



Supplement to Rules of Procedure of the State Bar of California

April 1, 2024

TITLE 5: DISCIPLINE

Rule 5.4 Definitions

(29) “Electronic service address” means an email address at or through which the party or other person is deemed to have authorized electronic service. The initial electronic service address, as set forth below, is deemed valid for a party or other person if the party or other person has not filed and served notice of a change of electronic service address pursuant to subdivision (E) of rule 5.26.1:

- (a) For employees of the Office of Chief Trial Counsel, the State Bar email address,
- (b) For State Bar licensees, the email address provided to the State Bar to facilitate communications by the State Bar with its licensees pursuant to rule 9.9(a)(2) of the California Rules of Court, and
- (c) For other parties and persons, including Special Deputy Trial Counsel handling matters pursuant to rule 2201, petitioners for reinstatement, and applicants for admission requesting a moral character proceeding, the email address that they must provide to the court and all parties for service of documents with their initial pleading.

Eff. January 1, 2011; Revised January 25, 2019; July 1, 2019; November 1, 2020; April 1, 2024.

DIVISION 4

CHAPTER 6: Bus. & Prof. Code § 6007(c)(1)-(3): Threat of Harm

Rule 5.226 Application for Involuntary Enrollment

- (A) **Beginning Proceeding.** The Office of Chief Trial Counsel must file with the Clerk a verified application with supporting documents. A request for a hearing must be stated in the application or it will be waived.
- (B) **Service.** The application must be served on the attorney under rule 5.25.
- (C) **Stating Facts.** The application must state with particularity facts showing that (1) the attorney has caused or is causing substantial harm to the attorney’s clients or the public and (2) there is a reasonable probability that the chief trial counsel will prevail on the merits of the underlying disciplinary matter, and that the attorney will be disbarred, as required under Business and Professions Code § 6007(c)(2)(A)-(B). It must be supported by declarations, transcripts, or requests for judicial notice.
- (D) **Alleging Violations.** If the application relates to pending or concurrently filed notices of disciplinary charges, then those must be identified by case number

and copies of all notices must be attached to the application. If there is no pending disciplinary proceeding, the application itself must: (1) cite the statutes, rules, or court orders allegedly violated, or that warrant involuntary inactive enrollment, and (2) state the particular acts or omissions that constitute the alleged violation or violations, or that form the basis for warranting involuntary inactive enrollment.

- (E) **Notice to Attorney; Attorney’s Response and Request for Hearing.** The application must contain a notice to the attorney, in prominent type, stating that the attorney must file a verified response to the application and request a hearing as provided in rule 5.227; otherwise, the right to a hearing will be waived.

Eff. January 1, 2011; Revised July 1, 2014; January 25, 2019; April 1, 2024

DIVISION 7

CHAPTER 3: Reinstatement Proceedings

Rule 5.441 Filing Requirements

- (A) **Filing Petition, Disclosure Statement, and Authorization and Release.** A petitioner must complete and verify a petition and disclosure statement on the forms approved by the court and in compliance with the instructions therein. The original and three copies of the petition must be filed with the Clerk of the State Bar Court. The disclosure statement is not filed with the court but must be served on the Office of Chief Trial Counsel. In addition, a petitioner must complete an authorization and release approved by the State Bar. The authorization and release is not filed with the court but must be served on the Office of Chief Trial Counsel.
- (B) **Pre-Filing Requirements and Proof.** Prior to filing the petition, the petitioner must satisfy the following requirements and must attach proof of compliance to the petition:
- (1) **Fingerprints Submitted.** Under Business and Professions Code section 6054, the petitioner must have submitted fingerprints to the California Department of Justice via Live Scan technology, or if the petitioner resides outside the state, two sets of original fingerprints on record cards furnished by the State Bar must have been submitted to the Office of Chief Trial Counsel;

- (2) Discipline Costs Paid and Monetary Sanctions Paid. Unless the petitioner has been granted an extension of time for payment under these rules which has not expired at the time of the filing of the petition, petitioner must have paid all discipline costs imposed under Business and Professions Code section 6086.10, subdivision (a). Proof of payment of costs or a copy of the court order extending the time to pay costs must be attached to the petition.
- (3) Client Security Fund Payments Reimbursed. Petitioner must have reimbursed all payments made by the Client Security Fund as a result of the petitioner's conduct, plus applicable interest and costs, under Business and Professions Code section 6140.5, subdivision (c).
- (4) Passage of the Attorneys' Examination.
 - (a) Resigned with Charges Pending or Disbarred. Petitioners who resigned with charges pending or who were disbarred must establish that they have taken and passed the Attorneys' Examination by the Committee of Bar Examiners within three years prior to the filing of the petition for reinstatement.
 - (b) Resigned without Charges Pending. Petitioners who resigned without charges pending more than five years before filing the petition for reinstatement must establish that they have taken and passed the Attorneys' Examination administered by the Committee of Bar Examiners within five years prior to the filing of the application for readmission or reinstatement.

- (C) **Filing Fee.** The petition must include a filing fee of \$1,600, which will be given to the Office of Chief Trial Counsel to defray incurred costs. The Clerk will reject the petition for filing if the fee is not included.

- (D) **Service.** The petition and disclosure statement must be served on the Office of Chief Trial Counsel under rule 5.25.

- (E) **Dismissal.** Failure to comply with any of the requirements of this rule will be grounds to dismiss the petition. If a petitioner submits a new petition within 30 days of a dismissal under this rule, the petitioner will not have to pay the filing fee again. The new petition must otherwise meet all of the requirements of this rule.

Eff. January 1, 2011; Revised November 18, 2016; January 1, 2021; April 1, 2024.

Rule 5.445 Burden of Proof

(A) Reinstatement after Resignation with Charges Pending or Disbarment.

Petitioners for reinstatement must:

- (1) provide proof of passage of a professional responsibility examination within one year prior to filing the petition;
- (2) establish their rehabilitation;
- (3) establish present moral qualifications for reinstatement;
- (4) establish present ability and learning in the general law by providing proof that they have taken and passed the Attorneys' Examination by the Committee of Bar Examiners within three years prior to the filing of the petition; and
- (5) provide proof of payment of all monetary sanctions imposed under Business and Professions Code section 6086.13, subdivision (a).

(B) Reinstatement after Resignation without Charges Pending. Petitioners for reinstatement must:

- (1) provide proof of passage of a professional responsibility examination within one year prior to filing the petition;
- (2) establish their present moral qualifications for reinstatement; and
- (3) establish present ability and learning in the general law. If the petitioner resigned without charges pending more than five years before filing the petition, the petitioner must establish present ability and learning in the general law by providing proof that he or she has taken and passed the Attorneys' Examination administered by the Committee of Bar Examiners within five years prior to the filing of the petition.

Eff. January 1, 2011; Revised April 1, 2024

DIVISION 7

CHAPTER 4: Moral Character Proceedings

Rule 5.461 Beginning Proceeding; Time for Filing

If the Committee of Bar Examiners makes an adverse moral character determination, the applicant may file an application for a moral character proceeding and hearing. Within 60 days after the notice of adverse moral character determination is served, the application and supporting documents must be served under rule 5.25 and filed, accompanied by a copy of the notice of adverse moral character determination, the applicable filing fee, and proof of service upon the Committee of Bar Examiners and the Office of Chief Trial Counsel. As an alternative to

service via certified mail as otherwise required by rule 5.25(E), the application and supporting documents may be electronically served upon the Committee of Bar Examiners and the Office of Chief Trial Counsel to the email addresses specified for service on these entities on the State Bar's website.

Eff. January 1, 2011; Revised April 1, 2024

TITLE III – GENERAL PROVISIONS

Chapter 3: Confidentiality

Rule 2302. DISCLOSURE OF INFORMATION

- (a) Except as otherwise provided by law or these rules, information concerning inquiries, complaints or investigations of licensees and other attorneys subject to the disciplinary jurisdiction of the State Bar (collectively, licensees) is confidential, and shall not be shared outside of the State Bar Office of Chief Trial Counsel. The information that is confidential includes the existence and contents of an inquiry, complaint, or investigation, until the filing of a notice of disciplinary charges or the institution of a formal proceeding identified in paragraph (2) of subdivision (a) of Business and Profession Code section 6086.1.
- (b) A licensee whose conduct is or has been the subject of an inquiry, complaint or investigation may consent to a public announcement or disclosure. Notwithstanding such consent, the Chief Trial Counsel or designee may decline to waive confidentiality regarding an inquiry, complaint or investigation, if it is determined that an inquiry, complaint, or investigation may be substantially prejudiced by a public disclosure of some or all of the information authorized by subdivision (c)(6) of this rule before the filing of a notice of disciplinary charges or the institution of a formal proceeding identified in paragraph (2) of subdivision (a) of Business and Professions Code section 6086.1.
- (c)
 - (1) Notwithstanding the confidentiality requirement of subdivision (a) and without waiving confidentiality for other purposes, the Chief Trial Counsel or designee, with the written concurrence of the Chair of the Board of Trustees or designee, after private notice to the licensee, may waive confidentiality and disclose some or all of the information authorized by subdivision (c)(6) of this Rule, but only if all of the following are met:
 - (A) Disclosure is warranted for protection of the public;

- (B) Disclosure is necessary to prevent an immediate harm to the public, including, but not limited to, ongoing fraud, theft, or embezzlement; and
 - (C) Disclosure under the provisions of subdivision (c)(2) below is inadequate for the protection of the public.
- (2) Notwithstanding the confidentiality requirements of subdivision (a) and without waiving confidentiality for other purposes, the Board of Trustees may vote to waive confidentiality, and disclose some or all of the information authorized by subdivision (c)(6) of this Rule, but only if the Board determines by majority vote that disclosure is warranted for protection of the public, and only after compliance with the following procedures:
- (A) The Board shall set for closed session, at either a regular or special meeting, an agenda item for determination whether disclosure is warranted for protection of the public;
 - (B) The Board or its designee shall provide the licensee who is the subject of the complaint(s), inquiry(ies), or investigation(s) for which disclosure is being considered at least five days' notice of the fact that the Board will be meeting to consider disclosure – the notice provided to the licensee shall advise the licensee that the licensee will not be permitted to attend the closed session meeting of the Board but may, in advance of the Board meeting, submit a written statement to the Board for its consideration at the meeting;
 - (C) If the Board votes to waive confidentiality and disclose information, the State Bar shall provide notice to the licensee both via email at the email address shown on the licensee's State Bar registration records and via United States mail to the physical address shown on the licensee's State Bar registration records of all of the following (i) the fact that the Board voted to waive confidentiality; (ii) a description of the information that may be disclosed to the public; and (iii) that the licensee has five business days from the date of the notice to notify the State Bar that the licensee is contesting the release of the information; and
 - (D) If the licensee elects to contest the Board's determination to disclose information after providing the State Bar notice as required by subdivision (c)(2)(C) above and Business and Professions Code section 6086.1, subdivision (c)(3)(C), the licensee may do so by filing, within seven court days from the date of the notice provided to the licensee under subdivision (c)(2)(C) above, a motion with the State Bar Court to

prevent the State Bar from disclosing information, which motion shall be filed, served, and resolved using the following procedures, which implement the provisions of Business and Professions Code section 6086.1, subdivision (d):

- (i) The licensee shall electronically serve the motion on the Office of Chief Trial Counsel at CTC@calbar.ca.gov and on the Office of General Counsel at GC@calbar.ca.gov;
 - (ii) The State Bar shall file a response to the motion within three court days of the motion's filing and service and shall electronically serve this response on the licensee;
 - (iii) No reply or additional briefing may be filed unless ordered by the court;
 - (iv) The State Bar Court may, but is not required to, conduct a hearing on the motion;
 - (v) The State Bar Court will issue a ruling based on the pleadings and any hearing within 10 court days from the filing of the motion;
 - (vi) The ruling of the State Bar Court is final and not subject to review; and
 - (vii) The motion, the State Bar's response, any hearing, and the State Bar Court's ruling, shall all be confidential.
- (3) In assessing whether and to what extent to waive confidentiality pursuant to subdivision (c)(1) or (c)(2) above, the Chief Trial Counsel or designee, the Chair of the Board or designee, and the Board shall, at a minimum:
- (A) Apply a presumption in favor of maintaining confidentiality of the complaint(s), inquiry(ies), and investigation(s);
 - (B) Consider the extent to which the allegations or issues involved in the complaint(s), inquiry(ies), and investigation(s) are already generally known to the public;
 - (C) Consider the gravity of the underlying allegations and the potential for continued harm to the public in the absence of disclosure; and
 - (D) Consider the potential for harm to the reputation of the licensee from any disclosure.
- (4) In assessing whether and to what extent a waiver of confidentiality pursuant to subdivision (c)(1) or (c)(2) above is warranted for the protection of the public, the Chief Trial Counsel or designee, the Chair of the Board or designee, and the Board may also consider any other information relating to the licensee and the

relevant complaint(s), inquiry(ies), and investigation(s), including but not limited to the following:

- (A) Whether the licensee's conduct has caused, or is likely to cause, harm to client(s), the public, or to the administration of justice;
 - (B) The need to maintain public confidence in the discipline system's exercise of self-regulation;
 - (C) The licensee's current license status;
 - (D) The record of prior complaints against and prior discipline of the licensee;
 - (E) The potential for the imposition of a substantial disciplinary sanction;
 - (F) The existence of any other public matters;
 - (G) The status of the complaint(s), inquiry(ies), or investigation(s);
 - (H) Any consent to disclosure by the licensee;
 - (I) The gravity of the underlying allegations;
 - (J) The licensee's cooperation with the State Bar;
 - (K) Whether the licensee has committed criminal acts or is under investigation by law enforcement authorities; and
 - (L) Whether the licensee is under investigation by a regulatory or licensing agency, or has committed acts or made omissions which may reasonably result in investigation by a regulatory or licensing agency.
- (5) If the Chief Trial Counsel or Chair of the Board, for any reason, self-disqualifies, is otherwise disqualified, declines, or is otherwise unavailable to exercise the authority provided by subdivision (c)(1) above, the Chief Trial Counsel or Chair of the Board shall appoint a designee to act in their place.
- (6) Once a decision to waive confidentiality and disclose information pursuant to subdivision (c)(1) or (c)(2) above becomes final, the Chief Trial Counsel or designee or the Chair of the Board or designee may issue, if appropriate, one or more public announcements or make information public generally or to specified individuals or entities. Any public announcement or any disclosure of information to the public generally or to specified individuals or entities shall include a statement defending the right of the licensee to a fair hearing and shall

be limited to doing some or all of the following:

- (A) Confirming the fact of a complaint, inquiry, investigation, or proceeding, whether pending or previously closed;
 - (B) Providing a brief factual summary to identify the subject matter of the complaint, inquiry, investigation, or proceeding; and
 - (C) Providing the status of the complaint, inquiry, investigation, or proceeding.
- (7) The discretionary authority to waive confidentiality as authorized by Business and Professions Code section 6086.1, subdivisions (b)(2) and (c), and this Rule extends to both pending and previously closed complaints, inquiries, investigations or proceedings.
- (d) The provisions of subdivisions (a) through (c) above do not apply to inquiries, complaints, or investigations regarding nonlicensees. The Chief Trial Counsel or designee may assert confidentiality with respect to inquiries, complaints, or investigations regarding nonlicensees if, in the discretion of the Chief Trial Counsel or designee, that is necessary to protect members of the public. The Chief Trial Counsel or designee may, in their discretion, issue, one or more public announcements and may disclose information, not subject to the limitations in subdivision (c)(6) above, concerning a complaint(s), inquiry(ies), or investigation(s) involving a nonlicensee, including but not limited to, when such disclosure would serve to protect the public, from an individual(s) who has engaged in the unauthorized practice of law.
- (e) Notwithstanding the confidentiality requirements of subdivision (a) and without waiving confidentiality for other purposes, the Chief Trial Counsel or designee, in the exercise of discretion, may disclose documents and information concerning disciplinary inquiries, complaints and investigations to the following individuals or entities:
- (1) Any Special Deputy Trial Counsel or any employee of the State Bar. Any Special Deputy Trial Counsel or State Bar employee receiving confidential documents or information pursuant to this subdivision (e)(1) shall not disclose such documents or information to any other person or entity without the authorization of the Chief Trial Counsel or designee;
 - (2) Any person or entity providing services to the State Bar. Prior to receiving such confidential information or documents, any such person or entity must execute a confidentiality agreement or non-disclosure agreement with the State Bar, or a contract containing a confidentiality or non-disclosure clause;

- (3) Members of the Judicial Nominees Evaluation Commission or Review Committee as to matters concerning nominees in any jurisdiction (see Business and Professions Code section 6044.5(b)(2));
 - (4) Witnesses or potential witnesses in conjunction with an inquiry, complaint, investigation, or proceeding (see Business and Professions Code section 6049(b));
 - (5) Other governmental agencies responsible for the enforcement of civil or criminal laws (see Business and Professions Code sections 6043.5 and 6044.5(b)(1));
 - (6) Agencies and other jurisdictions responsible for professional licensing and disciplinary enforcement (see Business and Professions Code section 6044.5(a), (b)(1));
 - (7) The complainant or lawful designee (see Business and Professions Code sections 6092.5(a) and 6093.5);
 - (8) The licensee(s) who is (are) the subject of the inquiry, complaint or investigation or their counsel of record, if any (see State Bar Rule of Procedure 2409);
 - (9) Judges of the State Bar Court (see Business and Professions Code sections 6049(a) and 6051.1);
 - (10) Any person or entity to the extent that such disclosure is authorized by Business and Professions Code sections 6094.5(b), 6086.14 or other statutory provision or any other law; or
 - (11) Third-party recipients of subpoenas duces tecum in a State Bar Court proceeding, when service of a narrowly tailored supporting declaration is necessary to inform the subpoenaed party why their private information is being subpoenaed (see Business and Professions Code section 6049 (a)).
- (f) In exercising their discretion pursuant to subdivision (e), the Chief Trial Counsel or designee shall consider the purposes for which disclosure is sought, the State Bar's policy of promoting information sharing within the State Bar where necessary to advance the State Bar's goals and objectives, the need to maintain the confidentiality of the documents or information at issue, and the risk that the disclosure sought would lead to an improper or unlawful disclosure beyond the intended recipient(s) of the documents or information at issue. To protect the confidentiality of particular documents or information, to prevent the disclosure of information or documents beyond the intended recipient(s), or to prevent the use of disclosed information for

improper purposes, the Chief Trial Counsel or designee may impose limitations or conditions on any disclosure pursuant to subdivision (e), including but not limited to: redaction; anonymization; limits on further disclosure to other persons or entities; confidentiality or non-disclosure agreements; and limits on the use of disclosed documents or information.

- (g) This rule is not intended to conflict with and shall not be construed as conflicting with Business and Professions Code section 6079.5(a), which provides that the Chief Trial Counsel “shall report to and serve under the Regulation, Admissions, and Discipline Oversight Committee of the Board of Trustees of the State Bar or its successor committee on attorney discipline, and shall not serve under the direction of the chief executive officer.”

Eff. January 1, 1996; Revised November 18, 2016; May 18, 2018; November 16, 2018; January 25, 2019; April 1, 2024.

Chapter 5: Subpoenas and Depositions

Rule 2502 INVESTIGATION DEPOSITIONS

In the course of an investigation, pursuant to Business and Professions Code section 6049, subdivision (b), the Office of Chief Trial Counsel may compel by subpoena the appearance of a witness at a deposition. The deposition shall be conducted in accordance with Code of Civil Procedure sections 2025.220 through 2025.480, inclusive. The Office of Chief Trial Counsel shall serve a copy of the notice of deposition upon each attorney whose conduct is being investigated. Such attorneys shall have the right to appear and participate at the deposition and such attorneys and the Office of Chief Trial Counsel shall have the right to seek protective orders from the State Bar Court pursuant to Code of Civil Procedure section 2025.420, subdivision (b)(1) through subdivision (b)(5), inclusive, and subdivision (b)(8) through (b)(14), inclusive.

Eff. January 1, 1996; Revised January 25, 2019; April 1, 2024.