

## ATTACHMENT B

### Chapter 5. Alternative Discipline Program

#### Rule 5.380 Purpose of Program; Authority [No Proposed Changes]

#### Rule 5.381 Eligibility to Apply for Participation in Program

**(A) Before Proceeding Begins.** ~~An attorney is not eligible to participate in ADP until after a State Bar Court proceeding has been initiated by the filing of a Notice of Disciplinary Charges or the referral of a criminal conviction case to the State Bar Court's Hearing Department.~~ Before a proceeding in the State Bar Court begins, a judge assigned to conduct ~~a Prefiling Settlement an Early Neutral Evaluation~~ Conference under rule 5.30 ~~or rule 5.341(B)~~ may discuss the attorney's eligibility to participate in the Program. If formal charges are filed, the ~~prefiling settlement~~ ~~Early Neutral Evaluation~~ judge may be the Program Judge.

**(B) After Proceeding Begins.** At any time after a proceeding in the State Bar Court begins, at the request of either the attorney or the Office of Chief Trial Counsel or on the court's own motion, ~~an attorney may be referred~~ the court may, in its discretion, refer an attorney to a judge ~~whom the Presiding Judge has designated~~ who shall serve as the Program Judge to ~~determine the attorney's eligibility to participate in the Program. A referral by the Court must be made at least 45 days before the first scheduled trial date in the proceeding.~~ preside over the matter for all Program proceedings and determinations subject to rules 5.382 to 5.387.

#### Rule 5.382 Acceptance for Participation in Program

**(A) Conditions for Participation.** ~~Except as limited by subsections (B) and (C), t~~The Program Judge has the discretion to accept an attorney for participation in the Program if all of the following conditions are satisfied:

~~Participation is contingent on:~~ (1) the Program Judge determines that the attorney is eligible to participate in the Program under the criteria set out in section (C) of this rule;

(2) the attorney is 's accepted ~~ance~~ into the State Bar's Lawyer Assistance Program;

(3) the Program Judge Court's approves ~~al of~~ a stipulation of facts and conclusions of law signed by the parties in accordance with section (B) of this rule;

(4) the attorney or OCTC presents evidence sufficient for the Program Judge to determine ~~evidence~~ that the attorney's substance abuse or mental health issue causally contributed to the misconduct; and

(5) the attorney satisfies any additional conditions that the Program Judge may impose.

**(B) No Stipulation or Incomplete Stipulation Stipulation Not Submitted.** If the parties do not sign and submit a stipulation of facts and conclusions of law to the Program Judge for approval within 90 days after the date the attorney was referred to the Program to determine eligibility, the Program Judge may return the proceeding for processing as a standard discipline proceeding. The stipulation must resolve all relevant facts and conclusions of law.

**(C) Grounds for Ineligibility.** An attorney will not be accepted to participate in the Program if:

(1) the Program Judge finds, in the exercise of that judge's discretion, that the stipulation of facts and conclusions of law, including aggravating factors, signed by the attorney and the Office of Chief Trial Counsel, shows that the attorney's disbarment is requiredwarranted, despite mitigating circumstances and even assuming successful completion of the Program;

(2) the Program Judge determines as a matter of law that the attorney has been convicted of a criminal offense that subjects the attorney him or her to summary disbarment under Business and Professions Code §-section 6102(c)(1);

(3) the Program Judge finds that the stipulation of facts and conclusions of law shows by clear and convincing evidence that the attorney has been convicted of a criminal offense that subjects the attorney to summary disbarment under Business and Professions Code section 6102(c)(2); or

(43) the Program Judge finds that the stipulation of facts and conclusions of law shows by clear and convincing evidence that the attorney's current misconduct involves acts of moral turpitude, dishonesty, or corruption that have has resulted in significant harm to one or more clients, the public, or to the administration of justice; or;

(4) there is a finding, based on expert testimony, that:

(a) the attorney will not substantially benefit from treatment for his or her substance abuse or mental health problem; or

(b) the substance abuse or mental health problem cannot be overcome or controlled to the extent that it is unlikely to cause further misconduct; or

(55) the Program Judge determines that the attorney has previously participated in the Program and has either successfully completed the Program or been terminated from the Program.

**(D) Evidence and Findings.** In making findings pursuant to subsections (C)(1), (3), and (4) of this rule, the Program Judge may consider all of the stipulated facts and conclusions of law.

**(E) Timely Submission of Stipulation and Other Materials.** The Program Judge may, in the exercise of the judge's discretion, set deadlines for the parties to submit a proposed stipulation, the evidence required by subsection (A)(4) above, or any other materials the Program Judge determines are needed for the Program Judge to make a finding of acceptance or nonacceptance into the Program.

**(FD) Effect of Nonacceptance.** Unless otherwise agreed by the parties, if the attorney is not accepted into the Program or refuses to sign the written agreement of the terms and conditions for participating in the Program, then any stipulation of facts and conclusions of law signed by the parties in the pending disciplinary proceeding and entered into as a condition for participating in the Program will be rejected and will not be binding on either the attorney or the Office of Chief Trial Counsel.

**Rule 5.383 Disqualification of Program Judge in Standard Proceeding.** [No Proposed Changes]

**Rule 5.384 Disposition; Deferral of Imposition**

**(A) Statement of Disposition.** If an attorney seeking to participate in the Program has stipulated to the facts and conclusions of law in the pending disciplinary proceeding and has agreed to or has

fulfilled all other conditions for participating in the Program, the Program Judge will give the attorney a written statement regarding:

- (1) the disposition that will be implemented or recommended to the Supreme Court if the attorney successfully completes the Program; and
- (2) the disposition that will be implemented or recommended to the Supreme Court if the attorney does not complete the Program.

**(B) Range of Dispositions.** If the attorney:

- (1) - successfully completes the Program, the disposition may be as low as dismissal of the charges or proceeding, with the exception that if the Program Judge determines, based on the stipulation of facts and conclusions of law, that the attorney's conduct involves one or more acts of moral turpitude that have resulted in significant harm to one or more clients, the public, or the administration of justice, the disposition may be no lower than:
  - (a) in the absence of compelling mitigating circumstances, a recommendation to the Supreme Court that includes an actual suspension; or
  - (b) a recommendation to the Supreme Court that includes a suspension, stayed or actual.
- (2) If the attorney does not complete the Program, it the disposition may be as high as disbarment. The extent and severity of the attorney's stipulated misconduct, including the degree of harm suffered by his or her clients, are factors in determining the disposition implemented or recommended.

**(C) Victim's Statement.** Any person who has been harmed by the stipulated conduct of the attorney may submit a written statement setting forth the nature and extent of the harm caused by the attorney's conduct. The Program Judge must consider the victims' written statements in determining the degree of harm suffered by the attorney's client(s) and in determining the appropriate dispositions to be implemented or recommended in the proceeding.

**(D) Delay in Implementation and Recommendation.** If the attorney is accepted to participate in the Program, the stipulation of facts and conclusions of law will be filed and public, but the proposed disposition will not be implemented or transmitted to the Supreme Court until the attorney either successfully completes the Program or is terminated from the Program.

**(E) Placement on Inactive Status.** Unless the Program Judge finds, in writing, that inactive enrollment is not necessary for the protection of the public or of attorney's clients, the Program Judge must immediately place the attorney on inactive status if:

- (1) the attorney is accepted to participate in the Program, and
- (2) upon the attorney's successful completion of the Program, the disposition recommended to the Supreme Court will include an actual suspension of at least 90 days.

**Rule 5.385 Term of Participation in Program [No Proposed Changes]**

## Rule 5.386 Effect of Later Proceedings on Program Participation

**(A) Requirements for Incorporation of New Matters.** Before any additional inquiry, investigation or proceeding against the attorney, not included in the approved stipulation, can be incorporated into an existing ADP proceeding, the Office of Chief Trial Counsel must file a Notice of Disciplinary Charges or the Review Department must refer a criminal conviction case to the Hearing Department relating to the new matter.

**(B) Misconduct after Admittance to Program.** An inquiry, investigation, or proceeding against the attorney in which the alleged misconduct occurred after the attorney's admittance to the Program may not be incorporated into the ADP proceeding without the stipulation of the parties and the approval of the Program Judge. If incorporated into the ADP proceeding, any new matter may result in changes to previously set levels of discipline. The attorney's culpability for later acts of misconduct, if proved by clear and convincing evidence, may constitute grounds to terminate the attorney from the Program.

**(B)(C) Misconduct before Admittance to Program.** An inquiry, investigation or proceeding against the attorney in which the alleged misconduct occurred before the attorney's admittance to the Program may be incorporated into the ADP proceeding, if:

- (1) the parties stipulate to the facts and conclusions of law about the additional acts of misconduct; and
- (2) the attorney accepts any modifications to the alternative levels of disposition and conditions of participation recommended by the Program Judge.

**(C)(D) Release from Program.** The attorney will be released from the Program if:

- (1) the parties do not agree to stipulate to the facts and conclusions of law under subsection section (B)(C) of this rule; or
- (2) the attorney refuses to accept the modified alternative levels of disposition recommended by the Program Judge.

**(D)(E) Conversion Release to Standard Disciplinary Proceeding.** If the attorney is released under subsection section (C), (D), the entire proceeding will be assigned to another judge as a standard disciplinary proceeding and:

- (1) the Program Judge's written statement regarding the proposed disposition or recommendation to the Supreme Court is vacated; and
- (2) the original stipulation of facts and conclusions of law that the parties signed when the attorney entered the Program remains binding on the parties.

## Rule 5.387 Termination from Program [No Proposed Changes]

## Rule 5.388 Confidentiality [No Proposed Changes]

## Rule 5.389 Review [No Proposed Changes]

### Rule 5.389.1 Use of Findings in Subsequent Proceedings

The Program Judge's findings pursuant to subsection (1), (3), or (4) of rule 5.382(C) will not be binding or admissible at any subsequent hearing or trial, whether as the result of the attorney's non-acceptance into the Program, the attorney's release from the Program pursuant to rule 5.386(D), or the attorney's termination from the Program pursuant to rule 5.387.