



MEMBER/PUBLIC COMMENT

The State Bar of California

180 Howard Street, San Francisco, CA 94105-1639 (415) 538-2000 <http://www.calbar.ca.gov>

SUBJECT: Proposed new rules 800 through 806 of the Rules of Procedure of the State Bar of California, for the implementation of the State Bar Court's Pilot Program for Respondents with Substance Abuse and/or Mental Health Issues.

DISCUSSION: Effective January 1, 2002, Business and Professions Code sections 6230, *et seq.* were added to the State Bar Act. Section 6231 directs the Board of Governors to establish and administer and Attorney Diversion and Assistance Program (hereinafter "Lawyer Assistance Program").

The Lawyer Assistance Program ("LAP") primarily addresses the substance abuse and mental health problems of attorneys who are referred to LAP or who voluntarily seek to participate in LAP. Section 6232, subdivision (b) permits the Office of Chief Trial Counsel or the State Bar Court to refer attorneys to LAP. Section 6233 provides, among other things, that an attorney who enters the LAP pursuant to section 6232, subdivision (b) and who successfully completes the program shall be entitled either to a dismissal of the underlying allegations or a reduction in the recommended discipline.

The goal of the Pilot Program is to address the substance abuse and mental health problems of attorneys against whom formal disciplinary complaints have been filed or formal disciplinary proceedings have been initiated in the State Bar Court while ensuring that the public, the courts, and the legal profession are adequately protected and that appropriate discipline is imposed or recommended, in light of the circumstances.

Since this is a new program, substantial flexibility is needed to modify the operation of the Pilot Program, to ensure that it is successful. As a result, the proposed Rules of Procedure are relatively broad but, in the court's view, are adequate for the initial implementation of the Program and subject to potential amendment at a later date in light of the experience of the Court and the parties.

PLEASE NOTE: Publication for public comment is not, and shall not be construed as, a recommendation or approval by the Board of Governors of the materials published.

ATTACHMENTS: Proposed New Rules, 800 through 806, to the Rules of Procedure of the State Bar of California.

SOURCE: Board Committee on Planning, Program Development and Budget, of the State Bar of California.

COMMENT DEADLINE: November 29, 2002

DIRECT COMMENTS TO: Michael Alewine
Office of the State Bar Court
The State Bar of California
180 Howard Street, 6th Floor
San Francisco, CA 94105-1639
Phone: 415.538.2017
Fax: 415.538.2040
E-Mail: sbcourt@calbar.ca.gov

TITLE II – STATE BAR COURT PROCEEDINGS

Division VIII – Specific Proceedings

K. PILOT PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE AND/OR MENTAL HEALTH ISSUES

RULE 800. PURPOSE OF PILOT PROGRAM; AUTHORITY

Consistent with the intent of the Legislature expressed in Business and Professions Code section 6230, et seq., these rules apply to proceedings before the State Bar Court in which a respondent is identified as having a substance abuse or mental health issue and is seeking to participate in or has been accepted to participate in the State Bar Court's Pilot Program for Respondents with Substance Abuse and/or Mental Health Issues ("Pilot Program").

RULE 801. ELIGIBILITY TO APPLY FOR PARTICIPATION IN PILOT PROGRAM

At any time following the commencement of a proceeding in the State Bar Court, at the request of the respondent, the Office of the Chief Trial Counsel or on the court's own motion, a respondent may be referred to a judge who has been designated by the Presiding Judge as a Pilot Program Judge to determine the respondent's eligibility for participation in the Pilot Program. Prior to the commencement of a proceeding in the State Bar Court, the Office of the Chief Trial Counsel may refer a respondent to a Pilot Program Judge to determine the respondent's eligibility for participation in the Pilot Program.

RULE 802. ACCEPTANCE FOR PARTICIPATION IN PILOT PROGRAM.

- (a) Acceptance of a respondent for participation in the Pilot Program shall be at the discretion of the Pilot Program Judge but shall be contingent upon the respondent's acceptance into the State Bar's Lawyer Assistance Program and upon such additional conditions as the Pilot Program Judge may impose, including but not limited to, a stipulation as to facts and conclusions of law in the pending disciplinary proceeding that is agreed upon and signed by the respondent and the Office of the Chief Trial Counsel and the respondent's written agreement to the court's terms and conditions for his or her participation in the Pilot Program.
- (b) Unless otherwise agreed by the parties, in the event the respondent is not accepted into the Pilot Program or declines to sign the written agreement regarding the terms and conditions of his or her participation in the Pilot Program, any stipulation as to facts and conclusions of law signed by the parties in the pending disciplinary proceeding and entered into as a condition for participation in the Pilot Program shall be rejected and shall not be binding upon either the respondent or the Office of the Chief Trial Counsel.

RULE 803. DEGREE OF DISCIPLINE; DEFERRAL OF IMPOSITION OF DISCIPLINE.

- (a) If a respondent seeking to participate in the Pilot Program has entered into a stipulation as to facts and conclusions of law in the pending disciplinary proceeding and has agreed to or has fulfilled all of the other requirements identified by the Pilot Program Judge as conditions for the respondent's participation in the Program, the Pilot Program Judge shall provide the respondent with a written statement regarding (1) the discipline that will be imposed or recommended to the Supreme Court in the event that the respondent successfully completes the Pilot Program; and (2) the discipline that will be imposed or recommended to the Supreme Court, based upon the stipulated facts and conclusions of law, if the respondent does not successfully complete the Pilot Program.
- (b) If the respondent is accepted for participation in the Pilot Program, the stipulation as to facts and conclusions of law shall not be filed and the proposed discipline shall not be imposed or transmitted as a recommendation to the Supreme Court until the respondent either successfully completes the Pilot Program or is terminated from the Program.

RULE 804. TERM OF PARTICIPATION IN PILOT PROGRAM.

In order to successfully complete the Pilot Program, a respondent must participate in the Program for a term of 36 months from the date of acceptance in the Program, provided that, with earned incentives as specified in the written agreement signed by the respondent, the respondent may complete the Pilot Program in a minimum of 18 months. No respondent may successfully complete the Pilot Program without the certification of the Lawyer Assistance Program that he or she has been substance-free for a period of at least one year or, in the case of a respondent with mental health issues, without a recommendation from a mental health professional that is satisfactory to the Pilot Program Judge.

RULE 805. CONFIDENTIALITY.

A respondent's participation in the Pilot Program and the fact that the respondent has either successfully completed the Program or has been terminated from the Program shall be public. All information concerning the nature and extent of the respondent's treatment is absolutely confidential and shall not be disclosed to the public absent an express written waiver by the respondent.

RULE 806. REVIEW

No decision or order of the Pilot Program Judge may be reviewed by the State Bar Court Review Department except as follows:

- (a) The decision of the Pilot Program Judge to admit the respondent to the Pilot Program or to deny the respondent admittance to the Pilot Program shall be reviewable only pursuant to Rule 300.

- (2) The decision of the Pilot Program Judge to terminate a respondent from the Pilot Program or to deny the State Bar's motion to terminate the respondent from the Pilot Program shall be reviewable only pursuant to Rule 300.