



The State Bar of California

OPEN SESSION

AGENDA ITEM

54-122 JULY 2020

REGULATION AND DISCIPLINE COMMITTEE II.B

DATE: July 13, 2020

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

FROM: James J. Chang, Assistant General Counsel

SUBJECT: Amended Interim Rule of Procedure 5.26.1 (Electronic Service of Process in State Bar Court Proceedings) - Request for Approval

EXECUTIVE SUMMARY

This item requests the approval by the Board of Trustees of amended Interim Rule of Procedure 5.26.1, to continue allowing electronic service of process in State Bar Court proceedings while the State Bar solicits public comment on a proposal for a permanent electronic service rule.

BACKGROUND

On April 16, 2020, the Board of Trustees approved interim Rule of Procedure 5.26.1 to allow electronic service of process in State Bar Court proceedings.¹ Interim Rule 5.26.1 was enacted as an emergency measure due to the COVID-19 state of emergency and was made effective immediately without prior public comment. Pursuant to Rule 1.10(C) of the Rules of the State Bar of California, no interim measure may remain in effect for longer than 120 days without Board approval. Accordingly, interim Rule of procedure 5.26.1 is currently set to expire on August 14, 2020. This item seeks the Board's approval to amend and reauthorize Interim Rule 5.26.1 for another 120-day period.

¹ Agenda Item 702 April 2020, available at <http://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000025870.pdf>

In Item III.C of this meeting, the Regulation and Discipline Committee is set to solicit public comment on a rule proposal to allow electronic service of process in State Bar Court proceedings on a permanent basis.

DISCUSSION

This item proposes reauthorization of Interim Rule of Procedure 5.26.1, with minor amendments, in order to continue allowing parties to engage in electronic service of process in State Bar Court proceedings while the State Bar considers a proposal for a permanent rule (Item III.C).

This proposal for reauthorization of Interim Rule 5.26.1 includes minor technical amendments to address stakeholder feedback. First, the amended interim rule adds “electronic notification” as an allowable form of electronic service (conforming to Code of Civil Procedure section 1010.6(a)(1)(C)). Second, the amended interim rule requires that if a sealed or confidential document is served electronically, the document must be encrypted (conforming to Code of Civil Procedure section 1010.6(a)(8)). Attachment B provides a redline comparison against the previous version of Interim Rule 5.26.1 reflecting these amendments.

Staff recommends that pursuant to Rule 1.10(C) of the Rules of the State Bar of California and due to the continued COVID-19 emergency, amended Interim Rule 5.26.1 be enacted immediately without prior public comment for a period of 120 days through November 13, 2020. If permanent Rule 5.26.1 is enacted during the 120-day period, it will supersede Interim Rule 5.26.1.

FISCAL/PERSONNEL IMPACT

No significant fiscal or personnel impact.

AMENDMENTS TO RULES OF THE STATE BAR

Title 5, Division 2, Chapter 1, Interim Rule 5.26.1 of the Rules of Procedure of the State Bar of California is proposed to be enacted as set forth in Attachment A.

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 determine that, pursuant to rule 1.10(C) of the Rules of the State Bar of California, the continued COVID-19 emergency requires reauthorization of rules to permit electronic service in State Bar Court proceedings without prior public comment; and it is

FURTHER RESOLVED, that the Regulation and Discipline Committee recommends that the Board of Trustees adopt amended interim Rule of Procedure 5.26.1 as set forth in Attachment A.

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, having determined pursuant to Rule 1.10(C) of the Rules of the State Bar of California that an emergency justifies immediate enactment of this interim measure without public comment, hereby enacts amended interim Rule 5.26.1 of the Rules of Procedure as set forth in Attachment A.

ATTACHMENT(S) LIST

- A.** Proposal for Amended Interim Rule of Procedure 5.26.1 (Clean Version)
- B.** Proposal for Amended Interim Rule of Procedure 5.26.1 (Redline Comparison to April 16, 2020 Version)

(A) **Electronic Service.**

- (1) In addition to the methods of service of later pleadings permitted by Rule 5.26(F), a party may serve later pleadings by an electronic service method as defined in subdivision (B). The court may electronically serve any document issued by the court to a party's or other person's email address. The court may use the attorney's email address that is reported to the State Bar pursuant to rule 9.9(a) of the California Rules of Court to electronically serve a party or other person.
- (2) Employees of the Office of Chief Trial Counsel must be served at their State Bar email address. State Bar licensees, other than Special Deputy Trial Counsel handling matters pursuant to rule 2201 and employees of the Office of Chief Trial Counsel must be served at the email address provided to the State Bar to facilitate communications by the State Bar with its licensees pursuant to rule 9.9(a)(2) of the California Rules of Court. Special Deputy Trial Counsel handling matters pursuant to rule 2201 and other parties and persons must be served at an email address provided to the court and all parties for service of documents.
- (3) Sealed materials and documents or other materials containing unredacted confidential information must be encrypted prior to being served electronically to ensure that they are not improperly disclosed. If the sealed materials or documents or other materials containing unredacted confidential information cannot be encrypted, they must not be served electronically.

(B) **Definitions.** The following definitions apply to this rule:

- (1) "Electronic service" means service of a document, on a party or other person, by electronic transmission. Electronic service may be performed directly by a party or other person, or by an agent of a party or other person, including the party or other person's attorney.
- (2) "Electronic transmission" means the transmission of a document by electronic means to the electronic service address.
- (3) "Electronic notification" means the notification of the party or other person that a document is served by sending an electronic message to the electronic address at or through which the party or other person has authorized electronic service, specifying the exact name of the document served, and providing a hyperlink at which the served document may be viewed and downloaded. A party or other person that serves a document by means of electronic notification must maintain the availability of the original document served, without any change or alteration, at the hyperlink until final disposition of the matter.

(C) **Computing Time.**

- (1) Service of a pleading or document that is served by electronic service is deemed complete at the time of the electronic transmission of the pleading or document.
- (2) When service is made by electronic transmission, the prescribed period to act or respond is extended by two Court days.
- (3) The provisions of Rule 5.28 otherwise apply to computing time.

(D) **Proof of Electronic Service.**

- (1) When a party serves a document by electronic service pursuant to this rule, a party must make proof of electronic service under Code of Civil Procedure section 1013b, subdivisions (a) and (b). The proof of electronic service may include an electronic signature as defined in State Bar Court General Order 20-03.
- (2) For purposes of this rule, a party complies with the electronic service requirements if the party executes the party's own proof of service after completing the electronic transmission.
- (3) The proof of electronic service must be filed with the court pursuant to Rule 5.27(C).

(E) **Change of Electronic Service Address.** A party or other person whose electronic service address changes while the proceeding is pending must promptly notify in writing, including by email, all other parties and all other persons required to be served of his or her change of electronic service address.

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