



Rules of Procedure of the State Bar of California

May 19, 2022

under these rules, and will be without regard to any other basis for an attorney's inactive enrollment.

- (3) **Effect of Bankruptcy Dismissal.** Upon receiving notice that the award debtor's bankruptcy filing has been dismissed by the bankruptcy court, the Presiding Arbitrator may subsequently file a new inactive enrollment motion pursuant to rule 5.361.

Eff. January 1, 2011; Revised March 1, 2021.

Rule 5.371 Inapplicable Rules

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

- (A) **General.** Rules that by their terms apply only to disciplinary proceedings or to other specific proceedings.
- (B) **Specific.** Rules 5.44(A), (C), and (D) (amended pleadings); 5.50 (abatement); rules 5.60-5.71 (subpoenas and discovery); rules 5.80-5.102 (default; obligation to appear at trial; pretrial; notice of trial); rules 5.105-5.108 (admission of certain evidence); rules 5.151-5.157 (review).

Eff. January 1, 2011; Revised July 1, 2014.

Chapter 5. Alternative Discipline Program

Rule 5.380 Purpose of Program; Authority

These rules apply to proceedings before the State Bar Court in which an attorney is identified as having a substance abuse or mental health issue and is seeking to participate in or has been accepted to participate in the State Bar Court's Alternative Discipline Program ("Program" or "ADP").

Eff. January 1, 2011; Revised January 25, 2019.

Rule 5.381 Eligibility to Apply for Participation in Program

- (A) **Before Proceeding Begins.** Before a proceeding in the State Bar Court begins, a judge assigned to conduct an Early Neutral Evaluation Conference under rule 5.30 may discuss the attorney's eligibility to participate in the Program. If formal charges are filed, the Early Neutral Evaluation judge may be the Program Judge.
- (B) **After Proceeding Begins.** At any time after a proceeding in the State Bar Court begins, at the request of either the attorney or the Office of Chief Trial Counsel or on the court's own motion, an attorney may be referred to a judge whom the Presiding Judge

has designated a Program Judge to determine the attorney's eligibility to participate in the Program. A referral by the Court must be made at least 45 days before the first scheduled trial date in the proceeding.

Eff. January 1, 2011; Revised July 1, 2014; January 25, 2019.

Rule 5.382 Acceptance for Participation in Program

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

conclusions of law signed by the parties in the pending disciplinary proceeding and entered into as a condition for participating in the Program will be rejected and will not be binding on either the attorney or the Office of Chief Trial Counsel.

Eff. January 1, 2011; Revised July 1, 2014; January 25, 2019.

Rule 5.383 Disqualification of Program Judge in Standard Proceeding

- (A) **Standard Discipline Proceeding.** If the attorney is not admitted into the Program and the proceeding is returned for processing as a standard disciplinary proceeding, the Program Judge may not serve as the assigned judge in the proceeding.
- (B) **Exception to Disqualification.** The Program Judge may be assigned the standard disciplinary proceeding if:

 - (1) the parties agree on the record; or
 - (2) the Program Judge has neither received a stipulation to the facts and conclusions of law signed by the parties nor received confidential evaluation, treatment, or nexus information about the attorney.
- (C) **Definition of “Nexus.”** As used here, the term “nexus” means clear and convincing evidence that the substance abuse or mental health issue causally contributed to the attorney’s misconduct.

Eff. January 1, 2011; Revised January 25, 2019.

Rule 5.384 Disposition; Deferral of Imposition

- (A) **Statement of Disposition.** If an attorney seeking to participate in the Program has stipulated to the facts and conclusions of law in the pending disciplinary proceeding and has agreed to or has fulfilled all other conditions for participating in the Program, the Program Judge will give the attorney a written statement regarding:

 - (1) the disposition that will be implemented or recommended to the Supreme Court if the attorney successfully completes the Program; and
 - (2) the disposition that will be implemented or recommended to the Supreme Court if the attorney does not complete the Program.
- (B) **Range of Dispositions.** If the attorney successfully completes the Program, the disposition may be as low as dismissal of the charges or proceeding. If the attorney does not complete the Program, it may be as high as disbarment. The extent and severity of the attorney’s stipulated misconduct, including the degree of harm suffered by his or her clients, are factors in determining the disposition implemented or recommended.

- (C) **Victim's Statement.** Any person who has been harmed by the stipulated conduct of the attorney may submit a written statement setting forth the nature and extent of the harm caused by the attorney's conduct. The Program Judge must consider the victims' written statements in determining the degree of harm suffered by the attorney's client(s) and in determining the appropriate dispositions to be implemented or recommended in the proceeding.
- (D) **Delay in Implementation and Recommendation.** If the attorney is accepted to participate in the Program, the stipulation of facts and conclusions of law will be filed and public, but the proposed disposition will not be implemented or transmitted to the Supreme Court until the attorney either successfully completes the Program or is terminated from the Program.
- (E) **Placement on Inactive Status.** Unless the Program Judge finds, in writing, that inactive enrollment is not necessary for the protection of the public or of attorney's clients, the Program Judge must immediately place the attorney on inactive status if:
- (1) the attorney is accepted to participate in the Program, and
 - (2) upon the attorney's successful completion of the Program, the disposition recommended to the Supreme Court will include an actual suspension of at least 90 days.

Eff. January 1, 2011; Revised January 25, 2019.

Rule 5.385 Term of Participation in Program

- (A) **Minimum Time.** To successfully complete the Program, an attorney must participate in the Program for 36 months from the date of acceptance to the Program. But if the attorney earns the incentives specified in the written agreement signed by the attorney, the Court may shorten the Program term to as little as 18 months.
- (B) **Certification.** No attorney may successfully complete the Program unless the Lawyer Assistance Program certifies that he or she has been substance-free for at least one year, or in the case of an attorney with mental health issues, a mental health professional's recommendation that is satisfactory to the Program Judge.

Eff. January 1, 2011; Revised January 25, 2019.

Rule 5.386 Effect of Later Proceedings on Program Participation

- (A) **Misconduct after Admittance to Program.** An inquiry, investigation, or proceeding against the attorney in which the alleged misconduct occurred after the attorney's admittance to the Program may not be incorporated into the ADP proceeding without the stipulation of the parties and the approval of the Program Judge. The attorney's culpability for later acts of misconduct, if proved by clear and convincing evidence, may constitute grounds to terminate the attorney from the Program.

- (B) **Misconduct before Admittance to Program.** An inquiry, investigation or proceeding against the attorney in which the alleged misconduct occurred before the attorney's admittance to the Program may be incorporated into the ADP proceeding, if:
- (1) the parties stipulate to the facts and conclusions of law about the additional acts of misconduct; and
 - (2) the attorney accepts any modifications to the alternative levels of disposition and conditions of participation recommended by the Program Judge.
- (C) **Release from Program.** The attorney will be released from the Program if:
- (1) the parties do not agree to stipulate to the facts and conclusions of law under subsection (B) of this rule; or
 - (2) the attorney refuses to accept the modified alternative levels of disposition recommended by the Program Judge.
- (D) **Conversion to Standard Disciplinary Proceeding.** If the attorney is released under subsection (C), the entire proceeding will be assigned to another judge as a standard disciplinary proceeding and:
- (1) the Program Judge's written statement regarding the proposed disposition or recommendation to the Supreme Court is vacated; and
 - (2) the original stipulation of facts and conclusions of law that the parties signed when the attorney entered the Program remains binding on the parties.

Eff. January 1, 2011; Revised January 25, 2019.

Rule 5.387 Termination from Program

Before terminating an attorney from the Program for failure to comply with Program requirements, the Court will issue an order to show cause notifying the parties of the Court's intent to terminate the attorney from the Program and the proposed reasons for the termination. Within 10 days after the order to show cause is served, the parties may file a response. If timely requested by one or both of the parties in a written response, the Court will hold a hearing on the order.

Eff. January 1, 2011; Revised January 25, 2019.

Rule 5.388 Confidentiality

- (A) **Program; Pleadings; Order.** The fact that an attorney is currently in the Program and any pleadings or orders filed in the proceeding, including the stipulation as to facts and conclusions of law, will be public.
- (B) **Treatment.** All information about the nature and extent of the attorney's treatment is absolutely confidential and may not be disclosed to the public unless the attorney waives confidentiality in writing.

(C) **Documents Submitted to Court.** Documents that are submitted to the Court, including but not limited to, the Court's written statement of proposed disposition, the attorney's nexus evidence, the parties' briefs on the recommended disposition, and reports from the Lawyer Assistance Program about the attorney's compliance with Lawyer Assistance Program requirements, will not be public unless the Court orders the documents filed when the attorney successfully completes the Program or the attorney is terminated from the Program. When the proceeding concludes, all documents that the Court did not order to be filed will be sealed under rule 5.12.

(D) **Permitted Disclosure.** Despite subsection (C), the Court may provide the Office of Probation and the Client Security Fund with documents necessary to help the Office of Probation monitor the attorney's compliance with the Lawyer Assistance Program and

this Program requirements and to help the Client Security Fund process any claim for reimbursement made against the Fund.

Eff. January 1, 2011; Revised January 25, 2019.

Rule 5.389 Review

(A) **Decisions and Orders.** The following decisions and orders of the Program Judge may be reviewed by the Review Department:

- (1) The Program Judge's decision to grant or deny the attorney admittance to the Program. The issues that may be raised on review may include, but are not limited to:
 - (a) whether the attorney meets the eligibility requirements for admittance to the Program, and
 - (b) the appropriate disposition or recommendation for the level of discipline.
- (2) The Program Judge's decision to terminate an attorney from the Program or to deny the State Bar's motion to terminate the attorney from the Program.

(B) **Procedure.** The procedure in rule 5.150 applies, except that the Review Department will:

- (1) independently review the record and may adopt findings, conclusions, and a decision or recommendation different from those of the Program Judge;
- (2) decide matters before it under this rule en banc, but two judges of the Review Department will constitute a quorum; and
- (3) file its opinion or order within 60 days after the matter is submitted.

Eff. January 1, 2011; Revised January 25, 2019.