

Supreme Court Case No. S282275
State Bar Court Case No. SBC-22-O-30217

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

In the Matter of Respondent CC
A Licensee of the State Bar

**REPLY BRIEF IN SUPPORT OF PETITION OF
THE OFFICE OF CHIEF TRIAL COUNSEL OF THE
STATE BAR OF CALIFORNIA FOR REVIEW OF
THE DECISION OF THE STATE BAR COURT**

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I. INTRODUCTION

Through its Petition in this matter, the State Bar’s Office of Chief Trial Counsel (“State Bar”) seeks review of a published interlocutory opinion of the Review Department of the State Bar Court (“Review Department”) that erroneously narrows the grounds for finding certain attorneys with serious misconduct ineligible to participate in the State Bar’s Alternative Dispute Program (“ADP”). The Petition describes the ADP and the related Lawyer Assistance Program (“LAP”), and explains why the Hearing Department made an error when it accepted Respondent—an attorney with serious misconduct that justified disbarment—into ADP despite a State Bar Rule providing that attorneys are not eligible for ADP participation if their disbarment is warranted.

The State Bar’s Petition was based on the plain meaning and legislative history of the applicable State Bar Rules. As set forth below, Respondent, in his Answer, did not meaningfully address the State Bar’s substantive arguments, or otherwise show that the Review Department decision below was not erroneous.

For these reasons and as set forth in more detail in its Petition and below, the State Bar respectfully requests that this Court grant this Petition, order the Review Department’s opinion depublished, issue

an opinion clarifying that under rule 5.382(C)(1), an attorney is ineligible for ADP if the attorney's disbarment would be justified under the stipulated facts and conclusions of law, including mitigating and aggravating circumstances, and that such determination should be made considering the Standards for Attorney Sanctions for Professional Misconduct, and remand the matter to the State Bar Court for further proceedings consistent with the correct interpretation of the rule.

II. ARGUMENT

A. The State Bar Acted Proactively and Challenged Respondent's Admission Into ADP Promptly; Laches Has No Application to this Case

In the introduction to his Answer, Respondent offhandedly notes that the State Bar never sought a stay in the proceedings in the State Bar Court and did not seek an order depublishing the Review Department opinion in this matter, and argues that the doctrine of laches should somehow apply to prevent this Court's review because Respondent has now spent nearly two years in the LAP program. (Answer at 6.) None of these observations or arguments support *not* granting review here to correct the State Bar Court's erroneous interpretation of eligibility rules for ADP participation.

As an initial matter, laches does not apply here, as the State Bar did not delay in asserting its rights and, in any event, there has been

no prejudice to Respondent. The basic elements of laches are: “(1) an omission to assert a right; (2) a delay in the assertion of the right for some appreciable period; and (3) circumstances which would cause prejudice to an adverse party if assertion of the right is permitted.”

City of Hesperia v. Lake Arrowhead Cmty. Servs. Dist., 93 Cal. App. 5th 489, 512 (2023) (internal citations omitted). Further, delay is a ground for dismissing attorney discipline only when there is a showing of specific prejudice. *See Ramirez v. State Bar*, 28 Cal. 3d 402, 412 (1980) (“Petitioner’s fourth contention that these proceedings are barred by laches is without merit. Mere lapse of time is neither a denial of due process nor a jurisdictional defect in an attorney disciplinary proceeding absent a showing of specific prejudice.”)

Here, laches cannot apply because the State Bar did not omit to assert any rights, but rather asserted its right to seek review of the ineligibility decision promptly. After Respondent filed a request for participation in the ADP on June 16, 2022, the State Bar filed an objection six days later. *See* Petitioner’s Appendix at 6. Then, after the Hearing Department entered an order on June 27, 2023 accepting Respondent into ADP, the State Bar promptly sought interlocutory review in the Review Department on July 14, 2023, as permitted by

State Bar Rules of Procedure, rule 5.150. (*Id.* at 5, 7.)¹ Thus, laches cannot apply because the State Bar did not omit or delay to assert its rights to seek review.²

Moreover, even if the State Bar had delayed, there has been no prejudice. Respondent points to the time he has spent in the LAP program, but that is a *treatment* program³, and Respondent offers no explanation for how his receipt of treatment prejudiced him. At issue is whether Respondent met the criteria set forth in State Bar Rule

¹ The State Bar was not *required* to seek interlocutory review, but could have waited until discipline was recommended by the Hearing Department after Respondent's completion of ADP (or his failure to complete ADP) to pursue review.

² That it has taken a number of months since July 2023 for this matter to reach this Court is partly due to the nature of the normal course of review at the Review Department and then this Court, but is also largely due to Respondent ignoring the Petition filed by the State Bar in this matter for nearly three months until the Court requested an Answer on January 10, 2024. In any event this delay does not support laches as the State Bar has acted promptly to pursue its right to seek review.

³ The California Legislature established the LAP to have the State Bar "seek ways and means to identify and rehabilitate attorneys with impairment due to substance use or a mental health disorder affecting competency so that attorneys so afflicted may be treated and returned to the practice of law in a manner that will not endanger the public health and safety." Bus. & Prof. Code § 6230. The LAP is a treatment program only, and does not curtail this Court's plenary jurisdiction over attorney discipline. Bus. & Prof. Code § 6237.

5.382(C) for admission into the ADP. If this Court rules, consistent with the plain language and legislative history of Rule 5.382(C), that Respondent was not eligible for ADP because his disbarment was justified, this matter will be remanded to the Hearing Department for further proceedings which will result in recommended discipline; this process can and should take into consideration the mitigating circumstance of any rehabilitation Respondent can show as a result of his participation in LAP.

Respondent's points regarding the State Bar's purported failure to seek a stay and to depublish the opinion in the Review Department are unavailing. No authority suggests that the State Bar should have sought—let alone was required to seek—any stay here. And, there was no need for the State Bar to move to depublish the Review Department's opinion in the Review Department because the opinion is not citable while the State Bar's Petition in this matter is pending. *See* State Bar Rule 5.159(C).⁴

⁴⁴ Indeed, the State Bar Court's website notes that the Review Department opinion in this matter is only designated for publication, and is not final pending Supreme Court review. *See* <https://www.statebarcourt.ca.gov/Case-Dispositions/Opinions-Designated-for-Publication> (last visited Feb. 28, 2024).

B. Review is Appropriate Because, Without Review, the Review Department Opinion Allowing Attorneys Whose Misconduct Justifies Disbarment to Participate in ADP Will Be Citable Precedent for All ADP Evaluations Going Forward

As set forth in the State Bar’s Petition in this matter, review is necessary to settle important questions of law. (Cal. Rules of Ct., rule 9.16(a)(1).) In his answer, Respondent obliquely challenges this by listing a number of instances in which this Court has exercised its appellate jurisdiction (such as gay marriage), and implying that this case does not rise to the same level of import as such matters. (Answer at 9.) This argument fails as it does not recognize this Court’s “unlimited, original jurisdiction over disciplinary proceedings[.] *See In re Att’y Discipline Sys.*, 19 Cal. 4th 582, 603 (1998). Indeed, this Petition is about more than one respondent, or one case. The Review Department opinion of which the State Bar now seeks review was designated for publication. If review is not granted, the two legal errors that are the subject of the State Bar’s Petition in this matter will have the force of law in State Bar Court proceedings, resulting in allowing licensees whose misconduct warrants disbarment to escape that sanction by participating in the ADP—risking harm to the public and to the profession—notwithstanding the Board of Trustees’s express determination that such attorneys should not be permitted to

participate in the ADP. This question of which attorneys with misconduct can participate in the ADP is one that will affect all ADP eligibility determinations go forward, and is without doubt an important question on which this Court can and should weigh in as the final decisionmaker in all serious attorney discipline cases.

C. Respondent Fails to Meaningfully Answer the State Bar’s Argument that, under Rule 5.382(C) (1), an Attorney is Ineligible for ADP if the Stipulated Facts Demonstrate that the Attorney’s Disbarment is Justified

In its Petition, the State Bar set forth in detail how the Review Department’s holding that the phrase “disbarment is warranted” in Rule 5.382(C) (1) means “disbarment is required” is erroneous for at least three reasons: (1) this interpretation is inconsistent with the “plain, commonsense meaning” of the word “erroneous”; (2) interpreting “is warranted” to mean “is required” would render rule 5.382(C)(1) a nullity, violating the principle of statutory construction that statutes should be interpreted to give each part effect; and (3) the interpretation of “is warranted” to mean “is required” is also inconsistent with other uses of these terms in the Rules of Procedure of the State Bar of California. (Petition at 22 – 29.) In his Answer, Respondent does not meaningfully address any of these three arguments, characterizing the issue as “at best, an argument over semantic ambiguity.” (Answer at

11.) As set forth in the Petition, there is no ambiguity—“is warranted” means “is warranted,” not “is required”—but to the extent there is any ambiguity, then it is appropriate for this Court to resolve it, and provide clarity whether, where the stipulated facts show that an attorney’s disbarment is justified, that attorney should be permitted to participate in ADP.

D. Respondent Fails to Meaningfully Answer the State Bar’s Argument that the Review Department Erred By Holding that the Standards for Attorney Sanctions for Professional Misconduct Should Not Be Considered in Determining Eligibility Under Rule 5.382(C) (1)

In its Petition, the State Bar also set forth why the Review Department’s conclusion that “utilizing the disciplinary standards under rule 5.382 of the Rules of Procedure of the State Bar is inappropriate” is erroneous. (Petition at 29 – 32.) Essentially, because Rule 5.382 requires determination whether an attorney’s disbarment is warranted, to make that determination, the State Bar Court must look to the authority that sets forth when disbarment is warranted – i.e., the Standards for Attorney Sanctions for Professional Misconduct (“Standards”). Respondent devotes only a paragraph of his Answer to this issue, and appears to argue that the Standards should not apply to ADP eligibility determination because the eligibility determination is

not, in itself, a disciplinary sanction. (Answer at 13.) This is a true observation that proves nothing. *Of course* an ADP eligibility evaluation is not a disciplinary sanction, but the terms of Rule 5.382(C) require determination whether an attorney's disbarment is warranted. Resolving that issue *requires* examining the facts as they then exist and determining what disciplinary sanction *would be* warranted – and the authority the State Bar Court uses to determine what the appropriate disciplinary sanction is based on given facts are the Standards. *See* Standard 1.1 (“The Standards ... are adopted by the Board of Trustees to set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances.”). While Respondent is correct that the Rule 5.382 does not *expressly* mandate consideration of the Standards in determining ADP eligibility, they are the means for determining the appropriate disciplinary sanction in a particular case, which is precisely the determination that Rule 5.382(C)(1) requires the State Bar Court to make in evaluating eligibility for ADP. Indeed, as the State Bar noted in its Petition, in this matter the Review Department—while asserting that use of the Standards was not appropriate—in fact effectively relied on the Standards in determining whether Respondent's disbarment

was warranted, citing four cases that, in turn, relied on the Standards.
(Petition at 32 fn. 9.)

III. CONCLUSION

For the reasons set forth above and in its Petition, the State Bar respectfully requests that this Court grant the Petition, order the Review Department's opinion depublished, issue an opinion clarifying that under rule 5.382(C)(1), an attorney is ineligible for ADP if the attorney's disbarment would be justified under the stipulated facts and conclusions of law, including mitigating and aggravating circumstances, and that such determination should consider the Standards for Attorney Sanctions for Professional Misconduct, and remand the matter to the State Bar Court for further proceedings consistent with the correct interpretation of the rule.

Dated: February 28, 2024

Respectfully submitted,

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**WORD COUNT CERTIFICATE PURSUANT TO
CALIFORNIA RULE OF COURT 8.520(C)(1)**

Pursuant to rule 8.520(c)(1) of the California Rules of Court, I hereby certify that this brief contains 2,127 words. I have relied on the word count of the computer program used to prepare the brief.

Dated: February 28, 2024

/S/BRADY R. DEWAR
BRADY R. DEWAR

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I, Jenny Batdorj, hereby certify that I electronically filed and served the attached **REPLY BRIEF IN SUPPORT OF PETITION OF THE OFFICE OF CHIEF TRIAL COUNSEL OF THE STATE BAR OF CALIFORNIA FOR REVIEW OF THE DECISION OF THE STATE BAR COURT**

with the Clerk of the California Supreme Court and to Respondent's counsel (mcbridelaw@gmail.com) by transmitting a true copy via this Court's TrueFiling system on February 28, 2024.

I also served copies of this document electronically (with permission) upon the Clerk of the State Bar Court (michelle.cramton@statebarcourt.ca.gov).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
Executed in Los Angeles, California this 28th day of February, 2024.

/s/ Jenny Batdorj
JENNY BATDORJ

STATE OF CALIFORNIA
Supreme Court of California

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