

APPENDIX B

PROPOSED AMENDMENTS BY STATE BAR COURT TO RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA

[Additions Underlined; Deletions in ~~Strikeout~~]

RULE 802. ACCEPTANCE FOR PARTICIPATION IN PROGRAM

- a. Acceptance of a respondent for participation in the Program shall be at the discretion of the Program Judge but shall be contingent upon the respondent's acceptance into the State Bar's Lawyer Assistance Program and upon such additional conditions as the Program Judge may impose, including but not limited to, a stipulation as to facts and conclusions of law in the pending disciplinary proceeding that is agreed upon and signed by the respondent and the Office of the Chief Trial Counsel and the respondent's written agreement to the court's terms and conditions for his or her participation in the Program. If the stipulation as to facts and conclusions of law is not submitted to the Program Judge for approval within 120 days of the date respondent was referred to the Program for a determination of eligibility, the Program Judge may return the proceeding to normal case processing.
- b. A respondent who has been convicted of a criminal offense that subjects him or her to summary disbarment pursuant to Business and Professions Code section 6102, subdivision (c) shall not be eligible to participate in the Program.
- c. In order to be eligible for acceptance into the Program, the respondent must establish by clear and convincing evidence that there is a nexus between his or her substance abuse or mental health issue and the acts that constitute disciplinable violations of the State Bar Act and/or the Rules of Professional Conduct. As used herein, the term "nexus" means clear and convincing evidence that there is a reasonable likelihood that the substance abuse or mental health issue either precipitated causally contributed to the respondent's misconduct, or that it was a contributing cause of the misconduct.

- d. Unless otherwise agreed by the parties, in the event the respondent is not accepted into the Program or declines to sign the written agreement regarding the terms and conditions of his or her participation in the Program, any stipulation as to facts and conclusions of law signed by the parties in the pending disciplinary proceeding and entered into as a condition for participation in the Program shall be rejected and shall not be binding upon either the respondent or the Office of the Chief Trial Counsel.

RULE 806. CONFIDENTIALITY

- a. The fact that a respondent is currently in the Program and any pleadings or order filed in the proceeding shall be public.
- b. All information concerning the nature and extent of the respondent's treatment is absolutely confidential and shall not be disclosed to the public absent an express written waiver by the respondent. Court proceedings during which the nature and extent of respondent's treatment are discussed are closed to the public.
- c. Documents that are submitted to the Court, including but not limited to, ~~stipulation as to facts and conclusions of law~~, the Court's written statement of proposed disposition, the respondent's nexus evidence, the briefs of the parties on the recommended disposition and reports from the Lawyer Assistance Program regarding the respondent's compliance with Lawyer Assistance Program requirements, shall not be public unless and until they are ordered filed by the Court upon the respondent's successful completion of the Program or the respondent's termination from the Program. At the conclusion of the proceeding, all documents not ordered filed by the Court shall be sealed pursuant to rule 23.
- d. Notwithstanding the provisions of subdivision (c) above, the Court may provide the Office of Probation and/or the Client Security Fund with such documents as may be necessary to enable the Office of Probation to monitor the respondent's compliance with LAP and Program requirements and to enable the Client Security Fund to process any claim for

reimbursement made against the Fund. Notwithstanding the provisions of subdivision (c) above, the Office of the Chief Trial Counsel may provide the complainant with (i) a written summary of the status of the disciplinary proceeding against the respondent, including the fact that the respondent is seeking to participate or has been accepted for participation in the Program; (ii) a written summary of the acts of misconduct relating to the complainant of which the respondent has been found culpable; and (iii) a written summary of any agreements by the respondent to make restitution, return client papers or property or to take other action relating to the complainant.

Rule 807. REVIEW

No decision or order of the Program Judge may be reviewed by the State Bar Court Review Department except as follows:

- (a) The decision of the Program Judge to admit the respondent to the Program or to deny the respondent admittance to the Program shall be reviewable only pursuant to Rule 300.
- (b) The decision of the Program Judge to terminate a respondent from the Program or to deny the State Bar's motion to terminate the respondent from the Program shall be reviewable only pursuant to Rule 300.
- (c) The Program Judge's alternative discipline recommendation or disposition shall be reviewable only pursuant to Rule 300.
- (d) Review under this rule must be expedited.

RULE 808. INVOLUNTARY INACTIVE ENROLLMENT

As a condition of participation in the program, the Court may require a respondent to be placed on involuntary inactive enrollment pursuant to Business and Professions Code section 6233. In deciding whether involuntary inactive enrollment is appropriate, the Court must consider all relevant factors, including whether the level of discipline recommended to the Supreme Court in the event that the respondent successfully completes the Program is 90 days or more of actual suspension. If a respondent successfully completes the Program, the Court may recommend to the Supreme Court that the respondent receive credit for all or any part of the period of his or her inactive enrollment towards any period of actual suspension.