

AGENDA ITEM

123 JULY 2016

DATE: July 5, 2016

TO: Members, Regulation and Discipline Committee
Members, Board of Trustees

FROM: Gregory Dresser, Interim Chief Trial Counsel

SUBJECT: Proposed Amendment to Rule 5.441(A) of the Rules of Procedure of the State Bar of California Relating to the Filing Requirements for Reinstatement Proceedings. Request for Adoption Following Public Comment.

EXECUTIVE SUMMARY

At its November 19, 2015, meeting, the Regulation and Discipline Committee approved circulating for public comment a proposal to amend rule 5.441(A) of the Rules of Procedure of the State Bar, and to adopt an authorization and release to facilitate the investigation of a petitioner seeking reinstatement to the Bar after disbarment or resignation. The Office of Chief Trial Counsel (OCTC) received four public comments during the 75-day public comment period. Based on a review of the comments, OCTC does not recommend changes to the rule or authorization and release as circulated, and is recommending the Regulation and Discipline Committee and the Board of Trustees adopt the rule and the authorization and release.

BACKGROUND

A party seeking reinstatement to membership in the State Bar after disbarment or resignation ("reinstatement petitioner" or "petitioner") must, among other things, establish present moral qualifications for reinstatement, pursuant to rule 5.445 of the Rules of Procedure. If the petitioner seeks reinstatement after disbarment or resignation with charges pending, the petitioner must also establish rehabilitation from prior misconduct.

A petitioner initiates reinstatement proceedings by filing a verified petition with the Clerk of the State Bar Court and complying with service and pre-filing requirements set forth in rule 5.441. Along with the petition, the petitioner must serve OCTC with a Disclosure Statement Supporting Petition for Reinstatement. This form requires the reinstatement petitioner to disclose information about: (a) other jurisdictions in which the petitioner has been admitted to practice law, including any discipline recommended in such other jurisdictions; (b) medical, dental, real estate, stock brokerage, securities, and similar professional licenses; (c) financial obligations, including all restitution ordered or recommended by any court, and debts owed by petitioner; and (d) activities since disbarment or resignation, including employment history, sources of

income, civil cases or bankruptcies, criminal charges, or fraud charges levied in any legal proceedings. The information disclosed is only a starting point for the investigation.

OCTC has 120 days from the filing of the petition to complete an investigation to determine whether to oppose the petition for reinstatement. As provided in rule 5.443, the 120-day investigation period may not be extended without a finding of good cause by the State Bar Court.

Unlike applicants seeking first-time admission to the Bar, reinstatement petitioners are not required to sign a broad authorization and release that permits the Bar to obtain information about the petitioner. For applicants for admission, the authorization and release assists the Committee of Bar Examiners, and its agents, in conducting a thorough investigation to appropriately evaluate an applicant's moral character.

The proposed amendment to rule 5.441(A) would require reinstatement petitioners – that is, individuals who have been previously disbarred or resigned from the practice law – to sign an authorization and release similar to that required of applicants seeking first-time admission. Such an authorization and release will better enable OCTC to conduct a thorough investigation to appropriately evaluate the petitioner's moral qualifications for reinstatement and, where applicable, evaluate the petitioner's rehabilitation from prior misconduct.

DISCUSSION

Rule 5.441(A) of the State Bar Rules of Procedure currently provides:

Filing Petition and Disclosure Statement. A petitioner must complete and verify a petition and disclosure statement on the forms approved by the Court and in compliance with the instructions therein. The original and three copies of the petition must be filed with the Clerk of the State Bar Court. The disclosure statement is not filed with the Court but must be served on the Office of the Chief Trial Counsel.

The proposed amendment to rule 5.441(A) would also require the reinstatement petitioner to complete an authorization and release:

Filing Petition, ~~and Disclosure Statement,~~ and Authorization and Release. A petitioner must complete and verify a petition and disclosure statement on the forms approved by the Court and in compliance with the instructions therein. The original and three copies of the petition must be filed with the Clerk of the State Bar Court. The disclosure statement is not filed with the Court but must be served on the Office of the Chief Trial Counsel. In addition, a petitioner must complete an authorization and release approved by the State Bar. The authorization and release is not filed with the Court but must be served on the Office of the Chief Trial Counsel.

The proposed amendment is also attached as Attachment A.

The proposed authorization and release is virtually identical to the one currently required of first-time applicants for admission to the Bar. The differences between the two are entirely technical in nature. (See Attachment B for the proposed Reinstatement Authorization and Release, and

Attachment C for a red-line comparison between the Reinstatement Authorization and Release and the Moral Character Authorization and Release for applicants for admission.)

The burden of proving good moral character is substantially more rigorous for a petitioner seeking reinstatement than for a first-time applicant for admission to practice law.¹ The reinstatement petitioner must present stronger proof of present honesty and integrity than a person seeking admission for the first time, whose character has never been called into question. The reinstatement petitioner's proof must be sufficient to overcome the prior adverse judgment of his character.² In order to obtain information to help the State Bar Court determine whether those difficult burdens have been met, OCTC must have the ability to access the necessary information. The proposed authorization and release will provide that ability.

This authorization and release will assist OCTC in carrying out the Bar's public protection mission by ensuring OCTC has sufficient time and ability to get records from third parties, necessary to facilitate the thorough and prompt investigation into the reinstatement petitioner's present moral qualifications and, where applicable, rehabilitation from prior misconduct. It will protect the public and promote confidence in the profession and administration of justice by allowing OCTC investigators to complete more thorough reinstatement investigations within the short time permitted. Moreover, it will help to ensure that all relevant evidence is available for presentation in a reinstatement proceeding and will, consequently, aid the State Bar Court in its determination as to whether the petitioner is, in fact, rehabilitated and morally fit to practice law. Although there are benefits in utilizing the authorization and release in lieu of a subpoena in a time-limited period for investigation, the authorization and release will be most helpful in cases where the third parties in possession of the records are beyond the reach of the Bar's subpoena power, or where a third party prefers to have an indication of the reinstatement petitioner's agreement to the release of such records.

Public Comment and OCTC Response

OCTC received four public comments during the public comment period, from Mr. Jerry Miller, Mr. Jerome Fishkin, Ms. Chauné Williams, and the Legal Ethics Committee of the Bar Association of San Francisco. (See Attachments D – G.)

Comment from Jerry Miller

The comment from Mr. Jerry Miller was beyond the scope of this amendment, relating to reinstatement generally, but not to the specific issue at hand. Thus, Mr. Miller's comment is not addressed herein.³

Comment from Jerome Fishkin

Mr. Jerome Fishkin opposed the proposal, arguing that the Bar failed to "identify any pattern of problems in reinstatement cases. It does not even purport to identify one problem." In support of his assertion that current law is sufficient, Mr. Fishkin notes that reinstatement petitioners are required to disclose various types of information, including financial and employment

¹ *In re Menna* (1995) 11 Cal.4th 975, 986.

² *Id.*; *Calaway v. State Bar* (1986) 41 Cal.3d 743, 745-746; *Tardiff v. State Bar* (1980) 27 Cal.3d 395, 403.

³ Mr. Miller's comment relates to adding a requirement of monitoring reinstatement petitioners for some length of time prior to reinstatement.

information, tax returns, and an accounting of their activities after disbarment. “They are expected to answer **relevant** requests for follow up information posed by OCTC.” Mr. Fishkin appears to suggest that independent investigations are unnecessary, and that OCTC simply needs to ask reinstatement petitioners for the information it seeks, and proceed only on that basis. Although petitioners are required to provide information and “a court evaluating a petition for reinstatement should be able to rely on it as candid and complete,”⁴ reinstatement petitioners are not always forthcoming. Investigation is necessary for OCTC to vet the information provided by a reinstatement petitioner and gather all the information the State Bar Court requires to determine the petitioner’s qualifications for reinstatement and, where applicable, evaluate the petitioner’s rehabilitation.

OCTC strongly disagrees with Mr. Fishkin’s assertion that there is no problem acquiring the necessary information under the rules, and that this is a mere fishing expedition for sensitive and private information. The Bar’s subpoena authority is not absolute, and the limited time frame can constrain the Bar from obtaining all relevant information. Although, in most instances, the 120-day investigation period is sufficient to subpoena records from those subject to the Bar’s subpoena powers, sometimes information uncovered in the review of subpoenaed records gives rise to the need to secure additional records. Additionally records from federal government entities, such as the Federal Bureau of Prison Records, the Social Security Administration, federal law enforcement, or the military, are not subject to the Bar’s subpoena power. Similarly when seeking information from other jurisdictions, including information from another state’s Department of Motor Vehicles, Department of Real Estate, Department of Insurance, state or county probation, or law enforcement, an authorization and release is necessary. Such out-of-state entities are also outside of the Bar’s subpoena power.

Even where a subpoena is required (and effective), the authorization and release demonstrates the agreement of the reinstatement petitioner to provide access to information, and, thus, can assist in securing the documents, or expediting the process. Currently reinstatement petitioners are not required to sign an authorization and release, and OCTC has encountered situations where the petitioner delays providing a release, hampering OCTC’s ability to secure necessary information. Public protection warrants that OCTC be able to obtain the records necessary to determine the moral qualifications to practice law and, where applicable, the petitioner’s rehabilitation from past misconduct.

Finally, Mr. Fishkin raises concerns that confidential information and documents sought through this broad authority could identify third parties and describe unfounded allegations against them. He objects to the language in the release that “release[s], discharge[s], and exonerate[s] the State Bar of California, including its Board of Trustees and the Chief Trial Counsel, and all officers, employees, agents and representatives (as the same may be constituted from time to time) and any Third Party from and against any and all claims, demands, causes of action, damages, judgments, debts, obligations, or liabilities of every nature and kind arising out of or in connection with any information furnished to the Chief Trial Counsel or used by the Chief Trial Counsel pursuant to this authorization and release.” Except for changing references from the Committee of Bar Examiners to the Chief Trial Counsel, this language is identical to the language in the authorization and release required to be signed by all first-time applicants for admission to the State Bar of California. Although Mr. Fishkin points to examples where information was inadvertently disclosed by OCTC, he does not articulate any reason why the same authority provided to investigate applicants for admission to the Bar should not extend to

⁴ *In re Matter of Giddens* (Review Dept. 1990)1 Cal. State Bar Ct. Rptr. 25, 34.

investigations of those who have been disbarred or resigned, and are now seeking reinstatement.

Comment from Chauné Williams

Ms. Chauné Williams opposes the proposal, arguing that it is seeking to “enable the OCTC to conduct clandestine discovery outside the boundaries of Rules 5.463 and 5.65,” relating to, respectively, the discovery in moral character proceedings for applicants for admission, and discovery procedures after the filing of a notice of disciplinary charges. Ms. Williams argues that OCTC has subpoena power to obtain documents from third parties, and has not demonstrated why that subpoena power is insufficient. OCTC notes that the discovery rules cited do not govern the 120-day *investigation period* for a petitioner seeking reinstatement. Nonetheless, the substance of Ms. Williams’s comment is addressed, above, in response to Mr. Fishkin’s comments.

Ms. Williams further argues, as does the Legal Ethics Committee for the Bar Association of San Francisco, that the authorization and release is inconsistent with the California Right to Financial Privacy Act, Gov. Code sec. 7460, et seq., which requires requests for financial records from a financial institution to be included in a subpoena that describes the records with particularity. The statute provides that a customer may sign an authorization permitting release, but the authorization must specify the period of time for which records are sought and the records that are authorized to be disclosed. That authorization must include notification that the customer has the right at any time to revoke such authorization. (Gov. Code sec. 7473(a), (c).)

The Reinstatement Authorization and Release cannot, and does not purport to, absolve OCTC from any obligations it has under Government Code sec. 7640, et seq., or any other law. Nor does it absolve a financial institution from its obligations to withhold records when statutory requirements have not been satisfied. Financial institutions require the issuance of subpoenas regardless of the existence of an authorization and release. OCTC currently provides a subpoena and complies with all relevant statutory requirements when it seeks financial records as part of a moral character investigation for applicants for admission even though the Moral Character Authorization and Release contains the same language as that proposed here regarding financial information. The same will be true with the adoption of a Reinstatement Authorization and Release.

Finally, Ms. Williams asserts that the authorization and release should terminate by operation of law upon the conclusion of the 120-day investigation period. Ms. Williams argues that in moral character cases OCTC improperly uses the authorization and release as a “discovery weapon” after the 120-day investigation period ends. Like the Moral Character Authorization and Release for applicants for admission, this release remains effective throughout the entire reinstatement process, which includes proceedings before the State Bar Court and the California Supreme Court. Until the final decision is rendered by the Supreme Court, a reinstatement petitioner has a continuing obligation to provide updated information that would bear on his or her rehabilitation or fitness for reinstatement. After the conclusion of the 120-day investigation period, any discovery is conducted under rules 5.65 and 5.443. However, the limits on the Bar’s subpoena authority remain, even though OCTC is operating under the provisions of these rules. The authorization and release is necessary during this period, as it is during the investigation period, to assist OCTC in collecting evidence from jurisdictions outside the Bar’s subpoena power.

Comment from the Legal Ethics Committee of the Bar Association of San Francisco

The Legal Ethics Committee of the Bar Association of San Francisco (BASF) raises several concerns:

- (1) The authorization for release of financial information.
- (2) The failure to limit the records subject to the authorization and release to the time after resignation or disbarment through the time of hearing on the reinstatement petition.
- (3) The failure to limit the third parties from whom records may be requested, resulting in receipt of records with no indicia of reliability.
- (4) The termination of the reinstatement process upon the petitioner's withdrawal of the authorization and release.

The memorandum addresses BASF's first concern, above, in response to Ms. Williams's comments.

As to the second issue raised, BASF may not have a complete understanding of the investigations that OCTC needs to conduct to determine whether to oppose a petition for reinstatement. OCTC may need to secure information from the time period prior to resignation or disbarment in order to assess the petitioner's rehabilitation or moral fitness. For example, when a petitioner resigns with charges pending, OCTC likely did not have the opportunity to investigate the full extent of his or her misconduct. Or if a petitioner is disbarred, OCTC may not have fully investigated other complaints against the petitioner, because it understood that the attorney was going to be disbarred based on other misconduct, making those other investigations unnecessary. It is impossible to assess whether petitioner has been rehabilitated from misconduct without knowing the full scope of all of the petitioner's prior misconduct.

Additionally, an investigation may reveal a long history of misconduct, requiring a showing of a longer period of rehabilitation. The evidence of petitioner's present character must be considered in light of all of his or her past moral shortcomings and measured against the gravity of his prior misconduct.⁵ This means that the amount of evidence of rehabilitation required to justify reinstatement will depend on the seriousness of the prior misconduct.⁶ Further, in considering whether a petitioner has shown good moral character, "[t]he State Bar Court may consider any act or conduct that is relevant to a petitioner's moral character regardless of when or where the act or conduct occurred."⁷ Therefore, a temporal limitation on the authorization and release is not appropriate.

As to BASF's third issue, there are a variety of third parties that may possess records or documents that weigh on a petitioner's moral character. "[G]ood moral character has traditionally been defined in terms of the absence of proven acts that have been historically considered manifestations of moral turpitude."⁸ It also includes "qualities of honesty, fairness, candor, trustworthiness, observance of fiduciary responsibility, respect for and obedience to the laws of the state and the nation and respect for the rights of others and for the judicial process."⁹ "Thus, any act or conduct bearing on any of these qualities is relevant in a

⁵ *Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1092; *In re Menna*, *supra*, 11 Cal.4th at 987.

⁶ *In re Menna*, *supra*, 11 Cal.4th at 987.

⁷ *Id.* at 634.

⁸ *In the Matter of Kirwan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 630, 634.

⁹ *Id.*

reinstatement proceeding.”¹⁰ Finally, with respect to BASF’s concern regarding receipt of records with no indicia of reliability, it should be noted that when presenting a reinstatement case in State Bar Court, OCTC must formally move documentary evidence into evidence, which includes demonstrating that the documentary evidence is relevant, laying the foundation for it, and authenticating it. The court determines whether to receive the documents into evidence and the weight to afford to evidence presented by OCTC or the reinstatement petitioner. These procedures guard against the admission of evidence that is not reliable. Accordingly, any limit on the third parties from whom records may be requested is not appropriate.

Finally, BASF objects to the provision that, if the petitioner withdraws the authorization and release, the reinstatement proceedings terminate. It argues that this precludes the possibility of a petitioner revoking the authorization and release if he or she believes OCTC has abused the process. However, the appropriate remedy for a perceived abuse of process is to seek relief from the State Bar Court, not a self-help remedy through revocation of the release. In addition to its responsibility to determine the weight to afford evidence, the State Bar Court also has the authority to exclude evidence it determines is not relevant or was obtained inappropriately. The authorization and release does not purport to limit the court’s authority in these matters. Moreover, this language is essentially identical to that included in the authorization and release for applicants for admission to the State Bar.

Based on the foregoing, OCTC recommends that the Regulation and Discipline Committee and the Board of Trustees adopt the amendment to rule 5.441(A) and the Reinstatement Authorization and Release as proposed. This will enable OCTC to perform the appropriate analysis to determine whether a reinstatement petitioner has met the burden of proving good moral character after having been disbarred or resigned from the practice of law.

FISCAL/PERSONNEL IMPACT

None.

RULE AMENDMENTS

Rule 5.441(A), Rules of Procedure of the State Bar of California, Title 5, Division 7, Chapter 2.

BOARD BOOK IMPACT

None.

BOARD GOALS & OBJECTIVES

Adoption of this recommendation is consistent with mission of the State Bar, as set forth in Section 6001.1 of the Business and Professions Code, which places protection of the public as the highest priority for the Bar and the Board of Trustees “in exercising their licensing, regulatory, and disciplinary functions.” It carries out Goal and Objective number 1 of the 2012-2017 Five-Year Plan – “Ensure a timely, fair, and appropriately resourced discipline and regulatory system.”

¹⁰ *Id.* at 635.

BOARD COMMITTEE RECOMMENDATIONS

Should the Regulation and Discipline Committee agree with the proposed amendment to Rule 5.441(A), Rules of Procedure of the State Bar of California and the Reinstatement Authorization and Release attached hereto as Attachments A and B, the following resolution would be appropriate:

The Regulation and Discipline Committee recommends that the Board of Trustees approve the following resolution:

RESOLVED, following publication for comment and notice and upon recommendation of the Regulation and Discipline Committee, that the Board of Trustees adopts the proposed amendment of Rule 5.441(A), Rules of Procedure of the State Bar of California, and the Reinstatement Authorization and Release, as set forth in attachments A and B, effective upon adoption.

ATTACHMENTS LIST

- A.** Proposed Amendment to Rule 5.441(A).
- B.** Proposed Reinstatement Authorization and Release.
- C.** Red-line Comparison of Reinstatement Authorization and Release and Moral Character Authorization and Release.
- D.** Public Comment Received, Jerome Fishkin.
- E.** Public Comment Received, Jerry Miller, Esq.
- F.** Public Comment Received, Chauné Williams.
- G.** Public Comment Received, Bar Association of San Francisco, Legal Ethics Committee.

Proposed Amendment to Rule 5.441(A)

Current

rule:

Filing Petition and Disclosure Statement. A petitioner must complete and verify a petition and disclosure statement on the forms approved by the Court and in compliance with the instructions therein. The original and three copies of the petition must be filed with the Clerk of the State Bar Court. The disclosure statement is not filed with the Court but must be served on the Office of the Chief Trial Counsel.

Proposed amended

rule:

Filing Petition, Disclosure Statement, **and Authorization and Release**. A petitioner must complete and verify a petition and disclosure statement on the forms approved by the Court and in compliance with the instructions therein. The original and three copies of the petition must be filed with the Clerk of the State Bar Court. The disclosure statement is not filed with the Court but must be served on the Office of the Chief Trial Counsel. **In addition, a petitioner must complete an authorization and release approved by the State Bar. The authorization and release is not filed with the Court but must be served on the Office of the Chief Trial Counsel.**

AUTHORIZATION AND RELEASE

IN RE THE PETITION OF
NAME: _____

I, _____, hereby consent to an investigation into my qualifications for reinstatement to practice law in California to be conducted by the State Bar of California, Office of Chief Trial Counsel. I expressly authorize the Office of Chief Trial Counsel, by and through its authorized agents or representatives (collectively, the "Chief Trial Counsel"), to make inquiries and request information from third parties which, in the sole discretion of the Chief Trial Counsel, is deemed necessary to determine my qualifications for reinstatement to practice law in California. I understand that this Authorization and Release will remain effective throughout the entire reinstatement qualifications determination process, which includes proceedings before the State Bar Court and the California Supreme Court. I acknowledge and agree that withdrawal of this Authorization and Release will terminate the reinstatement qualifications determination process.

I authorize and request every person, organization, association, firm, company, corporation, school, employer (past or present), bank, financial institution, franchise tax board, consumer or credit reporting agency, law enforcement agency, governmental agency or instrumentality, court, or any other third party (collectively, "Third Party") having any information or an opinion about me or knowledge or control of any documents, records, or data pertaining to me, including, but not limited to, any confidential or sealed records, public or private disciplinary records, or any criminal history record information (collectively, "Information") to reveal, furnish, and release to the Chief Trial Counsel any such Information. I further authorize and request any Third Party to answer any and all inquiries, questions, or interrogatories asked by the Chief Trial Counsel concerning me or such Information about me and to appear before the State Bar Court and give full and complete testimony concerning me or such Information about me.

Without limiting the previously described release, I specifically authorize the National Personnel Records Center, St. Louis, Missouri, or other custodian of my military records, to reveal, furnish, and release Information to the Chief Trial Counsel from my military personnel file, including related medical records or a DD Form 214, Report of Separation, if any. I also specifically authorize the release of Information from other state bars, bar associations, or bar grievance councils regarding charges or complaints filed against me, formal or informal, pending or closed, or any other pertinent Information, as well as all undergraduate, graduate, or law school Information relating to my admission and my conduct during my enrollment in such schools.

I hereby release, discharge, and exonerate the State Bar of California, including its Board of Trustees and the Chief Trial Counsel, and all officers, employees, agents and representatives (as the same may be constituted from time to time) and any Third Party from and against any and all claims, demands, causes of action, damages, judgments, debts, obligations, or liabilities of every nature and kind arising out of or in connection with any Information furnished to the Chief Trial Counsel or used by the Chief Trial Counsel pursuant to this Authorization and Release.

For purposes of this Authorization and Release the undersigned gives permission to use a photocopy of his/her signature on this form as an original signature.

Executed on _____
(Date)

at _____
(City and State)

(Print Name)

SIGN HERE _____
(Signature)

AUTHORIZATION AND RELEASE

IN RE THE PETITION APPLICATION OF
NAME: _____

APPLICATION NUMBER: _____

I, _____, hereby consent to an investigation into my qualifications for reinstatement to practice law in California to be conducted by the State Bar of California's Committee of Bar Examiners Office of Chief Trial Counsel conducting an investigation into my qualifications for good moral character. ~~I have carefully read the questions in the foregoing application and have answered them truthfully, fully and completely, without mental reservations of any kind. I fully understand that failure to make a full disclosure of any fact or information called for may result in the denial of my application and receipt of an adverse moral character determination.~~ I therefore expressly authorize the Committee of Bar Examiners Office of Chief Trial Counsel, by and through its authorized agents or representatives (collectively, the "Committee Chief Trial Counsel"), to make inquiries and request information from third parties which, in the sole discretion of the Committee Chief Trial Counsel, is deemed necessary to determine my qualifications for good moral character reinstatement to practice law in California. I understand that this Authorization and Release will remain effective throughout the entire moral character reinstatement qualifications determination process, which includes proceedings before the State Bar Court and the California Supreme Court. I acknowledge and agree that withdrawal of this Authorization and Release will terminate the moral character reinstatement qualifications determination process.

I authorize and request every person, organization, association, firm, company, corporation, school, employer (past or present), bank, financial institution, franchise tax board, consumer or credit reporting agency, law enforcement agency, governmental agency or instrumentality, court, or any other third party (collectively, "Third Party") having any information or an opinion about me or knowledge or control of any documents, records, or data pertaining to me, including, but not limited to, any confidential or sealed records, public or private disciplinary records, or any criminal history record information (collectively, "Information") to reveal, furnish, and release to the Committee Chief Trial Counsel any such Information. I further authorize and request any Third Party to answer any and all inquiries, questions, or interrogatories asked by the Committee Chief Trial Counsel concerning me or such Information about me and to appear before the ~~Committee or the~~ State Bar Court and give full and complete testimony concerning me or such Information about me.

Without limiting the previously described release, I specifically authorize the National Personnel Records Center, St. Louis, Missouri, or other custodian of my military records, to reveal, furnish, and release Information to the Committee Chief Trial Counsel from my military personnel file, including related medical records or a DD Form 214, Report of Separation, if any. I also specifically authorize the release of Information from other state bars, bar associations, or bar grievance councils regarding charges or complaints filed against me, formal or informal, pending or closed, or any other pertinent Information, as well as all undergraduate, graduate, or law school Information relating to my admission and my conduct during my enrollment in such schools. ~~I further authorize all law schools, educational institutions and testing organizations to release to the Committee Information to be used in conjunction with studies conducted by the Committee regarding the admissions process.~~

~~I understand that the fact that I am a California applicant will be communicated to other bar admitting entities, as well as to the National Conference of Bar Examiners and by that agency~~

~~to such other bar admitting authorities as may inquire, and I further authorize the Committee to release any information received or obtained in connection with my moral character application to other bar admitting entities and the National Conference of Bar Examiners for purposes of other moral character investigations pertaining to me.~~

I hereby release, discharge, and exonerate the State Bar of California, including its Board of Trustees and the CommitteeChief Trial Counsel, and all officers, employees, agents and representatives (as the same may be constituted from time to time) and any Third Party from and against any and all claims, demands, causes of action, damages, judgments, debts, obligations, or liabilities of every nature and kind arising out or in connection with any Information furnished to the CommitteeChief Trial Counsel or used by the CommitteeChief Trial Counsel pursuant to this Authorization and Release.

~~I also understand that pursuant to Rule 4.42 of the Admissions Rules, I am under a continuing obligation to keep my application current and must update in writing my response to the application whenever there is an addition to or a change to information previously furnished to the Committee.~~

For purposes of this Authorization and Release the undersigned gives permission to use a photocopy of his/her signature on this form as an original signature.

~~I hereby declare under penalty of perjury under the laws of the State of California that the answers and statements provided by me in the foregoing application are true and correct.~~

Executed on _____
(Date)

at _____
(City and State)

(Print Name)

SIGN HERE _____
(Signature of Declarant)

~~Note: Applications received more than 30 days after being signed will be returned as stale dated.~~

From: [Jerome](#)
To: [Ramos, Letty](#)
Subject: OPPOSED to Proposed Amendment to Rule 5.44(A) of the Rules of Procedure
Date: Thursday, January 07, 2016 4:00:36 PM
Attachments: [agendaitem1000013966.pdf](#)

OPPOSED to Proposed Amendment to Rule 5.44(A) of the Rules of Procedure

This proposal does not solve any existing problems. It may create some. I oppose the proposal.

My Background

I am in my 46th years as an attorney. My first 8 years were in general practice. My next 5 years were as a staff attorney for the State Bar. My next 9 years were as a State Bar discipline prosecutor. Since 1992, I have been in private practice, primarily representing attorneys. I have a steady practice representing attorneys in State Bar investigations and prosecutions. I also represent moral character applicants. I have advised perhaps 30 - 40 prospective reinstatement applicants and tried 5 such cases.

I am a founding member of the Association of Discipline Defense Counsel and regularly discuss Bar issues with the other 35 +/- members.

Reason for my opposition

I am not aware of any reinstatement case in which a problem arose due to the inability of the State Bar to obtain relevant information on a reinstatement applicant. I am not aware of any case in which a successful applicant was later found to have blocked the State Bar from obtaining relevant information. I am not aware of any case in which any sort of disciplinary problem arose from information that the State Bar could not obtain during the reinstatement process. The agenda item itself does not articulate any specific problem, just a generalized desire to get information.

Under current practice, reinstatement applicants are expected to disclose financial and employment information, three years of tax returns, employment history; account for activities since the disbarment; and write a narrative that shows why they should be reinstated. They are expected to answer **relevant** requests for follow information posed by OCTC.

Sometimes, OCTC asks for information that has no reasonable relationship to the case. My experience is that when asked to explain why information is requested under current practice, most prosecutors are willing to refine a request so it applies to relevant, timely information. If there is a genuine dispute, a brief motion gets a judge to resolve it.

The risk to an applicant for withholding valid consent or information is great -- the applicant has the burden of proof, by clear and convincing evidence, and the failure to provide relevant information can be used to deny the application.

The overlooked public protection issue

Often times, confidential information and documents identify third parties and describe unfounded allegations against them. And from time to time, confidential

information either slips out or is misused. Here, the State Bar seeks the broadest amount of information under the broadest waiver, and then absolves itself for any misuse or negligent treatment of the information. The public is not protected when a government entity can demand all sorts of private information, without guidelines, and then claims that the entity is not responsible for misuse of that information. The opposite should be true. If the State Bar demands the unfettered right to gather unlimited amounts of sensitive information, the State Bar should take full responsibility for handling that information.

The release purports to absolve from liability, "any Third Party." Thus, if the State Bar improperly releases information to a third party, and that person misuses the information, even that person is allegedly absolved of responsibility. This sort of release threatens the public.

I don't make up this issue lightly. With all its controls, the State Bar does sometimes slip up. For example, a DTC once obtained a confidential federal probation report and release it in the litigation. Another DTC once agreed to provide a witness with a transcript of the witness's own statement, then released the entire investigation file by mistake. Another DTC once released the privileged portion of a file and retained the unprivileged portion. None of these were deliberate; they are the sort of errors that can occur in any large office over time.

Conclusion

The agenda item does not identify any pattern of problems in reinstatement cases. It does not even purport to identify one past problem. Rather, it speaks of a bureaucracy that would like to fish around for sensitive and private information and absolve itself for any misuse of that information. This proposal should be voted down.

+++++

From: millerslaw@juno.com
To: [Ramos, Letty](#)
Subject: Public Comment on Reinstatement Proceedings
Date: Monday, January 11, 2016 3:39:06 PM

Dear Ms. Ramos,

I am presently on "inactive" status after 50 plus years of practice (member number 33548).

For a number of years I served the Bar as a Probation Monitor and all that it entailed. Since doing so it was always my belief that as a condition to reinstatement there should be a condition imposed that the member be monitored for an appropriate period e.g. 3 years. Such monitoring would be monthly or quarterly, focus on and be confined to the conduct or basis resulting in the disbarment; so that if the misconduct for example were misappropriation of funds then the attorneys bank accounts would be examined/audited; and if the misconduct were alcohol or drug related the member would be subject to random testing and/or attending meetings; and so on.

I hope I've made the above points clear to you. Please feel free to call me should you have any questions, or wish to discuss same.

Sincerely

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DATE: January 27, 2016

TO: BOARD OF TRUSTEES FOR THE STATE BAR OF CALIFORNIA

FROM: CHAUNÉ WILLIAMS, ESQ.

SUBJECT: Public Comment re Proposed Amendment to Rule 5.441(A) of the Rules of Procedure of the State Bar of California

INTRODUCTION

The Board of Trustees should reject the proposed amendment to Rule 5.441(A) as well as the proposed “Authorization and Release” Form submitted as Attachment D. The exclusive procedure for the parties in a formal proceeding to conduct discovery is set forth in Rules 5.463 and 5.65 of the State Bar Rules of Procedure. The proposed amendment to Rule 5.441(A) would enable the OCTC to conduct clandestine discovery outside the boundaries of Rules 5.463 and 5.65. An opposing party (i.e. a petitioner for reinstatement) would be deprived of his/her due process right to object or challenge the propriety of the OCTC seeking disclosure of privileged or private financial records which may have no bearing whatsoever on a petitioner’s fitness to practice law. Fortunately for the State Bar system, the Board of Trustees adopted discovery guidelines in 2011 which provide a balanced discovery approach and allow discovery propounded to third parties to be conducted by subpoena after reasonable notice to an opposing party.

Furthermore, the proposed Authorization/Release Form violates the California Right to Financial Privacy Act because it authorizes the Franchise Tax Board and financial institutions to disclose a petitioner's financial information but does not: (1) include a termination/expiration date for the authorization; (2) identify the records which are authorized to be disclosed; and (3) include a written notification to the person authorizing the disclosure that he/she has the right at any time to revoke the authorization.

Although the OCTC is correct that it has 120 days from the filing of a petition for reinstatement to complete its investigation to determine whether it should oppose the petition, the proposed amendment to Rule 5.441(A) does not restrict the OCTC'S use of the proposed Authorization/Release Form to the 120-day investigation period. Allowing the OCTC to use the proposed Authorization and Release Form as a discovery tool, beyond the 120-day investigation period, conflicts with exclusive procedures for discovery set forth in Rules 5.463 and 5.65.

The OCTC asserts that the proposed Authorization and Release Form is necessary for public protection but offers no explanation as to why the OCTC'S investigatory subpoena power available under Business and Professions Code section 6049 is insufficient to achieve its investigatory objective. If a subpoena is used, a Notice to Consumer would be required and the consumer would be able to object or file a motion to quash if the propriety of the subpoena is in question.

For these reasons, as set forth in more detail below, the Board of Trustees should reject the proposed amendment to Rule 5.441(A) and the proposed Authorization/Release Form. An Authorization/Release Form is not necessary for public protection because the OCTC has the investigatory subpoena power to obtain documents from third parties under Business and Professions Code section 6049.

Alternatively, the Board of Trustees should require that any proposed Authorization/Release Form (that authorizes the Franchise Tax Board or a financial institution to disclose a petitioner's financial records) conform to the requirements set forth in the California Financial Right to Privacy Act and that any amendment to Rule 5.441(A) include a provision requiring the OCTC to serve a Notice to Consumer on the petitioner whose records are being sought and afford him/her an opportunity to object and/or file a motion to quash with the State Bar Court.

DISCUSSION

A. The Proposed Amendment to Rule 5.441(A) is not necessary because the OCTC Has Investigatory Subpoena Power to Obtain Disclosure of Information from Third Parties

Under Business and Professions Code section 6049, "[i]n the conduct of investigations, the chief trial counsel or his or her designee, may compel, by subpoena, the attendance of witnesses and the production of books, papers, and documents pertaining to the investigation." Cal. Bus. Prof. Code Ann. §6049(b).

Here, the OCTC asserts the proposed amendment to Rule 5.441(A) “would better enable OCTC to conduct a thorough investigation in order to appropriately evaluate the petitioner’s qualifications for reinstatement and evaluate the petitioner’s rehabilitation in cases where the petitioner has been disbarred or resigned with charges pending.” But the OCTC offers no explanation as to why a thorough investigation cannot be accomplished with the subpoena power afforded under Business and Professions Code section 6049(b). Section 6049(b) affords the OCTC power to compel attendance of witnesses and production of documents.

By utilizing Section 6049(b) power, the OCTC is required to provide notice to an opposing party and afford that party an opportunity to object and/or file a motion to quash. This makes sense. It preserves the due process rights of the consumer/opposing party and affords the State Bar Court an opportunity to perform its judicial functions. While it may be convenient for the OCTC to bypass any perceived nuances associated with utilizing a subpoena, the convenience does not outweigh the risk of depriving a consumer/opposing party of due process or interference with the adjudicatory independence of the State Bar Court to hear and decide the matters submitted to it fairly, correctly and efficiently.

Given the fact the OCTC has investigatory subpoena power afforded under Business and Professions Code section 6049(b), the proposed amendment to Rule 5.441(A) is not necessary and should be rejected.

B. The Proposed Authorization/Release Form Does Not Comply with the Requirements Set Forth in the California Right to Financial Privacy Act

“The Legislature finds and declares as follows: (a) Procedures and policies governing the relationship between financial institutions and government agencies have in some cases developed without due regard to citizens’ constitutional rights; (b) the confidential relationships between financial institutions and their customers are built on trust and must be preserved and protected; (c) the purpose of this chapter is to clarify and protect the confidential relationship between financial institutions and their customers and to balance a citizen’s right of privacy with the governmental interest in obtaining information for specific purposes and by specified procedures as set forth in this chapter.” Cal. Gov. Code Ann. §§ 7460-7461(a), (b), (c) (West 2016).

Notwithstanding the Legislative concerns in enacting the Financial Privacy Act, a customer may authorize disclosure if those seeking disclosure furnish to the financial institution a signed and dated statement by which the customer: (1) authorizes such disclosure for a period to be set forth in the authorization statement; (2) specifies the name of the agency or department to which disclosure is authorized and, if applicable, the statutory purpose for which the information is to be obtained; and (3) identifies the records which are authorized to be disclosed. Cal. Gov. Code Ann §7473 (West 2016.)

Here, the proposed Authorization/Release Form does not comply with the Act because it does not: (1) authorize disclosure for a period set forth in the Authorization (in other words, there is no termination/expiration date of the authorization); and (2) identify the records which are authorized to be disclosed.

Furthermore, any state or local agency seeking customer authorization for disclosure of customer financial records must include in the form which the customer signs granting authorization written notification that the customer has the right at any time to revoke such authorization. Cal. Gov. Code Ann §7473(c) (West 2016.)

Here, the proposed Authorization/Release Form does not contain a written notification to the applicant/petitioner that he/she has the right at any time to revoke the authorization.

Finally, any evidence obtained in violation of the California Right to Financial Privacy Act is inadmissible in any proceeding, except a proceeding to enforce the provisions of the Act. Cal. Govt. Code Ann. §7489 (West 2016). Failure to comply with the Act not only renders evidence obtained in violation of the Act inadmissible, it also subjects the violator to misdemeanor charges. *People v. Nosler*, 151 Cal. App. 3d 125, 132 (1984).

Here, because the proposed Authorization/Release Form does not comply with the requirements set forth in the California Right to Financial Privacy Act, any evidence the OCTC obtains (by virtue of the proposed Authorization/Release Form)

during the 120-day investigation would be inadmissible and could subject any entity producing the records to criminal penalty.

Given the fact the proposed Authorization/Release Form does not comply with the California Right to Financial Privacy Act, the Board of Trustees should reject the proposed Authorization/Release in its present form. Simply put, the proposed Authorization/Release Form must specify the records sought; and contain a termination/expiration date and written notification that the applicant/petitioner can at any time revoke the Authorization/Release.

C. If the Amendment to Rule 5.441(A) is Approved, the OCTC’S Use of an Authorization/Release Form Should Be Restricted to the 120-day Investigation Time Period

In first-time admissions cases, where an applicant initiates a formal moral character proceeding following an adverse moral character determination by the Committee of Bar Examiners, the OCTC has a practice of improperly using the Authorization/Release Form. After the 120-day investigation ends, OCTC uses the form as a discovery weapon to develop evidence to support its opposition to the moral character application. This practice is improper.

The problem with allowing the OCTC to use an Authorization/Release Form as a discovery weapon, after the 120-day investigation period, is that a petitioner: (1) is not served with a Notice to Consumer; (2) is not afforded an opportunity to object to disclosure of privileged or private information; and (3) is deprived of

his/her due process right to file a motion to quash any effort by the OCTC to improperly obtain privileged or private information because the OCTC is not required to notify a consumer when the Authorization/Release Form is deployed.

Stated simply, once the OCTC concludes its 120-day investigation and elects to oppose a petition for reinstatement, any Authorization/Release Form should terminate/expire by operation of law. The OCTC should be limited (just as any petitioner is limited) to conduct discovery in accordance with the Rules of the State Bar as it provides the exclusive means for parties to conduct discovery in a formal proceeding. The discovery-gathering playing field must be level.

In accordance with Title 5, Division 2, "Case Proceedings" of the Rules of the State Bar of California, "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." Rules, Rule 5.65(A).

Here, nothing in the proposed amendment to Rule 5.441(A) precludes the OCTC from using the proposed Authorization/Release Form to conduct discovery (after the 120-day investigation ends) in support of its opposition to a petition for reinstatement. The consumer/petitioner cannot object or file a motion to quash and the State Bar Court is deprived of the adjudicatory independence to hear and decide the matters submitted to it fairly, correctly and efficiently.

CONCLUSION

This much is clear: the Legislature empowered the OCTC to compel attendance of witnesses and production of documents by use of a subpoena pursuant to Business and Professions Code section 6049; thus, the proposed amendment to Rule 5.441(A) is not necessary and should be rejected.

Furthermore, the proposed Authorization and Release Form is very broad. It requires financial institutions to disclose a customer's financial information notwithstanding the fact the proposed Authorization and Release Form does not conform to the requirements set forth in the California Right to Financial Privacy Act. The purpose of enacting the Act was "to protect the confidential relationship between financial institutions and their customers and to balance a citizen's right of privacy with the governmental interest in obtaining information for specific purposes and by specified procedures" as set forth in the Act. The OCTC cannot be permitted to frustrate the purpose of the Act by requiring a petitioner to provide an Authorization/Release Form that does not comply with the express requirements of the Act; thus, the Board of Trustees should reject the proposed Authorization and Release Form; or require the OCTC to conform the proposed form to the requirements set forth in the Financial Privacy Act.

Legal Ethics Committee of Bar Association of San Francisco
301 Battery Street, 3rd Floor
San Francisco, CA 94111
(415) 982-1600

February 4,

Letty Ramos
Office of Chief Trial
Counsel The State Bar of
California 845 South
Figueroa Street Los
Angeles, CA 90017

Re: Bar Association of San Francisco's Legal Ethics Committee's
Comments to Proposed Amendment to Rule 5.441(A) of the Rules of
Procedure of the State Bar of California Relating to the Filing
Requirements for Reinstatement Proceedings

Dear Letty Ramos:

On behalf of the Legal Ethics Committee of the Bar Association of San Francisco
("BASF"), we submit the following comments to the proposed amendment to Rule
5.441(A) of the Rules of Procedure of the State Bar of California.

The State Bar Office of the Chief Trial Counsel has proposed a significant change to Rule
5.441(A) relating to reinstatement proceedings after either disbarment, a resignation with
charges pending or a resignation without charges pending. Currently, there is no
requirement as a condition for filing a petition for reinstatement that an applicant for
reinstatement sign an authorization and release to permit the State Bar Office of the Chief
Trial Counsel to obtain a multitude of documentation and information (undefined).

A copy of the proposed authorization and release is enclosed with this letter for easy
reference. Of particular concern to our active Legal Ethics Committee members is
paragraph two, which authorizes the release of specified information, including
documents, records or data pertaining to the individual from banks, financial institutions,
law enforcement, etc. Significantly, this paragraph also purports to allow for the
collection of such information and documents from "any other third party" without
defining that third party or the time frame for the requested documents. In other words,
the authorization and release is open ended as to time and is not limited to the relevant
time between the resignation or disbarment and the current date. Moreover, it is
unlimited as to third parties from whom information could be sought and could
therefore, include the equivalent of Yelp reviews with no indicia of reliability or means of
testing such reliability.

Furthermore, the final line of paragraph one states that the withdrawal of the
Authorization and Release terminates the reinstatement qualifications determination
process. That provision precludes the possibility of a petitioner discovering an abuse of

the process and a revocation to address such an occurrence.

California Government Code Section 7473 has specific language regarding a party's authorization to disclosure of documents by a financial institution. Section (a)(1) states that there must be a period set forth in the authorization statement. There is no such language in the proposed authorization and release. Section (a)(2) states that the name of the agency or department from which disclosure is being sought must be specifically named and the statutory purpose for which the information is to be obtained must be stated. The full text of section 7473 is provided below.

(a) A customer may authorize disclosure under paragraph (1) of subdivision (a) of Section 7470 if those seeking disclosure furnish to the financial institution a signed and dated statement by which the customer:

(1) Authorizes such disclosure for a period to be set forth in the authorization statement;

(2) Specifies the name of the agency or department to which disclosure is authorized and, if applicable, the statutory purpose for which the information is to be obtained; and

(3) Identifies the financial records which are authorized to be disclosed.

(b) No such authorization shall be required by a financial institution as a condition of doing business with such financial institution.

(c) Any officer, employee or agent of a state or local agency seeking customer authorization for disclosure of customer financial records shall include in the form which the customer signs granting authorization written notification that the customer has the right at any time to revoke such authorization, except where such authorization is required by statute.

(d)(1) An agency or department examining the financial records of a customer pursuant to this section shall notify the customer in writing of such examination within 30 days of the agency or department's receipt of any of the customer's financial records, except that by application to a judge of a court of competent jurisdiction in the county in which the records are located upon a showing of good cause to believe that disclosure would impede the investigation, such notification requirements may be extended for two additional 30-day periods. Thereafter, by application to a court upon a showing of extreme necessity for non-disclosure, such notification requirements may be extended for three additional 30-day periods. At the end of that period or periods the agency or department shall inform the customer that he has the right to make a written request as to the reason for such examination. Such notice shall

specify the financial records which were examined and, if requested, the reason for such examination.

(2) Wherever practicable, an application for an additional extension of notification time shall be made to the judge who granted the first extension of notification time. In deciding whether to grant an extension of the notification time, the judge shall endeavor to provide the customer with prompt notification, consistent with the purpose of this chapter, and on the presumption that prompt notification is the rule and delayed notification the exception.

It would be appropriate that any authorization and release set forth the exact information sought, from whom the authority to receive such information and the time period that the authorization and release is to cover. It is also reasonable that the authorization and release be limited to the time period from the disbarment or resignation to the date of hearing/trial in the reinstatement petition. An open ended trolling through one's past may be appropriate for an admission matter, but not for reinstatement. The criteria for reinstatement are current ability in the law and rehabilitation for the past misconduct as set forth in Rule of Procedure 5.445, which addresses "present moral qualifications."

It is entirely appropriate for the Office of the Chief Trial Counsel to inquire into the facts and circumstances that led to disbarment, including all of the underlying facts and prior instances, if any, of discipline, in order to determine if the Petitioner has rehabilitated himself/herself from the past instance[s] of misconduct. It is also appropriate to look into the past history to determine if the Petitioner has the present moral character and meets the high standards of the profession. Similarly, in Resignation with Charges Pending instances, the same inquiry is appropriate. That is, what were the facts and circumstances of the misconduct that led to the Resignation, has the Petitioner been rehabilitated and does the Petitioner possess the requisite present moral character to be reinstated.

The Office of the Chief Trial Counsel of the State Bar of California has offered little justification for this significant change to the current rule. There is merely a recitation to the goal of public protection without any empirical evidence or other justification. Nothing has been presented that reflects an abuse of the reinstatement process.

Reinstatements are extremely difficult to achieve in the current system. Among other requirements is a retaking of the California Bar Examination. This proposal would make it that much more difficult. We propose a more narrow authorization and release form be drafted that complies with the Government Code and takes into account our Committee's concerns.

Letty Ramos
February 4, 2016
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Thank you for the opportunity to share our comments.

Sincerely,

Sarah J. Banola, Chair BASF Legal Ethics Committee

Kendra Basner, Vice Chair BASF Legal Ethics Committee

AUTHORIZATION AND RELEASE

IN RE THE PETITION OF
NAME: _____

I, _____, hereby consent to an investigation into my qualifications for reinstatement to practice law in California to be conducted by the State Bar of California, Office of Chief Trial Counsel. I expressly authorize the Office of Chief Trial Counsel, by and through its authorized agents or representatives (collectively, the "Chief Trial Counsel"), to make inquiries and request information from third parties which, in the sole discretion of the Chief Trial Counsel, is deemed necessary to determine my qualifications for reinstatement to practice law in California. I understand that this Authorization and Release will remain effective throughout the entire reinstatement qualifications determination process, which includes proceedings before the State Bar Court and the California Supreme Court. I acknowledge and agree that withdrawal of this Authorization and Release will terminate the reinstatement qualifications determination process.

I authorize and request every person, organization, association, firm, company, corporation, school, employer (past or present), bank, financial institution, franchise tax board, consumer or credit reporting agency, law enforcement agency, governmental agency or instrumentality, court, or any other third party (collectively, "Third Party") having any information or an opinion about me or knowledge or control of any documents, records, or data pertaining to me, including, but not limited to, any confidential or sealed records, public or private disciplinary records, or any criminal history record information (collectively, "Information") to reveal, furnish, and release to the Chief Trial Counsel any such Information. I further authorize and request any Third Party to answer any and all inquiries, questions, or interrogatories asked by the Chief Trial Counsel concerning me or such Information about me and to appear before the State Bar Court and give full and complete testimony concerning me or such Information about me.

Without limiting the previously described release, I specifically authorize the National Personnel Records Center, St. Louis, Missouri, or other custodian of my military records, to reveal, furnish, and release Information to the Chief Trial Counsel from my military personnel file, including related medical records or a DO Form 214, Report of Separation, if any. I also specifically authorize the release of Information from other state bars, bar associations, or bar grievance councils regarding charges or complaints filed against me, formal or informal, pending or closed, or any other pertinent Information, as well as all undergraduate, graduate, or law school Information relating to my admission and my conduct during my enrollment in such schools.

I hereby release, discharge, and exonerate the State Bar of California, including its Board of Trustees and the Chief Trial Counsel, and all officers, employees, agents and representatives (as the same may be constituted from time to time) and any Third Party from and against any and all claims, demands, causes of action, damages, judgments, debts, obligations, or liabilities of every nature and kind arising out of or in connection with any Information furnished to the Chief Trial Counsel or used by the Chief Trial Counsel pursuant to this Authorization and Release.

For purposes of this Authorization and Release the undersigned gives permission to use a photocopy of his/her signature on this form as an original signature.

Executed on _____

(Date)

at _____

(City and State)

(Print Name)

SIGN HERE

(Signature)