

RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA

(Approved by the Board of Governors November 21, 2008, effective January 1, 2009.)

D. CONVICTION PROCEEDINGS

RULE 600. NATURE; INITIAL PLEADING

- (a) These rules apply to ~~conviction~~ proceedings, that is, ~~proceedings initiated as a result from~~ of a ~~respondent's~~ member's criminal conviction and are held pursuant to Business and Professions Code sections 6101 and 6102, California Rules of Court, rule 9.10, and these Rules of Procedure of the State Bar.
- (b) ~~The initial pleading in a conviction proceeding is a notice of hearing on conviction filed and served by the Clerk following the issuance of an order of reference by the State Bar Court or the Supreme Court. A copy of the order of reference shall be attached as an exhibit to the notice of hearing on conviction. The notice of hearing on conviction shall include the following notice:~~

~~IF YOU FAIL TO FILE AN ANSWER TO THIS NOTICE WITHIN THE TIME ALLOWED BY STATE BAR RULES, INCLUDING EXTENSIONS, OR IF YOU FAIL TO APPEAR AT THE STATE BAR COURT TRIAL, (1) YOUR DEFAULT SHALL BE ENTERED, (2) YOU SHALL BE ENROLLED AS AN INVOLUNTARY INACTIVE MEMBER OF THE STATE BAR AND WILL NOT BE PERMITTED TO PRACTICE LAW UNLESS THE DEFAULT IS SET ASIDE ON MOTION TIMELY MADE UNDER THE RULES OF PROCEDURE OF THE STATE BAR, (3) YOU SHALL NOT BE PERMITTED TO PARTICIPATE FURTHER IN THESE PROCEEDINGS UNLESS YOUR DEFAULT IS SET ASIDE, AND (4) YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.~~

~~"STATE BAR RULES REQUIRE YOU TO FILE YOUR WRITTEN RESPONSE TO THIS NOTICE WITHIN TWENTY DAYS AFTER SERVICE."~~

~~"IF YOUR DEFAULT IS ENTERED AND THE DISCIPLINE IMPOSED BY THE SUPREME COURT IN THIS PROCEEDING INCLUDES A PERIOD OF ACTUAL SUSPENSION, YOU WILL REMAIN SUSPENDED FROM THE PRACTICE OF LAW FOR AT LEAST THE PERIOD OF TIME SPECIFIED BY THE SUPREME COURT. IN ADDITION, THE ACTUAL SUSPENSION WILL CONTINUE UNTIL YOU HAVE REQUESTED, AND THE STATE BAR COURT HAS GRANTED, A MOTION FOR TERMINATION OF THE ACTUAL SUSPENSION. AS A CONDITION FOR TERMINATING THE ACTUAL SUSPENSION, THE STATE BAR COURT MAY PLACE YOU ON PROBATION AND REQUIRE YOU TO COMPLY WITH SUCH CONDITIONS OF PROBATION AS THE STATE BAR COURT DEEMS APPROPRIATE. SEE RULE 205, RULES OF PROCEDURE FOR STATE BAR COURT PROCEEDINGS."~~

Conviction proceedings are initiated in the Review Department of the State Bar Court by the Office of the Chief Trial Counsel's filing of a certified copy of the record of conviction. If the conviction is not final as defined in California Rule of Court, rule

9.10(a), at the time of the initial filing, the Office of the Chief Trial Counsel shall thereafter file a supplemental record of conviction that contains a certified copy of evidence showing that the conviction has become final. Any record of conviction filed under this subsection shall be served on the respondent pursuant to rule 60.

Rule 601. RESPONSE INTERIM SUSPENSION; RELIEF

~~The respondent in a conviction proceeding shall file and serve a response to the notice of hearing on conviction within twenty (20) days after service thereof, subject to any extension of time granted by order of the Court. The response shall state respondent's position on the issues stated in the order of reference, and any objections thereto, and shall contain an address for service on the respondent in the proceeding.~~

- (a) The Review Department shall examine the record of conviction and if it appears therefrom that any ground for suspension set forth in Business and Professions Code section 6102(a) is present, the Review Department may interimsly suspend the respondent pending final disposition of the conviction proceeding or further order of the Review Department.
- (b) Within 10 days of service of the initial record of conviction either party may file a brief which may include evidence from the record of the proceedings resulting in the conviction, including a transcript of any testimony, addressing whether grounds for interim suspension under Business and Professions Code section 6102(a) are present. The opposing party shall have 10 days from the date of service of the brief to file and serve a written response.
- (c) In cases involving misdemeanor convictions, the Review Department, on its own or on motion of any party, may direct the Hearing Department to conduct a hearing for the sole purpose of resolving factual issues as to whether there is probable cause to believe that the conviction involved moral turpitude and to make a recommendation whether interim suspension should be imposed. Proceedings pursuant to this paragraph shall be conducted as follows:
 - (1) No discovery shall be conducted except by leave of the court for good cause shown.
 - (2) Within 30 days after the referral order, each party must file and serve: (i) a list of all witnesses to be called at the hearing, except for impeachment or rebuttal; and (ii) copies of all exhibits to be offered.
 - (3) A hearing shall be held within 45 days of service of the referral order. The court shall file and submit its report to the Review Department no more than 15 days after the conclusion of the hearing.
 - (4) Rules 200-206 shall not apply to these proceedings. If a respondent fails to appear at the hearing in person or by counsel, the hearing shall proceed unless for good cause the hearing is continued.
 - (5) A recommendation under this paragraph shall be reviewable pursuant to rule 300.

(d) At any time during the pendency of a conviction proceeding within the State Bar Court, a respondent may file a motion in the Review Department to vacate, delay the effective date of, or temporarily stay the effect of an order of interim suspension. Such motions are governed by rule 321 of these Rules.

RULE 602. DEFAULT SUMMARY DISBARMENT

If the respondent fails to file a response as required by rule 601, the default procedures set forth in rule 200 shall apply, except that:

- ~~(a) References in rule 200 to "notice of disciplinary charges" shall be deemed to be references to "notice of hearing on conviction" and the wording of the notices required by rules 200(a)(4) and 200(c) shall be modified accordingly.~~
- ~~(b) Rule 200(a)(3) shall apply only if the degree of discipline is placed at issue by the order of reference attached to the notice of hearing on conviction, and if so, the words "if culpability is found" in rule 200(a)(3) shall be deemed to read "if moral turpitude or other misconduct warranting discipline is found".~~
- ~~(c) Notwithstanding the respondent's default, subsequent augmented orders of reference issued by the State Bar Court or the Supreme Court, if any, shall be served on the respondent pursuant to the rule for service of initial pleadings (rule 60).~~

The Office of the Chief Trial Counsel may file a motion seeking the summary disbarment of a respondent pursuant to Business and Professions Code section 6102(c). The motion shall be filed concurrently with the filing of the record of conviction showing that the conviction is final. The respondent shall have 10 days from the date of service of the motion to file a written response.

RULE 603. RIGHT TO SET ASIDE DEFAULT UPON AUGMENTATION OF ORDER OF REFERENCE FINAL CONVICTIONS

~~If the respondent's default has been entered, and the State Bar Court or the Supreme Court subsequently issues an augmented order of reference in the proceeding, then, notwithstanding the provisions of rule 200(d), the respondent may file a response under rule 601, directed to the augmented order of reference, within twenty (20) days of the service of the Augmented order of reference. If the respondent files such a response, the respondent may participate in all portions of the proceeding held pursuant to the augmented order of reference.~~

- (a) After a conviction that is not subject to summary disbarment becomes final, the Review Department shall refer the case to the Hearing Department to conduct a hearing and file a decision regarding the issue(s) set forth in the order of reference.
- (b) At any time prior to a conviction becoming final, a respondent may file a notice waiving finality of the conviction and requesting that the Review Department refer the case to the Hearing Department for a hearing and decision as set forth in subsection (a) of this rule.

RULE 604. RECORD AND EVIDENCE HEARING DEPARTMENT PROCEEDINGS

~~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 introduced may include that permitted by Business and Professions Code section 6102(g).~~

- (a) Upon referral of a conviction proceeding to the Hearing Department pursuant to rule 603, the Clerk shall serve and file a notice of hearing on conviction. Service shall be made pursuant to rule 60. A copy of the order of reference shall be attached as an exhibit to the notice of hearing on conviction. The notice of hearing on conviction shall include the following notice:

IF YOU FAIL TO FILE AN ANSWER TO THIS NOTICE WITHIN THE TIME ALLOWED BY THE RULES OF PROCEDURE OF THE STATE BAR, INCLUDING EXTENSIONS, OR IF YOU FAIL TO APPEAR AT THE STATE BAR COURT TRIAL: (1) YOUR DEFAULT SHALL BE ENTERED; (2) YOU SHALL BE ENROLLED AS AN INVOLUNTARY INACTIVE MEMBER OF THE STATE BAR AND WILL NOT BE PERMITTED TO PRACTICE LAW UNLESS THE DEFAULT IS SET ASIDE ON MOTION TIMELY MADE UNDER THE RULES OF PROCEDURE OF THE STATE BAR; (3) YOU SHALL NOT BE PERMITTED TO PARTICIPATE FURTHER IN THESE PROCEEDINGS UNLESS YOUR DEFAULT IS SET ASIDE; (4) THE FACTUAL ALLEGATIONS SET FORTH IN THE OFFICE OF THE CHIEF TRIAL COUNSEL'S STATEMENT OF FACTS AND CIRCUMSTANCES SURROUNDING THE CONVICTION, FILED PURSUANT TO RULE 604(c), SHALL BE DEEMED ADMITTED; AND (5) YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.

THE RULES OF PROCEDURE OF THE STATE BAR REQUIRE YOU TO FILE YOUR WRITTEN RESPONSE TO THIS NOTICE WITHIN TWENTY DAYS AFTER SERVICE.

IF YOUR DEFAULT IS ENTERED AND THE DISCIPLINE IMPOSED BY THE SUPREME COURT IN THIS PROCEEDING INCLUDES A PERIOD OF ACTUAL SUSPENSION, YOU WILL REMAIN SUSPENDED FROM THE PRACTICE OF LAW FOR AT LEAST THE PERIOD OF TIME SPECIFIED BY THE SUPREME COURT. IN ADDITION, THE ACTUAL SUSPENSION WILL CONTINUE UNTIL YOU HAVE REQUESTED, AND THE STATE BAR COURT HAS GRANTED, A MOTION FOR TERMINATION OF THE ACTUAL SUSPENSION. AS A CONDITION FOR TERMINATING THE ACTUAL SUSPENSION, THE STATE BAR COURT MAY PLACE YOU ON PROBATION AND REQUIRE YOU TO COMPLY WITH SUCH CONDITIONS OF PROBATION AS THE STATE BAR COURT DEEMS APPROPRIATE. SEE RULE 205, RULES OF PROCEDURE OF THE STATE BAR.

- (b) The respondent in a conviction proceeding shall file and serve a response to the notice of hearing on conviction within 20 days after service thereof, subject to any extension of time granted by order of the Court. The response shall state respondent's position on the issues stated in the order of reference and shall contain an address for service on the respondent in the proceeding.

- (c) If the respondent fails to file a response to the notice of hearing on conviction or fails to appear at trial, the default procedures set forth in rules 200-206 shall apply, except that:
- (1) References in these rules to “notice of disciplinary charges” shall be deemed to be references to “notice of hearing on conviction” and the wording of the notices required by the rules shall be modified accordingly. References to factual allegations having been “deemed admitted” shall be deemed to be references to the factual allegations set forth in the Office of the Chief Trial Counsel’s statement of facts and circumstances surrounding the conviction filed pursuant to subsection (c)(3) of this rule.
 - (2) Reference in rule 200(a)(3) to “if culpability is found” shall be deemed to read “if moral turpitude or other misconduct warranting discipline is found.”
 - (3) In addition to the items specified in rule 200(a), the motion for entry of default shall recite the facts and circumstances surrounding the conviction that the Office of the Chief Trial Counsel contends it has clear and convincing evidence to prove the issue(s) stated in the order of referral.
 - (4) Upon entry of the respondent’s default, the factual allegations set forth in the Office of the Chief Trial Counsel’s statement of facts and circumstances surrounding the conviction, filed pursuant to subsection (c)(3) of this rule, shall be deemed admitted unless otherwise ordered by the court based on contrary evidence, and no further proof shall be required to establish the truth of such facts.
- (d) 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 introduced may include that permitted by Business and Professions Code section 6102(g).

RULE 605. ISSUES APPLICABLE RULES

~~The issue or issues before the Court are those stated in the order(s) of reference.~~

Rules which by their terms apply only to other specific proceedings shall not apply in conviction proceedings. All other rules shall apply, except that rules 200-206 (default) shall apply as modified by these conviction proceedings rules.

RULE 606. SUMMARY DISBARMENT

~~The Review Department, on its own motion or on motion of any party, may direct the Hearing Department to conduct a hearing for the sole purpose of resolving factual issues as to whether the criteria required for summary disbarment are present. A decision by the Hearing Department pursuant to a referral under this rule shall be reviewable pursuant to rule 301 and such review shall be completed prior to further proceedings in the Hearing Department concerning other factual issues.~~

RULE 607. WAIVER OF FINALITY OF CONVICTION

~~The parties may stipulate that the Court may decide the issues as to the discipline to be imposed even if the criminal conviction is not final.~~

~~RULE 608. APPLICABLE RULES~~

~~Rules which by their terms apply only to other specific proceedings shall not apply in conviction proceedings. All other rules shall apply, except that rules 200-209 (default) shall apply as modified by rules 602 and 603.~~