INDEX OF RULES CHANGED BASED ON PUBLIC COMMENT

6. Subpoenas and Discovery	
RULE 180. APPLICABILITY OF CIVIL DISCOVERY ACT	**Rule 6.6 Discovery Procedures**
(a) The Civil Discovery Act (commencing with section 2016.010-2016.070 of the Code of Civil Procedure) applies in State Bar Court proceedings whenever discovery is permitted, as limited or modified by these rules.	**(A) Generally.** The procedures in this rule constitute the exclusive procedures for discovery. No other form of discovery is permitted without prior Court order under rules 6.7 or 6.9.
(b) Except as limited by these rules, Code of Civil Procedure section 2017.220, applies to complaining witnesses and alleged victims of misconduct in any proceeding in which a member is charged with a violation of Business and Professions Code section 6106.9 or rule 3-120 of the Rules of Professional Conduct, or which arises from the criminal conviction of the member for sexual misconduct.	**(B) Timing of Discovery Requests**. All requests for discovery must be made in writing and served on the other side within 10 ~~15~~ days after service of the answer to the notice of disciplinary charges, or within 10 days after service of any amendment to the notice.
	(A) Scope of Discovery. Upon request, a party must provide to the other party: (1) The name, the address and telephone number of each individual likely to have discoverable information – along with the subjects of that information – that the disclosing party may use to support its allegations or defenses, including in mitigation and aggravation; (2) The name (and, if not previously provided, the address and telephone number) of each individual the disclosing party then intends to call as a witness and those it may call if the need arises, including in mitigation and aggravation;

	(3) A copy – or description by category and location – of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its allegations or defenses, including in mitigation and aggravation. This includes: (i) all statements about the subject matter of the proceedings, including any impeaching evidence, made by any witness then intended to be called or may be called if the need arises by the disclosing party; (ii) all statements about the subject matter of the proceedings made by a person named or described in the notice, or amendment to the notice, other than the member when it is claimed that an act or omission of the member as to the person named or described is a basis for the discipline proceeding; (iii) all investigative reports made by or on behalf of the disclosing party about the subject matter of the proceeding; (iv) all reports of mental, physical, and blood examinations, then intended to be offered in evidence by the disclosing party.
	(D) Definition of Statement. For purposes of these procedures, statement means either: (1) a written statement that the person has signed or otherwise adopted or approved; or (2) a contemporaneous stenographic, mechanical, electrical, or other recording – or a transcription of it – that recites substantially verbatim the person's oral statement.

	(E) Form and Time of Response. All responses under subdivision (C) must be in writing, signed and served within 20 days after service of the request. All documents and tangible things described but not served with the responses must be made available for inspection and copying by the requesting party within the same time period.
	(F) Basis for Initial Disclosure; Unacceptable Excuses. A party must make its disclosures based on the information then reasonably available to it. A party is not excused from making its disclosures because it has not fully investigated the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosure.
	(G) Continuing Duty. If a party receives a written request for discovery, the party receiving the request has a continuing duty to provide discovery of items listed in the request until proceedings before the Court are concluded. When a written request for discovery is made in accordance with these rules, discovery must be provided within a reasonable time after any discoverable items become known to the party obligated to provide discovery.

	(H) Failure to Comply with Discovery Request. **(1) Inadmissible**. If any party fails to comply with a discovery request as authorized by these procedures, the items withheld are inadmissible or, if the items have been admitted into evidence, may ~~must~~ be stricken from the record. If testimony is elicited during direct examination and the party eliciting the testimony withheld any statement of the testifying witness in violation of these discovery procedures, the testimony may ~~must~~ be ordered stricken from the record. **(2) Reasonable Continuance.** Upon a showing of good cause for failure to comply with a discovery request, the Court may admit the items withheld or direct examination testimony of a witness whose statement was withheld upon condition that the side against whom the evidence is sought to be admitted is granted a reasonable continuance to prepare against the evidence, or may order the items or testimony suppressed or stricken from the record.

	(I) Privileged or Protected Material. **(1) Applicable.** Nothing in these procedures authorizes the discovery of any writing or thing which is privileged from disclosure by law or is otherwise protected. Statements of any witness interviewed by the deputy trial counsel, by any investigators for either side, by the member, or by the member's attorney are not protected as work product. **(2) Information Withheld**. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or otherwise protected, the party must make the claim expressly and must describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable the other party to assess the applicability of the privilege or protection.
	(J) Protective Orders. The Court may, upon application supported by a showing of good cause, issue protective orders to the extent necessary to maintain in effect such privileges and other protections as are otherwise provided by law.

6. Subpoenas and Discovery	
RULE 181. TIME PERIOD FOR COMPLETING DISCOVERY	**Rule 6.7 Motion to Request Other Discovery**
(a) All parties shall complete formal discovery within one hundred twenty (120) days after service of the initial pleading unless the Court extends the discovery period pursuant to paragraph (d) or orders a shorter discovery period.	**(A) Generally.** Upon a motion and showing of good cause, the Court may order additional discovery.
(b) The discovery period is tolled (1) from the filing of the Clerk's entry of default until the default is set aside or (2) from the filing of a stipulation as to facts, conclusions of law and disposition until ruled upon by the Court.	**(B) Timing and Support.** The motion must be filed no later than 45 days after service of the answer to the notice of disciplinary charges. The motion ~~It~~ must be supported by one or more declarations describing the nature and scope of the requested discovery, its relevancy to the allegations or defenses, and the proposed completion date.
(c) Discovery requests must be served so as to allow each responding party sufficient time to respond within the discovery period.	**(C) Time for Response.** An opposing party must file and serve a written response within five days after a motion is served.

(d) A motion for an extension of the discovery period shall show that the party or parties seeking the extension have made reasonably diligent efforts to complete discovery within the time allowed by paragraph (a) of this rule, and that the requested extension will materially contribute to settlement of the proceeding or to the party's presentation of evidence at trial. Upon motion or stipulation, or on the Court's own motion after notice to the parties and an opportunity to respond, the Court may order reasonable extensions of the discovery period.	**(D) Ruling.** The Court may deny the motion if it determines that: (1) The discovery sought is irrelevant to the allegations or defenses at issue; (2) The discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome or less expensive; (3) The party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (4) The burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the importance of the issues at stake in the proceeding, and the importance of the proposed discovery in resolving the issues.
(e) The amendments to paragraphs (a) and (d) shall apply to all proceedings in which the notice of disciplinary charges or other initial pleading is filed on or after February 1, 1999.	[deleted]

7. Defaults and Trials	
RULE 200. DEFAULT PROCEDURE FOR FAILURE TO FILE TIMELY RESPONSE	**Rule 7.1 Default Procedure for Failure to File Timely Response**
(a) To proceed by default upon respondent's failure to timely file a written response as provided by rule 103, the deputy trial counsel shall file and serve a written motion for entry of default on respondent. This motion shall recite:	**(A) Motion for Entry of Default.** When a member fails to timely file a ~~written~~ response ~~under rule 5.4~~, the deputy trial counsel must file and serve on the member a ~~written~~ motion for entry of default ~~on the member~~. The motion must contain:
(1) the date of filing of the notice of disciplinary charges and the date of service thereof;	(1) the date of notice and date of service of disciplinary charges;
(2) that the respondent has not timely filed a response as required by rule 103;	(2) a statement that the member did not timely file a response under rule 5.4;
(3) the minimum discipline which the deputy trial counsel intends to recommend if culpability is found, based on the evidence known to the moving party at the time the motion is filed, and, if the recommendation is less than disbarment, a statement that the State Bar Court may recommend or impose, and the Supreme Court may impose, lesser or greater discipline than recommended by the deputy trial counsel; and	[intentionally left blank] [intentionally left blank]
(4) the following in prominent type:	(3) the following language in prominent type:

"YOUR DEFAULT WILL BE ENTERED IF NO RESPONSE IS FILED WITH THE CLERK OF THE STATE BAR COURT WITHIN TEN (10) DAYS OF SERVICE OF THIS MOTION FOR ENTRY OF DEFAULT. IF YOUR DEFAULT IS ENTERED: (1) THE FACTUAL ALLEGATIONS SET FORTH IN THE NOTICE OF DISCIPLINARY CHARGES WILL BE DEEMED ADMITTED; (2) EVIDENCE THAT WOULD OTHERWISE BE INADMISSIBLE MAY BE USED AGAINST YOU IN THIS PROCEEDING, AND (3) YOU WILL LOSE THE OPPORTUNITY TO PARTICIPATE FURTHER IN THESE PROCEEDINGS, INCLUDING PRESENTING EVIDENCE IN MITIGATION, COUNTERING EVIDENCE IN AGGRAVATION, AND MOVING FOR RECONSIDERATION, UNLESS AND UNTIL YOUR DEFAULT IS SET ASIDE ON MOTION TIMELY MADE UNDER THE PRESCRIBED GROUNDS. SEE RULES 200 ET SEQ., RULES OF PROCEDURE FOR STATE BAR COURT PROCEEDINGS."	**"If you do not file a response with the State Bar Court within 10 days of service of this motion, the Court will enter your default, deem the facts in the notice of disciplinary charges admitted by you, and <u>may</u> admit evidence against you that would otherwise be inadmissible. You will lose the opportunity to participate further in these proceedings, unless you timely make—and the Court grants—a motion to set aside your default. If <u>your default is entered, and</u> you fail to timely move to set <u>it</u> aside<u>,</u> ~~your default, it will be deemed as consent by you for~~ this Court <u>will</u> ~~to~~ enter an order recommending your disbarment without further hearing or proceeding. See Rule 7 et seq., Rules of Procedure of the State Bar of California."**

"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."	[deleted]
	(B)Declaration of Reasonable Diligence. The motion must be supported by a declaration establishing that the deputy trial counsel acted with reasonable diligence to notify the member of the proceedings. ~~Reasonable diligence means a thorough, systematic investigation and inquiry conducted in good faith.~~ The declaration must: (1) state whether a signed return receipt for the notice of disciplinary charges was received from the member; (2) <u>if a signed return receipt is not received from the member,</u> show the deputy trial counsel or agent took those <u>additional</u> steps a reasonable person ~~who truly desired to give notice~~ would have taken under the circumstances <u>to provide notice</u>.

(b) The motion for entry of default shall be served in the manner specified in rule 60.	**(C) Service <u>of Default Motion</u>.** The deputy trial counsel must serve the motion under rule 4.6.
(c) If the respondent fails to file a written response with the Clerk within ten (10) days after service of the motion for entry of default, the Clerk shall enter the respondent's default by filing and serving on the respondent and deputy trial counsel a notice of entry of default. Service of the notice of entry of default on the respondent shall be as provided in the rule for service of initial pleadings (rule 60). The notice shall include the following in prominent type:	**(D) <u>Order Entering</u> ~~Entry of~~ Default.** If the member fails to file a written response ~~with the Clerk~~ within 10 days after the motion is served, the <u>Court may order the entry of the member's default</u>. ~~Clerk will enter the member's default by filing and serving a notice of entry of default on the member and the deputy trial counsel.~~ Service of the ~~notice of entry~~ default <u>order</u> must comply with rule 4.6. The <u>order</u> ~~notice~~ must include this language in prominent type:
"YOUR DEFAULT HAS BEEN ENTERED BECAUSE OF YOUR FAILURE TO TIMELY FILE A RESPONSE TO THE NOTICE OF DISCIPLINARY CHARGES FILED IN THIS PROCEEDING. THE FACTUAL ALLEGATIONS SET FORTH IN THE NOTICE OF DISCIPLINARY CHARGES HAVE BEEN DEEMED ADMITTED. YOU MAY NOT PARTICIPATE FURTHER IN THESE PROCEEDINGS UNLESS AND UNTIL YOUR DEFAULT IS SET ASIDE ON MOTION TIMELY MADE UNDER THE PRESCRIBED GROUNDS. SEE RULES 200 ET SEQ., RULES OF PROCEDURE FOR STATE BAR COURT PROCEEDINGS.	**"Because you did not timely file a response to the notice of disciplinary charges filed in this proceeding, the Court has entered your default and deemed the facts alleged in the notice of disciplinary charges admitted. You may ~~not~~ participate ~~further~~ in these proceedings <u>only if</u> ~~unless~~ the Court sets aside your default. If you fail to timely move to set aside your default, ~~it will be deemed as consent by you for~~ this Court <u>will</u> ~~to~~ enter an order recommending your disbarment without further hearing or proceeding. See rule 7 et seq., Rules of Procedure of the State Bar of California."**

"IN LIGHT OF THE ENTRY OF YOUR DEFAULT, IF 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."	[deleted]
(d) Upon entry of default:	~~**(E) Effects of Entry of Default.** If the court enters a default:~~
(1) Unless the default is vacated:	~~(1) the Court will deem the facts alleged in the notice of disciplinary charges admitted without further evidence and will issue an order enrolling the member as an inactive member without notice or hearing;~~
(A) The factual allegations set forth in the notice of disciplinary charges 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;	~~(2) the member may not participate in any way in the proceeding, except to file a motion to set aside the default or as otherwise permitted by these rules;~~

(B) The respondent shall be precluded from participating in anyway[sic] in the proceeding, except to file a motion to vacate the default; and	~~(3) except as allowed by these rules or ordered by the Court, the member will not receive any further notices or pleadings.~~ [Moved to rule 7.3]
(C) Except as otherwise provided in these rules or by order of the Court, no further notices or pleadings shall be served upon the respondent except for any request for review filed by the deputy trial counsel and the decisions of the State Bar Court.	[intentionally left blank]
(2) Unless otherwise ordered by the Court, any settlement and pretrial conference dates set prior to the entry of default shall be vacated and the Clerk shall serve a notice of the default hearing upon the deputy trial counsel. The hearing shall be conducted in accordance with rule 202.	**~~(F) Vacation of Conference Dates.~~** ~~Unless the Court orders otherwise, it will vacate any settlement and pretrial conference dates set before entry of default.~~
(3) Stipulations under rules 130-135 maybe[sic] filed notwithstanding the entry of default, provided, however, that unless otherwise provided in the stipulation and approved by the Court, the filing of such stipulations shall not relieve the respondent from the default.	**~~(A) Stipulations.~~** ~~The parties may file stipulations under rules 5.14–5.19. But the stipulations do not relieve the member of default unless the stipulation provides otherwise, and the Court approves it.~~ [See rule 7.4]

7. Defaults and Trials	
RULE 201. PROCEDURES FOR RESPONDENT'S FAILURE TO APPEAR AS PARTY AT TRIAL; ENTRY OF DEFAULT	**Rule 7.2 Default Procedure for Failure to Appear~~; Entry of Default~~.**
(a) If a respondent fails to appear at trial in person or by counsel, the trial shall proceed unless for good cause the trial is continued;	~~**(A) Continuance.** If a member fails to appear at trial in person or by counsel, the trial shall proceed unless for good cause the trial is continued;~~
(b) If a respondent fails to appear as a party at the trial when that respondent's default had not previously been entered in the proceeding, then the Court shall order the Clerk to enter that respondent's default, if:	~~**(B)**~~**(A) Default for Failure to Appear.** If the member fails to appear in person or by counsel ~~as a party~~ at the trial, the Court must order the entry of the ~~Clerk to enter a~~ member's default, if:
(1) The notice of disciplinary charges was served on the respondent as required by the rule for service of initial pleadings (rule 60);	(1) the notice of disciplinary charges was served on the member under rule 4.6; and
(2) Notice of trial was mailed by first class mail, postage paid, to the respondent's counsel of record, or if none, to the respondent at the address provided in the response or in a notice of change of address filed by the respondent, or if none, at the respondent's address maintained pursuant to Business and Professions Code section 6002.1, or if none of the foregoing applies, at an address at which the respondent may be served pursuant to the rule for service of subsequent pleadings (rule 61); and	(2) notice of trial was served by the Court ~~mailed~~ by first class mail, postage paid, ~~to~~ on: (a) the member's counsel; (b) the member at the address provided in the response or in a change-of-address notice filed by the member (if the member has no counsel); (c) the member's address in the State Bar's membership records (if the member has no counsel and has not provided any other address); or (d) an address allowed by rule 4.7.
(3) The respondent has not appeared at trial.	[intentionally left blank]

(c) Promptly upon entry of default under this rule, the Court shall order the Clerk to file and serve upon all parties a notice of entry of default. The notice shall include the following in prominent type:	~~(C)~~**(B) Order Entering Default.** ~~**Notice of Entry of Default.**~~ The Court must order the Clerk to promptly file and serve ~~notice of entry of~~ the default order on all parties. Service must comply with rule 4.6 The order ~~notice~~ must include the following language in prominent type:
"YOUR DEFAULT HAS BEEN ENTERED BECAUSE OF YOUR FAILURE TO APPEAR AT THE TRIAL IN THIS PROCEEDING. THE FACTS SET FORTH IN THE NOTICE OF DISCIPLINARY CHARGES HAVE BEEN DEEMED ADMITTED AND DISCIPLINE MAY BE RECOMMENDED OR IMPOSED UPON YOU BASED UPON THE ADMITTED FACTS. YOU MAY NOT PARTICIPATE FURTHER IN THESE PROCEEDINGS UNLESS AND UNTIL YOUR DEFAULT IS SET ASIDE ON MOTION TIMELY MADE UNDER THE PRESCRIBED GROUNDS. SEE RULES 200 ET SEQ., RULES OF PROCEDURE FOR STATE BAR COURT PROCEEDINGS."	**"Because you failed to appear at trial, the Court has entered your default and deemed the facts alleged in the notice of disciplinary charges admitted. You may ~~not~~ participate ~~further~~ in these proceedings only if ~~unless~~ the Court sets aside your default. If you fail to timely move to set aside your default, ~~it will be deemed as consent by you for~~ this Court ~~to~~ will enter an order recommending your disbarment without further hearing or proceeding. See rule 7 et seq., Rules of Procedure of the State Bar of California."**

"IN LIGHT OF THE ENTRY OF YOUR DEFAULT, IF 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."	[deleted]
(d) Proceedings, including the testimony of witnesses, the receipt of evidence and the argument of deputy trial counsel, may proceed immediately after the Court has ordered the Clerk to enter the respondent's default and before the default is actually entered.	**~~(D)~~(C) Effects ~~of Entry~~ of Default on Trial.** ~~(1)~~ If the Court determines that the perpetuation of evidence is pertinent to any future inquiry into the member's conduct or qualification to practice law, or if other good cause is shown, the trial may proceed for such limited purpose. ~~immediately after the Court orders the Clerk to enter the member's default and before the default is actually entered;~~ ~~(2) The other effects of entry of default under this rule are as set forth in rule 7.1(E).~~

7. Defaults and Trials	
RULE 202. DEFAULT HEARINGS	**Rule 7.3 Effects of Default.~~[This rule is deleted]~~**
(a) After entry of the respondent's default pursuant to rule 200 or rule 201, an expedited hearing shall be held at which the deputy trial counsel shall be entitled to introduce any evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in Court proceedings.	If the Court enters a member's default: (1) the member will be enrolled as an inactive member of the State Bar and will not be permitted to practice law; (2) the facts alleged in the notice of disciplinary charges will be deemed admitted; (3) except as allowed by these rules or ordered by the Court, the member will not be permitted to participate further in the proceeding and will not receive any further notices or pleadings unless the default is set aside on timely motion or by stipulation; and (4) the Court will recommend that the member be disbarred.
(b) Declarations are admissible, if:	[intentionally left blank]
(1) the facts stated in the declarations are within the personal knowledge of the declarant and	[intentionally left blank]
(2) the facts are set forth with particularity	[intentionally left blank]
(c) The deputy trial counsel may submit the State Bar's written evidence with a request for waiver of hearing. The Court may then take the matter under submission without a hearing.	[intentionally left blank]

7. Defaults and Trials	
RULE 203. VACATING DEFAULT	**Rule 7.4 Vacating or Setting Aside Default**
(a) Stipulation. Prior to the commencement of the trial in a proceeding, a default entered under rule 200 may be vacated by written stipulation of the parties, filed with the Clerk. After the commencement of trial, a default may be vacated only by Court order as provided in this rule.	**(A) Stipulation.** ~~The parties may file~~ A~~a written~~ stipulation to vacate a default ~~that~~ must be approved by the Court.
(b) Motion to Vacate Improperly Entered Default. Any party may move to vacate any default on the ground that it was not properly entered. The Court may vacate an improperly entered default on its own motion. An improperly entered default may be vacated at any time while the State Bar Court has jurisdiction of the matter. Any default entered while the respondent was on active duty in the armed forces of the United States shall be deemed to have been entered improperly.	**(B) Motion to Vacate Improperly Entered Default.** By motion of any party or on the Court's own motion, an ~~An~~ improperly entered default may be vacated at any time while the Court has jurisdiction over the matter. ~~It may be done by motion of any party or on the Court's own motion.~~ Any default entered while the member is on active duty in the armed forces of the United States is improperly entered.
(c) Motion to Set Aside Default. A respondent whose default has been properly entered under rules 200 or 201 may make a motion under this paragraph to set aside the default on the grounds of mistake, inadvertence, surprise or excusable neglect. Those grounds shall be interpreted in the same manner as in civil matters arising under Code of Civil Procedure section 473.	**(C) Motion to Set Aside Default.** A member may move ~~make a motion~~ to set aside a default because of mistake, inadvertence, surprise, or excusable neglect. Those grounds will ~~must~~ be interpreted ~~in the same manner as in civil matters arising~~ under Code of Civil Procedure § 473. The member must file the motion as soon as practical but no later than: (1) 180 days after ~~notice of the entry of~~ the default order is served under rule 7.1, or (2) 90 days after ~~notice of the entry of~~ the default order is served under rule 7.2.
(1) Any motion under this paragraph shall be filed as soon as practical, and in no event later than forty-five (45) days after service of notice of the entry of default.	**(D) Late-Filed Motion.** If the member files the motion beyond the time required in subdivision (C), the member must prove by clear and convincing evidence that:

(2) After the expiration of the time provided in subparagraph (1) of this paragraph, a respondent seeking relief from default must prove all of the following by clear and convincing evidence:	(1) the member did not receive or learn of the notice of disciplinary charges until after the required period expired;
(A) that the respondent did not receive or learn of the notice of disciplinary charges until after the expiration of the 45-day period provided in paragraph (c)(1) of this rule;	(2) the member filed the motion promptly after learning of the notice; and
(B) that the respondent filed the motion promptly after learning of the notice of disciplinary charges; and	(3) the member's failure to file a timely response and failure to file a timely motion <u>are</u> ~~were~~ excused by compelling circumstances beyond the member's control.
(C) that the respondent's failure to file a timely response and the respondent's failure to file a timely motion prior to the expiration of the 45-day period provided in paragraph (c)(1) of this rule were excused by compelling circumstances beyond the control of the respondent.	[intentionally left blank]
(3) A motion under this paragraph shall be accompanied by a copy of the respondent's proposed response to the notice of disciplinary charges, unless the respondent has previously filed a response. The proposed response shall be verified and shall set forth with specificity the respondent's asserted defenses.	**(E) Notice of Charges and Response.** Unless the member already filed a response, a copy of the proposed response to the notice of disciplinary charges must accompany the motion. The proposed response must be verified and <u>comply with rule 5.4</u>. ~~specifically state the member's defenses.~~
(4) A motion under this paragraph shall be supported by one or more declarations showing:	**(F) Support for Motion <u>to Set Aside Default</u>.** The member must support the motion with one or more declarations showing:

(A) the date on which the respondent first learned of the notice of disciplinary charges;	(1) the date that the member first learned of the disciplinary charges;
(B) the reason why the respondent did not file a response to the notice of disciplinary charges prior to the entry of default (if no response was filed);	(2) the reason why the member did not file a response to the notice of disciplinary charges ~~before the entry of default (if no response was filed)~~, or why the member failed to appear at trial;
(C) the date on which the respondent first learned of the entry of default;	(3) the date that the member first learned of the entry of default; and
(D) the reasons or grounds for setting aside the default; and	(4) the <u>grounds</u> ~~reasons~~ to set aside the default.
(E) if a decision has been filed, an offer of proof of facts that the respondent expects to show if relieved from default, including any facts in mitigation.	[deleted]
(d) A motion to set aside a default under paragraph (c) of this rule shall not be granted on the ground that the discipline recommended by the deputy trial counsel or the Court exceeds the minimum discipline stated in the motion for entry of default pursuant to rule 200(a)(3).	[deleted]
(3) Ruling on Motion. A motion to set aside or vacate a default shall be decided on an expedited basis.	**G) <u>Expedited</u> Ruling on Motion.** The Court will decide a motion to set aside or vacate a default on an expedited basis. It may stay the proceedings pending its ruling. ~~If the Court sets aside a default, it will vacate any decision it has issued.~~
(1) The Court may stay the proceedings pending its ruling.	[intentionally left blank]

(2) The Court may vacate a default subject to appropriate conditions. If the Court sets aside a default, it shall vacate any decision it has issued.	[intentionally left blank]
(3) If a motion to set aside a default is filed after the filing of the judge's decision, the judge:	**(I) Motion to Vacate Default After Decision Entered.** If a member files a motion to set aside a default after the judge files a disbarment recommendation ~~decision~~, the judge:
(A) May set aside the default;	(1) may vacate the default subject to appropriate conditions;
(B) May set aside the default for limited purposes only, or	(2) may set aside the default for limited purposes only; or
(C) May deny the motion if the judge determines that the required showing has not been made or that the recommended discipline in the proceeding would not be affected by any legal contention made by the respondent, by proof of the truth of the facts set forth in the respondent's offer of proof, or by the respondent's participation in the proceeding.	(3) may deny the motion if the judge decides that the member has not made the required showing. ~~or that the recommendation in the proceeding would not be affected by the member's: (a) legal contentions, (b) offer of proof; or (c) participation in the proceeding.~~

7. Defaults and Trials	
RULE 204. INTERLOCUTORY REVIEW OF ORDERS DENYING OR GRANTING RELIEF FROM DEFAULT	**Rule 7.5 Interlocutory Review of Orders Denying or Granting Relief from Default**
An order on a motion to vacate a default may be reviewed pursuant to rule 300.	An order on a motion to vacate or set aside default is reviewable under rule 9.1.

7. Defaults and Trials	
RULE 205. DURATION AND TERMINATION OF ACTUAL SUSPENSION IN DEFAULT PROCEEDINGS	**Rule 7.6 Petition for Disbarment After Default**
(a) Except as provided in paragraph (b), in a matter in which a member's default has been entered and the Court recommends that the member be placed on actual suspension, the Court's recommendation shall include each of the following: (1) a specific period of actual suspension; (2) a period of stayed suspension, if appropriate; and (3) a statement that the member's actual suspension shall continue unless the Court grants a motion to terminate the actual suspension at the conclusion of the specific period of actual suspension or upon such later date ordered by the Court.	**(A) Petition.** If the member fails to have the default set aside or vacated, ~~under rule 7.3,~~ the Office of the Chief Trial Counsel must ~~may~~ file a petition requesting the Court to recommend the member's disbarment to the Supreme Court. The petition must be supported by one or more declarations stating whether ~~that address if~~: (1) any contact with the member has occurred since the default was entered; (2) any other investigations or disciplinary charges are pending against the member; (3) the member has a prior record of discipline; and (4) the Client Security Fund has paid out claims as a result of the member's misconduct.
(b) If the period of actual suspension imposed by the Supreme Court is two years or more or if the Supreme Court has ordered the member placed on actual suspension for a specific period of time and until the member demonstrates to the satisfaction of the State Bar Court his rehabilitation, present fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Conduct, the provisions of rules 630 through 641 shall apply in addition to this rule.	**(B) Timing of Petition.** The petition may be filed no earlier than: (1) 180 days after service of the order entering the default under rule 7.1 or (2) 90 days after service of the order entering the default under rule 7.2. **(C)(~~B)~~ Service.** The Office of the Chief Trial Counsel must serve the petition under rule 4.6. **(D)(~~C~~) Response.** Within 20 days of service of the petition, the member may ~~must~~ file and serve a motion to set aside or vacate the default. ~~as required under rule 7.3.~~

(c) At any time after the Court files a decision pursuant to paragraph (a), the member may move the Court to terminate his or her actual suspension at the conclusion of any specified period of actual suspension imposed by the Supreme Court or upon the effective date of the Court's ruling on the motion, whichever is later. The motion shall be in writing and shall be accompanied by a declaration of the member, under penalty of perjury, stating all of the following:	~~**(D) Order to Show Cause.** If the Office of the Chief Trial Counsel fails to file a petition, the Court may order the parties to show cause why the Court should not recommend the member's disbarment to the Supreme Court.~~ ~~(1) The Clerk must serve the order to show cause as set forth under rule 4.6.~~ ~~(2) The parties must file and serve responses within 20 days of service of the order to show cause. The responses must satisfy the requirements of subdivision (A) and (C), as appropriate.~~
(1) whether the Supreme Court has filed a final disciplinary order and, if so, the date the order imposing the actual suspension became or will become effective;	**(E) Ruling.** (1) If the member fails to file a response or the Court denies a motion to set aside <u>or vacate</u> the default, the Court must recommend the member's disbarment if the evidence shows: (a) The notice of disciplinary charges was served on the member <u>properly</u> ~~as required under rule 4.6~~; (b) <u>The member had actual notice or</u> ~~R~~reasonable diligence was used to notify the member of the proceedings prior to the entry of default; (c) The default was properly entered; and (d) The factual allegations deemed admitted in the notice of disciplinary charges support a finding that the member violated a statute, rule or court order that would warrant the imposition of discipline. (2) If the Court determines that any of the factors set forth under subdivision (1) do not exist, it must deny the petition, vacate the default, and take other appropriate action to ensure that the matter is promptly resolved.

(2) the length of the specific period of actual suspension ordered by the Supreme Court or, if no final disciplinary order has been filed, the length of the specific period of actual suspension recommended by the State Bar Court;	[intentionally left blank]
(3) in order to assist the Court in ascertaining any appropriate probation conditions to be imposed, the reasons for the member's failure to participate in the underlying proceeding for which his or her default was entered; provided, however, that such reasons need not be sufficient for vacating the member's default;	[intentionally left blank]
(4) whether the member is willing to fully comply with such probation conditions as are reasonably related to the proceeding, and are agreed upon by the parties or are imposed by the Court as a condition for the termination of the member's actual suspension;	[intentionally left blank]
(5) if the Supreme Court has filed a final disciplinary order and the period of actual suspension is ninety (90) days or more, that the member has complied with the requirements of rule 9.20, California Rules of Court; and	[intentionally left blank]
(6) if the period of actual suspension recommended by the State Bar Court is ninety (90) days or more, and the Supreme Court has not filed a final disciplinary order, that the member will comply with the requirements of rule 9.20, California Rules of Court.	[intentionally left blank]

(d) Within fifteen (15) days of service of the member's motion pursuant to paragraph (c), the Office of the Chief Trial Counsel may file a response.	[intentionally left blank]
(e) In the Court's discretion, the Court may hold a hearing on the member's motion to terminate his or her actual suspension.	[intentionally left blank]
(f) If the member has complied with the provisions of paragraph (c) of this rule and has agreed to fully comply with such standard or other probation conditions which are agreed upon by the parties or which the Court may impose, there shall be a presumption in favor of granting the motion to terminate the member's actual suspension at the conclusion of the specified period of actual suspension imposed by the Supreme Court. If the Court denies the motion, the Court shall clearly state the reason(s) for such denial.	[intentionally left blank]
(g) If the Court grants the motion to terminate the member's actual suspension, the Court may place the member on probation for a specified period of time and may impose such conditions of probation as the Court deems necessary or appropriate.	[intentionally left blank]
(h) This rule shall not preclude a member from moving to vacate a default pursuant to rule 203.	[intentionally left blank]
(i) The provisions of this rule shall apply to all proceedings in which the notice of disciplinary charges or other initial pleading is filed on or after March 15, 1999.	[intentionally left blank]

7. Defaults and Trials	
RULE 206. INTERLOCUTORY REVIEW OF ORDERS DENYING OR GRANTING MOTION PURSUANT TO RULE 205	**Rule 7.7 ~~Interlocutory~~ Review of Orders <u>on Petitions for Disbarment</u> ~~Issued Under Rule 7.6~~**
An order on a motion pursuant to rule 205 may be reviewed for abuse of discretion or error of law under rule 300.	An order on <u>a petition for disbarment</u> ~~a motion under rule 7.6~~ is reviewable ~~for abuse of discretion or error of law~~ under rule 9.1.

7. Defaults and Trials	
RULE 212. NOTICE OF TRIAL	**Rule 7.10 Trial**
(a) Notice of the trial date shall be served upon the parties by the Clerk not less than thirty (30) days before the trial date, unless the parties agree to shorter notice.	**(A) Notice.** The Clerk must serve notice of the trial date on the parties at least 30 days before the trial date.
(b) If a trial date is rescheduled, at least twenty (20) days notice of the new date shall be given to the parties, orally or by mail, unless the parties have agreed to shorter notice.	**(B) Trial Date Rescheduled.** If a trial date is rescheduled, the Clerk must give at least 20 days notice of the new date to the parties, orally or by mail, unless the parties agree to shorter notice.
	(C) Commencement of Trial. Unless the hearing judge finds, in writing, that good cause exists for a continuance~~is shown~~, the trial will begin no later than 125 days after the notice of disciplinary charges is served and will be conducted on consecutive days.

7. Defaults and Trials	
RULE 214. RULES OF EVIDENCE	**Rule 7.12 Evidence**
Except as otherwise provided in rules governing specific types of proceedings or hearings, and subject to the provisions of the State Bar Act and relevant decisions of the Supreme Court and the State Bar Court, the Evidence Code, as applied in civil cases, shall be applicable in State Bar Court proceedings. The procedure for producing evidence in civil cases in Courts of record shall apply except as otherwise provided by these rules. However, no error in admitting or excluding evidence shall invalidate a finding of fact, decision or determination, unless the error resulted in a denial of a fair hearing.	**(A) Oral Evidence.** Oral evidence must be taken only on oath or affirmation. **(B) Rights of Parties.** Each party will have these rights: (1) to call and examine witnesses; (2) to introduce exhibits; (3) to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; (4) to impeach any witness regardless of which party first called him or her to testify; (5) to rebut the evidence against him or her; and, (6) if the member does not testify in his or her own behalf he or she may be called and examined as if under cross-examination. **(C) Relevant and Reliable Evidence.** The hearing need not be conducted according to technical rules relating to evidence and witnesses, except as hereinafter provided. Any relevant evidence must be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions. **(D) Hearsay.** Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but over timely objection will not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. ~~An objection is timely if made before submission of the case.~~ **(E) Privileges.** The rules of privilege will be effective to the extent that they are otherwise required by statue to be recognized at the hearing.

	(F) Judicial Discretion. The hearing judge has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.

7. Defaults and Trials	
RULE 216. PRIOR RECORD OF DISCIPLINE	**Rule 7.14 Prior Record of Discipline**
(a) A prior record of discipline consists of an authenticated copy of all charges, stipulations, findings and decisions (whether or not final) reflecting or recommending imposition of discipline on a party who is presently the subject of a State Bar Court proceeding. A prior record of discipline may include records from any jurisdiction stated in Business and Professions Code section 6049.1. A prior record of discipline includes recommended discipline that has not yet been approved by the Court of last resort in the jurisdiction, and excludes the following dispositions if ordered in California or the equivalent if ordered elsewhere: suspension for non-payment of State Bar fees, inactive enrollment, interim suspension after conviction of crime, admonition, and agreements in lieu of discipline. In the event that part or all of the record evidencing a prior record of discipline is lost or destroyed, the record may be established by clear and convincing evidence.	**(A) Included Items.** A prior record of discipline comprises an authenticated copy of all charges, stipulations, findings and decisions (final or not) reflecting or recommending that discipline be imposed on a party. It may include: (1) records from any jurisdiction stated in Business and Professions Code §6049.1, and (2) recommended discipline that the Court of last resort in the jurisdiction has not yet approved.
	(B) Excluded Items. A prior record does not include the following dispositions if ordered in California or the equivalent if ordered elsewhere: (1) inactive enrollment; (2) suspension for nonpayment of State Bar fees; (3) interim suspension after conviction of crime; (4) admonition; and (5) agreements in lieu of discipline.
	(C) Lost or Destroyed Records. If part or all of the record is lost or destroyed, the record may be established by clear and convincing evidence.
(b) A record, or the existence of a record, of prior discipline is inadmissible until a finding of culpability is made, unless it tends to prove a fact in issue in determining culpability.	**(D) Admissibility.** A record, or the existence of a record, is inadmissible unless the Court finds culpability or it tends to prove a fact in issue in determining culpability.

(c) A record of prior discipline is not made inadmissible by the fact that the discipline has been recommended but has not yet been imposed. If a record of prior discipline which is not yet final is admitted, the Court shall specify the disposition:	**(E) Nonfinal Records.** A record of prior discipline is not made inadmissible by the fact that the discipline has been recommended but has not yet been imposed. If a record of prior discipline that is not yet final is admitted, the Court shall specify the disposition: ~~If a record shows that discipline has been recommended but not yet imposed, the record is admissible but the Court must specify whether the nonfinal prior discipline recommendation is adopted, dismissed, or modified.~~
(1) If the non-final prior discipline recommendation is adopted; and	(1) If the non-final prior discipline recommendation is adopted; and ~~[intentionally left blank]~~
(2) If the non-final prior discipline recommendation is dismissed or modified.	(2) If the non-final prior discipline recommendation is dismissed or modified. ~~[intentionally left blank]~~

8. Dispositions and Costs	
RULE 270. PUBLIC AND PRIVATE REPROVALS	**Rule 8.8 Public and Private Reprovals**
(a) A reproval shall be set forth in the Court's decision or order approving stipulation, and shall be effective when the decision or order is final. The decision or order shall specify whether the reproval is public or private.	**(A) Stipulation and Reproval.** The Court's decision or order approving a stipulation may ~~will~~ include a reproval that takes effect when the decision or order is final. The decision or order must specify whether the reproval is public or private.
(b) A public reproval imposed on a respondent is publicly available as part of the respondent's official State Bar membership records and is disclosed in response to public inquiries. The record of the proceeding in which the public reproval was imposed remains public.	**(B) Public Reproval.** A public reproval is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries, and is reported as a record of public discipline on the State Bar's web page. The record of the proceeding in which the public reproval was imposed is also public.
(c) A private reproval imposed on a respondent after the initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page. The complainant shall be advised of the imposition of any private reproval.	**(C) Private Reproval Before Notice of Disciplinary Charges.** A private reproval imposed before a State Bar Court proceeding begins is part of the member's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding is not available to the public unless it becomes part of the record of any later proceeding in which it is introduced as evidence of a prior record of discipline. The member is not obligated to pay discipline costs.

(d) If a private reproval was imposed as the result of a stipulation approved by the Court prior to the initiation of a State Bar Court proceeding, then the private reproval is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproval was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under these rules.	**(D) Private Reproval After Notice of Disciplinary Charges.** A private reproval imposed on a respondent after the initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page. The complainant is informed of the imposition of the private reproval. The member is not obligated to pay discipline costs.

8. Dispositions and Costs	
RULE 280. CERTIFICATION AND ASSESSMENT OF COSTS	**Rule 8.10 Certification and Assessment of Costs**
Pursuant to Business and Professions Code section 6086.10:	**(A) Payment of Proceeding's Costs.** Under Business and Professions Code § 6086.10, a member who receives a public reproval or greater level of discipline must pay the costs of the disciplinary proceeding based upon cost certificates submitted by the Office of the Chief Trial Counsel or the Office of Probation and of the State Bar Court.
(a) Respondents ordered publicly reproved shall be ordered to pay the costs of the disciplinary proceeding based upon cost certificates of the Office of the Chief Trial Counsel or the Office of Probation and of the State Bar Court.	[intentionally left blank]
(b) The record of the State Bar proceedings transmitted to the Supreme Court with a recommendation of suspension, disbarment or acceptance of a member's resignation with disciplinary charges pending, shall be accompanied by the cost certificates of the Office of the Chief Trial Counsel or the Office of Probation and of the State Bar Court.	**(B) Cost Certificates Submitted with Record.** If the record of the State Bar proceedings sent to the Supreme Court contains a recommendation of suspension, disbarment, or acceptance of a member's resignation with disciplinary charges pending, the cost certificates of the Office of the Chief Trial Counsel or the Office of Probation and of the State Bar Court must accompany it.

(c) Costs shall be awarded to the State Bar with respect to any matter for which a respondent has been found culpable. For purposes of this rule, a "matter" is defined as a separate investigation initiated by the Office of the Chief Trial Counsel against a member, irrespective of the number of charged statutory and/or rule violations relating to that matter. A member has been found culpable in a matter if he or she is found culpable of one or more statutory or rule violations in that matter. "Matter" shall also include a probation revocation proceeding initiated by the Office of Probation and a conviction proceeding initiated by the Clerk of the State Bar Court following a referral order by the State Bar Court or the Supreme Court.	**(C) Culpability and Award of Costs.** If the Court finds a member culpable in a matter, it will award costs to the State Bar. A member is found culpable in a matter if the State Bar Court decides that the member violated at least one rule or statute at issue in that matter.
	(D) Definition of "matter." "Matter" includes: (1) a separate investigation opened by the Office of the Chief Trial Counsel against a member; or (2) a probation revocation proceeding begun by the Office of Probation; or (3) a conviction proceeding.
(d) If a respondent resigns from the practice of law with disciplinary charges pending against him or her, costs shall be awarded to the State Bar for both (i) the costs applicable to the processing of the respondent's resignation; and (ii) the costs applicable to the underlying pending disciplinary investigation or proceeding in light of the status of the proceeding at the time the respondent's resignation was received by the State Bar, provided that costs shall only be awarded as to those matters in which the State Bar's investigation was completed at the time the respondent's resignation was received by the State Bar.	**(E) Resignation with Charges Pending.** If a member resigns from the practice of law while disciplinary charges are pending against the member, the Court will award the State Bar the costs of: (1) processing the member's resignation; ~~and the costs of~~ (2) the underlying pending disciplinary proceeding; and (3) any pending investigations ~~investigation or proceeding, depending on the status of the proceeding at the time of the resignation,~~ that were complete when the State Bar received the member's resignation.

(e) If the Court orders that disciplinary costs be paid in installment payments, the order imposing costs shall require the payments to be made on an annual basis, designating the amount of each annual installment. Each installment payment shall be added to and become a part of the annual membership fees of the member.	**(F) Payment in Annual Installments.** If the Court's order imposing costs allows a member to pay in annual installments, the order must designate the amount of each installment, which will be added to and become a part of the member's annual membership fees.
(f) This rule does not limit the authority of the State Bar Court to grant relief from costs pursuant to Rule 282 and Business and Professions Code section 6086.10(c).	**(G) State Bar Court's Authority.** This rule does not limit the State Bar Court's authority to grant relief from costs under rule 8.11 and Business and Professions Code § 6086.10(c).

8. Dispositions and Costs	
RULE 283. AWARD OF COSTS TO RESPONDENT EXONERATED OF ALL CHARGES FOLLOWING TRIAL	**Rule 8.12 Award of Costs to Respondent Exonerated of All Charges After Trial**
(a) A respondent in a disciplinary proceeding who is exonerated of all charges following trial in the Hearing Department, decision of the Review Department, if review was sought, and decision or order of the Supreme Court, if a petition for writ of review was filed, may move for reimbursement of costs as authorized by Business and Professions Code section 6086.10(d).	**(A) Motion for Costs.** If a member in a disciplinary proceeding is exonerated of all charges, the member may move for reimbursement of costs under Business and Professions Code § 6086.10(d). Exoneration may occur following trial in the Hearing Department, or, after review, by decision of the Review Department or by decision or order of the Supreme Court.
(b) Only the following items shall be allowable as reasonable expenses of preparation for the hearing under Business and Professions Code section 6086.10(d):	**(B) Reasonable Expenses.** Under Business and Professions Code § 6086.10(d), only the following items are reasonable hearing preparation expenses:
(1) Taking, videotaping and transcribing necessary depositions, including an original and one copy of those taken by the respondent and one copy of depositions taken by the State Bar, and travel expenses to attend depositions;	(1) taking, videotaping, and transcribing necessary depositions – including an original and one copy of depositions taken by the respondent and one copy of depositions taken by the State Bar – and travel expenses to attend depositions;
(2) Service of process by a public officer, registered process server, or other means, as provided in Code of Civil Procedure section 1033.5(a)(4);	(2) service of process by a public officer, registered process server, or other means under Code of Civil Procedure § 1033.5(a)(4);
(3) Ordinary witness fees, other than expert witness fees, pursuant to Government Code section 68093;	(3) ordinary witness fees – but not expert-witness fees – under Government Code § 68093;
(4) Models and blowups of exhibits and photocopies of exhibits if, in the discretion of the Court, they were reasonably helpful to aid the Court as the trier of fact;	(4) models and blowups of exhibits and photocopies of exhibits (if, in the Court's discretion, they were reasonably helpful to the Court as the trier of fact);

(5) Transcripts of Court proceedings ordered by the Court;	(5) transcripts of Court proceedings ordered by the Court;
(6) Copies of State Bar Court Clerk's audiotape recordings of the proceeding in which the hearing is being held;	(6) copies of the State Bar Court Clerk's audiotape recordings of the proceeding in which the hearing is held;
(7) Investigation expenses incurred after filing of the notice of disciplinary charges in preparing the case for hearing if, in the discretion of the Court, such expenses were reasonably necessary;	(7) investigation expenses incurred to prepare the case for hearing after filing the notice of disciplinary charges (if, in the Court's discretion, the expenses were reasonably necessary);
(8) The reasonable expenses of computerized legal research if, in the discretion of the Court, such computerized research was reasonably required by the issues involved in the hearing and other less expensive means of research were not reasonably available;	(8) computerized legal research (if, in the Court's discretion, the research was reasonably required by the issues involved in the hearing and other less expensive means of research were not reasonably available); and
(9) The actual expense incurred in preparation for the hearing for (A) photocopying (except exhibits), (B) postage, and (C) telephone and facsimile transmission charges, provided that expenses shall not exceed $150.00 for the entire proceeding.	(9) photocopying (except exhibits), postage, and telephone and fax transmission charges (capped at $150 for the entire proceeding).
	(C) Expenses of Seeking Reimbursement. An exonerated member cannot recover costs incurred in seeking reimbursement.

(c) "Exoneration of all charges" within the meaning of Business and Professions Code section 6086.10(d) means a dismissal with prejudice of the entire proceeding following the Court's finding that the respondent is not culpable of the charged misconduct. A respondent is not "exonerated of all charges" within the meaning of section 6086.10(d) if the Court imposes an admonition or concludes that the respondent is culpable of charged misconduct even though no discipline is imposed or recommended.	**(D) "Exoneration" Defined.** Under Business and Professions Code § 6086.10(d) "exonerated of all charges" means the Court found the member not culpable of the charged misconduct and dismissed the entire proceeding with prejudice. A respondent is not "exonerated of all charges" if the Court imposes an admonition.
(d) A motion for reimbursement of costs under this rule shall be filed no earlier than the date of service of the final ruling exonerating the respondent of all charges following the conclusion of all proceedings in the matter, including Supreme Court review if any, and no later than thirty (30) days thereafter. The motion shall be accompanied by appropriate documentation of the costs for which reimbursement is requested. The respondent shall not be entitled to reimbursement of costs incurred in seeking reimbursement under this rule.	**(E) Time to File Motion and Response.** A motion for reimbursement of costs filed within 30 days after service of the final ruling exonerating the respondent of all charges after all proceedings in the matter end, including any Supreme Court review. Appropriate documentation of the costs for which reimbursement is requested must accompany the motion. A response may be filed within 20 days after it is served.
(e) Within twenty (20) days after service of a motion under this rule, a response thereto may be filed.	[intentionally left blank]
(f) The motion shall be heard and decided by the hearing judge who was assigned to the underlying proceeding. If there is no such judge or that judge is unavailable or disqualified, the motion shall be assigned to another hearing judge. A hearing may be held if the Court determines it necessary to resolve any substantial question of fact, or upon written request of any party.	**(F) Hearing.** The motion will be decided by the hearing judge who was assigned to the underlying proceeding. If there is no such judge or that judge is unavailable or disqualified, the motion will be assigned to another hearing judge. A hearing will be held only if the Court, in its discretion, determines that it will materially contribute to the consideration of the motion.

(g) The judge shall decide the motion by written order. The order may grant or deny the motion in whole or in part. The judge shall determine the reasonable expenses to be reimbursed pursuant to Business and Professions Code section 6086.10(d).	**(G) Decision.** The judge will decide the motion by written order, and may grant or deny the motion in whole or in part. The judge will determine the reasonable expenses to be reimbursed.
(h) Within fifteen (15) days after the service of the order on the motion, a party may file a petition for review under rule 300.	**(H) Review.** A party may file a petition for review under rule 9.1 within 15 days after the order on the motion is served.

9. Review by Review Department and Powers Delegated by Supreme Court	
RULE 302. APPELLANT'S BRIEF	**Rule 9.3 Appellant's Brief**
(a) Within forty-five (45) days after service of the request for review or service by the Clerk of the trial transcript, whichever occurs later, the appellant shall file with the Clerk and serve an opening brief. The brief shall include references to the record to establish all issues of fact in support of the points raised by the appellant.	**(A) Time to File.** Within 45 days after the request for review is served or the Clerk serves the trial transcript, whichever occurs later, the appellant must file and serve an opening brief. **(B) Length.** Unless otherwise ordered by the Presiding Judge, the brief must not exceed 30 pages, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations or similar materials. **(C) Factual Issues on Review.** The appellant must specify the particular findings of fact that are in dispute and must include references to the record to establish all ~~issues of~~ facts in support of the points raised by the appellant. Any factual error that is not raised on review is waived by the parties.
(b) If the appellant's opening brief is not timely filed, the Clerk shall notify the parties that if the brief is not filed within fifteen (15) days from service of the Clerk's notice, then unless otherwise ordered by the Presiding Judge, the request for review will be dismissed with prejudice, and if no other party requested review, the decision of the hearing judge will become the final decision of the State Bar Court.	**(D) Failure to File Brief.** Unless otherwise ordered by the Presiding Judge, if the opening brief is not filed, the Clerk will notify the parties that the brief must be filed within five days after the Clerk's notice is served or: (1) the request for review will be dismissed with prejudice; and (2) if no other party requested review, the hearing judge's decision will become the State Bar Court's final decision.

9. Review by Review Department and Powers Delegated by Supreme Court	
RULE 305. ACTIONS BY REVIEW DEPARTMENT	**Rule 9.6 Actions by Review Department**
(a) Upon review pursuant to rule 301 of decisions of rulings of the Hearing Department, the Review Department shall independently review the record and may adopt findings, conclusions and a decision or recommendation at variance with those of the hearing judge. The Review Department may remand a proceeding to the Hearing Department for a new trial on specified issues, for a trial de novo, or for other proceedings. Proceedings on remand shall be held before the same hearing judge unless the Review Department orders otherwise or that judge is unavailable. Findings of fact of the hearing judge resolving issues pertaining to credibility of witnesses shall be given great weight.	**(A) Standard of Review under Rule 9.2.** The Review Department will independently review the record and may make findings, conclusions, or a decision or recommendation different from those of the hearing judge. The findings of fact of the hearing judge are entitled to great weight. ~~and the burden is on the party alleging factual error to show that the findings are not supported by clear and convincing evidence.~~ **(B) Remand.** The Review Department may remand a proceeding to the Hearing Department for a new trial on specified issues, for a trial de novo, or for other proceedings. If a proceeding is remanded, the same hearing judge will preside unless that judge is unavailable or the Review Department orders otherwise.
(b) The Review Department may take action as to an issue whether or not that issue was raised in the request for review or briefs of any party. If the Review Department is considering taking action as to an issue not raised by any party, the Review Department shall advise the parties in writing of such issues prior to oral argument and any party may file a supplemental brief regarding such issues. If the Review Department does not advise the parties in advance of oral argument, supplemental posttrial briefs shall be permitted, or a rehearing shall be ordered upon timely motion by any party under rule 309.	**(C) Issues Not Raised for Review.** The Review Department may take action on an issue that was not raised in the request for review or briefs of any party. Before ~~If~~ it does so, the Review Department will notify the parties in writing of the issue~~s~~ before oral argument, and any party may file a supplemental brief about that ~~those~~ issue~~s~~. If the parties are not notified before oral argument, they may make a motion to file supplemental briefs or for reconsideration under rule 9.9.

(c) The Review Department shall decide matters before it in bank. Two (2) judges 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 in any matter before that department.	**(D) En Banc Review.** The Review Department will decide matters before it en banc. Two judges constitute a quorum. A majority vote of the judges present and voting are sufficient to take any action or arrive at any decision.
(d) The Review Department shall file its opinion within ninety (90) days of taking the matter under submission, unless a shorter period for filing the opinion in an expedited proceeding is required by statute, by Supreme Court rule, or by these rules.	**(E) Time for Opinion.** The Review Department will file its opinion within 90 days after the matter is submitted, unless the proceeding is expedited and a procedural rule, a statute, or a Supreme Court rule requires a shorter period for filing the opinion.
(e) In the event that one or more Review Department judges are disqualified or unavailable to serve in a matter before the department, the Presiding Judge may designate a hearing judge appointed by the Supreme Court pursuant to Business and Professions Code section 6079.1 to act in the place of the disqualified or unavailable Review Department judge, provided that the hearing judge so designated took no part in the consideration or decision of the matter in the Hearing Department. If the Presiding Judge is disqualified or unavailable to act under this provision, a Lawyer Review Judge shall act in place of the Presiding Judge, unless the Presiding Judge has designated another judge for this purpose.	**(F) Disqualified Judge.** If one or more Review Department judges are disqualified or unavailable to serve, the Presiding Judge may designate a hearing judge appointed by the Supreme Court under Business and Professions Code § 6079.1 to act in the Review Department judge's place, if the designated hearing judge took no part in considering or deciding the matter in the Hearing Department. If the Presiding Judge is disqualified or unavailable to act and has not designated another judge to act in his or her place, the Acting Presiding Judge may act in place of the Presiding Judge.

(f) In the event that the Review Department recommends disbarment, it shall also include in its opinion an order that the respondent be enrolled as an inactive member pursuant to Business and Professions Code section 6007, subdivision (c)(4). The order of inactive enrollment shall be effective upon personal service or three (3) days after service by mail, whichever is earlier, unless otherwise ordered by the Court.	**(G) Disbarment Recommendation.** If the Review Department recommends disbarment, it must include in its opinion an order that the respondent be enrolled as an inactive member under Business and Professions Code § 6007(c)(4). Unless otherwise ordered by the Court, the order takes effect on personal service or three days after service by mail, whichever is earlier.
(g) By March 1 of each year, the State Bar Court shall prepare and submit to the Chief Justice an annual report describing the compliance of the Review Department with the requirements of paragraph (d) during the preceding calendar year.	**(H) State Bar Court's Annual Report.** By March 1 of each year, the State Bar Court must prepare and submit to the Chief Justice an annual report describing how the Review Department complied with the requirements of subsection (E) during the preceding calendar year.
(h) Paragraphs (d) and (f) of this rule shall apply to all proceedings which are taken under submission on or after February 1, 1999.	[intentionally left blank]

9. Review by Review Department and Powers Delegated by Supreme Court	
RULE 306. ADDITIONAL EVIDENCE BEFORE REVIEW DEPARTMENT	**Rule 9.7 Additional Evidence Before Review Department**
(a) Except as provided by this rule or by order of the Review Department, the Review Department shall consider as evidence only that which was made a part of the record in the Hearing Department in the proceeding under review, or which was offered and excluded in the Hearing Department and which the Review Department determines should not have been excluded.	**(A) Record & Excluded Evidence.** Except as provided by this rule or by order of the Review Department, the Review Department considers only evidence that is a part of the record made in the Hearing Department, or ~~excluded~~ evidence offered and excluded that the Review Department determines should have been admitted.
(b) On its own motion or at the request of a party, the Review Department may take judicial notice of orders and decisions of the Supreme Court or the State Bar Court arising out of any State Bar Court proceeding involving the party who is the subject of the proceeding under review, whether or not such orders and decisions were introduced as evidence in the Hearing Department.	**(B) Augmenting Record: Judicial Notice & Stipulations.** On its own motion or at the request of a party, the Review Department may take judicial notice of orders and decisions of the Supreme Court or the State Bar Court arising out of any State Bar Court proceeding involving the party who is the subject of the proceeding under review, whether or not such orders and decisions were introduced as evidence in the Hearing Department. The Review Department may also admit other judicially noticeable facts or stipulated facts such as those bearing on restitution or rehabilitation occurring after the evidentiary proceedings before the hearing judge ended.
(c) The Review Department may augment the record to admit other judicially noticeable facts or stipulated facts such as those bearing on restitution or rehabilitation occurring subsequent to the conclusion of evidentiary proceedings before the hearing judge.	[intentionally left blank]

(d) Any party may move to augment the record, or in the alternative to remand the proceeding, to present evidence occurring subsequent to the conclusion of evidentiary proceedings before the hearing judge, such as evidence bearing on restitution or rehabilitation. Alternatively, any party may move to remand in order to file a motion to reopen the record pursuant to rule 222. Upon such motion, or on its own motion after notice to the parties, the Review Department may appoint a hearing judge as a referee to receive evidence and make proposed additional findings of fact thereon.	**(C) Augmenting Record: Additional Evidence from a Party.** Any party may move to present additional evidence occurring after evidentiary proceedings before the hearing judge ended, including evidence bearing on restitution or rehabilitation. Alternatively, any party may move to remand the proceeding so the party may file a motion to reopen the record under rule 7.20. On this motion, or on its own motion after notice to the parties, the Review Department may appoint a hearing judge as a referee to receive evidence and make proposed additional findings of fact.
(e)	**(D) Procedures to Augment or Correct Record.**
(1) Any motion by a party, or stipulation by all parties, for augmentation or correction of the record on review shall be so identified and shall be filed and served as a separate pleading on the date the appellant's opening brief is due to be filed.	(1) A motion or stipulation to augment or correct the record on review must be identified as such and filed and served as a separate pleading on the date the appellant's opening brief is due to be filed.
(2) All other parties shall file and serve a response to the motion to augment or correct the record as a separate pleading on the date the appellee's brief is due to be filed. If a motion to augment or correct the record is filed after the filing of the appellant's opening brief, any response thereto must be filed and served within ten (10) days of the service of the motion.	(2) All other parties may file and serve a response to the motion to augment or correct the record as a separate pleading on the date the appellee's brief is due to be filed. If a motion to augment or correct the record is filed after the appellant's opening brief is filed, any response to the motion must be filed and served within 10 days after the motion is served.

(3) The Review Department will grant requests for augmentation or correction of the record on review only if it determines that the original record is incomplete or incorrect, or as permitted by paragraphs (a) through (d) of this rule.	**(E) Augmentation Permitted.** The Review Department will grant requests to augment or correct the record on review only if it determines that the original record is incomplete or incorrect, or as permitted by subsections (A) through (D) above.

9. Review by Review Department and Powers Delegated by Supreme Court	
RULE 308. SUMMARY REVIEW PROGRAM	**Rule 9.8 Summary Review Program**
(a) The Review Department may summarily review matters raising limited issues on review which can be decided without necessitating a transcript of the entire record of State Bar hearings or the normal briefing schedule. Matters eligible for summary review include, but are not limited to, matters where no challenge has been made to the material findings of fact of the hearing judge and the issues on review are:	**(A) Scope for Summary Review.** The Review Department may summarily review matters raising legal issues on review that can be decided without a transcript of the entire record of State Bar hearings or the normal briefing schedule.
(1) contentions that the facts support conclusions of law different from those reached by the hearing judge;	**(B) Eligibility for Summary Review.** A matter is eligible for summary review if the requesting party does not challenge the hearing judge's findings of fact. The decision of the hearing judge will be the final State Bar Court decision on all material findings of fact and the parties will be bound by the facts as provided for under rule 5.15 ~~5.5~~. The issues on review are limited to:
(2) disagreement as to the appropriate disposition or degree of discipline; and/or	(1) contentions that the facts support conclusions of law different from those reached by the hearing judge;
(3) other questions of law.	(2) disagreement about the appropriate disposition or degree of discipline; or
	(3) other questions of law.
(b) Unless the Review Department determines pursuant to paragraph (i) that a matter for which summary review has been requested is not appropriate for summary review, any issue or contention not raised by the parties in briefs filed pursuant to paragraph (f) shall be waived.	**(C) Issues Waived.** Any issue or contention not raised by the parties is waived.

(c) The decision of the hearing judge shall be the final State Bar Court decision as to all material findings of fact and as to all issues or contentions not raised in the briefs filed pursuant to paragraph (f) of this rule.	[moved to subd. (B)]
(d) Rules 301-304 are not applicable to matters reviewed pursuant to summary review. Rules 305, 306 and 309 are applicable to summary review matters.	**(D) Inapplicable and Applicable Rules.** Rules 9.2 – 9.5 do not apply to summary review matters. Rules 9.6, 9.7, and 9.9 apply to summary review matters.
(e)	**(E) Requests for Summary Review.**
(1) In lieu of a request for review, a party seeking summary review shall file a request that the Review Department designate the matter for summary review. Such request shall be filed within thirty (30) days after service of the hearing judge's decision or, if a posttrial motion has been made, the hearing judge's ruling on the posttrial motion.	(1) A party must ask the Review Department to designate the matter for summary review. The request must be filed within 30 days after the hearing judge's decision is served or, if a posttrial motion has been made, within 30 days after the hearing judge's ruling on the motion.
(2) In a matter in which review is sought under rule 301, the Review Department may notify the parties on its own motion that it considers the matter eligible for summary review, and may invite the party seeking review to elect summary review. If the party declines to elect summary review, the matter will proceed pursuant to rules 301-304.	(2) If review is sought under rule 9.2, the Review Department may notify the parties on its own motion that it considers the matter eligible for summary review, and may invite the party seeking review to elect summary review. If the party declines to elect summary review, the matter will proceed under rules 9.2 – 9.5.
(3) If both a request for summary review under this rule and a request for review under rule 301 are timely filed in the same proceeding, the matter shall proceed pursuant to rules 301-304, subject to subparagraph (2) of this paragraph.	(3) If a request for summary review under this rule and a request for review under rule 9.2 are both timely filed in the same proceeding, the matter will proceed under rules 9.2 – 9.5. But the Review Department may apply subsection (E)(2) of this rule.

(f) In summary review proceedings, in lieu of briefs, and provided that supplemental briefs may be ordered by the Review Department:	**(F) Opening Memorandum.** Instead of an opening brief, the party seeking summary review must file an opening memorandum within 20 days after the order designating the proceeding for summary review is served. The memorandum must not exceed 20 pages. It must include a copy of the decision from which review is sought and:
(1) Within twenty (20) days after service of the order designating the proceeding for summary review, the party seeking summary review shall file an opening memorandum which shall:	(1) concisely state the issues for review, including, if applicable, how the conclusions of law or disposition or both should be modified;
(A) Have attached thereto a copy of the decision from which review is sought;	(2) list the supporting authorities cited for the contentions raised on review, and concisely state the proposition for which each authority is cited; and
(B) Concisely state the issues presented on review, including, if applicable, the modifications requested with regard to the conclusions of law and/or disposition;	(3) state whether or not oral argument is requested.
(C) List the authorities asserted in support of the contentions raised on review, with a concise statement of the proposition for which each authority is cited; and	[intentionally left blank]
(D) State whether or not oral argument is requested.	[intentionally left blank]
(2) Within fifteen (15) days of service of the opening memorandum, each opposing party shall file a responsive memorandum which shall:	**(G) Responsive Memorandum.** Within 15 days after the opening memorandum is served, the opposing party may ~~must~~ file a responsive memorandum that does not exceed 20 pages and:

(A) State whether the party disputes any issue raised or relief requested in the opening memorandum, and if so, the party's position regarding such disputed issue or request for relief;	(1) states whether the party disputes any issue raised or relief requested in the opening memorandum, and, if so, the party's position on the disputed issue or request for relief;
(B) State whether the party disputes the propriety of summary review;	(2) states whether the party believes summary review is not proper;
(C) Concisely state any additional issues which the party wishes to raise on review, including, if applicable, any modifications requested with regard to the conclusions of law and/or disposition;	(3) concisely states any additional issues for review, including, if applicable, how the conclusions of law or disposition or both should be modified;
(D) List the authorities upon which the party relies in support of its position, with a concise statement of the proposition for which each authority is cited; and	(4) lists the supporting authorities cited for the party's position, and concisely state the proposition for which each authority is cited; and
(E) State whether or not oral argument is requested.	(5) states whether or not oral argument is requested.
(3) Within ten (10) days of service of the responsive memorandum, the party seeking summary review may file a reply memorandum not more than five(5) pages in length addressing any new issues raised in the responsive memorandum.	**(H) Reply Memorandum.** Within 10 days after the responsive memorandum is served, the party seeking summary review may file a reply memorandum not to exceed five pages addressing any new issues raised in the responsive memorandum.

(g) Oral argument will not be heard in summary review proceedings unless specifically requested by a party or ordered by the Review Department on its own motion. If requested or ordered, oral argument shall be held by telephone conference on fifteen (15) days notice unless the parties agree otherwise. The telephone conference shall originate from one or more designated Courtrooms which shall be open to the public if the proceeding is public. The judges of the Review Department may participate from designated Courtrooms at different locations. Each party may present its oral argument either by telephone or in person at one of the designated Courtrooms.	**(I) Oral Argument.** Unless specifically requested by a party or ordered by the Review Department on its own motion, oral argument will not be heard in summary review proceedings. If requested or ordered, oral argument will be by telephone conference on 15 days' notice. The telephone conference will originate from one or more designated Courtrooms that will be open to the public if the proceeding is public. The judges of the Review Department may participate from designated Courtrooms at different locations. Each party may present its oral argument either by telephone or in person at one of the designated Courtrooms.
(h)	**(J) Full Record <u>After Summary Review Granted</u>.**
(1) Nothing in this rule shall restrict the Review Department's authority, in proceedings in which review is requested, to review independently the full record of State Bar proceedings or to require a full or partial transcript and briefing schedule prior to oral argument of any case.	(1) When <u>summary</u> review is <u>granted</u> ~~requested~~, nothing in this rule restricts the Review Department's authority to independently review the full record of State Bar proceedings or to require a full or partial transcript and briefing schedule before oral argument of any case.
(2) Should the Review Department determine that review of the full record is warranted, it may decline a party's request to review a matter by summary review and order the matter reviewed under rules 301-304. In this event, the party requesting review may withdraw the request within thirty (30) days after service of the Review Department's order.	(2) If the Review Department determines that it needs to review the full record, it may ~~decline a party's request to review a matter by summary review and~~ order the matter reviewed under rules 9.2 – 9.5. In this event, the party requesting summary review may withdraw the request within 30 days after the Review Department's order is served.

(i) In the event the Review Department determines that a matter for which summary review has been requested is not appropriate for summary review, the parties shall have ten (10) days from service of notice of such determination by the Court to file a request for review pursuant to rule 301. Rule 301 (a) (1) shall not apply to such requests for review.	**(K) Denial of Summary Review.** If the Review Department determines that summary review is not appropriate, then within 10 days after ~~notice of~~ the order ~~determination~~ is served, a party may request review under rule 9.2.
(j) After the filing of the Review Department's decision in a summary review matter, a party who intends to seek review by the Supreme Court must first file a motion for reconsideration by the Review Department, accompanied by certification that a trial transcript has been ordered and appropriate arrangements have been made for payment. The motion shall be filed within fifteen (15) days from service of the Review Department's decision.	**(M) Review by the Supreme Court.** After the Review Department files its opinion in a summary review matter, a party who intends to petition the Supreme Court for review must first file with the Review Department a certification that a trial transcript has been ordered and appropriate payment has been made. The certification must be filed within 15 days from service of the Review Department's decision. The Supreme Court requires a complete record, including a trial transcript.
(1) For good cause, on motion of the party seeking reconsideration or on the Court's own motion after notice and an opportunity to be heard, the Court may order that all or part of the cost of the transcript be paid by the party or parties who originally sought summary review.	[intentionally left blank]
(2) Upon the filing of a motion for reconsideration under this paragraph, the provisions of rules 301(a)(2), 301(b), 301 (c), and 302-306 shall apply as if the motion for reconsideration were a request for review under rule 301, except that the time to file briefs shall be thirty (30) days for the opening brief, twenty (20) days for the responsive brief, and five (5) Court days for the rebuttal brief.	[intentionally left blank]