

DIVISION FIVE. PROBATION PROCEEDINGS

CHAPTER 1. PROBATION MODIFICATION AND EARLY TERMINATION PROCEEDINGS

**Rule 5.300 Motions for Modification or Early Termination of Probation**

**(A) Timing of Motion.** If at least six months have passed since the effective date of the order imposing probation, either the attorney, the Office of Probation, or the Office of Chief Trial Counsel may move to terminate probation early. A motion to modify probation may be made at any time.

**(B) Considerations; Requirements.** The State Bar Court must balance the interests of the attorney and the public and determine whether modifying or terminating probation serves the objectives of probation. A motion to modify or terminate probation early must state facts showing that the request is consistent with:

- (1) protecting the public;
- (2) the attorney's successful rehabilitation; and
- (3) maintaining the integrity of the legal profession.

**(C) Modification of Suspension.** Unless expressly authorized by the Supreme Court, the State Bar Court will not consider a motion or stipulation to modify an actual or stayed period of suspension, whether it's a condition of probation or not.

**(D) Specific Relief.** The motion must clearly state the specific relief requested and be accompanied by one or more declarations.

**(E) Response.** A response to the motion must be filed within 30 days after the motion is served.

**(F) Hearing.**

- (1) A party may file and serve a written request for a hearing when filing the motion or within 10 days after serving the response. Failure to request a hearing is a waiver of hearing.
- (2) The Court will hold a hearing if timely requested by either party and it determines that a hearing will materially contribute to the Court's consideration of the motion. The hearing will be set on an expedited basis.

**(G) Service.** The party filing the motion must serve it under rule 5.25. Service on the State

Bar under rule 5.25(E) must be made on both the Office of Probation and the Office of Chief Trial Counsel at 845 S. Figueroa Street, Los Angeles, CA 90017-2515.

**Rule 5.301 Stipulation to Modification or Early Termination of Probation** The parties may stipulate to modifying the conditions of probation, as permitted by rule 9.10(c) of the California Rules of Court, or to terminating probation early. The stipulation must state specific facts demonstrating that the requested relief is appropriate and serves the objectives of probation. The Court must approve the stipulation and has the discretion to reject the stipulation in the interest of justice.

**Rule 5.302 Burden of Proof; Discovery; Evidence**

(A) Supporting Evidence. Clear and convincing evidence is required to support a motion to modify or terminate probation early.

(B) Discovery. The Court will allow discovery only if good cause is shown.

(C) Objections to Motion. Written objections to the declarations offered in support of and in response to the motion must be filed and served by a party within 10 days after the response is filed. If no hearing is held, the Court will receive the declarations in evidence, subject to its rulings on any objections.

(D) Hearing. If a hearing is held, the submitted declarations will be admitted in evidence, subject to appropriate objection, as the direct testimony of the respective declarants.

(E) Cross-Examination. If an opposing party is served a declaration, and files and serves within five days after service a request to cross-examine the declarant, the party that filed the declaration must produce the declarant for cross-examination at the hearing.

**Rule 5.303 Ruling on Motion** The Court will issue a written order stating its ruling on the motion and its reasons.

**Rule 5.304 Form of Ruling**

(A) Order. The Court's ruling will be an order when:

- (1) granting a motion to correct, modify, or terminate early a probation ordered by the State Bar Court as a condition of reprobation;

(2) approving a stipulation or granting a motion to correct or modify probation terms for which the State Bar Court has delegated authority under rule 9.10(c) of the California Rules of Court;

(3) rejecting any stipulation; or

(4) denying any motion.

(B) Recommendation. The Court's ruling will be a recommendation when:

(1) granting a motion to terminate early a probation ordered by the Supreme Court; or

(2) granting a motion to modify probation terms for which the State Bar Court does not have delegated authority under rule 9.10(c) of the California Rules of Court.

### **Rule 5.305 Review**

A ruling by a hearing judge on a motion under these rules is reviewable only under rule 5.150.

### **Rule 5.306 Inapplicable Rules**

The following rules do not apply in proceedings on a motion to modify or terminate probation early:

(A) General. Rules that by their terms apply only to disciplinary proceedings or to other specific proceedings, and

(B) Specific. Rules 5.80-5.100 (default; obligation to appear at trial); rules 5.105-5.108 (admission of certain evidence); and rules 5.151-5.157 (review).

## **CHAPTER 2. PROBATION REVOCATION PROCEEDINGS**

### **Rule 5.310 Probation Revocation Proceedings**

If the Office of Probation or the Office of Chief Trial Counsel has reasonable cause to believe that an attorney has violated a condition of probation, either office may charge the probation violation in a probation revocation proceeding governed by these rules. Alternatively, the Office of Chief Trial Counsel may charge the probation violation in an original disciplinary proceeding, based on the attorney's violation of Business and Professions Code § 6068(k), governed by the rules for disciplinary proceedings generally.

### **Rule 5.311 Burden of Proof in Probation Revocation Proceedings; Expedited Proceeding**

A preponderance of the evidence is required in probation revocation proceedings, and the proceedings will be expedited.

### **Rule 5.312 Discipline Recommended in Probation Revocation Proceedings**

The court may recommend imposing an actual suspension equal to or less than the period of stayed suspension. It may also recommend staying all or part of the actual suspension and imposing a new period of probation, which may be of a different duration or under different conditions than the original probation or both. The court must also make a recommendation regarding monetary sanctions, if applicable, pursuant to rule 5.137 of the Rules of Procedure, and set forth its reasons for its recommendation.

### **Rule 5.313 Consolidation of Probation Revocation Proceedings**

A probation revocation proceeding may be consolidated with another probation revocation proceeding alleging a separate violation or violations of the same Supreme Court order. Otherwise, it may not be consolidated for decision with any other proceeding.

### **Rule 5.314 Conduct of Probation Revocation Proceedings**

Probation revocation proceedings will be conducted as follows:

**(A) Motion.** The proceeding begins by filing a motion to revoke probation, accompanied by one or more declarations stating all the facts relied on in support of the motion. If a hearing is not requested in the motion, a hearing is waived. The motion and all supporting pleadings and evidence, including declarations and a copy of an approved response form, must be served on the attorney under rule 5.25.

**(B) Response.** The response, including any opposition, must be filed and served within 20 days of the service of the motion. All facts relied on in the response must be stated in one or more accompanying declarations. If a hearing is not requested in the response, the right to request a hearing is waived, regardless of a request for hearing in the motion. The response must state whether the attorney wants to cross-examine the declarants at the hearing.

**(C) Admissions.** If no response is filed, the factual allegations contained in the motion and supporting documents will be treated as admissions.

**(D) Discovery.** The Court will allow discovery only if good cause is shown.

**(E) Hearing.** The Court will hold a hearing if timely requested by any party or if the Court determines that a hearing will materially contribute to its consideration of the motion.

**(F) Declarations in Support of Motion.** Subject to appropriate objection, the Court will admit in evidence the declarations submitted in support of the motion as the direct testimony of the respective declarants. If the attorney filed a timely response to the motion and expressly requested a hearing and the opportunity to cross-examine the declarants, counsel for the State Bar will produce the declarants at the hearing.

**(G) Declarations in Response.** If the attorney filed declarations in response to the motion, then, subject to appropriate objection, the Court will admit in evidence the declarations as the direct testimony of the respective declarants only if:

- (1) the attorney produces the declarant at the hearing for cross-examination, or
- (2) counsel for the State Bar waives the right to cross-examine the declarant.

**(H) No Hearing.** If no hearing is held, the Court will receive in evidence declarations and exhibits submitted in support of and in opposition to the motion. The admissibility of this evidence is subject to the Court's ruling on any appropriate objections asserted by the attorney in the response to the motion or by the State Bar in a writing filed and served within five court days after the response is served.

**(I) Order.** The Court will issue a written order stating its reasons for the recommended action.