



The State Bar of California

OPEN SESSION

AGENDA ITEM

54-121 JULY 2020

REGULATION AND DISCIPLINE COMMITTEE II.A

DATE: July 16, 2020

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

FROM: James J. Chang, Assistant General Counsel

SUBJECT: Amendments to Rules 3.513(F) and 3.550(E)(2) of the Rules of the State Bar of California (Electronic Service of Process and Videoconference Appearances in Fee Arbitration Proceedings) – Return from Public Comment and Request for Approval

EXECUTIVE SUMMARY

On May 12, 2020, the Regulation and Discipline Committee (RAD) authorized a 30-day public comment period for proposed amendments to the Rules of the State Bar of California and State Bar of California Model Rules of Procedure for Fee Arbitrations to allow electronic service of process and videoconference appearances in fee arbitration proceedings.

The State Bar received two public comments, both in support of the proposed amendments.

This item requests approval of the proposed amendments.

BACKGROUND

The COVID-19 pandemic has necessitated changes to State Bar rules to allow fee arbitration proceedings to continue while respecting physical distancing guidelines. At the April and May 2020 Board of Trustees meetings, the Board approved several interim rules to allow electronic service of process and videoconference appearances in fee arbitration proceedings, and authorized circulation for public comment of proposals for permanent rules.

The background of this item was discussed at the May 2020 meeting. See Item 121 May 2020, available at <http://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000025904.pdf>.

DISCUSSION

Two public comments were received, both in support of the rule. The first commenter, an attorney who represents clients in State Bar matters, stated that videoconference appearances are more effective and economical than telephone appearances. The second commenter, a member of the public, stated that in the age of the Internet it is appropriate to adopt new technology to facilitate access to justice.

Staff recommends adoption of the rule as circulated for public comment.

FISCAL/PERSONNEL IMPACT

None

AMENDMENTS TO RULES OF THE STATE BAR

Title 3, Division 4, Chapter 2, Rules 3.513(F) and 3.540(E)(2) are proposed to be amended as set forth in Attachment B.

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: None

RECOMMENDATIONS

Should the Regulation and Discipline Committee concur in the proposed action, passage of the following resolution is recommended:

RESOLVED, that the Regulation and Discipline Committee recommends that the Board of Trustees approve the proposed amendments to Rules 3.513 and 3.540 of the Rules of the State Bar of California and Rules 27.3-27.4 of the State Bar of California Model Rules of Procedure for Fee Arbitrations as set forth in Attachments A, B, and C respectively.

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, approves the proposed amendments to Rules 3.513 and 3.540 of the Rules of the State Bar of California and Rules 27.3-27.4 of the State Bar of California Model Rules of Procedure for Fee Arbitrations as set forth in Attachments A, B, and C respectively.

ATTACHMENT(S) LIST

- A.** Proposed Amendment to Rule 3.513 of the Rules of the State Bar of California [Permitting Electronic Service] (Redline Version)
- B.** Proposed Amendment to Rule 3.540 of the Rules of the State Bar of California [Permitting Videoconference Appearances] (Redline Version)
- C.** Proposed Amendment to 27.3-27.4 of the State Bar of California Model Rules of Procedure for Fee Arbitrations

**Proposed Amendment to Rule 3.513 of the Rules of the State Bar of California
[Permitting Electronic Service] (Redline Version)**

AMENDMENT to Rule 3.513 of the Rules of the State Bar of California:

Rule 3.513 Service; receipt; dates

- (A) Unless these rules provide otherwise, service is by personal delivery or by mail pursuant to Code of Civil Procedure section 1013(a). If a party is represented by counsel, service is required only upon that party's counsel, except for service of an award, which is served on the party as well as on counsel.
- (B) Service by mail is complete at the time of deposit in the United States mail or in a business facility used to collect and process correspondence for mailing with the United States Postal Service. The time for performing any act commences on the date service is complete and shall not be extended by reason of service by mail.
- (C) A client who is a party to an arbitration is served at the latest address provided to the State Bar. If a client fails to advise the State Bar of his or her current address, the State Bar may close a client request for arbitration or enforcement thirty days after learning that the address is not current.
- (D) An attorney who is a party to an arbitration or who represents a party in an arbitration is served at the attorney's address of record with the State Bar.
- (E) A filing or other communication submitted to the State Bar electronically or by facsimile is deemed to be received on the date of receipt of the transmission only when the State Bar receives the original within five days of the electronic or facsimile submission
- (F) Electronic Service
 - (i) In addition to the methods of service provided for in subdivision (A) of this rule, the parties to an arbitration may consent to electronic service of documents upon each other pursuant to Code of Civil Procedure section 1010.6(a)(1)(A)-(C).
 - (ii) The parties to an arbitration may consent to receive electronic service of documents from the State Bar in lieu of service by mail by providing to the State Bar written consent to receive electronic service of documents from the State Bar at the party's designated electronic address.

**Proposed Amendment to Rule 3.540 of the Rules of the State Bar of California
[Permitting Videoconference Appearances] (Redline Version)**

Rule 3.540 Preparation for hearing

- (A) Discovery is not permitted except as provided by this rule.
- (B) Nothing in these rules deprives a client of the right to inspect and obtain the client's file kept by the attorney. This provision does not apply to a non-client.
- (C) Before a hearing the parties
 - (1) are encouraged to agree to issues not in dispute and to voluntarily exchange documents;
 - (2) may be required by the sole arbitrator or panel chair to clarify issues, submit additional documentation, or exchange documents, and the sole arbitrator or panel may decline to admit into evidence any document a party was required to exchange but did not; and
 - (3) may request issuance of a subpoena in accordance with these rules.
- (D) A party seeking to have a subpoena issued must submit to the State Bar a completed but unsigned subpoena form approved by the State Bar, with proof of service on all parties. Upon a showing of good cause, the presiding arbitrator, or panel chair if appointed, may issue a signed subpoena. The requesting party is responsible for service of the subpoena and any witness fees.
- (E) At least ten days before the hearing a party may submit a written request that the sole arbitrator or panel chair permit the party to
 - (1) waive personal appearance and submit testimony and exhibits by declaration under penalty of perjury;
 - (2) appear by telephone or videoconference; or
 - (3) designate an attorney or non-attorney representative because of inability to attend the hearing.

**Proposed Amendment to 27.3-27.4 of the State Bar of California
Model Rules of Procedure for Fee Arbitrations**

RULE 27.0 Waiver of Personal Appearance.

27.1 Upon advance approval of the Panel Chair, any party may waive personal appearance and submit to the hearing panel testimony and exhibits by written declaration under penalty of perjury.

27.2 Any party may designate a lawyer or non-lawyer representative.

27.3 Any party unable to attend a hearing may request to appear by telephone or videoconference, subject to the advance approval of the Panel Chair.

27.4 A request for waiver of appearance or designation of a representative and the submission of testimony by written declaration or request for telephonic or videoconference appearance pursuant to this rule shall be filed with the Panel Chair and served on all parties at least 10 days prior to the hearing.