



# **Rules of Procedure of the State Bar of California**

**April 1, 2020**

## **Chapter 2. Probation Revocation Proceedings**

### **Rule 5.310 Probation Revocation Proceedings**

If the Office of Probation has reasonable cause to believe that an attorney has violated a condition of probation, it may charge the probation violation in a probation revocation proceeding governed by these rules. Alternatively, the Office of Chief Trial Counsel may charge the probation violation in an original disciplinary proceeding, based on the attorney's violation of Business and Professions Code § 6068(k), governed by the rules for disciplinary proceedings generally.

Eff. January 1, 2011; Revised: January 25, 2019.

### **Rule 5.311 Burden of Proof in Probation Revocation Proceedings; Expedited Proceeding**

A preponderance of the evidence is required in probation revocation proceedings, and the proceedings will be expedited.

### **Rule 5.312 Discipline Recommended in Probation Revocation Proceedings**

The Court may recommend imposing an actual suspension equal to or less than the period of stayed suspension. It may also recommend staying all or part of the actual suspension and

imposing a new period of probation, which may be of a different duration or under different conditions than the original probation or both.

### **Rule 5.313 Consolidation of Probation Revocation Proceedings**

A probation revocation proceeding may be consolidated with another probation revocation proceeding alleging a separate violation or violations of the same Supreme Court order. Otherwise, it may not be consolidated for decision with any other proceeding.

### **Rule 5.314 Conduct of Probation Revocation Proceedings**

Probation revocation proceedings will be conducted as follows:

- (A) **Motion.** The proceeding begins by filing a motion to revoke probation, accompanied by one or more declarations stating all the facts relied on in support of the motion. If a hearing is not requested in the motion, a hearing is waived. The motion and all supporting pleadings and evidence, including declarations and a copy of an approved response form, must be served on the attorney under rule 5.25.
- (B) **Response.** The response, including any opposition, must be filed and served within 20 days of the service of the motion. All facts relied on in the response must be stated in one or more accompanying declarations. If a hearing is not requested in the response, the right to request a hearing is waived, regardless of a request for hearing in the motion. The response must state whether the attorney wants to cross-examine the declarants at the hearing.
- (C) **Admissions.** If no response is filed, the factual allegations contained in the motion and supporting documents will be treated as admissions.
- (D) **Discovery.** The Court will allow discovery only if good cause is shown.
- (E) **Hearing.** The Court will hold a hearing if timely requested by any party or if the Court determines that a hearing will materially contribute to its consideration of the motion.
- (F) **Declarations in Support of Motion.** Subject to appropriate objection, the Court will admit in evidence the declarations submitted in support of the motion as the direct testimony of the respective declarants. If the attorney filed a timely response to the motion and expressly requested a hearing and the opportunity to cross-examine the declarants, counsel for the Office of Probation will produce the declarants at the hearing.
- (G) **Declarations in Response.** If the attorney filed declarations in response to the motion, then, subject to appropriate objection, the Court will admit in evidence the declarations as the direct testimony of the respective declarants only if:
  - (1) the attorney produces the declarant at the hearing for cross-examination, or

(2) counsel for the Office of Probation waives the right to cross-examine the declarant.

- (H) **No Hearing.** If no hearing is held, the Court will receive in evidence declarations and exhibits submitted in support of and in opposition to the motion. The admissibility of this evidence is subject to the Court's ruling on any appropriate objections asserted by the attorney in the response to the motion or by the Office of Probation in a writing filed and served within five court days after the response is served.
- (I) **Order.** The Court will issue a written order stating its reasons for the recommended action.

Eff. January 1, 2011; Revised: January 25, 2019.

### **Rule 5.315 Involuntary Inactive Enrollment in Probation Matters**

In a probation revocation proceeding, or in an original disciplinary proceeding for violating Business and Professions Code § 6068(k), if the Court finds that each element of Business and Professions Code § 6007(d) has occurred, the Court may order the attorney transferred to involuntary inactive enrollment. The order takes effect three days after service, unless otherwise ordered by the judge. The involuntary inactive enrollment terminates when the conditions in § 6007(d)(2) occur.

Eff. January 1, 2011; Revised: January 25, 2019.

### **Rule 5.316 Review**

A ruling on a motion to revoke probation is reviewable on an expedited basis under rule 5.151.

### **Rule 5.317 Applicable Rules**

- (A) **Inapplicable.** The following rules do not apply in probation revocation proceedings:
- (1) rules that by their terms apply only to other specific proceedings, and
  - (2) rule 5.41 (notice of disciplinary charges); rule 5.43 (response to notice of disciplinary charges); rules 5.80-5.86 (default); and rule 5.103 (State Bar's burden of proof).
- (B) **Conditionally Applicable.** The following rules apply in probation revocation proceedings in certain circumstances:
- (1) rule 5.65 (discovery) only if and to the extent that the Court permits discovery;
  - (2) rule 5.100 (obligation to appear at trial) only if a hearing is held; and
  - (3) rule 5.104 (rules of evidence) subject to the provisions of rule 5.314.