

OPEN SESSION AGENDA ITEM

54-124 NOVEMBER 2018

REGULATION AND DISCIPLINE COMMITTEE, ITEM II.D

DATE: November 15, 2018

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

FROM: Brady R. Dewar, Assistant General Counsel, Office of General Counsel

SUBJECT: Revision to Confidentiality Rule, Rule 2302, Rules of Procedures of the State Bar: Return from Public Comment and Request for Approval

EXECUTIVE SUMMARY

At its September 13, 2018 meeting, the Regulation and Discipline Committee approved circulating, for a 30-day public comment period, the proposed amendments to Rules of Procedure of the State Bar of California, rule 2302 ("Rule 2302") set forth in Attachments A and B. During the subsequent public comment period, one public comment was received; it expressed neither approval nor disapproval of the proposed amendments.

Under the current version of Rule 2302, access to confidential information concerning inquiries, complaints, and investigations ("Confidential Information") by non-OCTC State Bar employees and State Bar vendors (other than a few enumerated employee and vendor categories) may be impliedly permitted but is not expressly permitted. However, limited access to Confidential Information by unenumerated non-OCTC State Bar employees and State Bar vendors has occurred in the past and will need to occur in the future.

The proposed amendments expressly grant the Chief Trial Counsel ("CTC") discretion to allow State Bar employees outside the Office of Chief Trial Counsel ("OCTC") and State Bar vendors access to Confidential Information, thus expressly permitting information-sharing necessary for the OCTC and the State Bar as a whole to conduct their necessary activities.

This item recommends that the Regulation and Discipline Committee and the Board of Trustees approve the amendments to Rule 2302 set forth in Attachments A and B.

BACKGROUND

The State Bar Act provides for the confidentiality of disciplinary proceedings prior to the initiation of formal charges or proceedings. In relevant part, it provides: "All disciplinary investigations are confidential until the time that formal charges are filed and all investigations of matters identified in paragraph (2) of subdivision (a) are confidential until the formal proceeding

identified in paragraph (2) of subdivision (a) is instituted.” (Bus. & Prof. Code § 6086.1(b).)¹ California Business and Professions Code section 6086.1 (“Section 6086.1”) does not define “confidential” or specify who may access information without violating confidentiality. The statute does not limit information sharing within the State Bar or with State Bar vendors, but it also does not specifically address such access. Such vendors may be considered as part of the State Bar for confidentiality purposes when they access confidential information as part of their work for the State Bar and within the confines of a confidentiality agreement with the State Bar.²

Rule 2302 implements and interprets Section 6086.1. The current version of Rule 2302 begins with the baseline rule that information concerning inquiries, complaints or investigations is confidential, and implies that only the CTC may access such information. The current Rule 2302 then explicitly grants the CTC discretion to disclose Confidential Information to enumerated State Bar employees, including OCTC employees. (Rule 2302(e)(1).)

The current version of Rule 2302(e) also explicitly grants the CTC discretion to share Confidential Information with several categories of non-OCTC State Bar employees and State Bar vendors:

- (1) To employees of the State Bar Office of the Chief Trial Counsel, the State Bar Office of General Counsel or any Special Deputy Trial Counsel;
- (8) To judges of the State Bar court;

¹ Section 6086.1 contains several exceptions to the confidentiality rule that are not directly relevant to the proposed amendments. (Bus. & Prof. Code § 6086.1(b)(1), (b)(2), (b)(3), and (c).) These exceptions are addressed in the current version of Rule 2302, and are not affected by the proposed amendments.

² Interpreting Section 6086.1 as allowing vendor access is consistent with analogous areas of the law. The federal Privacy Act of 1974, 5 U.S.C. § 552a, which governs the collection, maintenance, use, and dissemination of personal information by federal agencies, allows sharing of information within agencies, but does not expressly allow sharing of information with federal contractors. Nonetheless courts have held that federal agencies may share personal information with contractors pursuant to the statutory language allowing the agencies to disclose information to their own employees. (See, e.g., *Mount v. USPS*, 79 F.3d 531, 532-34 (6th Cir. 1996) (allowing disclosure of plaintiff’s medical files to “a physician under contract with the USPS” as a disclosure to a USPS official or employee); *Gard v. Dep’t of Educ.*, 789 F. Supp. 2d 96, 110 (D.D.C. 2011) (consultant under contract with the Department of Education was a Department of Education employee for purposes of permissible intra-agency disclosure).) California’s Information Practices Act of 1977, Cal. Civ. Code §§ 1798, *et seq.*, which deals with state agencies’ treatment of personal information, does not expressly name vendors among those categories of persons and entities to which agencies may disclose personal information, but rather allows disclosure to “those officers, employees, attorneys, agents, or volunteers of the agency that has custody of the information if the disclosure is relevant and necessary in the ordinary course of the performance of their official duties and is related to the purpose for which the information was acquired.” (Cal. Civ. Code § 1798.24(d).) In other sections, however, the statute simply assumes that personal information may be shared with contractors, and expressly states that contractors and their employees shall be considered agency employees for purposes of penalties for violations of the law. (Cal. Civ. Code §§ 1798.19, 1798.55) In the litigation context the concept of allowing vendors that agree to maintain confidentiality access to confidential information without destroying confidentiality is widely applied in stipulated protective orders, which allow attorneys who receive highly confidential information during discovery to disclose such information to vendors such as expert witnesses. (See, e.g., *Los Angeles Model Stipulation and Protective Order – Confidential Designation Only* at ¶¶ 2, 7(b), 7(d), 7(g) and 7(h), available at <http://www.lacourt.org/division/civil/CI0043.aspx>.)

... [and]

(10) To employees of a language interpretation or language translation company under contract with the State Bar to provide language translation or language interpretation services. Any contract between the State Bar and a language interpretation or language translation company shall include a confidentiality clause or non-disclosure agreement.

The current version of Rule 2302 does not *expressly* grant the CTC discretion to disclose Confidential Information to State Bar employees other than those enumerated in paragraphs (e)(1) and (e)(8) or to any State Bar vendors other than employees of a language interpretation or language translation company as set forth in paragraph (e)(10).

Several instances have arisen in which non-OCTC State Bar employees other than those enumerated in the current rule have needed access to Confidential Information. For instance, employees of the State Bar Office of Information Technology often access Confidential Information in the course of their work on State Bar information systems. Recently, employees of the State Bar Office of Research and Institutional Accountability (“ORIA”) requested limited Confidential Information in relation to ORIA’s efforts to study the OCTC intake process; in this case, because the current version of Rule 2302 did not *expressly* allow such access, the State Bar decided to utilize OCTC employees rather than ORIA employees to handle the Confidential Information at issue. Similarly, State Bar vendors other than interpreters and translators need access to Confidential Information. For instance, the Case Management System implementation may involve use of a vendor, bound by a confidentiality agreement, to scan various OCTC documents.

As was done with the recent amendment concerning interpreters and translators, to make expressly clear that the CTC has discretion to allow non-OCTC employees and State Bar vendors access to Confidential Information needed to perform their work for the State Bar, Rule 2302 should be amended as discussed in more detail below.

DISCUSSION

Proposed Amendments

This proposal, if adopted, will amend Rule 2302 in the following ways:

1. Rule 2302(a). The current version of Rule 2302(a) states, in relevant part, that “[e]xcept as otherwise provided by law or these rules, information concerning inquiries, complaints or investigations is confidential.” The current version of Rule 2302(a) does not expressly specify to whom this Confidential Information must be kept confidential, though, read as a whole, the current rule provides that Confidential Information is confidential to the CTC, who then has discretion to disclose Confidential Information to others, including OCTC employees.

This proposal clarifies and simplifies Rule 2302(a) by amending it to state, in relevant part: “Except as otherwise provided by law or these rules, information concerning inquiries, complaints or investigations is confidential, and shall not be disclosed outside the Office of Chief Trial Counsel.” The amended Rule 2302 does not and need not address limitations on access to Confidential Information within OCTC; the CTC controls such access through management of the OCTC.

2. Rule 2302(e)(1). The current version of Rule 2302(e)(1) provides:

e) Notwithstanding paragraph (a), without violating the duty of confidentiality or waiving confidentiality for other purposes, the Chief Trial Counsel, in the exercise of discretion, may disclose documents and information concerning disciplinary inquiries, complaints and investigations to the following individuals or entities:

- (1) To employees of the State Bar Office of the Chief Trial Counsel, the State Bar Office of General Counsel or any Special Deputy Trial Counsel[.]

The proposed amendment grants the CTC discretion to disclose Confidential Information to any State Bar employee, thus conforming the rule to existing practice and clarifying that the rule permits necessary information sharing with State Bar employees. To further protect confidentiality, the amendment includes language prohibiting non-OCTC State Bar employees from sharing Confidential Information without authorization by the CTC. The amended Rule 2302(e)(1) provides as follows:

(e) Notwithstanding paragraph (a), without violating the duty of confidentiality or waiving confidentiality for other purposes, the Chief Trial Counsel or designee, in the exercise of discretion, may disclose documents and information concerning disciplinary inquiries, complaints and investigations to the following individuals or entities:

- (1) Any Special Deputy Trial Counsel or any employee of the State Bar. Any Special Deputy Trial Counsel or State Bar employee receiving confidential documents or information pursuant to this paragraph (e)(1) shall not disclose such documents or information to any other person or entity without the authorization of the Chief Trial Counsel or designee[.]

3. Rule 2302(e)(2). The proposal adds a provision expressly granting the OCTC discretion to disclose Confidential Information to State Bar vendors who contractually agree to maintain confidentiality. Amended Rule 2302(e)(2) provides:

(e) Notwithstanding paragraph (a), without violating the duty of confidentiality or waiving confidentiality for other purposes, the Chief Trial Counsel or designee, in the exercise of discretion, may disclose documents and information concerning disciplinary inquiries, complaints and investigations to the following individuals or entities:

...

- (2) Any person or entity providing services to the State Bar. Prior to receiving such confidential information or documents, any such person or entity must execute a confidentiality agreement or non-disclosure agreement with the State Bar, or a contract containing a confidentiality or non-disclosure clause[.]

This proposed amendment thus clarifies that Rule 2302 permits necessary information sharing with vendors performing State Bar work. Because this amendment renders redundant the specific provision for translators and interpreters in current Rule 2302(e)(10), this proposal also deletes that provision.

4. Rule 2302(f). The proposal also adds Rule 2302(f), which underscores that the discretion whether to disclose Confidential Information to persons or entities listed in paragraph (e) rests with the CTC or the CTC's designee, and lists various factors to be considered in exercising this broad discretion. In addition, this provision explicitly allows the CTC or designee to take any necessary steps to protect the Confidential Information:

(f) In exercising his or her discretion pursuant to paragraph (e), the Chief Trial Counsel or designee shall consider the purposes for which disclosure is sought, the State Bar's policy of promoting information sharing within the State Bar where necessary to advance the State Bar's goals and objectives, the need to maintain the confidentiality of the documents or information at issue, and the risk that the disclosure sought would lead to an improper or unlawful disclosure beyond the intended recipient(s) of the documents or information at issue. To protect the confidentiality of particular documents or information, to prevent the disclosure of information or documents beyond the intended recipient(s), or to prevent the use of disclosed information for improper purposes, the Chief Trial Counsel or designee may impose limitations or conditions on any disclosure pursuant to paragraph (e), including but not limited to: redaction; anonymization; limits on further disclosure to other persons or entities; confidentiality or non-disclosure agreements; and limits on the use of disclosed documents or information.

5. Rule 2302(g). Finally, the proposal adds Rule 2302(g), which provides:

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

While this provision is simply a restatement of current law and policy, OGC recommends adopting this amendment to insure that Rule 2302's authorization of access to Confidential Information by employees who serve under the Executive Director (or by the Executive Director herself or himself) is not construed as affecting the CTC's independence vis-à-vis non-OCTC State Bar staff.

In addition to the amendments discussed above, the proposal renumbers the paragraphs of Rule 2302(e) and makes other minor clerical changes.

Public Comments

The 30-day public comment period ended on October 19, 2018. One comment was received, from Fountain Valley attorney Roy C. Zukerman, who did not express approval or disapproval of the rule. Rather, Mr. Zukerman suggested that, "[i]n view of the change in status of the State Bar to a solely regulatory agency," the term "member" in the proposed revised rule be changed to "licensee" or "attorney." Staff had considered making this change when it proposed circulating the amendments for public comment, but decided not to do so at this time, because it is a global change affecting many rules (and requiring changes to the definitions section of the

Rules of Procedure of the State Bar of California). Staff will propose changes to the Rules to address such changes in nomenclature as “member” to “licensee” and “dues” to “fees.”

FISCAL/PERSONNEL IMPACT

None is anticipated.

RULE AMENDMENTS

Title III, Division II, Chapter 3, Rule 2302, Rules of Procedure of the State Bar of California.

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.

Objective: a. Develop and deploy a new case management system for the Office of Chief Trial Counsel, State Bar Court, the Office of Probation, and the Office of Admissions for greater transparency and accountability.

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

Objective: c. Develop and implement transparent and accurate reporting and tracking of the health and efficacy of the discipline system, to include: (a) completion of a workload study for the Office of Chief Trial Counsel and the State Bar Court; (b) identification of staffing and resource needs based on the results of that study; and (c) development of new metrics for measuring the effectiveness of the discipline system including any needed revisions to the statutory backlog metric.

Goal: 3. Improve the fiscal and operational management of the State Bar, emphasizing integrity, transparency, accountability, and excellence.

Objective: e. Develop outcome and performance accountability metrics for assessing organizational and service effectiveness throughout the Bar.

RECOMMENDATION

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

RESOLVED, following notice and publication for comment, that the Board of Trustees adopt the proposed amendments to Rules of Procedure of the State Bar of California, rule 2302, as set forth in Attachments A and B, with such amended rule operative immediately.

ATTACHMENT(S) LIST

- A.** Proposed amended Rule 2302 (Clean Version)
- B.** Proposed amended Rule 2302 (Redline Version)

Rule 2302. DISCLOSURE OF INFORMATION

- (a) Except as otherwise provided by law or these rules, information concerning inquiries, complaints or investigations is confidential, and shall not be shared outside of the State Bar Office of the Chief Trial Counsel. There is no duty of confidentiality with respect to non-members; however, the Chief Trial Counsel or designee may assert confidentiality with respect to inquiries, complaints, or investigations regarding non-members, if, in the discretion of the Chief Trial Counsel or designee, that is necessary to protect members of the public.
- (b) A member whose conduct is the subject of an inquiry, complaint or investigation may waive confidentiality.
- (c) Notwithstanding the provisions of paragraph (b), the Chief Trial Counsel or designee may decline to waive confidentiality regarding an inquiry, complaint or investigation, if it is determined that an ongoing investigation may be substantially prejudiced by a public disclosure before the filing of a notice of disciplinary charges.
- (d) (1) Notwithstanding paragraph (a), without violating the duty of confidentiality or waiving confidentiality for other purposes, the Chief Trial Counsel or designee, after private notice to the member, may disclose documents or information concerning a complaint(s) or investigation(s) for the protection of the public when the necessity for disclosing information outweighs the necessity for preserving confidentiality, including but not limited to the following circumstances:
 - (A) A member has caused, or is likely to cause, harm to client(s), the public, or to the administration of justice, such that the public or specific individuals should be advised of the nature of the allegations. The following additional factors shall be considered in making this determination:
 - (i) The maintenance of public confidence in the discipline system's exercise of self-regulation;
 - (ii) The member's current membership status;
 - (iii) The record of prior discipline of the member;
 - (iv) The potential for the imposition of a substantial disciplinary sanction;
 - (v) The existence of any other public matters;
 - (vi) The status of the complaint or investigation;
 - (vii) The waiver of confidentiality by the member;
 - (viii) The gravity of the underlying allegations; and
 - (ix) The member's cooperation with the State Bar.

- (B) A member has committed criminal acts or is under investigation by law enforcement authorities;
 - (C) A member is under investigation by a regulatory or licensing agency, or has committed acts or made omissions which may reasonably result in investigation by a regulatory or licensing agency; or
 - (D) The member is the subject of multiple complaints and the Office of the Chief Trial Counsel has determined not to pursue all of the complaints. The Office of the Chief Trial Counsel may inform complainants whose allegations have not been pursued of the status of the other investigations or the manner in which the other complaint(s) against the member have been resolved, e. g., by directional letter, warning letter, admonition, agreement in lieu of discipline, or private reproof.
- (2) If the Chief Trial Counsel, for any reason, declines to exercise the authority provided by paragraph (d)(1), or disqualifies himself or herself from acting under paragraph (d)(1), he or she shall appoint a designee to act in his or her place.
 - (3) The Chief Trial Counsel or designee, may define the scope of information disclosed and may limit the information disclosed pursuant to paragraph (d)(1), above, to specified individuals or entities.
 - (4) Except as otherwise provided by law or these rules, if the Chief Trial Counsel or designee discloses documents or information pursuant to paragraph (d)(1) through (d)(3), the Chief Trial Counsel or designee may issue, if appropriate, one or more public announcements and may disclose information concerning a complaint(s) or investigation(s) involving a member(s), which includes a statement of the status or disposition of the complaint(s) or investigation(s); clarifying the procedures involved; and defending the right of the member(s) to a fair hearing on the allegations of misconduct.
 - (5) The Chief Trial Counsel or designee may issue, if appropriate, one or more public announcements and may disclose information concerning a complaint(s) or investigation(s) involving a non-member(s) when such disclosure would serve to protect the public, including, but not limited to, protecting the public from an individual(s) who has engaged in the unauthorized practice of law.
- (e) Notwithstanding paragraph (a), without violating the duty of confidentiality or waiving confidentiality for other purposes, the Chief Trial Counsel or designee, in the exercise of discretion, may disclose documents and information concerning disciplinary inquiries, complaints and investigations to the following individuals or entities:
 - (1) Any Special Deputy Trial Counsel or any employee of the State Bar. Any Special Deputy Trial Counsel or State Bar employee receiving confidential documents or information pursuant to this paragraph (e)(1) shall not disclose such documents or information to any other person or entity without the authorization of the Chief Trial Counsel or designee;
 - (2) Any person or entity providing services to the State Bar. Prior to receiving such confidential information or documents, any such person or entity must execute a confidentiality agreement or non-disclosure agreement with the State Bar, or a contract containing a confidentiality or non-disclosure clause;

- (3) Members of the Judicial Nominees Evaluation Commission or Review Committee as to matters concerning nominees in any jurisdiction;
 - (4) Witnesses or potential witnesses in conjunction with an inquiry, complaint, investigation, or proceeding;
 - (5) Other governmental agencies responsible for the enforcement of civil or criminal laws, including but not limited to information within the definitions set forth in Business and Professions Code sections 6043.5 and 6044.5;
 - (6) Agencies and other jurisdictions responsible for professional licensing;
 - (7) The complainant or lawful designee;
 - (8) The member(s) who is (are) the subject of the inquiry, complaint or investigation or their counsel of record, if any;
 - (9) Judges of the State Bar Court;
 - (10) Any person or entity to the extent that such disclosure is authorized by Business and Professions Code sections 6094.5(b), 6086.14 or other statutory provision or any other law; or
 - (11) Third-party recipients of subpoenas duces tecum, when service of a narrowly tailored supporting declaration is necessary to inform subpoenaed party why his or her private information is being subpoenaed.
- (f) In exercising his or her discretion pursuant to paragraph (e), the Chief Trial Counsel or designee shall consider the purposes for which disclosure is sought, the State Bar's policy of promoting information sharing within the State Bar where necessary to advance the State Bar's goals and objectives, the need to maintain the confidentiality of the documents or information at issue, and the risk that the disclosure sought would lead to an improper or unlawful disclosure beyond the intended recipient(s) of the documents or information at issue. To protect the confidentiality of particular documents or information, to prevent the disclosure of information or documents beyond the intended recipient(s), or to prevent the use of disclosed information for improper purposes, the Chief Trial Counsel or designee may impose limitations or conditions on any disclosure pursuant to paragraph (e), including but not limited to: redaction; anonymization; limits on further disclosure to other persons or entities; confidentiality or non-disclosure agreements; and limits on the use of disclosed documents or information.
- (g) This rule is not intended to conflict with and shall not be construed as conflicting with Business and Professions Code section 6079.5(a), which provides that the Chief Trial Counsel "shall report to and serve under the Regulation, Admissions, and Discipline Oversight Committee of the Board of Trustees of the State Bar or its successor committee on attorney discipline, and shall not serve under the direction of the chief executive officer."

Rule 2302. DISCLOSURE OF INFORMATION

- (a) Except as otherwise provided by law or these rules, information concerning inquiries, complaints or investigations is confidential, and shall not be shared outside of the State Bar Office of the Chief Trial Counsel. There is no duty of confidentiality with respect to non-members; however, the Chief Trial Counsel or designees may assert confidentiality with respect to inquiries, complaints, or investigations regarding non-members, if, in the discretion of the Chief Trial Counsel or designees, that is necessary to protect members of the public.
- (b) A member whose conduct is the subject of an inquiry, complaint or investigation may waive confidentiality.
- (c) Notwithstanding the provisions of paragraph (b), the Chief Trial Counsel or designee may decline to waive confidentiality regarding an inquiry, complaint or investigation, if it is determined that an ongoing investigation may be substantially prejudiced by a public disclosure before the filing of a notice of disciplinary charges.
- (d) (1) Notwithstanding paragraph (a), without violating the duty of confidentiality or waiving confidentiality for other purposes, the Chief Trial Counsel or designee, after private notice to the member, may disclose documents or information concerning a complaint(s) or investigation(s) for the protection of the public when the necessity for disclosing information outweighs the necessity for preserving confidentiality, including but not limited to the following circumstances:
 - (A) A member has caused, or is likely to cause, harm to client(s), the public, or to the administration of justice, such that the public or specific individuals should be advised of the nature of the allegations. The following additional factors shall be considered in making this determination:
 - (i) The maintenance of public confidence in the discipline system's exercise of self-regulation;
 - (ii) The member's current membership status;
 - (iii) The record of prior discipline of the member;
 - (iv) The potential for the imposition of a substantial disciplinary sanction;
 - (v) The existence of any other public matters;
 - (vi) The status of the complaint or investigation;
 - (vii) The waiver of confidentiality by the member;
 - (viii) The gravity of the underlying allegations; and
 - (ix) The member's cooperation with the State Bar.

- (B) A member has committed criminal acts or is under investigation by law enforcement authorities;
- (C) A member is under investigation by a regulatory or licensing agency, or has committed acts or made omissions which may reasonably result in investigation by a regulatory or licensing agency; [or](#)
- (D) The member is the subject of multiple complaints and the Office of the Chief Trial Counsel has determined not to pursue all of the complaints. The Office of the Chief Trial Counsel may inform complainants whose allegations have not been pursued of the status of the other investigations or the manner in which the other complaint(s) against the member have been resolved, e. g., by directional letter, warning letter, admonition, agreement in lieu of discipline, or private reproof; ~~or.~~
- (2) If the Chief Trial Counsel, for any reason, declines to exercise the authority provided by paragraph (d)(1), or disqualifies himself or herself from acting under paragraph (d)(1), he or she shall appoint a designee to act in his or her place.
- (3) The Chief Trial Counsel or designee, may define the scope of information disclosed and may limit the information disclosed pursuant to paragraph (d)(1) ~~(A)~~, above, to specified individuals or entities.
- (4) Except as otherwise provided by law or these rules, if the Chief Trial Counsel or designee discloses documents or information pursuant to paragraph (d)(1) through (d)(3), the Chief Trial Counsel or designee may issue, if appropriate, one or more public announcements and may disclose information concerning a complaint(s) or investigation(s) involving a member(s), which includes a statement of the status or disposition of the complaint(s) or investigation(s); clarifying the procedures involved; and defending the right of the member(s) to a fair hearing on the allegations of misconduct.
- (5) The Chief Trial Counsel or designee may issue, if appropriate, one or more public announcements and may disclose information concerning a complaint(s) or investigation(s) involving a non-member(s) when such disclosure would serve to protect the public, including, but not limited to, protecting the public from an individual(s) who has engaged in the unauthorized practice of law.
- (e) Notwithstanding paragraph (a), without violating the duty of confidentiality or waiving confidentiality for other purposes, the Chief Trial Counsel [or designee](#), in the exercise of discretion, may disclose documents and information concerning disciplinary inquiries, complaints and investigations to the following individuals or entities:
- (1) ~~To Any Special Deputy Trial Counsel or any employee of the State Bars of the State bar Office of the Chief Trial Counsel, the State Bar Office of General Counsel or any Special Deputy Trial Counsel;~~ [Any Special Deputy Trial Counsel or State Bar employee receiving confidential documents or information pursuant to this paragraph \(e\)\(1\) shall not disclose such documents or information to any other person or entity without the authorization of the Chief Trial Counsel or designee;](#)
- (2) [Any person or entity providing services to the State Bar. Prior to receiving such confidential information or documents, any such person or entity must execute a confidentiality](#)

agreement or non-disclosure agreement with the State Bar, or a contract containing a confidentiality or non-disclosure clause;

- (32) ~~To m~~Members of the Judicial Nominees Evaluation Commission or Review Committee as to matters concerning nominees in any jurisdiction;
- (43) ~~To w~~Witnesses or potential witnesses in conjunction with an inquiry, complaint, investigation, or proceeding;
- (54) ~~To e~~Other governmental agencies responsible for the enforcement of civil or criminal laws, including but not limited to information within the definitions set forth in Business and Professions Code sections 6043.5 and 6044.5;
- (65) ~~To a~~Agencies and other jurisdictions responsible for professional licensing;
- (76) ~~To t~~The complainant or lawful designee;
- (87) ~~To t~~The member(s) who is (are) the subject of the inquiry, complaint or investigation or their counsel of record, if any;
- (98) ~~To j~~Judges of the State Bar Court; ~~or~~
- (109) ~~To a~~Any ~~other~~ person or entity to the extent that such disclosure is authorized by Business and Professions Code sections 6094.5(b), 6086.14 or other statutory provision or any other law; or :
- ~~(10) To employees of a language interpretation or language translation company under contract with the State Bar to provide language translation or language interpretation services. Any contract between the State Bar and a language interpretation or language translation company shall include a confidentiality clause or non-disclosure agreement.~~
- (11) ~~To t~~Third-party recipients of subpoenas duces tecum, when service of a narrowly tailored supporting declaration is necessary to inform subpoenaed party why his or her private information is being subpoenaed.
- (f) In exercising his or her discretion pursuant to paragraph (e), the Chief Trial Counsel or designee shall consider the purposes for which disclosure is sought, the State Bar's policy of promoting information sharing within the State Bar where necessary to advance the State Bar's goals and objectives, the need to maintain the confidentiality of the documents or information at issue, and the risk that the disclosure sought would lead to an improper or unlawful disclosure beyond the intended recipient(s) of the documents or information at issue. To protect the confidentiality of particular documents or information, to prevent the disclosure of information or documents beyond the intended recipient(s), or to prevent the use of disclosed information for improper purposes, the Chief Trial Counsel or designee may impose limitations or conditions on any disclosure pursuant to paragraph (e), including but not limited to: redaction; anonymization; limits on further disclosure to other persons or entities; confidentiality or non-disclosure agreements; and limits on the use of disclosed documents or information.
- (g) This rule is not intended to conflict with and shall not be construed as conflicting with Business and Professions Code section 6079.5(a), which provides that the Chief Trial

Counsel “shall report to and serve under the Regulation, Admissions, and Discipline Oversight Committee of the Board of Trustees of the State Bar or its successor committee on attorney discipline, and shall not serve under the direction of the chief executive officer.”