

PROPOSAL FOR MODIFICATIONS TO THE CALIFORNIA STATE BAR
ALTERNATIVE DISCIPLINE PROGRAM (ADP)

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STATE BAR OF CALIFORNIA BOARD OF GOVERNOR'S MEETING

PART ONE- RESTRICTIONS ON USING ADP AS A SAFE HAVEN

- 1-1 No ADP if a charged offense alleges a violation of a prior disciplinary order, e.g. suspension order.
- 1-2 No ADP if charged offense constitutes moral turpitude
- 1-3 No ADP if charged offense is obstructing a client from having access to the State Bar Disciplinary program or taking a reprisal against a client for having used the State Bar disciplinary program.
- 1-4 No ADP if two prior periods of suspension have been imposed

PART TWO- IMMEDIATE AND CONTINUING RELIEF TO PREVENT VIOLATIONS DURING ADP REHABILITATION

2-1 Where, as is always the case, ADP is sought based on a disability such as mental illness, drug use or alcohol use and, as always is the case, the attorney claims that there is a nexus between the misconduct and the disability, the attorney should be immediately suspended from practice until a Judge of the State Bar Court determines based on well nigh irrefutable evidence that the disability does not remain sufficiently operative as to constitute a significant risk of further misconduct during the rehabilitation period or afterwards.

(As a parallel reference, consider that the Pharmacy Board requires, as a condition under a similar program, that the Pharmacist seeking a "safe haven" under its alternative program, immediately stop practicing for a period determined by the Board and after the completion of that period, during rehabilitation, that the Pharmacist practice in a proctored environment under another licensed Pharmacist as well as having the Pharmacist monitored through random substance abuse testing.)

2-2 Require that any practice by the attorney during the rehabilitation period be under the auspices and responsibility of another licensed attorney in California.

PART THREE- VICTIM'S RIGHT TO TESTIFY AT ADP PROCEEDINGS

3-1 Require that victims be allowed to testify at ADP proceedings as to issues of culpability, nexus, and amenability of the offender to rehabilitation, moral turpitude perceived by the victim, mitigation, aggravation and the nature and extent of proposed sanctions which should be imposed upon the attorney.

3-2 Require that the victims/complainants have access to all matters which the attorney, or the Bar, or the State Bar Court on its own motion, has introduced into evidence as to culpability, nexus, amenability of the offender to rehabilitation, moral turpitude perceived by the victim, aggravation, mitigation and proposed sanctions which should be imposed upon the attorney.

PART FOUR- TRANSPARENCY

4-1 Remove confidentiality and denial of public access to information at all stages of the disciplinary program from the time a charge is filed.

4-2 Establish a rule preventing former employees of the Office of the Trial Counsel or Judges of the State Bar Court from appearing in cases for a period of five (5) years to prevent revolving doors and undue influence.

PART FIVE- TIMELINESS

5-1 Require that the State Bar complete investigations and actions upon investigations related to complaints filed by clients, other attorneys, members of the public or Judges against members of the State Bar within 60 days of receipt by the Bar of any such complaint.

5-2 Require that the State Bar file charges arising from facts determined in any investigation within 10 days of completion of the investigation.

5-3 Require that all ADP proceedings be conducted under time standards which would require:

a. Any submission of a preliminary ADP application be tendered within 7 calendar days of the service of disciplinary charges upon an attorney

b. A fully complete ADP application be tendered within 15 calendar days of the service of disciplinary charges upon an attorney

c. Establishment or rejection of nexus within 45 days of the filing of the preliminary ADP application and if such nexus has not been established within that time frame require that the ADP application be dismissed with prejudice

d. Establishment or rejection within 120 days of the filing of the preliminary ADP application a strong likelihood of amenability to

rehabilitation and, absent such a finding within the time period, require dismissal with prejudice of the ADP application

e. Require that the attorney be suspended from practice immediately upon submission of the ADP application and remain suspended until relieved therefrom under the procedures set forth at 2-1 above.

5-4 Require that all cases filed before the State Bar Court not referred to ADP be completed through decision within six months from the date of filing.

5-5 Require that all cases referred to ADP be completed within six months of filing of the preliminary ADP application except for continued control of rehabilitation including substance abuse monitoring, mental health monitoring, proctoring of the attorney's practice, reporting, and suspension periods in effect during rehabilitation.

5-6 Require that the State Bar President certify monthly, as a matter of public record, to the State Legislature and the California Supreme Court its compliance with the requirements of items 5-1 and 5-2.

5-7 Require that all State Bar Court Judges certify monthly to the State Legislature and to the California Supreme Court their compliance with items 5-3 through 5-5 as to any and all cases assigned to them and require a salary cutoff of any Judge who cannot make such a certification or will not make such a certification.

PART SIX-INDEMNIFICATION

6-1 Require the State Bar to indemnify any victims of financial or emotional or physical or other abuse where an attorney has been allowed to practice by the State Bar or the State Bar Court in violation of the safeguards set forth under Parts 1-5 above

6-2 Increase bar dues as needed to provide a fund to ensure the responsibility of the State Bar under 6-1

PART SEVEN- FAIL SAFE ENFORCEMENT PROCEEDINGS AND SUPERVISION THROUGH THE DEPARTMENT OF CONSUMER AFFAIRS

7-1 Require that the State Bar make available to the Director of the Department of Consumer Affairs all records of disciplinary complaints, investigations, proceedings, and monitoring including records of substantive matters as well as to timeliness and status of such matters.

7-2 Authorize and require the Director of the Department of Consumer Affairs to institute before the California Supreme Court an action for disciplinary orders against a member of the Bar when the Director is of the opinion that the prosecution or investigation or other disciplinary action by the State Bar is ineffective or dilatory or

tainted by influence or is otherwise insufficient to protect consumers, clients, other members of the Bar, or the public.

7-3 Authorize and require that the Director of the Department of Consumer Affairs report to the State Legislature and the California Supreme Court any instances in either specific cases, or in categories of cases, or in types of cases, or in the caseload of the State Bar as a whole where the Director is of the opinion that the prosecution or investigation or other disciplinary action by the State Bar is ineffective or dilatory or tainted by influence or is otherwise insufficient to protect consumers, clients, members of the Bar, or the public.

7-4 Authorize and require that the Director of the Department of Consumer Affairs receive, consider, and duly act upon, complaints by consumers, clients, members of the Bar, or the Bench, or the public, or bar associations or the Bench of other States where, in such complaints presented to the Director, a showing is made that the State Bar has been ineffective or dilatory or tainted by influence or is otherwise insufficient to protect consumers, members of the Bar, or the public in regard to matters against attorneys raised in complaints previously filed with the State Bar.

7-5 Require that the State Bar pay, in such sums as the California Supreme Court may approve, to the Department of Consumer Affairs such costs and expenses the Director of the Department incurs in the performance of the Director's duties under items 7-1 through 7-4 above.

7-6 Increase Bar dues to provide a fund to ensure the availability of funds at the State Bar to make the payments to the Department of Consumer Affairs as required by 7-5.

PART EIGHT- SEXUAL RELATIONS BY PARALEGALS AND OTHER LAW FIRM EMPLOYEES

8-1 Impose upon paralegals and others employed in the offices of members of the State Bar or utilized, even as independent paralegals by offices of members of the State Bar, the same requirements as are now imposed upon attorneys in regard to sexual relations with clients of the attorney or the law firm.

8-2 Make the attorney and the law firm employing or using any such paralegals and other employees fully accountable as a disciplinary matter for any activities by paralegals or other employees vis a vis clients of the attorney or the law firm.

8-3 Impose joint and civil liability and punitive damages liability upon attorneys and law firms as well as upon the paralegals or employees involved for any violation by paralegals or employees of the requirements of 8-1 or 8-2 or of any now current California legal ethics statute or rule concerning sexual relations with clients of an attorney or law firm.

PART NINE- OBSTRUCTION OF ADMINISTRATIVE JUSTICE

9-1 Provide a civil remedy including general and special damages as well as punitive damages for obstructing by physical activity or threat of physical activity, or by litigation or threat of litigation, or otherwise, a complainant or witness or member of the public for the making (or the possibility of making) of a complaint to the State Bar, providing (or the possibility of providing) evidence to the State Bar in an investigation or proceeding, or acting (or the possibility of acting) as a witness in a State Bar proceeding, or seeking (or the possibility of seeking) advice or assistance from the State Bar or its officers.