

OPEN SESSION AGENDA ITEM

REGULATION AND DISCIPLINE COMMITTEE - B.1

DATE: May 17, 2018

TO: **Members, Regulation and Discipline Committee**

FROM: Antonia G. Darling, Chief Court Counsel, State Bar Court

SUBJECT: Request to Circulate for Public Comment Changes in Rules of Procedure integrating some of the existing Rules of Practice into the Rules of Procedure of the State Bar. (Rules of Procedure of the State Bar).

EXECUTIVE SUMMARY

This proposal would amend the Rules of Procedure to integrate many of the current State Bar Court Rules of Practice into the Rules of Procedure. This suggested relocation of the bulk of the existing Rules of Practice is intended to make the rules consistent and enable the parties to locate more easily the most relevant procedural rules potentially affecting the cases.

This proposed integration of the Rules of Procedure and the Rules of Practice does not include those Rules of Practice viewed by the court as affecting only the internal practices of the court or creating procedures over which the court feels it currently needs to retain the ability to make adjustments from time to time (such as those potentially affected by the upcoming implementation of the CMS).

This item requests that the Board circulate, for a 45-day public comment period, proposed amendments to State Bar Rules of Procedure.

BACKGROUND

The State Bar Court is governed by two sets of procedural rules. There are the Rules of Procedure of the State Bar of California (Rules of Procedure), established and controlled by the State Bar Board of Trustees, and the Rules of Practice of the State Bar Court (Rules of Practice), created by the Executive Committee of the State Bar Court (Business & Professions Code §6086.5). Where there is a conflict in the rules, the Rules of Procedure take precedence. The Rules of Practice are comparable to the Local Rules of the superior courts, and are not subject to public comment or approval by the Board of Trustees.

The current Rules of Practice have been in place since at least 2009. A committee of the court undertook a review of these rules over the last eighteen months. This review revealed that a few of the rules are not completely consistent with the Rules of Procedure, thereby creating potential confusion, and many are duplicative. As a result of this review, it became the court's view that moving most of time-tested Rules of Practice into the Rules of Procedure (some with

revisions) would assist litigants by enabling them to find the bulk of the procedural requirements in one place and by eliminating the redundant and/or possibly confusing rules.

DISCUSSION

In most instances the language from the Rule of Practice cited was transported either exactly as originally written or with minor adjustments to make the language harmonize with the current Rules of Procedure. In a few cases, new language was added to clarify the procedure or to conform the rule to current practice.

The following proposed rules contain language from the Rules of Practice.

Rule 5.27 Proof of Service

Subsection (C) was added to provide that a proof of service must be filed with each document, including initiating documents. This rule reflects current practices and eliminates prior Rule of Practice 1111, which allowed the party filing the initial pleading an additional ten (10) days to file the proof of service.

Rule 5.XXX Change of Counsel of Record

Rule of Practice 1120 is moved into a new rule that provides that counsel may be changed in the same manner as set forth in the Code of Civil Procedure, but that OCTC may change assigned counsel by simply giving notice rather than requiring a motion.

Rule 5.49 Continuances

The brief language of existing Rule of Practice 5.49, simply said a motion for a continuance had to be in writing and would be granted only upon a showing of good cause. This rule has been replaced by the more detailed provisions of Rule of Practice 1131, which addresses the showing required, and the factors considered for good cause.

Rule 5.50 Abatement

Rule of Practice 1132(b), (c) is added to the existing rule regarding abatements, to provide that the court can ask for a status of the matter abated, and to outline the procedure to terminate the abatement.

Rule 5.65 Discovery Procedures

The words “unless attached as an exhibit to a motion” were imported into the existing Rule of Procedure as subsection (K) from Rule of Practice 1201 to make clear that discovery requests could be attached to a motion, such as motions to compel discovery, to exclude undisclosed evidence, to quash, or for a protective order.

Rule 5.69 Motions to Compel Discovery and Sanctions

Rule of Procedure 5.69 provides for the filing of motions to compel discovery but does not provide an overall description of the required format of such motions. That description is currently set forth in Rule 1202 of the Rules of Practice. The proposed amendment moves the language of Rule of Practice 1202 into Rule of Procedure 5.69(D).

Rule 5.XXX Status Conferences

This proposed new rule moves Rule of Practice 1210 of the into the Rules of Procedure, as there currently is no guidance in the Rules of Procedure on status conferences. One change from the Rule of Practice is the elimination of the requirement that a judge will order the initial status conference within 45 days of the filing of the initial pleading. This is an internal process which does not need to be part of a Rule of Procedure. It also

does not reflect the more expedited procedure now followed by the court, by which notice of the date and time of the initial status conference is included in the Notice of Assignment, which is filed and served almost immediately after the filing of the initial pleading in a case.

Rule 5.101 Pretrial Statements and Pretrial Conferences

Rule of Procedure 5.101(C) incorporates by reference the provisions of the Rules of Practice regarding pretrial statements and the exchange of exhibits. This proposed amendment would replace that reference, together with subsection (A) of Rule of Procedure 5.101, with the content of Rules 1221 and 1223 of the Rules of Practice (slightly modified as set forth below), which currently govern the content of pretrial statements.

Subsection (C)(2) was added to have the parties show they made efforts to agree on a pretrial statement.

The language of Rule of Practice 1223(b), now making up proposed subsection (C)(2) of Rule 5.101, was amended to require a “description” of the parties’ claims and defenses, rather than a “brief description.” Since abbreviated notice pleading format began, the need for a more detailed explanation of the factual and/or legal bases for all charges has become more important.

The language of Rule of Practice 1223(g), now making up proposed subsection (C)(8), was edited to delete the exception for disclosing impeachment or rebuttal witnesses expected to be called at trial. That exception has been used by parties to justify not disclosing critical witnesses who were in fact anticipated to be called to testify. The result in such situations is either a continuance of the trial or unfairness to the surprised party.

Subsection (C)(12) was added to clarify that the parties, while still required to discuss the status of settlement discussions, are not to disclose the substance of settlement discussions.

Rule 5.XXX Trial Exhibits

As previously noted, Rule of Procedure 5.101(C) incorporates by reference the provisions of the Rules of Practice regarding the exchange of exhibits. Such exchanges are presently governed by portions of Rule of Practice 1224(a)-(g). The proposed amendment would incorporate those provisions into the Rules of Procedure, with the following amendments.

Subsection (A): the language allowing the court to prescribe the specific manner in which exhibits are to be premarked was retained, but the presumption that respondent’s exhibits would be lettered was deleted. In addition, the wording of the paragraph was modified slightly to eliminate some potential confusion.

Subsection (B): the original language of Rule of Practice 1224 was amended to delete the provision that “impeachment and rebuttal exhibits” need not be exchanged before trial. Such exceptions have been used by parties to justify not disclosing important documents, that were expected to be used as evidence. In addition to that modification, the original language of Rule of Practice 1224(b) has been expanded to define “oversized exhibits” and adds a provision allowing parties flexibility in handling such exhibits.

Subsection (C)(1), the language now incorporated into the proposed subsection, has been amended to replace “shall” with “must” and to include the word “solely” to the sentence governing the disclosure of evidence of a prior record of discipline, which now must be disclosed if it is relevant to issues of culpability.

Subsection (C)(2), the original language of Rule of Practice 1224(c) is modified to require the parties to prepare an exhibit list using the format approved by the court.

Subsections (D)(1) and (D)(2), the original language of Rule of Practice 1224(D) has been modified and reordered to reflect the current practices for marking, copying and presenting exhibits to the court, except that the proposed new rule is changed to create a presumptive requirement that the original and all copies of exhibits will be lodged with the court at the time of trial, rather than be attached to the pre-trial statement.

Subsection (D)(3), the original language of Rule of Practice 1224(d)(3) was modified to eliminate the impracticable prohibition against any previously undisclosed exhibit even being “referred to” during the trial and replaced with the routine requirement that an exhibit may not be shown to a witness during trial until the opposing attorney has had an opportunity to examine it.

Subsection (E) was edited to remove references to exhibits not admitted.

Subsection (F) was amended to incorporate California Evidence Code Section 450 and to make clear the need of the parties to pre-mark, exchange, and disclose documents to be judicially noticed in the same manner as other trial exhibits.

Rule 5.XXX Objections to Proposed Exhibits

This proposed new rule transfers to the Rules of Procedure the requirement now in Rule of Practice 1225, that the parties disclose and discuss before trial the admissibility/inadmissibility of anticipated exhibits. However, the original language of Rule 1225, requiring the parties to seek a ruling by the Hearing Judge during the pretrial conference regarding the admissibility of disputed exhibits is deleted. Such arguments and rulings are best deferred to the time of trial and would still need to be preserved at that time, even if previously addressed during the pretrial conference.

Rule 5.XXX Settlement Conference

This proposed new rule transfers to the Rules of Procedure the provisions now in Rule 1230 of the Rules of Practice. However, the original language of Rule of Practice 1230 is amended to provide that, if the prosecution or defense trial attorney does not have full authority to settle a matter at the settlement conference, he/she must have access at that settlement conference to a person who does have such authority.

This new requirement, requiring the person having full authority to settle a case to at least be “available” for consultation during the course of a scheduled settlement conference, seeks to remedy the delays and need for multiple settlement conferences. The cases simply cannot be settled without the input of a person with authority to settle, given the significant new information that can be developed during the settlement conference. The proposed new requirement does not extend as far as that contained in rule 3.1380 of the California Rules of Court, which requires “Trial counsel, parties, and persons with full authority to settle the case must personally attend the [settlement] conference, unless excused by the court for good cause.”

Rule 5.XXX Settlement Conference Judge

This proposed new rule transfers to the Rules of Procedure the provisions now in Rule of Practice 1231. However, the original language of Rule of Practice 1231 is amended to delete language referring to internal court procedures, not needed to be included in Rules of Procedure.

Rule 5.XXX Notice of Designation of Settlement Judge

This proposed new rule transfers Rule of Prac.1232 to provide the process for the notification to the parties of the assigned settlement judge.

Rule 5.XXX Meet and Confer

This proposed new rule transfers the language of Rule of Practice1233 to set forth the requirement that parties meet and confer prior to the settlement conference.

Rule 5.XXX Settlement Conference Statements

This proposed new rule transfers to the Rules of Procedure the provisions now in Rule of Practice 1234. The original language of Rule of Practice 1234 is amended to delete the reference to joint settlement conference statements, clarify that the parties do not need to serve the statement on the opposing party, and make clear that failure to submit a timely settlement conference statement may result in rescheduling or cancelling of the settlement conference.

Rule 5.XXX Confidentiality of Settlement Conferences

Rule of Practice1235 is moved into the Rules of Procedure to specify that if no settlement is reached, no information from the conference can be disclosed in a later proceeding.

Rule 5.XXX Order of Proof in Disciplinary Proceedings

This proposed new rule transfers to the Rules of Procedure the provisions now in Rule of Practice 1250. The original language of Rule of Practice 1250 is amended to eliminate unnecessary language.

Rule 5.XXX Order of Proof in Other Proceedings

This proposed new rule transfers to the Rules of Procedure the provisions now in Rule of Practice 1251. The original language of Rule of Practice 1251 is amended to eliminate unnecessary language.

Rule 5.XXX Number of Copies of Filed Documents

Rule of Practice1300(a)-(b) are brought into the Rules of Procedure to set forth the number of copies required to perfect an appeal.

Rule 5.151 Requests for Review

This proposed new rule adds to Rule 5.151 of the Rules of Procedure the provisions now in Rule of Practice 1302. The language of Rule of Practice 1302 is amended to eliminate references to partial withdrawal of an appeal, as no such procedure exists. The language in subsection (H)(3) was amended to add "Unless otherwise ordered by the court."

Rule 5.XXX Record on Review

This proposed new rule brings Rule of Practice 1310 into the Rules of Procedure and specifies what constitutes a record for review.

Rule 5.152 Appellant's Brief

Rule of Practice 1320 is incorporated in this proposed new rule to add subsection B, which sets forth the format of the brief.

Rule 5.XXX Late Filings, Extensions of Time, Continuances

Rule of Practice 1301 is transferred to this proposed new rule to allow the court to approve late filings for good cause.

Rule 5.153 Subsequent Briefs

Rule of Practice 1321 is incorporated into subsection (C) of this rule to provide for the possibility of amicus briefs.

Rule 5.154 Oral Argument Before Review Department

Portions of Rules of Practice 1330-33 were incorporated into the existing Rule of Procedure 5.154. Subsection (B) was amended to give each side 30 minutes to argue, reflecting the current actual practice.

Rule 5.159 Review Department Opinions as Precedent

Rules of Practice 1340-43 are added to this rule to provide the criteria for publication, partial publication, other requirements for publication and how to request publication or non-publication.

OCTC reviewed the proposals and many of their suggestions were either adopted or are being held for further consideration.

FISCAL/PERSONNEL IMPACT

Minor savings as staff may spend less time correcting errors and answering questions about where rules are located. Savings of court and counsel time in attending avoidable, re-convened settlement conferences.

RULE AMENDMENTS

Title 5, Division 2, Chapter 5, Rules of Procedure of the State Bar: 5.27, 5.49, 5.50, 5.65, 5.69, 5.101, 5.151-5.154, 5.159, and proposes 15 new Rules of Procedure.

BOARD BOOK AMENDMENTS

None.

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: 2. Ensure a timely, fair, and appropriately resourced admissions, discipline, and regulatory system for the more than 250,000 lawyers licensed in California.

RECOMMENDATION

It is recommended that the Regulation and Discipline Committee approve the following resolution:

RESOLVED, that staff is authorized to make available, for public comment for a period of 45-days, proposed amendments to:
Title 5, Division 2, Chapter 5, Rules of Procedure of the State Bar; by integrating most of the current Rules of Practice into them, as set forth in Attachment A; and it is

FURTHER RESOLVED, that this authorization for release for public comment is not, and shall not be construed as, a statement or recommendation of approval of the proposed amended Rules of Procedure or Board policy.

ATTACHMENT(S) LIST

- A.** Proposed language of all Rules amended by the integration of the Rules of Practice into the Rules of Procedure (Clean version).
- B.** Proposed language of all Rules amended by the integration of the Rules of Practice into the Rules of Procedure (Redline version).

ATTACHMENT A
Revised Rules of Procedure
of The State Bar of California

Clean version

Rule 5.27 Proof of Service

- (A) **By a Party.** A party must make proof of service under Code of Civil Procedure § 1013a.
- (B) **By the Clerk.** The Clerk must make proof of service under Code of Civil Procedure § 1013a(4).
- (C) **Filing Proof of Service** [Former Rule of Practice 1111(b)]
The proof of service must be attached to all pleadings at the time of filing with the court.

Rule 5.XXX Change of Counsel of Record [Former Rule of Prac.1120]

Counsel of record in any proceeding before the court may be changed by any party in the same manner as provided in Code of Civil Procedure § 284, provided that any change of the individual counsel assigned to represent the State Bar in a particular proceeding need not be made by motion but may be made by notice of the name, telephone number, and email address of the new deputy trial counsel, filed with the Clerk and served upon the parties.

Rule 5.49 Continuances [Former Rule of Prac.1131]

- (A) **General Policy.** Continuances are disfavored. Dates set for all settlement conferences, hearings and oral arguments shall be firm and must be regarded by counsel as required court appointments. Stipulations for continuance require court approval.
- (B) **Ruling on Motion for Continuance.**
 - (1) **Hearing Department.** Any motion for or stipulation to a continuance filed in the Hearing Department shall be ruled on by the assigned judge. In unusual or urgent circumstances, the Supervising Judge may grant a continuance if the assigned judge is unavailable.
 - (2) **Review Department.** Any motion for continuance of oral argument in the Review Department shall be ruled on by the Presiding Judge.
- (C) **Showing Required; Factors Considered.** A continuance will be granted

only upon an affirmative showing of good cause requiring the continuance. In general, the necessity for the continuance should have resulted from an emergency occurring after the setting of the settlement conference, hearing, or oral argument date that could not have been anticipated or avoided with reasonable diligence and cannot now be properly provided for other than by the granting of a continuance. In ruling on a motion for a continuance, the court will consider all matters relevant to a proper determination of the motion, including:

- (1) The court's file in the case and any supporting declarations concerning the motion;
- (2) The diligence of counsel, particularly in bringing the emergency to the court's attention and to the attention of opposing counsel at the first available opportunity and in attempting to otherwise meet the emergency;
- (3) The nature of any previous continuances, extensions of time, or other delay attributable to any party;
- (4) The proximity of the settlement conference, hearing, or oral argument date;
- (5) The condition of the court's calendar and the availability of an earlier settlement conference, hearing, or oral argument date if the matter is ready;
- (6) Whether the continuance may properly be avoided by substitution of attorneys or witnesses, use of depositions in lieu of oral testimony, or trailing the matter for settlement conference, hearing, or oral argument;
- (7) Whether the interests of justice are best served by granting a continuance, by holding the settlement conference, hearing, or oral argument of the matter, or by imposing conditions on a continuance;
- (8) The court's time pendency guidelines;
- (9) Whether the party requesting the continuance failed to appear at any hearing or settlement conference; and
- (10) Any other fact or circumstance relevant to a fair determination of the motion.

Rule 5.50 Abatement

[Former Rule of Practice 1132(b), (c)]

- (A) Motion for Abatement.** On any party's motion or on its own motion after notice to the parties, the court may abate any proceeding in whole or in part. Abatement stays the proceeding in the State Bar Court and tolls all time limitations in the proceeding, but the court may grant a motion for perpetuation of evidence.
- (B) Relevant Factors.** The court may consider any relevant factor to determine a motion under this rule, including the need to dispose of the proceeding at the earliest time and the extent to which:

- (1) The issues in the proceeding are substantially the same as in a related proceeding;
 - (2) The proceeding would probably be delayed by waiting for the trial or an appeal in a related proceeding;
 - (3) The proceeding would probably be expedited by waiting for the disposition in a related proceeding;
 - (4) Evidence to be adduced in a related proceeding would aid in determining the proceeding;
 - (5) Evidence may become unavailable because of any delay;
 - (6) Parties, witnesses, or documents are currently unavailable for reasons beyond the parties' control;
 - (7) A party or witness may be prejudiced in a related proceeding by delaying or proceeding with further action; and
 - (8) A Client Security Fund claim would be unnecessarily delayed.
- (C) Related Proceeding.** "Related proceedings" means a civil, criminal, administrative, or State Bar Court proceeding that involves the same subject matter or in which a party, real party in interest, or witness in one proceeding is also a party or witness in another proceeding.
- (D) Requests for Information.** The court may at any time require any party to furnish information concerning an abated proceeding. The court may also order the parties to appear at a conference concerning the abated proceeding.
- (E) Termination of Abatement.**
- (1) Any party may, by motion, seek an order terminating an abatement; and the court on its own motion may terminate an abatement after affording the parties prior notice of its intent to do so and an opportunity to respond to the notice of intent to terminate abatement.
 - (2) The abatement of all proceedings involving the same member shall be terminated automatically upon the member's
 - (a) withdrawal of a resignation with charges pending, or
 - (b) transfer to active enrollment following prior transfer to inactive enrollment pursuant to Business and Professions Code section 6007.
- (F) Review.** A court's ruling on a motion for abatement is reviewable under rule 5.150.

Rule 5.65 Discovery Procedures

[Former Rule of Prac.1201]

- (A) Generally.** The procedures in this rule constitute the exclusive procedures for discovery. No other form of discovery is permitted without prior court order under rules 5.66 or 5.68.
- (B) Timing of Discovery Requests.** All requests for discovery must be made in

writing and served on the other party within 10 days after service of the answer to the notice of disciplinary charges, or within 10 days after service of any amendment to the notice.

- (C) Scope of Discovery.** Upon request, a party must provide to the other party:
- (1) The name, address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its allegations or defenses, including in mitigation and aggravation;
 - (2) The name (and, if not previously provided, the address and telephone number) of each individual the disclosing party then intends to call as a witness, including expert witnesses and those it may call if the need arises, including in mitigation and aggravation;
 - (3) A copy—or description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its allegations or defenses, including in mitigation and aggravation. This includes:
 - (a) All statements about the subject matter of the proceedings, including any impeaching evidence, made by any witness then intended to be called or may be called if the need arises by the disclosing party;
 - (b) All statements about the subject matter of the proceedings made by a person named or described in the notice, or amendment to the notice, other than the member when it is claimed that an act or omission of the member as to the person named or described is a basis for the discipline proceeding;
 - (c) All investigative reports made by or on behalf of the disclosing party about the subject matter of the proceeding;
 - (d) All reports of mental, physical, and blood examinations then intended to be offered in evidence by the disclosing party.
- (D) Definition of Statement.** For purposes of these procedures, statement means either:
- (1) A written statement that the person has signed or otherwise adopted or approved; or
 - (2) A contemporaneous stenographic, mechanical, electrical, or other recording—or a transcription of it—that recites verbatim the person's oral statement.
- (E) Form and Time of Response.** All responses under subdivision (C) must be in writing, signed and served within 20 days after service of the request. All documents and tangible things described but not served with the responses must be made available for inspection and copying by the requesting party within the same time period.

- (F) **Basis for Initial Disclosure; Unacceptable Excuses.** A party must make its disclosures based on the information then reasonably available to it. A party is not excused from making its disclosures because it has not fully investigated the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.
- (G) **Continuing Duty.** If a party receives a written request for discovery, the party receiving the request has a continuing duty to provide discovery of items listed in the request until proceedings before the court are concluded. When a written request for discovery is made in accordance with these rules, discovery must be provided within a reasonable time after any discoverable items become known to the party obligated to provide discovery.
- (H) **Failure to Comply with Discovery Request.**
- (1) **Inadmissible.** If any party fails to comply with a discovery request as authorized by these procedures, the items withheld are inadmissible or, if the items have been admitted into evidence, may be stricken from the record. If testimony is elicited during direct examination and the party eliciting the testimony withheld any statement of the testifying witness in violation of these discovery procedures, the testimony may be ordered stricken from the record.
 - (2) **Reasonable Continuance.** Upon a showing of good cause for failure to comply with a discovery request, the court may admit the items withheld or direct examination testimony of a witness whose statement was withheld upon condition that the party against whom the evidence is sought to be admitted is granted a reasonable continuance to prepare against the evidence, or may order the items or testimony suppressed or stricken from the record.
- (I) **Privileged or Protected Material.**
- (1) **Applicable.** Nothing in these procedures authorizes the discovery of any writing or thing which is privileged from disclosure by law or is otherwise protected. Statements of any witness interviewed by the deputy trial counsel, by any investigators for either party, by the member, or by the member's attorney are not protected as work product.
 - (2) **Information Withheld.** When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or otherwise protected, the party must make the claim expressly and must describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable the other party to assess the applicability of the privilege or protection.
- (J) **Protective Orders.** The court may, upon application supported by a showing of good cause, issue protective orders to the extent necessary to maintain in effect such privileges and other protections as are otherwise provided by law.

- (K) **Discovery requests.** Requests served upon an opposing party, as opposed to motions to compel discovery, must not be filed with the court unless attached as an exhibit to a motion.

Rule 5.69 Motions to Compel Discovery and Sanctions [Former Rule of Prac.1202]

- (A) **Informal Resolution of Issues.** A party must make a reasonable and good faith attempt to informally resolve any issue before filing a motion to compel compliance with discovery requests. A declaration stating facts showing that the party made the attempt must accompany the motion.
- (B) **Motion to Compel Compliance with Discovery Requests.** A party may move to compel compliance with discovery requests within 15 days after the date on which the discovery response was due or served.
- (C) **Discovery Sanctions.** The Civil Discovery Act's provisions about misuse of the discovery process and permissible sanctions (except provisions for monetary sanctions and the arrest of a party) apply in State Bar Court proceedings. The court may not order dismissal as a discovery sanction without considering the effect on the protection of the public.
- (D) **Format of Discovery Motions**
- (1) **Motion to Compel.** A motion to compel further responses to interrogatories, inspection demands, or admission requests and a motion to compel answers to questions propounded at a deposition or to compel production of documents or tangible things at a deposition must be accompanied by a declaration which sets forth each interrogatory, item or category of items, request, question, or document or tangible thing to which further response, answer, or production is requested, the response given, and the factual and legal reasons for compelling it. Material must not be incorporated by reference, except that in the separate document the moving party may incorporate identical responses and factual and legal reasons previously stated in that document. No other statements or summaries shall be required as part of this motion.
 - (2) **Identification of Interrogatories, Demands, or Requests.** A motion for further responses concerning interrogatories, inspection demands,

or admission requests must identify the interrogatories, demands, or requests by set and number.

- (3) **Reference to Other Responses.** If the response to a particular interrogatory is dependent on the response given to another interrogatory, or if the reasons a further response to a particular interrogatory is deemed necessary are based on the responses to some other interrogatory, the other interrogatory and its response must be set forth.
- (4) **Reference to Other Documents.** If the pleadings, other documents in the file, or other items of discovery are relevant to the motion, the party relying on them must summarize each relevant document.
- (5) **Failure to Respond to Discovery Requests.** Compliance with subparagraphs (A) through (D) of this rule is not necessary where the opposing party has failed to respond to the discovery request.

Rule 5.XXX Status Conferences

[Former Rule of Prac. 1210]

- (A) **Initial Status Conference.** Following the filing of the initial pleading in a proceeding, the assigned judge shall order that a status conference be held in all proceedings. The conference may be held in court or by telephone or by other appropriate means.
- (B) **Subjects Covered by Initial Status Conference.** Parties participating shall be prepared to respond on the subjects specified in any order noticing the conference and, in addition, on the following items:
 - (1) Jurisdiction and venue;
 - (2) The substance of the parties' claims and defenses and the definition of genuinely controverted issues;
 - (3) Anticipated motions;
 - (4) Further proceedings, including setting of dates for discovery cut-off, further status conferences, settlement conferences, pretrial and trial, and compliance with rules;
 - (5) Modification of the standard pretrial procedures specified by this rule on account of the relative simplicity or complexity of the proceeding;

- (6) Prospects for settlement; and
 - (7) Any other matters which may be conducive to the just, efficient, and economical determination of the proceeding.
- (C) **Additional status conferences.** Upon request of any party, or upon the assigned judge's own motion, additional status conferences may be held at anytime.

Rule 5.101 Pretrial Statements and Pretrial Conferences. [Former Rule of Prac.1221]

- (A) **Preparation of Pretrial Statements.** Unless the court orders that a pretrial statement need not be prepared, all counsel must meet in person or by telephone prior to the date on which the pretrial statement is due to be filed and discuss:
- (1) Preparation of a joint pretrial statement;
 - (2) Coordination of pretrial statements if no agreement is reached on the filing of a joint pretrial statement; and
 - (3) The factors set forth in paragraph (C).
- (B) **Time for Pretrial Statements.** The parties must file and serve pretrial statements at least 10 days before the pretrial conference, or as the court orders.
- (C) **Contents of Pretrial Statements and Exchange of Exhibits.** Unless otherwise ordered by the court, the pretrial statements shall include the following heading and information:
- (1) **Party.** The names of the party or parties on whose behalf the statement is filed.
 - (2) **If a joint pretrial statement is not submitted, the parties will summarize their efforts to comply with R 5.101(a)(1) and Rule 5.101 (a)(2).**
 - (3) **Substance of the proceeding.** A description of the substance of the charges or claims and defenses presented and of the issues to be decided.
 - (4) **Undisputed facts.** A plain and concise statement of all material facts not reasonably disputable. Counsel are expected to make a good faith effort to stipulate to all facts not reasonably disputable for incorporation into the trial record without the necessity of supporting testimony or exhibits.
 - (5) **Disputed issues.** A plain and concise statement of all disputed factual issues, evidentiary issues, and claims of work product or

- privilege.
- (6) **Disposition sought in disciplinary proceedings.** A statement as to the disposition sought if culpability is found and in other proceedings, a statement of the relief sought. No party shall be bound by presentations as to disposition sought.
 - (7) **Points of law.** A concise statement of each disputed point of law with respect to the issues in the proceeding, with reference to statutes, rules, and decisions relied upon.
 - (8) **Witnesses to be called.** A list of all witnesses likely to be called at trial, ~~except for impeachment or rebuttal~~, together with a statement following each name describing the substance of the testimony to be given, any anticipated difficulty in scheduling the witness, and any special needs of the witness, such as a need for an interpreter.
 - (9) **Further discovery or motions.** A statement of all remaining discovery or motions.
 - (10) **Stipulations.** A statement of stipulations requested or proposed for pretrial or trial purposes.
 - (11) **Amendments; dismissals.** A statement of requested or proposed amendments to pleadings or dismissals of parties, charges, claims, or defenses.
 - (12) **Settlement discussion.** A statement summarizing the status, but not the substance settlement, of settlement negotiations and indicating whether further negotiations are likely to be productive.
 - (13) **Bifurcation; separate trial of issues.** A statement whether bifurcation or a separate trial of specific issues is feasible and desired.
 - (14) **Limitation of experts.** A statement whether limitation of the number of expert witnesses is feasible and desired.
 - (15) **Estimate of trial time.** An estimate of the number of court days expected to be required for the presentation of each party's case. Counsel are expected to make a good faith effort to reduce the time required for trial by all means reasonably feasible, including stipulations, expedited means of presenting testimony and exhibits, and the avoidance of cumulative proof.
 - (16) **Claim of privilege or work product.** A statement indicating whether any of the matters otherwise required to be stated by this rule is claimed to be covered by the work product or other privilege. Upon such indication, such matters may be omitted subject to further order at the pretrial conference.
 - (17) **Failure to cooperate.** A statement as to any failure of opposing counsel to cooperate in meeting and conferring on pretrial issues. If established, such failure may constitute grounds for such orders as the court deems proper, including, but not limited to, the exclusion of evidence and witnesses.
 - (18) **Miscellaneous.** Any other subjects relevant to the trial of the proceeding, or material to its just, efficient, and economical determination.

- (D) **Pretrial Conference Rulings.** At the pretrial conference, the court may rule on any objections to the pretrial statements and may order the pretrial statements to be amended or supplemented.
- (E) **Failure to File Pretrial Statements.** If a party fails to file a pretrial statement, the court may order sanctions it deems proper, including, but not limited to, excluding evidence or witnesses.

Rule 5.XXX Trial Exhibits

[Former Rule of Prac.1224 (a)-(g)]

- (A) **Marking of Exhibits.** Each proposed exhibit for trial must be pre-marked by the parties for identification using a system of letters or numbers as ordered by the court. Any exhibit consisting of more than a single page must be pre-marked on the initial page with the exhibit number or letter, with each individual page within the exhibit, commencing with the first page of the exhibit, being paginated in numerical sequence. Upon request, a party must make the original or underlying document of any proffered exhibit available for inspection and copying.
- (B) **Exchange of Exhibits by Parties.** Unless otherwise ordered by the court, at least 10 days prior to the pretrial conference, the parties must exchange copies of all documents to be offered as exhibits, otherwise used at trial. Except for oversized exhibits (large exhibits which cannot be reasonably copied or presented in a binder), all exhibits exchanged by the parties must be pre-marked and paginated, as set forth above, and be in the same form as those lodged with the court. The parties may exchange an alternative form of any oversized exhibit by reasonably duplicating that exhibit.
- (C) **Proposed Exhibit List.**
 - (1) **Contents; restriction on evidence of prior discipline.** Together with the pretrial statement, each party must submit, as a separate document, a proposed exhibit list of all documents and other items to be offered by such party as exhibits at trial, properly described and indexed. Records of prior discipline to be used solely as evidence in aggravation must not be included in the proposed exhibit list.
 - (2) **Format of exhibit list.** The proposed exhibit list must be in the format approved by the court for use as the master exhibit list at trial. No exhibits are to be attached to the pretrial statement or the proposed exhibit list.
- (D) **Lodging and Offering of Exhibits at Trial**
 - (1) **Exhibits to be formally offered:** At the time trial commences, or as otherwise ordered by the court, each party must supply to the Clerk the original exhibits identified in such party's proposed exhibit list.

Each exhibit must be top-hole-punched, pre-marked, and paginated as described above, and, if over 30 pages, top-bound with a clasp. These original exhibits are not to be presented to the Clerk in binders. A copy of such exhibits, pre-marked and paginated as described above, must have been previously provided to opposing counsel. Except as provided below, these exhibits will become part of the official court record.

- (2) **Exhibits lodged for use of court and witnesses:** In addition to the original exhibits, at the time trial commences or as otherwise ordered by the court, each party must lodge two separate sets of its proposed exhibits, pre-marked and paginated as described above. One of these sets is for the use of the court and the other is for the use of witnesses at trial. Each such set must be presented in a tabbed exhibit binder, which binder must bear on both its front and spine affixed labels identifying the case name and number and the identity of the proffering party.
 - (3) **Witnesses:** No exhibit may be shown to a witness during trial until opposing counsel has had an opportunity to examine it.
- (E) **Withdrawn Exhibits.** A proposed exhibit which is withdrawn or not offered into evidence will not become part of the official record.
- (F) **Exhibits Judicially Noticed.** Requests for judicial notice will be governed by California Evidence Code sections 450 et seq. Any document for which judicial notice is requested must be pre-marked, disclosed to the other parties, and lodged with the court in accordance with subsection (D) of this rule.
- (G) **Failure to Comply.** Failure to comply with this rule without good cause may constitute grounds for such orders as the court deems proper, including, but not limited to, exclusion of exhibits from evidence.

Rule 5.XXX Objections to Proposed Exhibits

[Former Rule of Prac.1225]

Promptly after the receipt of exhibits from the opposing party and prior to commencement of the trial, any party objecting to the receipt in evidence of any proposed exhibit shall advise the opposing party of all such objections. All parties shall then meet and confer and attempt to resolve all such objections in advance of trial.

Rule 5.XXX Settlement Conference Prac.1230]

[Former Rule of

At any time after a proceeding has been initiated, any party may request a settlement conference or the court may order one on its own motion. The respondent, applicant or petitioner, whether or not represented by counsel, shall attend the conference unless

excused by the court. Counsel appearing at the conference shall be the counsel who will try the case and shall have full authority to settle the matter at the settlement conference, or have access to a person with full authority to settle the matter at that settlement conference, who must be identified at the outset of the conference.

Rule 5.XXX Settlement Conference Judge [Former Rule of Prac.1231]

Settlement conferences will be held before a judge other than the assigned judge. If all parties so stipulate, the assigned judge may conduct the settlement conference. A party's request for a settlement conference may request a specific settlement conference judge. If the parties have agreed to request a specific settlement conference judge, the request for a settlement conference shall so state.

Rule 5.XXX Notice of Designation of Settlement Judge [Former Rule of Prac.1232]

Unless otherwise ordered by the court, if the settlement conference is not conducted by the assigned judge, the Clerk shall notify all parties in writing of the name of the judge designated to conduct the settlement conference no later than 10 days prior to the date of the settlement conference.

Rule 5.XXX Meet and Confer [Former Rule of Prac.1233]

The parties shall meet and confer in person or by telephone prior to the settlement conference. If the parties have developed positions concerning settlement offers, they shall be communicated orally or in writing at this time.

Rule 5.XXX Settlement Conference Statements [Former Rule of Prac.1234]

Each party, ~~or both parties jointly~~ shall lodge with the court, but not file, a settlement conference statement at least five days before a scheduled settlement conference. The statement must be clearly marked as such, may be in letter form, must indicate in the heading the date and time of the scheduled settlement conference, and must be addressed to the settlement conference judge. Settlement conference statements may, but are not required to, be served on the opposing party. Failure to submit a timely settlement conference statement may result in the rescheduling or cancellation of the settlement conference.

Rule 5.XXX Confidentiality of Settlement Conferences [Former Rule of Prac.1235]

If a settlement conference does not result in a settlement, no reference shall be made nor consideration given in any subsequent aspect of any proceeding to the content of settlement discussions or written statements made in connection with the settlement conference or the parties' meeting and conferring process leading up to the settlement conference.

Rule 5.XXX Order of Proof in Disciplinary Proceedings [Former Rule of Prac.1250]

In disciplinary proceedings, the parties shall present evidence as to culpability prior to presenting evidence as to aggravating or mitigating circumstances, except as ordered by the court.

Rule 5.XXX Order of Proof in Other Proceedings [Former Rule of Prac.1251]

Unless otherwise ordered by the court, the party initiating the proceeding, or the State Bar if the proceeding was initiated by the court, shall present evidence first.

Rule 5.XXX Number of Copies of Filed Documents [Former Rule of Prac.1300(a)-(b)]

- (A) Any party filing a request for review or any brief or pleading in the Review Department to be considered in bank shall file an original and four copies of such document.
- (B) Any party filing a pleading to be determined by the Presiding Judge shall file an original and two copies.

Rule 5.151 Requests for Review [Former Rule of Prac.1302]

- (A) **What May Be Reviewed.** Unless expressly provided otherwise in the rules governing a particular type of proceeding, all decisions and orders by hearing judges that fully dispose of an entire proceeding are reviewable by the Review Department at the request of any party under this rule.
- (B) **Timing.** Any party may file and serve a request for review within 30 days after the hearing judge's decision or order is served. If a post-trial motion is filed in the Hearing Department, a party seeking review must file and serve the request within 30 days after the hearing judge's ruling on the post-trial motion

is served.

- (C) Post-Trial Motion After Request Filed.** If a post-trial motion about a decision is filed in the Hearing Department after a request for review is filed, any request for review of that decision will be vacated and the requesting party must file another request for review after the hearing judge's ruling on the post-trial motion is served.
- (D) Certification and Transcript.** Unless otherwise ordered by the Presiding Judge, the request for review must certify that a trial transcript has been ordered and payment has been made as required under the Rules of Practice of the State Bar Court. Unless otherwise ordered by the Presiding Judge, if the party requesting review fails to timely order a transcript or to timely pay the required transcript cost, the Clerk will notify the party that the request will be dismissed unless, within five days after the Clerk's notice is served, the party: (1) tenders the required cost, or (2) upon a motion and showing of good cause, obtains an order from the court granting an extension of time or permitting other arrangements satisfactory to the court.
- (E) Additional Parties' Requests for Review.** If any party files a request for review under rule 5.151, any opposing party may file a request for review within 10 days after the first party's request for review is served.
- (F) Multiple Requests for Review.** If more than one party requests review, the requesting parties will equally divide the cost of the transcript. Each will file an appellant's brief under rule 5.152 and a responsive brief under rule 5.153(A). Each may file a rebuttal brief under rule 5.153(B).
- (G) When Review Is Permitted.** Except as expressly permitted by these rules, no action of a hearing judge is reviewable by the Review Department until after the hearing judge enters a decision or order fully disposing of the entire proceeding.
- (H) Withdrawal of Request for Review.**

 - (1) At any time before service of notice of the time and place of oral argument, a party who requested review may withdraw the request for review.
 - (2) After the Clerk has served notice of the time and place of oral argument, a request for review may be withdrawn only by order of the Presiding Judge upon written motion by the party who sought review.

- (3) Unless otherwise ordered by the court, a withdrawal of request for review in its entirety shall leave standing the decision of the Hearing Department as the final decision of the court.

Rule 5.XXX Record on Review

[Former Rule of Prac.1310]

Upon the filing of a timely request for review, the Clerk shall prepare the record on review. The record on review shall consist of all pleadings filed in the formal proceeding under review; the decision of the judge of the Hearing Department and all other orders relating to the matter under review; all exhibits offered or received in evidence; and all tape recordings and transcripts of testimony relating to the matter under review.

Rule 5.152 Appellant's Brief

[Former Rule of Prac.1320]

- (A) **Time to File.** Within 45 days after the request for review is served or the Clerk serves the trial transcript, whichever occurs later, the appellant must file and serve an opening brief.
- (B) **Format of Brief.** Each point in a brief shall appear separately under an appropriate heading, with subheadings if desired. The statement of any matter in the record shall be supported by appropriate reference to the record, including the name of any document referred to and the specific page thereof.
Every brief in excess of 10 pages shall be prefaced by a topical index of its contents and a table of authorities, separately listing cases, statutes, court rules, constitutional provisions, and other authorities.
- (C) **Factual Issues on Review.** The appellant must specify the particular findings of fact that are in dispute and must include references to the record to establish all facts in support of the points raised by the appellant. Any factual error that is not raised on review is waived by the parties.
- (D) **Failure to File Brief.** Unless otherwise ordered by the Presiding Judge, if the opening brief is not filed, the Clerk will notify the parties that the brief must be filed within five days after the Clerk's notice is served or:
 - (1) The request for review will be dismissed with prejudice; and
 - (2) If no other party requested review, the hearing judge's decision will become the State Bar Court's final decision.

Rule 5.153 Subsequent Briefs

[Former Rule of Prac.1321]

- (A) **Responsive Brief.** Within 30 days after the appellant's brief is served, the appellee may file and serve a responsive brief that meets the same formal

requirements as the appellant's brief under rule 5.152(B) and (C). Unless otherwise ordered by the Presiding Judge, if the appellee's brief is not filed, the Clerk will notify the parties that the brief must be filed within five days after the Clerk's notice is served or:

- (1) The proceeding will be submitted on review without oral argument; or
- (2) If appellant requests or the court orders oral argument, the appellee will be precluded from appearing.

- (B) Rebuttal Brief.** Within 15 days after the appellee's brief is served, the appellant may file and serve a rebuttal brief whose body is no more than 10 pages. For good cause, the Presiding Judge may extend the time to file, or may permit the brief's body to exceed 10 pages, or both.
- (C) Brief of Amicus Curiae.** A brief of amicus curiae may be filed by order of the Presiding Judge .

Rule 5.154 Oral Argument Before Review Department [Former Rules of Prac. 1330-33]

Except as otherwise provided in these rules, the Review Department will give the parties an opportunity for oral argument. The parties may waive oral argument at any time up to five days before the date set for oral argument. Unless oral argument is waived or the parties agree to a shorter period of notice, written notice of the time and place of oral argument must be served by the Clerk on the parties at least 30 days before the oral argument.

- (A) Location of Oral Argument; Argument by Conference Telephone.** Unless otherwise ordered by the court, the Review Department will regularly hear oral arguments in San Francisco and Los Angeles. Oral argument shall be scheduled in the venue in which the trial took place. By written request filed with the Clerk at least 10 days prior to the date of oral argument, counsel entitled to present oral argument may request to do so by a conference telephone system operated by the State Bar Court. The Review Department may require counsel to appear in person.
- (B) Duration of Oral Argument.** In a matter before the Review Department, each side shall have a maximum of 30 minutes for oral argument except as the Presiding Judge may otherwise direct.
- (C) Expedited Oral Argument In Proceedings Underlying Business and Professions Code § 6007(c).** Any respondent having timely sought review of a decision by the Hearing Department on the matter underlying an order for inactive enrollment under Business and Professions Code section 6007(c) may move that the review of that underlying matter be set for oral argument

on the next available calendar regardless of location. Such motion shall be filed and served no later than the last day for filing briefs.

- (D) **Time of Submission.** A proceeding pending in the Review Department is submitted when that Department has heard oral argument or has approved at the conclusion of oral argument unless otherwise ordered by the court.

Rule 5.159 Review Department Opinions as Precedent

- (A) **Published and Unpublished Opinions.** Review Department opinions that the court designates for publication are published in the California State Bar Court Reporter or other publications, as directed by the Board of Trustees. Hearing Department decisions are not published.
- (B) **Precedential Value.** A published opinion that has no review pending and either takes effect without a Supreme Court order, or is adopted by a Supreme Court order, is binding on the Hearing Department and citable as precedent in the State Bar Court.
- (C) **Petition for Review Filed.** If a party to the proceeding files a petition for writ of review with the Supreme Court, the opinion in that proceeding cannot be cited as precedent unless the Supreme Court denies the petition for writ of review, dismisses the writ without issuing an opinion, or orders the Review Department opinion to remain citable.
- (D) **Depublished Opinions.** If the Supreme Court orders a Review Department opinion depublished, the opinion is not citable as precedent.
- (E) **Criteria for Publication.** By majority vote, the Review Department may designate for publication an opinion which:
- (1) Establishes a new rule, applies an existing rule to a set of facts significantly different from those stated in published opinions, or modifies, or criticizes with reasons given, an existing rule;
 - (2) Resolves or creates an apparent conflict in the law;
 - (3) Involves a legal issue of continuing interest to the public generally and/or to members of the State Bar, or one which is likely to recur;
 - (4) Makes a significant contribution to legal literature by collecting and analyzing the existing case law on a particular point or by reviewing and interpreting a statute or rule; or
 - (5) Makes a significant contribution to the body of disciplinary case law by discussing the appropriate degree of discipline based on a set of facts and circumstances materially different from those stated in published opinions.

[Former Rule of Prac. 1341]

- (F) **Partial Publication.** The Review Department may, by majority vote,

designate for publication only that part of the opinion which satisfies the requirements of this rule, including any additional material, factual or legal, that aids in the interpretation of the published part of the opinion.

[Former Rule of Prac. 1342]

- (G) Requirements for Publication of Certain Opinions.** Opinions in non-public matters shall not be designated for publication or for partial publication unless all parties to the proceeding having a right to confidentiality have consented to publication.

[Former Rule of Prac. 1343]

- (H) Requesting Publication or Non-Publication.** Any person may request publication or partial publication of an opinion not designated for publication, or publication in full of an opinion designated for partial publication. The request shall be made promptly by letter stating concisely why the opinion meets one or more of the standards set forth in this rule. The letter shall be addressed to the Presiding Judge, and shall be accompanied by proof of service on all parties to the proceeding. Any party to the proceeding may respond to the letter, within 10 days of service, by means of a letter to the Presiding Judge accompanied by proof of service on all parties to the proceeding and on the person requesting publication. The decision regarding the request shall be made by majority vote of the Review Department.

- (1) Within 20 days after the filing of an opinion designated for publication, any person may request by letter that the opinion not be published, that it be published only in part, or that it be published in a form which does not identify any party other than the State Bar. The request shall state the nature of the person's interest and shall state concisely the reasons why the change requested should be made. The request shall not exceed 10 pages and shall be accompanied by proof of service to each party to the action or proceeding.
- (2) Any person may, within 10 days after receipt by the Review Department of a request for depublication, submit a response, either joining in the request or stating concisely the reasons why the opinion should remain published. A response shall state the nature of the person's request. Any response shall not exceed 10 pages and shall be accompanied by proof of service to each party to the action or proceeding, and person requesting depublication.

ATTACHMENT B
Revised Rules of Procedure
of The State Bar of California

Redline version

Rule 5.27 Proof of Service

- (A) **By a Party.** A party must make proof of service under Code of Civil Procedure § 1013a.
- (B) **By the Clerk.** The Clerk must make proof of service under Code of Civil Procedure § 1013a(4).
- (C) **Filing Proof of Service** [Former Rule of Practice 1111(b)]
The proof of service must be attached to all pleadings at the time of filing with the court.

Rule 5.XXX Change of Counsel of Record

[Former Rule of Prac.1120]

Counsel of record in any proceeding before the court may be changed by any party in the same manner as provided in Code of Civil Procedure § 284, provided that any change of the individual counsel assigned to represent the State Bar in a particular proceeding need not be made by motion but may be made by notice of the name, telephone number, and email address of the new deputy trial counsel, filed with the Clerk and served upon the parties.

Rule 5.49 Continuances

[Former Rule of Prac.1131]

- (A) **General Policy.** Continuances are disfavored. Dates set for all settlement conferences, hearings and oral arguments shall be firm and must be regarded by counsel as definite required court appointments. Stipulations for continuance require court approval.
- (B) **Ruling on Motion for Continuance.**
 - (1) **Hearing Department.** Any motion for or stipulation to a continuance filed in the Hearing Department shall be ruled on by the assigned judge. In unusual or urgent circumstances, the Supervising Judge may grant a continuance if the assigned judge is unavailable.
 - (2) **Review Department.** Any motion for continuance of oral argument in the Review Department shall be ruled on by the Presiding Judge.
- (C) **Showing Required; Factors Considered.** A continuance will be granted only upon an affirmative showing of good cause requiring the continuance. In general, the necessity for the continuance should have resulted from an

emergency occurring after the setting of the settlement conference, hearing, or oral argument date that could not have been anticipated or avoided with reasonable diligence and cannot now be properly provided for other than by the granting of a continuance. In ruling on a motion for a continuance, the court will consider all matters relevant to a proper determination of the motion, including:

- (1) The court's file in the case and any supporting declarations concerning the motion;
- (2) The diligence of counsel, particularly in bringing the emergency to the court's attention and to the attention of opposing counsel at the first available opportunity and in attempting to otherwise meet the emergency;
- (3) The nature of any previous continuances, extensions of time, or other delay attributable to any party;
- (4) The proximity of the settlement conference, hearing, or oral argument date;
- (5) The condition of the court's calendar and the availability of an earlier settlement conference, hearing, or oral argument date if the matter is ready;
- (6) Whether the continuance may properly be avoided by substitution of attorneys or witnesses, use of depositions in lieu of oral testimony, or trailing the matter for settlement conference, hearing, or oral argument;
- (7) Whether the interests of justice are best served by granting a continuance, by holding the settlement conference, hearing, or oral argument of the matter, or by imposing conditions on a continuance;
- (8) The court's time pendency guidelines;
- (9) Whether the party requesting the continuance failed to appear at any hearing or settlement conference; and
- (10) Any other fact or circumstance relevant to a fair determination of the motion.

Rule 5.50 Abatement

[Former Rule of Practice 1132(b), (c)]

- (A) **Motion for Abatement.** On any party's motion or on its own motion after notice to the parties, the court may abate any proceeding in whole or in part. Abatement stays the proceeding in the State Bar Court and tolls all time limitations in the proceeding, but the court may grant a motion for perpetuation of evidence.
- (B) **Relevant Factors.** The court may consider any relevant factor to determine a motion under this rule, including the need to dispose of the proceeding at the earliest time and the extent to which:
 - (1) The issues in the proceeding are substantially the same as in a related proceeding;
 - (2) The proceeding would probably be delayed by waiting for the trial or an appeal in a related proceeding;
 - (3) The proceeding would probably be expedited by waiting for the disposition in a related proceeding;

- (4) Evidence to be adduced in a related proceeding would aid in determining the proceeding;
 - (5) Evidence may become unavailable because of any delay;
 - (6) Parties, witnesses, or documents are currently unavailable for reasons beyond the parties' control;
 - (7) A party or witness may be prejudiced in a related proceeding by delaying or proceeding with further action; and
 - (8) A Client Security Fund claim would be unnecessarily delayed.
- (C) Related Proceeding.** "Related proceedings" means a civil, criminal, administrative, or State Bar Court proceeding that involves the same subject matter or in which a party, real party in interest, or witness in one proceeding is also a party or witness in another proceeding.
- (D) Requests for Information.** The court may at any time require any party to furnish information concerning an abated proceeding. The court may also order the parties to appear at a conference concerning the abated proceeding.
- (E) Termination of Abatement.**
- (1) Any party may, by motion, seek an order terminating an abatement; and the court on its own motion may terminate an abatement after affording the parties prior notice of its intent to do so and an opportunity to respond to the notice of intent to terminate abatement.
 - (2) The abatement of all proceedings involving the same member shall be terminated automatically upon the member's
 - (a) withdrawal of a resignation with charges pending, or
 - (b) transfer to active enrollment following prior transfer to inactive enrollment pursuant to Business and Professions Code section 6007.
- (F) Review.** A court's ruling on a motion for abatement is reviewable under rule 5.150.

Rule 5.65 Discovery Procedures

[Former Rule of Prac.1201]

- (A) Generally.** The procedures in this rule constitute the exclusive procedures for discovery. No other form of discovery is permitted without prior court order under rules 5.66 or 5.68.
- (B) Timing of Discovery Requests.** All requests for discovery must be made in writing and served on the other party within 10 days after service of the answer to the notice of disciplinary charges, or within 10 days after service of any amendment to the notice.
- (C) Scope of Discovery.** Upon request, a party must provide to the other party:
- (1) The name, address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its allegations or defenses, including in mitigation and aggravation;

- (2) The name (and, if not previously provided, the address and telephone number) of each individual the disclosing party then intends to call as a witness, including expert witnesses and those it may call if the need arises, including in mitigation and aggravation;
 - (3) A copy—or description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its allegations or defenses, including in mitigation and aggravation. This includes:
 - (a) All statements about the subject matter of the proceedings, including any impeaching evidence, made by any witness then intended to be called or may be called if the need arises by the disclosing party;
 - (b) All statements about the subject matter of the proceedings made by a person named or described in the notice, or amendment to the notice, other than the member when it is claimed that an act or omission of the member as to the person named or described is a basis for the discipline proceeding;
 - (c) All investigative reports made by or on behalf of the disclosing party about the subject matter of the proceeding;
 - (d) All reports of mental, physical, and blood examinations then intended to be offered in evidence by the disclosing party.
- (D) Definition of Statement.** For purposes of these procedures, statement means either:
- (1) A written statement that the person has signed or otherwise adopted or approved; or
 - (2) A contemporaneous stenographic, mechanical, electrical, or other recording—or a transcription of it—that recites verbatim the person’s oral statement.
- (E) Form and Time of Response.** All responses under subdivision (C) must be in writing, signed and served within 20 days after service of the request. All documents and tangible things described but not served with the responses must be made available for inspection and copying by the requesting party within the same time period.
- (F) Basis for Initial Disclosure; Unacceptable Excuses.** A party must make its disclosures based on the information then reasonably available to it. A party is not excused from making its disclosures because it has not fully investigated the case or because it challenges the sufficiency of another party’s disclosures or because another party has not made its disclosures.
- (G) Continuing Duty.** If a party receives a written request for discovery, the party receiving the request has a continuing duty to provide discovery of items listed in the request until proceedings before the court are concluded. When a written request for discovery is made in accordance with these rules, discovery must

be provided within a reasonable time after any discoverable items become known to the party obligated to provide discovery.

(H) Failure to Comply with Discovery Request.

- (1) **Inadmissible.** If any party fails to comply with a discovery request as authorized by these procedures, the items withheld are inadmissible or, if the items have been admitted into evidence, may be stricken from the record. If testimony is elicited during direct examination and the party eliciting the testimony withheld any statement of the testifying witness in violation of these discovery procedures, the testimony may be ordered stricken from the record.
- (2) **Reasonable Continuance.** Upon a showing of good cause for failure to comply with a discovery request, the court may admit the items withheld or direct examination testimony of a witness whose statement was withheld upon condition that the party against whom the evidence is sought to be admitted is granted a reasonable continuance to prepare against the evidence, or may order the items or testimony suppressed or stricken from the record.

(I) Privileged or Protected Material.

- (1) **Applicable.** Nothing in these procedures authorizes the discovery of any writing or thing which is privileged from disclosure by law or is otherwise protected. Statements of any witness interviewed by the deputy trial counsel, by any investigators for either party, by the member, or by the member's attorney are not protected as work product.
- (2) **Information Withheld.** When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or otherwise protected, the party must make the claim expressly and must describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable the other party to assess the applicability of the privilege or protection.

(J) Protective Orders. The court may, upon application supported by a showing of good cause, issue protective orders to the extent necessary to maintain in effect such privileges and other protections as are otherwise provided by law.

(K) Discovery requests served upon an opposing party, as opposed to motions to compel discovery, must not be filed with the court unless attached as an exhibit to a motion.

Rule 5.69 Motions to Compel Discovery and Sanctions [Former Rule of Prac.1202]

(A) Informal Resolution of Issues. A party must make a reasonable and good faith attempt to informally resolve any issue before filing a motion to compel compliance with discovery requests. A declaration stating facts showing that the party made the attempt must accompany the motion.

- (B) **Motion to Compel Compliance with Discovery Requests.** A party may move to compel compliance with discovery requests within 15 days after the date on which the discovery response was due or served.
- (C) **Discovery Sanctions.** The Civil Discovery Act's provisions about misuse of the discovery process and permissible sanctions (except provisions for monetary sanctions and the arrest of a party) apply in State Bar Court proceedings. The court may not order dismissal as a discovery sanction without considering the effect on the protection of the public.
- (D) **Format of Discovery Motions**
- (1) **Motion to Compel.** A motion to compel further responses to interrogatories, inspection demands, or admission requests and a motion to compel answers to questions propounded at a deposition or to compel production of documents or tangible things at a deposition must be accompanied by a declaration which sets forth each interrogatory, item or category of items, request, question, or document or tangible thing to which further response, answer, or production is requested, the response given, and the factual and legal reasons for compelling it. Material must not be incorporated by reference, except that in the separate document the moving party may incorporate identical responses and factual and legal reasons previously stated in that document. No other statements or summaries shall be required as part of this motion.
 - (2) **Identification of Interrogatories, Demands, or Requests.** A motion for further responses concerning interrogatories, inspection demands, or admission requests must identify the interrogatories, demands, or requests by set and number.
 - (3) **Reference to Other Responses.** If the response to a particular interrogatory is dependent on the response given to another interrogatory, or if the reasons a further response to a particular interrogatory is deemed necessary are based on the responses to some other interrogatory, the other interrogatory and its response must be set forth.
 - (4) **Reference to Other Documents.** If the pleadings, other documents in the file, or other items of discovery are relevant to the motion, the party relying on them must summarize each relevant document.
 - (5) **Failure to Respond to Discovery Requests.** Compliance with subparagraphs (A) through (D) of this rule is not necessary where the opposing party has failed to respond to the discovery request.

Rule 5.XXX Status Conferences

[Former Rule of Prac. 1210]

- (A) **Initial Status Conference.** Following the filing of the initial pleading in a proceeding, the assigned judge shall order that a status conference be held in all proceedings. The conference may be held in court or by telephone or by other appropriate means.
- (B) **Subjects Covered by Initial Status Conference.** Parties participating shall be

prepared to respond on the subjects specified in any order noticing the conference and, in addition, on the following items:

- (1) Jurisdiction and venue;
- (2) The substance of the parties' claims and defenses and the definition of genuinely controverted issues;
- (3) Anticipated motions;
- (4) Further proceedings, including setting of dates for discovery cut-off, further status conferences, settlement conferences, pretrial and trial, and compliance with rules;
- (5) Modification of the standard pretrial procedures specified by this rule on account of the relative simplicity or complexity of the proceeding;
- (6) Prospects for settlement; and
- (7) Any other matters which may be conducive to the just, efficient, and economical determination of the proceeding.

(C) Additional status conferences. Upon request of any party, or upon the assigned judge's own motion, additional status conferences may be held at anytime.

Rule 5.101 Pretrial Statements and Pretrial Conferences. [Former Rule of Prac.1221]

(A) Preparation of Pretrial Statements. Unless the court orders that a pretrial statement need not be prepared, all counsel must meet in person or by telephone prior to the date on which the pretrial statement is due to be filed and discuss:

- (1) Preparation of a joint pretrial statement;
- (2) Coordination of pretrial statements if no agreement is reached on the filing of a joint pretrial statement; and
- (3) The factors set forth in paragraph (C).

(B) Time for Pretrial Statements. The parties must file and serve pretrial statements at least 10 days before the pretrial conference, or as the court orders.

[Former Rule of Prac. 1223]

(C) Contents of Pretrial Statements and Exchange of Exhibits. Unless otherwise ordered by the court, the pretrial statements shall include the following heading and information:

- (1) **Party.** The names of the party or parties on whose behalf the statement is filed.
- (2) **If a joint pretrial statement is not submitted, the parties will summarize their efforts to comply with R 5.101(a)(1) and Rule 5.101(a)(2).**
- (3) **Substance of the proceeding.** A description of the substance of the charges or claims and defenses presented and of the issues to be decided.
- (4) **Undisputed facts.** A plain and concise statement of all material facts not reasonably disputable. Counsel are expected to make a good faith effort

- to stipulate to all facts not reasonably disputable for incorporation into the trial record without the necessity of supporting testimony or exhibits.
- (5) **Disputed issues.** A plain and concise statement of all disputed factual issues, evidentiary issues, and claims of work product or privilege.
 - (6) **Disposition sought in disciplinary proceedings.** A statement as to the disposition sought if culpability is found and in other proceedings, a statement of the relief sought. No party shall be bound by presentations as to disposition sought.
 - (7) **Points of law.** A concise statement of each disputed point of law with respect to the issues in the proceeding, with reference to statutes, rules, and decisions relied upon.
 - (8) **Witnesses to be called.** A list of all witnesses likely to be called at trial, ~~except for impeachment or rebuttal~~, together with a statement following each name describing the substance of the testimony to be given, any anticipated difficulty in scheduling the witness, and any special needs of the witness, such as a need for an interpreter.
 - (9) **Further discovery or motions.** A statement of all remaining discovery or motions.
 - (10) **Stipulations.** A statement of stipulations requested or proposed for pretrial or trial purposes.
 - (11) **Amendments; dismissals.** A statement of requested or proposed amendments to pleadings or dismissals of parties, charges, claims, or defenses.
 - (12) **Settlement discussion.** A statement summarizing the status, but not the substance settlement, of settlement negotiations and indicating whether further negotiations are likely to be productive.
 - (13) **Bifurcation; separate trial of issues.** A statement whether bifurcation or a separate trial of specific issues is feasible and desired.
 - (14) **Limitation of experts.** A statement whether limitation of the number of expert witnesses is feasible and desired.
 - (15) **Estimate of trial time.** An estimate of the number of court days expected to be required for the presentation of each party's case. Counsel are expected to make a good faith effort to reduce the time required for trial by all means reasonably feasible, including stipulations, expedited means of presenting testimony and exhibits, and the avoidance of cumulative proof.
 - (16) **Claim of privilege or work product.** A statement indicating whether any of the matters otherwise required to be stated by this rule is claimed to be covered by the work product or other privilege. Upon such indication, such matters may be omitted subject to further order at the pretrial conference.
 - (17) **Failure to cooperate.** A statement as to any failure of opposing counsel to cooperate in meeting and conferring on pretrial issues. If established, such failure may constitute grounds for such orders as the court deems proper, including, but not limited to, the exclusion of evidence and witnesses.
 - (18) **Miscellaneous.** Any other subjects relevant to the trial of the proceeding, or material to its just, efficient, and economical

determination.

- (D) **Pretrial Conference Rulings.** At the pretrial conference, the court may rule on any objections to the pretrial statements and may order the pretrial statements to be amended or supplemented.
- (E) **Failure to File Pretrial Statements.** If a party fails to file a pretrial statement, the court may order sanctions it deems proper, including, but not limited to, excluding evidence or witnesses.

Rule 5.XXX Trial Exhibits

[Former Rule of Prac.1224 (a)-(g)]

- (A) **Marking of Exhibits.** Each proposed exhibit for trial must be pre-marked by the parties for identification using a system of letters or numbers as ordered by the court. Any exhibit consisting of more than a single page must be pre-marked on the initial page with the exhibit number or letter, with each individual page within the exhibit, commencing with the first page of the exhibit, being paginated in numerical sequence. Upon request, a party must make the original or underlying document of any proffered exhibit available for inspection and copying.
- (B) **Exchange of Exhibits by Parties.** Unless otherwise ordered by the court, at least 10 days prior to the pretrial conference, the parties must exchange copies of all documents to be offered as exhibits, or otherwise used at trial. Except for oversized exhibits (large exhibits which cannot be reasonably copied or presented in a binder), all exhibits exchanged by the parties must be pre-marked and paginated, as set forth above, and be in the same form as those lodged with the court. The parties may exchange an alternative form of any oversized exhibit by reasonably duplicating that exhibit.
- (C) **Proposed Exhibit List.**
 - (1) **Contents; restriction on evidence of prior discipline.** Together with the pretrial statement, each party must submit, as a separate document, a proposed exhibit list of all documents and other items to be offered by such party as exhibits at trial, properly described and indexed. Records of prior discipline to be used solely as evidence in aggravation must not be included in the proposed exhibit list.
 - (2) **Format of exhibit list.** The proposed exhibit list must be in the format approved by the court for use as the master exhibit list at trial. ~~An acceptable form is available from the clerk of the Court. The parties may generate their own forms but they must be in the specified format. No exhibits are to be attached to the pretrial statement or the proposed exhibit list. Exhibits must be handled in accordance with rule 1224(d).~~
- (D) **Lodging and Offering of Exhibits at Trial**
 - (1) **Exhibits to be formally offered:** At the time trial commences, or as otherwise ordered by the court, each party must supply to the Clerk the

original exhibits identified in such party's proposed exhibit list. Each exhibit must be top-hole-punched, pre-marked, and paginated as described above, and, if over 30 pages, top-bound with a clasp. These original exhibits are not to be presented to the Clerk in binders. A copy of such exhibits, pre-marked and paginated as described above, must have been previously provided to opposing counsel. Except as provided below, these exhibits will become part of the official court record.

- (2) **Exhibits lodged for use of court and witnesses:** In addition to the original exhibits, at the time trial commences or as otherwise ordered by the court, each party must lodge two separate sets of its proposed exhibits, pre-marked and paginated as described above. One of these sets is for the use of the court and the other is for the use of witnesses at trial. Each such set must be presented in a tabbed exhibit binder, which binder must bear on both its front and spine affixed labels identifying the case name and number and the identity of the proffering party.
- (3) No exhibit may be shown to a witness during trial until opposing counsel has had an opportunity to examine it.

- (E) Withdrawn Exhibits.** A proposed exhibit which is withdrawn or not offered into evidence will not become part of the official record.
- (F) Exhibits Judicially Noticed.** Requests for judicial notice will be governed by California Evidence Code sections 450 et seq. Any document for which judicial notice is requested must be pre-marked, disclosed to the other parties, and lodged with the court in accordance with subsection (D) of this rule.
- (G) Failure to Comply.** Failure to comply with this rule without good cause may constitute grounds for such orders as the court deems proper, including, but not limited to, exclusion of exhibits from evidence.

Rule 5.XXX Objections to Proposed Exhibits

[Former Rule of Prac.1225]

Promptly after the receipt of exhibits from the opposing party and prior to commencement of the trial, any party objecting to the receipt in evidence of any proposed exhibit shall advise the opposing party of all such objections. All parties shall then meet and confer and attempt to resolve all such objections in advance of trial.

Rule 5.XXX Settlement Conference

[Former Rule of Prac.1230]

At any time after a proceeding has been initiated, any party may request a settlement conference or the court may order one on its own motion. The respondent, applicant or petitioner, whether or not represented by counsel, shall attend the conference unless excused by the court. Counsel appearing at the conference shall be the counsel who will try the case and shall have full authority to settle the matter at the settlement conference, or have access to a person with full authority to settle the matter at that settlement conference, who must be identified at the outset of the conference.

Rule 5.XXX Settlement Conference Judge

[Former Rule of Prac.1231]

Settlement conferences ~~shall ordinarily~~ will be held before a judge other than the assigned judge. If all parties so stipulate, the assigned judge may conduct the settlement conference. A party's request for a settlement conference may request a specific settlement conference judge. If the parties have agreed to request a specific settlement conference judge, the request for a settlement conference shall so state.

Rule 5.XXX Notice of Designation of Settlement Judge

[Former Rule of Prac.1232]

Unless otherwise ordered by the court, if the settlement conference is not conducted by the assigned judge, the Clerk shall notify all parties in writing of the name of the judge designated to conduct the settlement conference no later than 10 days prior to the date of the settlement conference.

Rule 5.XXX Meet and Confer

[Former Rule of Prac.1233]

The parties shall meet and confer in person or by telephone prior to the settlement conference. If the parties have developed positions concerning settlement offers, they shall be communicated orally or in writing at this time.

Rule 5.XXX Settlement Conference Statements

[Former Rule of Prac.1234]

Each party shall lodge with the court, but not file, a settlement conference statement at least five days before a scheduled settlement conference. The statement must be clearly marked as such, may be in letter form, must indicate in the heading the date and time of the scheduled settlement conference, and must be addressed to the settlement conference judge. Settlement conference statements may, but are not required to, be served on the opposing party. Failure to submit a timely settlement conference statement may result in the rescheduling or cancellation of the settlement conference.

Rule 5.XXX Confidentiality of Settlement Conferences

[Former Rule of Prac.1235]

If a settlement conference does not result in a settlement, no reference shall be made nor consideration given in any subsequent aspect of any proceeding to the content of settlement discussions or written statements made in connection with the settlement conference or the parties' meeting and conferring process leading up to the settlement conference.

Rule 5.XXX Order of Proof in Disciplinary Proceedings

[Former Rule of Prac.1250]

In disciplinary proceedings, the parties shall present evidence as to culpability prior to presenting evidence as to aggravating or mitigating circumstances, except as ordered by the court.

Rule 5.XXX Order of Proof in Other Proceedings

[Former Rule of Prac.1251]

Unless otherwise ordered by the court, the party initiating the proceeding, or the State Bar if the proceeding was initiated by the court, shall present evidence first.

Rule 5.XXX Number of Copies of Filed Documents [Former Rule of Prac.1300(a)-(b)]

- (A) Any party filing a request for review or any brief or pleading in the Review Department to be considered in bank shall file an original and four copies of such document.
- (B) Any party filing a pleading to be determined by the Presiding Judge shall file an original and two copies.

Rule 5.151 Requests for Review

[Former Rule of Prac.1302]

- (A) **What May Be Reviewed.** Unless expressly provided otherwise in the rules governing a particular type of proceeding, all decisions and orders by hearing judges that fully dispose of an entire proceeding are reviewable by the Review Department at the request of any party under this rule.
- (B) **Timing.** Any party may file and serve a request for review within 30 days after the hearing judge's decision or order is served. If a post-trial motion is filed in the Hearing Department, a party seeking review must file and serve the request within 30 days after the hearing judge's ruling on the post-trial motion is served.
- (C) **Post-Trial Motion After Request Filed.** If a post-trial motion about a decision is filed in the Hearing Department after a request for review is filed, any request for review of that decision will be vacated and the requesting party must file another request for review after the hearing judge's ruling on the post-trial motion is served.
- (D) **Certification and Transcript.** Unless otherwise ordered by the Presiding Judge, the request for review must certify that a trial transcript has been ordered and payment has been made as required under the Rules of Practice of the State Bar Court. Unless otherwise ordered by the Presiding Judge, if the party requesting review fails to timely order a transcript or to timely pay the required transcript cost, the Clerk will notify the party that the request will be dismissed unless, within five days after the Clerk's notice is served, the party: (1) tenders the required cost, or (2) upon a motion and showing of good cause, obtains an order from the court granting an extension of time or permitting other arrangements satisfactory to the court.
- (E) **Additional Parties' Requests for Review.** If any party files a request for review under rule 5.151, any opposing party may file a request for review within 10 days after the first party's request for review is served.

- (F) **Multiple Requests for Review.** If more than one party requests review, the requesting parties will equally divide the cost of the transcript. Each will file an appellant's brief under rule 5.152 and a responsive brief under rule 5.153(A). Each may file a rebuttal brief under rule 5.153(B).
- (G) **When Review Is Permitted.** Except as expressly permitted by these rules, no action of a hearing judge is reviewable by the Review Department until after the hearing judge enters a decision or order fully disposing of the entire proceeding.
- (H) **Withdrawal of Request for Review.**
 - (1) At any time before service of notice of the time and place of oral argument, a party who requested review may withdraw the request for review by filing and serving notice of such withdrawal.
 - (2) After the Clerk has served notice of the time and place of oral argument, a request for review may be withdrawn ~~in whole or in part~~ only by order of the Presiding Judge upon written motion by the party who sought review.
 - (3) Unless otherwise ordered by the court, a withdrawal of request for review in its entirety shall leave standing the decision of the Hearing Department as the final decision of the court.

Rule 5.XXX Record on Review

[Former Rule of Prac.1310]

Upon the filing of a timely request for review, the Clerk shall prepare the record on review. The record on review shall consist of all pleadings filed in the formal proceeding under review; the decision of the judge of the Hearing Department and all other orders relating to the matter under review; all exhibits offered or received in evidence; and all tape recordings and transcripts of testimony relating to the matter under review.

Rule 5.152 Appellant's Brief

[Former Rule of Prac.1320]

- (A) **Time to File.** Within 45 days after the request for review is served or the Clerk serves the trial transcript, whichever occurs later, the appellant must file and serve an opening brief.
- (B) **Format of Brief.** Each point in a brief shall appear separately under an appropriate heading, with subheadings if desired. The statement of any matter in the record shall be supported by appropriate reference to the record, including the name of any document referred to and the specific page thereof. Every brief in excess of 10 pages shall be prefaced by a topical index of its contents and a table of authorities, separately listing cases, statutes, court rules, constitutional provisions, and other authorities.
- (C) **Factual Issues on Review.** The appellant must specify the particular findings of fact that are in dispute and must include references to the record to establish all facts in support of the points raised by the appellant. Any factual error that is not raised on review is waived by the parties.
- (D) **Failure to File Brief.** Unless otherwise ordered by the Presiding Judge, if the

opening brief is not filed, the Clerk will notify the parties that the brief must be filed within five days after the Clerk's notice is served or:

- (1) The request for review will be dismissed with prejudice; and
- (2) If no other party requested review, the hearing judge's decision will become the State Bar Court's final decision.

Rule 5.XXX Late Filings, Extensions of Time, Continuances [Former Rule of Prac. 1301]

Upon motion of a party and for good cause shown, the Presiding Judge may grant permission for late filings, including late filing of a request for review, for extensions of time for filing briefs, for continuance of oral argument, or for preference on the calendar.

Rule 5.153 Subsequent Briefs [Former Rule of Prac.1321]

- (A) **Responsive Brief.** Within 30 days after the appellant's brief is served, the appellee may file and serve a responsive brief that meets the same formal requirements as the appellant's brief under rule 5.152(B) and (C). Unless otherwise ordered by the Presiding Judge, if the appellee's brief is not filed, the Clerk will notify the parties that the brief must be filed within five days after the Clerk's notice is served or:
- (1) The proceeding will be submitted on review without oral argument; or
 - (2) If appellant requests or the court orders oral argument, the appellee will be precluded from appearing.
- (B) **Rebuttal Brief.** Within 15 days after the appellee's brief is served, the appellant may file and serve a rebuttal brief whose body is no more than 10 pages. For good cause, the Presiding Judge may extend the time to file, or may permit the brief's body to exceed 10 pages, or both.
- (C) **Brief of Amicus Curiae.** A brief of amicus curiae may be filed by order of the Presiding Judge.

Rule 5.154 Oral Argument Before Review Department [Former Rules of Prac. 1330-33]

Except as otherwise provided in these rules, the Review Department will give the parties an opportunity for oral argument. The parties may waive oral argument at any time up to five days before the date set for oral argument. Unless oral argument is waived or the parties agree to a shorter period of notice, written notice of the time and place of oral argument must be served by the Clerk on the parties at least 30 days before the oral argument.

- (A) **Location of Oral Argument; Argument by Conference Telephone.** Unless otherwise ordered by the court, the Review Department will regularly hear oral arguments in San Francisco and Los Angeles. Oral argument shall be scheduled in the venue in which the trial took place. By written request filed with the Clerk at least 10 days prior to the date of oral argument, counsel entitled to present oral argument may request to do so by a conference telephone system operated by the State Bar Court. The Review Department may require counsel

to appear in person.

- (B) **Duration of Oral Argument.** In a matter before the Review Department, each side shall have a maximum of 30 minutes for oral argument except as the Presiding Judge may otherwise direct.
- (C) **Expedited Oral Argument In Proceedings Underlying Business and Professions Code § 6007(c).** Any respondent having timely sought review of a decision by the Hearing Department on the matter underlying an order for inactive enrollment under Business and Professions Code section 6007(c) may move that the review of that underlying matter be set for oral argument on the next available calendar regardless of location. Such motion shall be filed and served no later than the last day for filing briefs.
- (D) **Time of Submission.** A proceeding pending in the Review Department is submitted when that Department has heard oral argument or has approved at the conclusion of oral argument unless otherwise ordered by the court.

Rule 5.159 Review Department Opinions as Precedent

- (A) **Published and Unpublished Opinions.** Review Department opinions that the court designates for publication are published in the California State Bar Court Reporter or other publications, as directed by the Board of Trustees. Hearing Department decisions are not published.
- (B) **Precedential Value.** A published opinion that has no review pending and either takes effect without a Supreme Court order, or is adopted by a Supreme Court order, is binding on the Hearing Department and citable as precedent in the State Bar Court.
- (C) **Petition for Review Filed.** If a party to the proceeding files a petition for writ of review with the Supreme Court, the opinion in that proceeding cannot be cited as precedent unless the Supreme Court denies the petition for writ of review, dismisses the writ without issuing an opinion, or orders the Review Department opinion to remain citable.
- (D) **Depublished Opinions.** If the Supreme Court orders a Review Department opinion depublished, the opinion is not citable as precedent.
- (E) **Criteria for Publication.** By majority vote, the Review Department may designate for publication an opinion which:
 - (1) Establishes a new rule, applies an existing rule to a set of facts significantly different from those stated in published opinions, or modifies, or criticizes with reasons given, an existing rule;
 - (2) Resolves or creates an apparent conflict in the law;
 - (3) Involves a legal issue of continuing interest to the public generally and/or to members of the State Bar, or one which is likely to recur;

[Former Rule of Prac. 1340]

- (4) Makes a significant contribution to legal literature by collecting and analyzing the existing case law on a particular point or by reviewing and interpreting a statute or rule; or
- (5) Makes a significant contribution to the body of disciplinary case law by discussing the appropriate degree of discipline based on a set of facts and circumstances materially different from those stated in published opinions.

[Former Rule of Prac. 1341]

- (F) Partial Publication.** The Review Department may, by majority vote, designate for publication only that part of the opinion which satisfies the requirements of this rule, including any additional material, factual or legal, that aids in the interpretation of the published part of the opinion.

[Former Rule of Prac. 1342]

- (G) Requirements for Publication of Certain Opinions.** Opinions in non-public matters shall not be designated for publication or for partial publication unless all parties to the proceeding having a right to confidentiality have consented to publication.

[Former Rule of Prac. 1343]

- (H) Requesting Publication or Non-Publication.** Any person may request publication or partial publication of an opinion not designated for publication, or publication in full of an opinion designated for partial publication. The request shall be made promptly by letter stating concisely why the opinion meets one or more of the standards set forth in this rule. The letter shall be addressed to the Presiding Judge, and shall be accompanied by proof of service on all parties to the proceeding. Any party to the proceeding may respond to the letter, within 10 days of service, by means of a letter to the Presiding Judge accompanied by proof of service on all parties to the proceeding and on the person requesting publication. The decision regarding the request shall be made by majority vote of the Review Department.

- (1) Within 20 days after the filing of an opinion designated for publication, any person may request by letter that the opinion not be published, that it be published only in part, or that it be published in a form which does not identify any party other than the State Bar. The request shall state the nature of the person's interest and shall state concisely the reasons why the change requested should be made. The request shall not exceed 10 pages and shall be accompanied by proof of service to each party to the action or proceeding.
- (2) Any person may, within 10 days after receipt by the Review Department of a request for depublication, submit a response, either joining in the request or stating concisely the reasons why the opinion should remain published. A response shall state the nature of the person's request. Any response shall not exceed 10 pages and shall be accompanied by proof of service to each party to the action or proceeding, and person requesting depublication.