

ATTACHMENT A

March 15, 2013

Dear Mr. Fox:

I write to support approval of the proposed changes to the State Bar Rule of Procedure, Rule 5.41 to allow for pleadings more akin to notice pleadings.

I was Chair of the Board of Governor's RAD Committee in 2003-04, and was surprised by the extraordinary detail that went into disciplinary pleadings. In my view substantial attorney time was wasted to draft lengthy and cumbersome and what I viewed as overly detailed pleadings. The explanation given was that that was needed in the event of default situations where the Bar needed to file a detailed factual statement to prove up the charge. At the time I suggested to the then Chief Trial Council Mike Nisperos (and later Scott Drexel) that shortened pleadings much along the lines used in criminal proceedings in State and Federal Courts should be sufficient and free up a significant amount of attorney time for more important work, provided adequate discovery was available to defense counsel.

I recommended this as a result of my own background.

As an Assistant U.S. Attorney in Los Angeles I ran the complaint unit handling the criminal filings, which basically provided what is sought here. There were very few complaints regarding our charging documents.

Later I served as the Federal Public Defender in Los Angeles and worked to defend based on the notice pleadings. As long as discovery was provided that system worked well.

I can understand why some defense counsel in State Bar proceedings would object. As a defense counsel you want as much information as you can get, and to use the present format of "exaggerated" pleadings to challenge and urge exclusion of irrelevant evidence not mentioned in the NDC.

Looked at as a whole, the proposed State Bar Rule change appears to provide adequate due process.

Before formal charges are filed (NDC), the member is to be notified in writing of the allegation forming the basis for complaint, and the member is given two weeks to respond, (if he or she wishes). Rule of Procedure 2409.

The member is notified of the right to request an Early Evaluation Conference before a judge, and if such is requested the Chief Trial Counsel must provide documentation including the rules and statutes alleged to be violated, together with a summary of the facts supporting the violation(s) (Rule 5.30).

It is only after the ENC (if requested) that the formal charges are filed.

The proposed changes are modest, but should provide adequate notice at the same time providing an adequate opportunity for discovery before filing.

I urge approval.

Sincerely,
John K. Van de Kamp