

Proposed Amendments to State Bar Rules of Procedure, Rule 5.137

Rule 5.137. Imposition and Payment of Monetary Sanctions (Bus. & Prof. Code, § 6086.13.)

(A) **The Supreme Court May Order Monetary Sanctions.** Business and Professions Code § 6086.13 provides that, ~~in~~ any disciplinary proceeding in which the licensee is ordered actually suspended, ~~is ordered~~ disbarred, or resigns with charges pending, the Supreme Court may order the payment of a monetary sanction not to exceed \$5,000 for each violation, to a maximum of \$50,000 per disciplinary order.

(B) **Violation Defined.** For the purposes of this rule, "violation" means (1) each count (including its subparts) contained in a Notice of Disciplinary Charges for which the State Bar Court has found the licensee culpable; (2) each violation of a rule or statute the attorney admits to have violated in a stipulation; or (3) each record of criminal conviction transmitted to State Bar Court pursuant to rule 5.341, regardless of the number of convictions contained in the transmittal.

(C) **Monetary Sanctions Payable To Client Security Fund.** Imposed monetary sanctions collected under this rule shall be deposited into the Client Security Fund.

(D) **Monetary Sanctions and Criminal Penalties or Civil Judgments.** Monetary sanctions shall not be collected to the extent that collection would impair the collection of criminal penalties or civil judgments arising out of transactions connected with discipline of the licensee. If monetary sanctions are collected and such criminal penalties or civil judgments are otherwise uncollectible, those penalties or judgments may be reimbursed from the Client Security Fund to the extent of the monetary sanctions collected.

(E) Guidelines for Imposition and Collection of Monetary Sanctions.

- (1) In any disciplinary proceeding described in subdivision (A), the State Bar Court shall make recommendations to the Supreme Court regarding monetary sanctions and shall provide reasons for its recommendation.
- (2) To determine the appropriate monetary sanction to recommend pursuant to subdivision (A), the State Bar Court shall consider all facts and circumstances of the discipline case and be guided by the following amounts as a total sanction per Supreme Court order:
 - (a) For disbarment: up to ~~\$51,000~~.
 - (b) For an actual suspension: ~~up to~~ \$2,500.
 - (c) For a resignation with charges pending: ~~up to~~ \$1,000.
- (3) The State Bar Court may, in its discretion, deviate from the ranges set forth in subdivision (E)(2) to a maximum of \$5,000 for each violation, ~~and subject to a total limit of \$50,000 total~~ for each disciplinary order.
 - (a) Deviations ~~from these ranges~~ should be reasonably based on the facts and circumstances of each discipline case.
 - (b) If the same conduct is encompassed by two or more separate violations, the Court generally should not impose more than one monetary sanction for that conduct.

Instead, the Court should consider the most serious applicable violation for that conduct.

- (4) The State Bar Court may, in its discretion, recommend that the monetary sanction be waived, in whole or in part, or be paid in installments, or the time to pay be extended based on a finding of financial hardship, special circumstances, whether a licensee's ability to pay criminal or civil judgments arising out of the discipline case is adversely affected, for good cause, or in the interests of justice. The burden of proof by preponderance of the evidence will be on the licensee to provide financial records and/or other proof to support any argument that the monetary sanction be waived, in whole or in part, or be paid in installments, or the time to pay be extended. The State Bar Court must state reasons for its ruling.
- (5) Any stipulation to disposition between Office of Chief Trial Counsel of the State Bar and the licensee in a disciplinary proceeding described in (A) must state in writing whether monetary sanctions should be ordered or waived; if ordered, the amount; the reasons for the order or waiver; whether a payment plan or extension of time will be allowed; and the reasons for and specifics of such payment plan or extension. All stipulations must be accepted and approved by the State Bar Court pursuant to rule 5.58.
- (6) A licensee may seek relief from an order of monetary sanctions, an extension of time to pay the sanctions, or request a compromise of judgment, through a motion filed with the State Bar Court, following the motion procedure and based on the grounds set forth in the Rules of Procedure of the State Bar. The burden of proof by preponderance of the evidence will be on the licensee to provide financial records and/or other proof to support the motion. The State Bar Court must state reasons for its ruling.
- (7) Payment of restitution must be made in full before payment of any monetary sanctions.

(F) **Reinstatement.** Monetary sanctions shall be paid in full as a condition of reinstatement or return to active status, unless time for payment is extended pursuant to this rule.

(G) **Collection.** Imposed monetary sanctions ordered under this rule are enforceable as a money judgment and may be collected through any means provided by law.

(H) **Payment in Annual Installments.** If the Court's order imposing monetary sanctions allows an attorney 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 attorney's annual attorney fees.

~~(I)(H)~~ **Application.** This rule shall apply to all disciplinary and criminal conviction proceedings commenced and stipulations signed on or after [effective date] April 1, 2020.