) Client Security Fund Payments Reimbursed. Petitioner must have 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 section 6140.5, subdivision (c).
- ~~(2)~~ (4) 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 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 Chief Trial Counsel under [r](#) ~~R~~ule 5.25.
- (E) Dismissal.** Failure to comply with any of the requirements of this rule will be grounds to dismiss the petition.



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Board of Trustees

The State Bar of California

Re: Proposed Changes to Rule of Procedure 5.137

Dear Trustees:

The Association of Discipline Defense Counsel (“ADDCC”) submits the following public comment regarding the proposed changes to Client Security Fund Rule of Procedure 3.434, put out for public comment by the State Bar Board of Trustees Regulation and Discipline Committee on July 13, 2020.

ADDCC Opposes the Proposed Rule Changes. The Board Should Work to Repeal Section 6086.13

ADDCC opposes the adoption of the rule changes. ADDCC believes the Board should be actively working to convince the Legislature to repeal Business and Professions Code section 6086.13, rather than taking further steps to implement this pernicious statute.

We have long held the view that the statute authorizing monetary sanctions is unfair, punitive in nature, and fundamentally incompatible with California Supreme Court’s oft-repeated description of the discipline system as existing to protect the public, not to impose punishment¹. The purpose of these sanctions is neither rehabilitative nor compensatory in nature but to raise revenue to fund the Client Security Fund.

The California Supreme Court has explained that because the purpose of the discipline is protection of the public, not punishment, due process is satisfied by less than the full panoply of protections required in a criminal case

The United States Supreme Court held in *In re Ruffalo* (1968) 390 U.S. 544, 550—551, [], that where administrative proceedings contemplate the deprivation of a license to practice one’s profession they are adversary proceedings of a quasi-criminal nature and procedural due process must be afforded the licensee. In *Black v. State Bar, supra*, 7 Cal.3d 676, 687—688, [] we held that *Ruffalo* does not require the holding that the federal constitutional privilege against self-incrimination be applied in such proceedings, because even though the penalty may be

¹ “Attorney discipline does not take the form of traditional criminal sanctions, such as monetary fines or incarceration, but rather consists of reproof, suspension from the practice of law, or disbarment. Finally, the aim of attorney discipline is not punishment or retribution; rather, attorney discipline is imposed to protect the public, to promote confidence in the legal system, and to maintain high professional standards. (*Baker v. State Bar* (1989) 49 Cal.3d 804, 822, []; *Kapelus v. State Bar* (1987) 44 Cal.3d 179, 198, [].)” *In re Brown* (1995) 12 Cal. 4th 205, 216–17

disbarment the penalty is designed to protect the court and the public, not to punish the individual.

Emslie v. State Bar (1974) 11 Cal. 3d 210, 229 parallel cites omitted. If punishment is now a *de facto* purpose of, the rationale of *Black* does not apply Respondents should be afforded greater due process protection.²

ADDC and ADDC members have repeatedly communicated this view to the Board since proposed rule changes to implement the legislation were discussed in 2018³.

Implementation of Sanctions Will Increase the Workload of the State Bar Court, Drive Up the Cost of Litigation and Slow Down the Discipline Process

Litigation in State Bar Court is focused on the question of what is necessary to protect the public. Introducing sanctions into the system adds a whole new arena for combat, as we will now have to litigate the questions of what the appropriate sanction will be. This will increase the resources the State Bar Court will have to devote to litigating that question. For Respondents represented by counsel, it will increase their legal bills as their counsel have to deal with that additional work. Respondents not represented by counsel will expend their labor negotiating or litigating the issue of what the appropriate sanction should be.

Moreover, the possibility of sanctions will give Respondents additional incentive to try cases in State Bar Court rather than settle them, which will, in most cases, require them to stipulate to sanctions.

Fully implementing sanctions will increase costs for all, slow down the work of the discipline system and impair public protection rather than improve it.

The advent of Rule 5.137 on April 1, 2020 caused some chaos as the State Bar Court and the Office of Chief Trial Counsel (OCTC) grappled with it. Many in OCTC seemed surprised by the new Rule, which arrived just as the State Bar was tasked with learning to work remotely. That chaos has abated, but the fact that a new package of rules clarifying how sanctions are supposed to work is under consideration so soon shows that the implementation of sanctions has already harmed the discipline system.

Implementation of Sanctions Will Exacerbate the Impact of Racial Disparities in the Discipline System

A recent study found racial disparities in the discipline system.⁴ Staff summarized the results as follows:

² Because their purpose is to raise general revenue to fund the Client Security Fund, sanctions imposed pursuant to section 6068.13 will likely be dischargeable in bankruptcy (see *In re Findle*, (9th Cir. 2010) 593 F.3d 1048, 1052–53.

³ See Proposed State Bar Court Rule 5.137: Return from Public Comment and Request for Submission to California Supreme Court for Approval [NOV 54-123]

⁴ Farkas, *Discrepancies By Race And Gender In Attorney Discipline By The State Bar Of California: An Empirical Analysis*, October 31, 2019, agenda item 705 November 2019 Board of Trustees meeting.

Thus, the disproportionate rate at which Black attorneys are put on probation and disbarred is associated with their having more complaints filed against them. This, in turn, makes it more likely that an attorney will be investigated and disciplined. To compound the disproportionate impact, Black attorneys in particular are less likely to be represented by counsel when they are under investigation by the State Bar. Looking at the total number of investigations by the State Bar, White attorneys were unrepresented in 7.9 percent of investigations of their cases; Black attorneys were unrepresented in 15.2 percent of the investigations of their cases.

Black attorneys are disciplined more often than white attorneys, even when controlling for the fact that Black attorneys received more complaints than White attorneys. Sanctions will be imposed only against attorneys who suffer more severe discipline, suspension, and disbarment. They will increase the financial impact of discipline on a population that is already suffering financial distress. Respondents are often in financial distress, and it is often at least part of the reason they are involved in the discipline. Unable to pay for legal help, they represent themselves in an increasingly complex discipline system and against an increasingly aggressive Office of Chief Trial Counsel. Discipline is a litigation process; self-represented respondents, not surprisingly, achieve poorer results.⁵ Farkas found lack of counsel as an important variable in explaining the disparity between Black and White discipline outcomes.⁶

If the State Bar is genuinely concerned about disparate outcomes in the discipline system, it should not be working to increase the impact of those disparate outcomes unnecessarily. Imposing sanctions on those least able to pay them doesn't make any sense. The State Bar seems to be talking out of both sides of its mouth about addressing disparities in discipline outcomes.

The Rule Changes Are Incompatible With the State Bar Strategic Plan

Adoption of the proposed Rule would further implementation of section 6086.13, a goal that is incompatible with the State Bar's Strategic Plan Goal 2: "Ensure a timely, *fair*, and appropriately resourced admissions, discipline, and regulatory system for the more than 250,000 lawyers licensed in California." Emphasis added.

Conclusion

Nobody who works in the discipline system thinks sanctions are a good idea. As Ms. Grandt stated in her memorandum dated November 15, 2018, the State Bar is not authorized to ignore this legislative mandate for policy reasons (although it did exactly that for 24 years.) But the Board should be under some mandate to tell the Legislature all of the policy reasons why the legislative mandate is a bad idea. We don't know if the Board did that in 1994 or 2018 or at any

⁵ The Bench-Bar conference has created a subcommittee on "Bridging the Justice Gap" for respondents and is asking the Association of Discipline Defense Counsel for help in creating a program for pro bono representation to assist financially challenged Respondents.

⁶ Farkas at 14: ... this variable is a very important reason for the higher disbarment/resignation rates of Black compared to White attorneys."

time in between. Many things have changed since 1994, and the recent study of disparate racial results in the discipline system was certainly not something the Legislature considered in 1994.

We urge the Board not to adopt these rule changes. We urge the Board to work toward repealing section 6086.13, consistent with the discussions held during the Bench-Bar Conference regarding State Bar Rule of Procedure 5.137.

Thank you for considering our position.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "David C. Carr". The signature is fluid and cursive, with the first name "David" being the most prominent.

David C. Carr

For the

Association of Discipline Defense Counsel