## D. **Nexus**

Supreme Court case law requires that, in order for a respondent attorney to be given mitigation credit for a substance abuse problem, the attorney must establish by clear and convincing evidence that (a) the abuse was addictive in nature; (b) the abuse causally contributed to the misconduct; and (c) the attorney has undergone a meaningful and sustained period of rehabilitation. (*Harford* v. *State Bar*, *supra*, 52 Cal.3d at p. 101; *In re Billings*, *supra*, 50 Cal.3d at p. 367.)

Similarly, in case of mental health problems, Supreme Court case law requires that, in order for the attorney to be given mitigation credit for a mental health issue, he or she must establish by clear and convincing evidence that (a) the mental health problem or emotional difficulty was directly responsible for the misconduct; and (b) the attorney no longer suffers from the mental health problem or emotional difficulty. (*Porter* v. *State Bar*, *supra*, 52 Cal.3d at p. 527; *In re Lamb*, *supra*, 49 Cal.3d at p. 246.) In these cases involving mental health issues or emotional difficulties, the attorney must show that he or she has so overcome or controlled the disorder that it is unlikely to cause further misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 197.)

In order to observe these Supreme Court requirements, the "nexus" between the attorney's substance abuse or mental health issue and his or her misconduct must also be shown in Pilot Program cases. The proposed amendment to rule 802 attached hereto as Appendix D defines the term "nexus" for purposes of Pilot Program participation and notifies the respondent attorney that he or she has the burden of establishing that nexus.