



The State Bar of California

OPEN SESSION

AGENDA ITEM

54-121 JANUARY 2020

REGULATION AND DISCIPLINE COMMITTEE II.A

DATE: January 24, 2020

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

FROM: James J. Chang, Assistant General Counsel
Carissa N. Andresen, Assistant General Counsel

SUBJECT: Rule of Procedure 2605 (Vexatious Complainants) – Approval of
Nonsubstantive Correction Due to Clerical Error

EXECUTIVE SUMMARY

This item corrects an error caused by the inadvertent posting of an incorrect internal nonfinal draft of Rule of Procedure 2605 (Vexatious Complainants) attached to the board agenda item enacted by the Board of Trustees at the September 2019 board meeting.

The correct draft of the rule had previously been approved by the Regulation and Discipline Committee (RAD) at the July 2019 board meeting for circulation for public comment. The correct draft was then circulated publicly and was intended to be presented to the board for approval at the September 2019 board meeting.

This item corrects the error and clarifies that the Board's intention at the September meeting was to enact the correct draft as previously approved by RAD and circulated for public comment.

BACKGROUND

On July 11, 2019, the Regulation and Discipline Committee (RAD) approved for circulation for public comment proposed Rule of Procedure 2605 concerning vexatious complainants (Attachment A). The version of the rule approved by RAD had been provided to RAD members in person at the July 11 meeting because staff had proposed additional clarifying changes after

the board agenda item materials had already been posted online. The correct version of the rule was circulated for public comment.

However, due to an inadvertent staff error, the September board agenda item at which the rule returned to the board from public comment with a request for adoption attached the nonfinal draft that had been previously posted online for the July meeting (Attachment B), rather than the final draft that was provided to RAD members in person at the meeting and subsequently circulated for public comment.

The differences between this nonfinal version inadvertently attached to the September board materials (Attachment B) and the final version circulated for public comment (Attachment A) are shown in a redline comparison in Attachment C. The differences are nonsubstantive and clarifying in nature.

DISCUSSION

This item corrects the error so that the version of Rule 2605 that was circulated for public comment and approved by RAD in July 2019 is deemed approved by the Board as the final enacted version of the rule, effective nunc pro tunc to September 19, 2019, the date of the Board's adoption of the rule.

FISCAL/PERSONNEL IMPACT

None

AMENDMENTS TO RULES OF THE STATE BAR

Title III, Division II, Chapter 6, Rule 2605 of the Rules of Procedure would be corrected to reflect the text of Attachment A.

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: None

RECOMMENDATIONS

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

RESOLVED, that the Regulation and Discipline Committee recommends that the Board of Trustees approve the version of Rule of Procedure 2605 attached hereto as Attachment A, effective nunc pro tunc to September 19, 2019.

Should the Board of Trustees concur in the proposed action, passage of the following resolution is recommended:

RESOLVED, that the Board of Trustees, upon recommendation of the Regulation and Discipline Committee approve the version of Rule of Procedure 2605 attached hereto as Attachment A, effective nunc pro tunc to September 19, 2019.

ATTACHMENT(S) LIST

- A.** The correct version of Rule 2605, as approved for circulation for public comment at the July 2019 board meeting.
- B.** The incorrect version of Rule 2605 inadvertently attached to the materials for the September 2019 board meeting and enacted by the Board.
- C.** Comparison between the versions in attachments A and B.

Rule 2605. Vexatious Complainants

- (a) The Office of Chief Trial Counsel may designate a person a vexatious complainant if, in the preceding two-year period, the complainant has submitted to the State Bar 10 or more communications alleging attorney misconduct that have been finally closed at the inquiry stage without investigation because the communications did not allege sufficient factual or legal grounds to indicate a potential disciplinary violation. The Office of Chief Trial Counsel will mail notice of the designation and a copy of this rule to the complainant at the complainant's last known address.
- (b) For purposes of this rule, a complainant's communication has been "finally closed" if:
 - (i) the complainant failed to seek reopening of the complaint by the Complaint Review Unit of the Office of General Counsel within 90 days of the closure of the communication; or
 - (ii) the Complaint Review Unit denied the complainant's request to reopen the communication and the complainant did not timely file an accusation arising from the communication with the Supreme Court in compliance with California Rules of Court, rule 9.13(d) through (f); or
 - (iii) the Supreme Court denied an accusation arising from the communication.
- (c) A complainant designated as vexatious under this rule may seek review of the designation by filing a request for review with the Presiding Judge of the Review Department of the State Bar Court within 30 days of the mailing of the notice issued pursuant to subdivision (a). The request for review must include a copy of the vexatious complainant designation notice and be accompanied by proof of service on the Office of Chief Trial Counsel, Intake Unit, at the Los Angeles office of the State Bar, and on the Clerk of the State Bar Court at the Los Angeles office. The Office of Chief Trial Counsel may file and serve an answer to the complainant's request for review within 20 days of service of the complainant's request for review. Based upon these written submissions, the State Bar Court will confirm whether the complainant has, in the two-year period preceding the notice of vexatious complainant designation, submitted 10 or more communications alleging attorney misconduct that have been finally closed. If the State Bar Court finds that the requirement of 10 or more finally closed communications, as specified in subdivision (a), was not met, the vexatious complainant designation will be vacated; otherwise, the designation will remain in place. The State Bar Court will not review the merits of the 10 or more communications on which the vexatious complainant designation is based. The Executive Committee of the State Bar Court may adopt rules of practice for these

proceedings.

- (d) The Office of Chief Trial Counsel may decline to review and process any subsequent communications from a person designated a vexatious complainant under this rule unless the communication is verified by the complainant under penalty of perjury and the communication is submitted on the complainant's behalf by an attorney who holds an active license to practice law in the State of California and is not currently in disciplinary proceedings or on disciplinary or criminal probation. If the vexatious complainant is an attorney licensed to practice law in the State of California, the communication must be submitted on the vexatious complainant's behalf by another attorney who is actively licensed to practice law in the State of California and is not currently in disciplinary proceedings or on disciplinary or criminal probation and is not designated as a vexatious complainant pursuant to this rule.
- (e) This rule shall apply retroactively to January 1, 2018.
- (f) This rule does not apply to complaints filed pursuant to Business and Professions Code section 6158.4.

Rule 2605. Vexatious Complainants

- (a) The Office of Chief Trial Counsel may designate a person a vexatious complainant if, in the preceding two-year period, the complainant has submitted to the State Bar 10 or more communications alleging attorney misconduct that have been finally closed at the inquiry stage without investigation because the communications did not allege sufficient factual or legal grounds to indicate a potential disciplinary violation. The Office of Chief Trial Counsel will mail notice of the designation and a copy of this rule to the complainant at the complainant's last known address.
- (b) For purposes of this rule, a complainant's communication has been "finally closed" if:
 - (i) the complainant failed to seek reopening of the complaint by the Complaint Review Unit of the Office of General Counsel within 90 days of the closure of the communication; or (ii) the Complaint Review Unit denied the complainant's request to reopen the communication and the complainant did not timely file an accusation arising from the communication with the Supreme Court in compliance with California Rules of Court, rule 9.13(d) through (f); or (iii) the Supreme Court denied an accusation arising from the communication.
- (c) A complainant designated as vexatious under this rule may seek review of the designation by filing a request for review with the Presiding Judge of the Review Department of the State Bar Court within 30 days of the mailing of the vexatious complainant notice issued by the Office of Chief Trial Counsel under subsection (a). The request for review must include a copy of the vexatious complainant designation notice and be accompanied by proof of service on the Office of Chief Trial Counsel, Intake Unit, at the Los Angeles office of the State Bar, and on the Clerk of the State Bar Court at the Los Angeles office. The Office of Chief Trial Counsel may file and serve an answer to the complainant's request for review within 20 days of service of the complainant's request for review. Based upon these written submissions, the State Bar Court will determine whether the complainant has, in the two-year period preceding the notice of vexatious complainant designation, submitted ten or more communications alleging attorney misconduct that have been finally closed. If the State Bar Court determines that requirement was not met, the vexatious complainant designation will be vacated; otherwise, the designation will remain in place. Proceedings under this rule shall be confidential. The Executive Committee of the State Bar Court may adopt rules of practice for these proceedings.

- (d) The Office of Chief Trial Counsel may decline to review and process any subsequent communications from a person designated a vexatious complainant under this rule unless the communication is verified by the complainant under penalty of perjury and the communication is submitted on the complainant's behalf by an attorney who holds an active license to practice law in the State of California and is not currently in disciplinary proceedings or on disciplinary or criminal probation. If the vexatious complainant is an attorney licensed to practice law in the State of California, the communication must be submitted on the vexatious complainant's behalf by another attorney who is actively licensed to practice law in the State of California and is not currently in disciplinary proceedings or on disciplinary or criminal probation and is not designated as a vexatious complainant pursuant to this rule.
- (e) This rule shall apply retroactively to January 1, 2018.
- (f) This rule does not apply to complaints filed pursuant to Business and Professions Code section 6158.4.

Rule 2605. Vexatious Complainants

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- (b) For purposes of this rule, a complainant's communication has been "finally closed" if: (i) the complainant failed to seek reopening of the complaint by the Complaint Review Unit of the Office of General Counsel within 90 days of the closure of the communication; or (ii) the Complaint Review Unit denied the complainant's request to reopen the communication and the complainant did not timely file an accusation arising from the communication with the Supreme Court in compliance with California Rules of Court, rule 9.13(d) through (f); or (iii) the Supreme Court denied an accusation arising from the communication.
- (c) A complainant designated as vexatious under this rule may seek review of the designation by filing a request for review with the Presiding Judge of the Review Department of the State Bar Court within 30 days of the mailing of the ~~vexatious complainant~~ notice issued ~~by the Office of Chief Trial Counsel under subsection~~ pursuant to subdivision (a). The request for review must include a copy of the vexatious complainant designation notice and be accompanied by proof of service on the Office of Chief Trial Counsel, Intake Unit, at the Los Angeles office of the State Bar, and on the Clerk of the State Bar Court at the Los Angeles office. The Office of Chief Trial Counsel may file and serve an answer to the complainant's request for review within 20 days of service of the complainant's request for review. Based upon these written submissions, the State Bar Court will ~~determine~~ confirm whether the complainant has, in the two-year period preceding the notice of vexatious complainant designation, submitted ~~ten~~ 10 or more communications alleging attorney misconduct that have been finally closed. ~~If the State Bar Court determines~~ finds that the requirement of 10 or more finally closed communications, as specified in subdivision (a), was not met, the vexatious complainant designation will be vacated; otherwise, the designation will remain in place. ~~Proceedings under this rule shall be confidential.~~ The State Bar Court will not review the merits of the 10 or more

[communications on which the vexatious complainant designation is based](#). The Executive Committee of the State Bar Court may adopt rules of practice for these proceedings.

- (d) The Office of Chief Trial Counsel may decline to review and process any subsequent communications from a person designated a vexatious complainant under this rule unless the communication is verified by the complainant under penalty of perjury and the communication is submitted on the complainant's behalf by an attorney who holds an active license to practice law in the State of California and is not currently in disciplinary proceedings or on disciplinary or criminal probation. If the vexatious complainant is an attorney licensed to practice law in the State of California, the communication must be submitted on the vexatious complainant's behalf by another attorney who is actively licensed to practice law in the State of California and is not currently in disciplinary proceedings or on disciplinary or criminal probation and is not designated as a vexatious complainant pursuant to this rule.
- (e) This rule shall apply retroactively to January 1, 2018.
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