

6.3 Proposed Amendments to the Rules of Procedure of the State Bar Regarding the Alternative Discipline Program (Rules 5.381, 5.382, 5.384, 5.386, and 5.389.1): Request to Circulate for Public Comment



The State Bar of California

**OPEN SESSION
AGENDA ITEM
6.3 MAY 2025
BOARD OF TRUSTEES**

DATE: May 22, 2025

TO: Members, Board of Trustees Sitting as the Regulation and Discipline Committee

FROM: Kathy Sher, Clerk of the State Bar Court

SUBJECT: Proposed Amendments to the Rules of Procedure of the State Bar Regarding the Alternative Discipline Program (Rules 5.381, 5.382, 5.384, 5.386, and 5.389.1): Request to Circulate for Public Comment

EXECUTIVE SUMMARY

At its November 2024 meeting, the Board of Trustees heard recommendations from the Lawyer Assistance Program Oversight Committee regarding changes to the rules for the Alternative Discipline Program (ADP). The Board referred the drafting of proposed rules revisions to the State Bar Court's Bench-Bar Committee (BBC), directing specifically that moral turpitude be eliminated as grounds for ineligibility for the ADP and that a minimum disciplinary sanction be set for ADP participants whose offenses involved moral turpitude. The Board further directed that the BBC also advance any additional amendments that the committee believed would improve the ADP process. The Board of Trustees, sitting as the Regulation and Discipline Committee is asked that the proposed amendments be presented to the Board at its May 2025 meeting with a request that they be circulated for public comment. This item seeks authorization to circulate for public comment the proposed ADP rules revisions developed by the BBC consistent with the referral from the Board.

RECOMMENDED ACTION

The Board of Trustees, sitting as the Regulation and Discipline Committee is asked to authorize the release for public comment for a period of 45 days of proposed changes to rules 5.381, 5.382, 5.384, 5.386, and adoption of new rule 5.389.1 of the State Bar Rules of Procedure relating to the ADP.

DISCUSSION

The proposed changes to the State Bar Rules of Procedure for the ADP are the product of a long process of discussion regarding how best to ensure that the rules for the ADP do not create unnecessary barriers to participation in the program and support the success of program participants. The rule revisions eliminate the bar on participation for attorneys whose misconduct involved moral turpitude, set minimum disciplinary sanctions for ADP participants in those cases, and make other changes to clarify the rules and give the court greater flexibility to control the timing of the evaluation process. The proposal was developed by the State Bar Court's Bench-Bar Committee (BBC), as requested by the Board at its November 2024, meeting, and reflects input from the State Bar Court (SBC), the Office of Chief Trial Counsel (OCTC), and the Association of Discipline Defense Counsel (ADDC).

BACKGROUND

The ADP is an SBC program for attorneys whose misconduct is linked to substance abuse or mental health problems. When an attorney is accepted into the program, the court issues two alternative discipline recommendations: one to be recommended to the Supreme Court as discipline if the attorney successfully completes all program requirements, including participation in treatment through the Lawyer Assistance Program (the low); and another to be recommended to the Supreme Court if the attorney fails to complete the program (the high). The ADP has long been a valued tool to fulfill the State Bar's mission of protecting the public while supporting attorneys in their recovery so that they can continue their legal careers.

The Ad Hoc Commission on the Discipline System, as part of its consideration of issues regarding the experience of respondents charged with moral turpitude, explored whether the rules for the ADP unfairly barred respondents whose misconduct involved moral turpitude from participating without giving them an opportunity to litigate the moral turpitude issue. [The Ad Hoc Commission recommended](#) that the Board "direct staff to work with stakeholders to study and clarify all applicable rules involving referrals to the Alternative Discipline Program (ADP), specifically concerning whether or not moral turpitude has resulted in significant harm to a client(s) or the administration of justice." Pursuant to that recommendation, the Board at its September 21, 2023, meeting [tasked the Lawyer Assistance Program Oversight Committee](#) (LAP Oversight Committee) with undertaking a comprehensive review of the rules for the ADP.

The LAP Oversight Committee [brought the results of its work to the Board](#) at the Board's November 14, 2024, meeting. The LAP Oversight Committee presented a history of the ADP to the Board; provided statistics on the numbers of attorneys participating, completion rates, and recidivism rates; and offered information on the demographics of ADP participants. The report included staff recommendations for the Board to (1) direct staff to collect and analyze specified data on ADP participation; (2) adopt the proposal for changes to rule 5.382(C)(3) of the Rules of Procedure to eliminate moral turpitude as grounds for ineligibility for the ADP while retaining the remainder of the ineligibility criteria in that rule; (3) adopt the OCTC proposal that in ADP cases where the misconduct involved moral turpitude, there be minimum disciplinary sanctions set; (4) retain the current process for stipulations to facts and conclusions of law; and (5) refer

the drafting of proposed rules, consistent with these recommendations, and any additional amendments that stakeholders believed would improve the ADP process, to the BBC. The proposed rules amendments presented to you today are the result of the BBC's work pursuant to that referral.

PROPOSED CHANGES DIRECTED BY THE BOARD TO IMPLEMENT THE AD HOC COMMISSION RECOMMENDATIONS

As discussed above, the Ad Hoc Commission recommended that staff be directed to study and clarify all of the rules governing the ADP, and specifically to look at the rule prohibiting eligibility for respondents charged with misconduct involving moral turpitude that has resulted in significant harm to one or more clients or the administration of justice, rule 5.382(C)(3). Subsequently, the Board directed the LAP Oversight Committee to undertake this review of the ADP rules.

As reflected in the [report to the Board](#) regarding the LAP Oversight Committee's work, the LAP Oversight Committee solicited input from the SBC, OCTC, and ADDC regarding the effect of the bar on eligibility for attorneys whose misconduct involved moral turpitude. The LAP Oversight Committee determined that the bar on eligibility creates a significant barrier to participation and lengthens the evaluation process. The LAP Oversight Committee heard from stakeholders that, because there is variability as to how the term moral turpitude is applied in different cases, disputes over allegations of moral turpitude often make it difficult for the parties to reach the required stipulation of facts and conclusions of law. By contrast, dishonesty or corruption, also grounds for ineligibility under rule 5.382 (C)(3), are more clearly defined and disputes over these types of allegations are more easily resolved. The staff recommendation to the Board was therefore to eliminate moral turpitude as grounds for ineligibility, while keeping the rule's language regarding dishonesty or corruption.

OCTC did not oppose the proposal to eliminate moral turpitude as grounds for ineligibility, but suggested that because of the seriousness of cases involving moral turpitude, a minimum sanction should be set for any attorney charged with misconduct involving moral turpitude. Staff recommended that this change also be made.

After reviewing the LAP Oversight Committee's work and report regarding the ADP rules, at its November 14, 2024, meeting, the Board referred to the BBC the work of drafting rules revisions in accordance with these recommendations. As proposed, the amendments to the rules do the following:

- Removes the words "moral turpitude" from rule 5.382(C)(3) (proposed to be renumbered as 5.382(C)(4)); and
- Adds provisions to rule 5.384(B) to set a minimum sanction that must be imposed if the misconduct involved moral turpitude. In the absence of compelling mitigating circumstances, the disposition must be no lower than a recommendation that includes an actual suspension; if there are compelling mitigating circumstances, the disposition must be no lower than a recommendation that includes a suspension, actual or stayed.

OTHER PROPOSED CHANGES

In addition to making the changes specifically directed by the Board, and in accordance with the Ad Hoc Commission's recommendation for clarification of the ADP rules, the BBC drafted further amendments intended to clarify the rules for acceptance into the ADP and to give the court better tools for managing that process. The proposed amendments are attached in clean text (Attachment A) and as a redline showing the changes from the current rules (Attachment B).

The proposed changes, with a brief description of the reasons for each change, are as follows:

Rule 5.381: Eligibility to Apply for Participation in Program

- Rule 5.381 (A): Language is added to clarify that an attorney cannot be accepted into the ADP until an SBC proceeding has been initiated. The existing rule notes that the judge in a Prefiling Settlement Conference (formerly called an Early Neutral Evaluation Conference) may discuss the attorney's eligibility to participate in the ADP. The BBC proposes the additional language to give clear notice to attorneys that participation in the ADP is only possible after a formal proceeding has been initiated.
- Rule 5.381(B): The rule is redrafted to provide that the appointment of the Program Judge is made by the court, rather than the Presiding Judge; to remove the deadline requiring that the referral be made at least 45 days before the first scheduled trial date; and to provide that the Program Judge will preside over the ADP proceedings from determination of whether the attorney will be accepted through disposition or termination. Elimination of the deadline is proposed to give the court greater flexibility to refer an attorney for the ADP when the court becomes aware that the attorney may benefit from participation. Stakeholders noted that the initial trial date may later be changed, so that using this to set the deadline often does not make sense in a particular case. The court believes that it has the necessary tools without this deadline to prevent requests for referrals from being used for purposes of gamesmanship and delay. The other changes in this rule are made to align the rule with the court's current practices as to the appointment of the Program Judge and having that judge assigned to preside over all ADP proceedings.

Rule 5.382: Acceptance for Participation in Program

- Rule 5.382(A): The provisions of 5.382(A) are recast for clarity without substantive change. A provision is added to require that the attorney be found eligible for participation under rule 5.382(C), which sets out grounds for ineligibility, to be accepted into the program. This is required for acceptance under the existing rules and is proposed to be brought into the list of conditions that must be met for acceptance so that the list reflects all requirements.
- Rule 5.382(B): Language is added to 5.382(B) to state that a stipulation of facts and conclusions of law must resolve all relevant facts and conclusions of law. This is intended to clarify that not only must the parties reach agreement on a stipulation, but

the stipulation must be complete, or the Program Judge may choose to return the proceeding to be handled as a standard disciplinary proceeding.

- Rule 5.382(C): As discussed above, this section is revised to make the change directed by the Board, removing misconduct involving moral turpitude as grounds for ineligibility. Additional changes are proposed to clarify the rule and remove unneeded provisions. The entire section is recast to clarify that it is the Program Judge who will determine if the criteria for ineligibility are met, and to clearly state the standards by which those determinations will be made. The existing language of rule 5.382(C)(1) makes an attorney ineligible for participation if the stipulation shows that disbarment of the attorney is “warranted;” to give the court greater flexibility to allow participation, this is proposed to be changed to state that the attorney is ineligible if the stipulation shows that disbarment is “required,” even assuming successful completion of the program. Finally, subsection (C)(4) is deleted as unnecessary. This subsection makes an attorney ineligible if there is a finding that the attorney would not benefit from treatment or that the substance abuse or mental health issues cannot be overcome so as to prevent future misconduct. In practice, evidence that an attorney will not benefit from treatment or that treatment will not prevent future misconduct can be brought in by OCTC on the issue of whether there is a nexus between the substance abuse or mental health issue and the misconduct, as required under rule 5.382(A)(3).
- Rule 5.382(D): This section is added to make it clear that the Program Judge’s findings on the grounds of ineligibility set out in rule 5.382(C)(1), (3), and (4) are based on the stipulated facts and conclusions of law, not on other evidence. (A finding under 5.382(C)(2) that the attorney has been convicted of a criminal offense that requires summary disbarment need not be based on the stipulation.)
- Rule 5.382(E): This section is added to clarify that the Program Judge has authority to set a deadline for submission of the proposed stipulation or other materials required for the determination of whether the attorney will be accepted into the ADP. The LAP Oversight Committee proposed a 180-day deadline from the date of referral for the Program Judge to make a determination of eligibility. The BBC rejected this as needlessly restricting a judge’s discretion regardless of facts that might lead to a longer timeline in a particular case. The BBC instead added this provision to give the judge the tools needed ensure that the parties do not unduly delay the determination of eligibility.

Rule 5.386: Effect of Later Proceedings on Program Participation

- Rule 5.386(A): New section 5.386(A) is added to clearly state that for an additional inquiry, investigation or proceeding to be added to an existing ADP case, there must be a Notice of Disciplinary Charges (NDC) filed or a referral of a criminal conviction to the Hearing Department. The BBC discussed how additional matters could be more easily brought into an ADP proceeding, with one proposal to allow such additions by stipulation without the filing of an NDC. However, representatives of the court noted the considerable procedural difficulties that can arise when uncharged misconduct is

added to an ADP case, including issues around what happens if the matter is referred back to standard disciplinary proceedings with no charges having been brought for some of the misconduct.

- Rule 5.386(B): This section is revised to make it clear to litigants that if a new matter is incorporated into an ADP proceeding, this may result in changes to the levels of discipline set.

Rule 5.389.1: Use of Findings in Subsequent Proceedings

- The proposed new language of rule 5.382(D), states that the judge may base findings regarding the grounds of ineligibility under rule 5.382(C)(1), (3), and (4) on all stipulated facts and conclusions of law agreed to by the parties. New rule 5.389.1 is proposed to ensure that those findings will not be used in a subsequent hearing or trial if the matter is returned to standard disciplinary proceedings. This will allow the parties to reach agreement on a stipulation without being concerned about how findings based on the stipulation might be used in a later proceeding.

PREVIOUS ACTION

- [Board of Trustees, November 14, 2024, Approval of Recommendations from the Lawyer Assistance Oversight Committee Regarding Alternative Discipline Program](#)
- [Lawyer Assistance Program Oversight Committee, September 6, 2024, Recommendations for Board of Trustees Regarding Alternative Discipline Program](#)
- [Board of Trustees, September 21, 2023, Ad Hoc Commission on the Discipline System: Status Update Regarding Board Directed Follow Up Work](#)
- [Board of Trustees, January 19, 2023, Discussion and Approval of the Ad Hoc Commission on the Discipline System Report and Recommendations](#)

FISCAL/PERSONNEL IMPACT

None

AMENDMENTS TO RULES

Title 5, Division 6, Chapter 5, Rules 5.381, 5.382, 5.384, 5.386, and 5.389.1

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS

Goal 1. Protect the Public by Strengthening the Attorney Discipline System

- d. 1. Align and implement recommendations of the Special Discipline Case Audit Committee and the Ad Hoc Commission on the Discipline System.

RESOLUTIONS

Should the Board of Trustees, sitting as the Regulation and Discipline Committee concur, it is:

RESOLVED, that the Board of Trustees, sitting as the Regulation and Discipline Committee authorizes staff to make available for public comment for a period of 45 days proposed amendments to rules 5.381, 5.382, 5.384, 5.386, and proposed new rule 5.389.1 of the Rules of the State Bar of California, as set forth in Attachments A and B; and it is

FURTHER RESOLVED, that this authorization for release for public comment is not, and shall not be construed as, a statement or recommendation of approval of the proposed amendments to the Rules of the State Bar of California.

ATTACHMENTS LIST

- A. Proposed Amendments to Rules 5.381, 5.382, 5.384, 5.386, and Proposed New Rule 5.389.1 of the Rules of the State Bar of California – Clean Version
- B. Proposed Amendments to Rules 5.381, 5.382, 5.384, 5.386, and Proposed New Rule 5.389.1 of the Rules of the State Bar of California – Redline to Current Rules

ATTACHMENT A

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 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 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, the court may, in its discretion, refer an attorney to a judge who shall serve as the Program Judge to 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. The Program Judge has the discretion to accept an attorney for participation in the Program if all of the following conditions are satisfied:

- (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 accepted into the State Bar's Lawyer Assistance Program;
- (3) the Program Judge approves 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 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. 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 required, 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 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

(4) 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 dishonesty or corruption that have resulted in significant harm to one or more clients, the public, or the administration of justice; or

(5) 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.

(F) 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) does not complete the Program, 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.

(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.

(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 section (C) of this rule; or
- (2) the attorney refuses to accept the modified alternative levels of disposition recommended by the Program Judge.

(E) Release to Standard Disciplinary Proceeding. If the attorney is released under section (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.

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),~~ ~~†~~ 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 anee 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.



The State Bar Court *of California*

Proposed Changes to the Rules for the Alternative Discipline Program (ADP)

Kathy Sher, Clerk of the State Bar Court

Board of Trustees Meeting, May 22–23, 2025

Alternative Discipline Program: Overview

- **What it is:** The ADP allows eligible attorneys with substance abuse or mental health issues to participate in treatment in lieu of going through standard disciplinary proceedings.
- **Eligibility requirements:**
 - The court must approve a stipulation of facts and conclusions of law agreed to by the parties.
 - The attorney must be accepted into the Lawyer Assistance Program (LAP).
 - Attorneys charged with certain types of misconduct, including misconduct involving acts of moral turpitude, dishonesty or corruption that has resulted in significant harm, are not eligible.
- **Discipline imposed:** If the attorney is accepted into the program, the court issues two alternative discipline recommendations:
 - “Low” discipline if the attorney successfully completes all program requirements
 - “High” discipline if the attorney fails to complete the program
- **Participation in Treatment:** An attorney accepted into the ADP must participate in treatment through the Lawyer Assistance Program (LAP).
- **Purpose of program.** The ADP ensures public protection while supporting lawyers in recovery so they can continue their legal careers.



Development of the Proposed Changes

- **Ad Hoc Commission** (January 2023): The Ad Hoc Commission on the Discipline System recommended clarification of the ADP rules, particularly those addressing eligibility for attorneys whose misconduct involved moral turpitude. Pursuant to this recommendation, the Board tasked the LAP Oversight Committee with a comprehensive review of the ADP rules.
- **LAP Oversight Committee** (November 2024): The LAP Oversight Committee presented the Board with an overview of the history of the ADP and offered three options for eliminating moral turpitude as grounds for ineligibility. Its report to the Board included a staff recommendation selecting one of those options, to eliminate moral turpitude as grounds for ineligibility while retaining the remainder of the ineligibility criteria. Staff further recommended that there be minimum disciplinary sanctions set for ADP cases where the misconduct involved moral turpitude.
- **Bench-Bar Committee (BBC)** (May 2025): The Board referred the drafting of changes to the ADP rules, consistent with the staff recommendations in the LAP Oversight Committee report, to the State Bar Court's BBC. The Board also asked that the BBC draft any further changes that stakeholders believed would improve the ADP process. **The proposed changes before you today are the result of the BBC's work.**



Key Changes

- **Eligibility Expansion:** Misconduct involving moral turpitude that results in significant harm will no longer automatically make an attorney ineligible for the ADP. The restriction on eligibility for those whose misconduct involves dishonesty or corruption will remain in place.
- **Minimum Sanctions:** In cases involving moral turpitude, the minimum recommended sanction will be actual suspension in cases where there are no compelling mitigating circumstances and a suspension, actual or stayed, in cases where there are compelling mitigating circumstances.
- **Greater Flexibility on Timing of Referral:** The changes eliminate the requirement that a referral to the ADP be made at least 45 days before the first scheduled trial date, to offer judges greater flexibility to make these referrals.
- **Clarification of Requirements for Adding Later Proceeding.** Language is added to expressly require that for an additional matter to be added to an existing ADP case, there must be an NDC filed or a referral of a criminal conviction.



Questions?

