

**PROPOSED AMENDMENTS TO
RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA**
[Additions in **Bold**; Deletions in ~~Strikeout~~]

K. **ALTERNATIVE DISCIPLINE PROGRAM FOR RESPONDENTS
WITH SUBSTANCE ABUSE AND/OR MENTAL HEALTH ISSUES**

RULE 800. PURPOSE OF PROGRAM; AUTHORITY

Consistent with the intent of the Legislature expressed in Business and Professions Code Section 6230, et seq., these rules apply to proceedings before the State Bar Court in which a respondent 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 for Respondents with Substance Abuse and/or Mental Health Issues** ("Program").

RULE 801. ELIGIBILITY TO APPLY FOR PARTICIPATION IN PROGRAM

- (a) At any time following the commencement of a proceeding in the State Bar Court, at the request of **either** the respondent **or** the Office of the Chief Trial Counsel or on the court's own motion, a respondent may be referred to a judge who has been designated by the Presiding Judge as a Program Judge to determine the respondent's eligibility for participation in the Program, **provided that no such referral shall be made less than 45 days prior to the first scheduled trial date in the proceeding.**
- (b) Prior to the commencement of a proceeding in the State Bar Court, a judge assigned to conduct an Early Neutral Evaluation Conference pursuant to rule 75 may refer a respondent to a Program Judge to determine the respondent's eligibility for participation in the Program. Additionally, either the Office of the Chief Trial Counsel or the respondent may request the Court to make a referral to a Program Judge for such evaluation.

RULE 802. ACCEPTANCE FOR PARTICIPATION IN PROGRAM

- (a) **Except as limited by subsections (b) and (c),** acceptance of a respondent for participation in the Program shall be at the discretion of the Program Judge ~~but~~ **and** shall be contingent upon **(1) the respondent's acceptance into the State Bar's Lawyer Assistance Program; (2) the Court's approval of a stipulation as to facts and conclusions of law executed by the parties; (3) evidence that there is a nexus between the respondent's substance abuse or mental health issue and the misconduct; and (4) 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~~

APPENDIX A

~~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.~~

(b) **If the stipulation as to facts and conclusions of law executed by the parties is not submitted to the Program Judge for approval within 120 days of the date the respondent was referred to the Program for a determination of eligibility, the Program Judge may return the proceeding to the assigned judge for processing as a standard discipline proceeding.**

(c) A respondent **shall not be accepted for participation in the Program if:**

(1) the stipulation as to facts and conclusions of law, including factors in aggravation, executed by the respondent and the Office of the Chief Trial Counsel demonstrates that the respondent's disbarment is warranted, irrespective of mitigating circumstances;

(2) the 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.~~

(3) the respondent'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 respondent 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 so overcome or controlled to the extent that it is unlikely to cause further misconduct.

(5) the respondent has previously participated in the Program and has either successfully completed the Program or has been terminated from the Program.

(d) ~~In order to be eligible for acceptance into the Program, the respondent must establish 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 participated **causally contributed to** the respondent's misconduct or that it was a contributing cause of the misconduct.~~

(e) 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

APPENDIX A

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 802.5. DISQUALIFICATION OF ADP JUDGE IN STANDARD PROCEEDING

In the event the respondent is not accepted for participation in the Program or the respondent declines to sign the written agreement regarding the terms and conditions of his or her participation in the Program and the proceeding is returned for processing as a standard discipline proceeding, the Program Judge shall not serve as the assigned judge in the proceeding unless (a) the parties agree on the record; or (b) the Program Judge has neither received a stipulation as to facts and conclusions of law executed by the parties nor received confidential evaluation, treatment or nexus information relating to the respondent.

RULE 803. DISPOSITION; DEFERRAL OF IMPOSITION

- (a) If a respondent seeking to participate in the Program has entered into a stipulation as to facts and conclusions of law in the pending disciplinary proceeding and has agreed to or has fulfilled all of the other ~~requirements identified by the Program Judge as~~ conditions for the respondent's participation in the Program, the Program Judge shall provide the respondent with a written statement regarding (1) the disposition that will be implemented or recommended to the Supreme Court in the event that the respondent successfully completes the Program; and (2) the disposition that will be implemented or recommended to the Supreme Court, based upon the stipulated facts and conclusions of law, if the respondent does not successfully complete the Program. Depending upon the extent and severity of the respondent's stipulated misconduct, including the degree of harm suffered by his or her client(s), the disposition implemented or recommended following successful completion of the Program may range as low as the dismissal of the charges or proceeding and, as a result of termination from the Program, may range as high as disbarment.
- (b) If the respondent is accepted for participation in the Program, the stipulation as to facts and conclusions of law shall ~~not~~ be filed **but** ~~and~~ the proposed disposition shall not be implemented or transmitted as a recommendation to the Supreme Court until the respondent either successfully completes the Program or is terminated from the Program.
- (c) **If the respondent is accepted for participation in the Program, and the proposed disposition that will be recommended to the Supreme Court in the event that the respondent successfully completes the Program involves a period of actual**

APPENDIX A

suspension of 90 days or more, there is a presumption that the respondent should be placed on inactive enrollment for the protection of the public or of the respondent's clients. In such cases, the Program Judge must immediately place the respondent on inactive status unless the Program Judge finds, in writing, that such inactive enrollment is not necessary for the protection of the public or of respondent's clients.

RULE 804. TERM OF PARTICPATION IN PROGRAM

In order to successfully complete the Program, a respondent must participate in the Program for a term of 36 months from the date of acceptance in the Program, provided that, with earned incentives as specified in the written agreement signed by the respondent, the Court may shorten the Program term to a period of not less than 18 months. No respondent may successfully complete the Program without the certification of the Lawyers Assistance Program that he or she has been substance-free for a period of at least one year, or in the case of a respondent with mental health issues, without a recommendation from a mental health professional that is satisfactory to the Program Judge.

RULE 804.5 IMPACT OF SUBSEQUENT PROCEEDINGS ON ADP PARTICIPATION

- (a) An inquiry, investigation or proceeding against the respondent in which the alleged misconduct occurred subsequent to the respondent'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 respondent's culpability of subsequent acts of misconduct, if proved by clear and convincing evidence, may constitute grounds for the respondent's termination from the Program.**
- (b) An inquiry, investigation or proceeding against the respondent in which the alleged misconduct occurred prior to the respondent's admittance to the Program may be incorporated into the ADP proceeding, provided that: (1) the parties execute a stipulation as to facts and conclusions of law with respect to such additional acts of misconduct; and (2) the respondent accepts any modifications to the alternative levels of disposition and conditions of participation recommended by the Program Judge.**
- (c) If the parties are unable to reach agreement on a stipulation as to facts and conclusions of law pursuant to subsection (b) of this rule or if the respondent is unwilling to accept the modified alternative levels of disposition recommended by the Program Judge, the respondent shall be released from the Program and the entire proceeding shall be assigned to another judge as a standard discipline**

APPENDIX A

proceeding provided that: (1) the Program Judge's written statement regarding the proposed disposition or recommendation to the Supreme Court shall be vacated; and (2) the original stipulation as to facts and conclusions of law executed when the respondent entered the Program shall remain binding upon the parties.

RULE 805. TERMINATION FROM PROGRAM

Prior to terminating a respondent from the Program for failure to comply with Program requirements, the Court shall issue an order to show cause notifying the parties of the Court's intent to terminate the respondent from the Program and the proposed reasons for the termination. Within ten (10) days of service of the Court's order to show cause, the parties may file a response to the Court's order. If timely requested by one or both of the parties in **their** written response(s), the Court shall hold a hearing on the order to show cause.

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.
- (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~~

APPENDIX A

~~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

- (a) ~~No decision or~~ **The following decisions and** orders of the Program Judge may be reviewed by the State Bar Court Review Department ~~except as follows:~~
- (1) 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.~~ **The issues that may be raised upon such review may include, but are not limited to: (i) whether the respondent meets the eligibility requirements for admittance to the Program; and (ii) the appropriate disposition or recommendation as to the level of discipline.**
 - (2) 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.~~
- (b) **Procedure.** The procedure for seeking review of a decision or order of the Program Judge set forth in subsection (a) of this rule shall be as provided for in rule 300, except for:
- (1) **Standard of Review.** In proceedings under this rule, the Review Department must independently review the record and may adopt findings, conclusions and a decision or recommendation at variance with those of the Program Judge.
 - (2) **Decision.** The Review Department shall file its opinion or order within sixty (60) days of taking the matter under submission. The Review Department shall decide matters before it under this rule in bank. Two (2) judge of the Review Department shall constitute a quorum. A majority vote of the judges of the Review Department present and voting shall be sufficient to take any action or arrive at any decision under this rule.