



The State Bar of California

OPEN SESSION AGENDA ITEM REGULATION AND DISCIPLINE COMMITTEE III.C

DATE: July 13, 2020

TO: Members, Regulation and Discipline Committee

FROM: Melanie Lawrence, Interim Chief Trial Counsel
Steven Moawad, Special Assistant to the Chief Trial Counsel

SUBJECT: Proposed Amendments to Rules and Proposed New Rules Regarding Electronic Service, Electronic Signatures, and Trial Exhibits: Request to Circulate for Public Comment

EXECUTIVE SUMMARY

This proposal would amend the definitions in the Rules of Procedure of the State Bar and the rules pertaining to service of later pleadings, proof of service, computing time, and trial exhibits to:

1. Permit the electronic service of documents that are not initial pleadings,
2. Define the procedure for electronic service,
3. Permit the use of electronic signatures,
4. Establish rules for electronic proof of service,
5. Define the method for computing time when service is performed electronically, and
6. Permit the parties to exchange and lodge electronic trial exhibits.

BACKGROUND

The COVID-19 emergency highlighted the need to update State Bar Court procedures. On April 3, 2020, the State Bar Court, with the authorization of the Board of Trustees, issued General Orders 20-03 regarding electronic signatures and 20-04 regarding electronic service. On April 16, 2020, the Board of Trustees adopted Interim Rule 5.26.1 permitting the electronic service of

later pleadings. Interim Rule 5.26.1 currently expires on August 14, 2020, but may be extended by the Board of Trustees. Following the adoption of Interim Rule 5.26.1, the State Bar Court issued General Order 20-05, rescinding General Order 20-04.

Under current law, Federal courts and California state courts permit electronic service and the use of electronic signatures. This item seeks to update permanently the Rules of Procedure of the State Bar to permit electronic service, the use of electronic signatures, and the exchange and lodging of electronic trial exhibits. These changes will allow the State Bar disciplinary system to operate more efficiently not only during an extended period of shelter at home, but into the future.

DISCUSSION

The proposed changes to rule 5.4 (Definitions) include defining the terms “Document,” “Electronic notification,” “Electronic service,” “Electronic service address,” “Electronic signature,” and “Electronic transmission.” The definitions of “Electronic notification,” “Electronic service,” and “Electronic transmission” come from Code of Civil Procedure section 1010.6. The definition of “Electronic signature” is based on the definition of electronic signature in rule 2.257 of the California Rules of Court. The proposed rule 5.4, in conjunction with proposed rule 5.26.2, specifically authorizes the use of a copy of an original signature, otherwise known as a digitized signature, in documents not under penalty of perjury, when served by the person signing the document or by another person at the direction of the signer.

The proposed amendment to rule 5.26 specifically authorizes electronic service as set forth in proposed new rule 5.26.1.

Proposed new rule 5.26.1 sets forth the procedures for electronic service. This proposed rule is largely based on Code of Civil Procedure section 1010.6. The definition of “Electronic Service Address,” in conjunction with this proposed rule, permits the court and the Office of Chief Trial Counsel (OCTC) to electronically serve State Bar licensees at the private email address provided to the State Bar to facilitate communications with its licensees and permits other persons or parties to serve State Bar employees at their State Bar email addresses. Proposed rule 5.26.1(F) provides that any document that is served electronically between 5:00 p.m. and 11:59:59 p.m. or at any time on a noncourt day shall be deemed to be served on the next court day.

While many electronic service rules permit service until midnight, these late night service rules have led to attorney-wellness issues.¹ While many of the lawyers working in the attorney discipline system do not face the same pressures as those in some other practice areas, in August 2017, the National Task Force on Lawyer Well-Being issued a report, *The Path to Lawyer*

¹ For discussions of the attorney wellness issues related to late night filings, see:

- Mass. Supreme Judicial Court Steering Committee on Lawyer Well-Being Report to the Justices, Submitted July 15, 2019, <https://www.mass.gov/files/documents/2019/07/18/SJC-Steering-Committee-Lawyer-Well-Being-Report-July-2019.pdf> (Last visited July 2, 2020).
- In Re Work Life Balance Recommendations And The Adoption of New Filing Deadlines for All Delaware Courts, July 18, 2018, <https://courts.delaware.gov/rules/pdf/Work-Life-Balance-FINAL-ORDER.pdf> (Last visited July 2, 2020).

Well-Being: Practical Recommendations for Positive Change², which recommended that attorney regulators should “take actions to meaningfully communicate that lawyer well-being is a priority.” OCTC believes it is appropriate for the disciplinary system for the largest State Bar in the United States to model wellness solutions.

Proposed Rule 5.26.1(K) clarifies that electronic versions of documents that are not initial pleadings may be served by United States mail, overnight mail, personal delivery, or State Bar interoffice mail, as set forth in rule 5.26. This subdivision expressly permits the exchange of electronic documents on a thumb drive or other digital media storage device.

Proposed new rule 5.26.2 sets forth the procedures for the use of electronic signatures. Electronic signatures are required to make the electronic service process completely electronic. Rule 5.26.2 is largely based on rule 2.257 of the California Rules of Court and Code of Civil Procedure section 1010.6. For example, proposed new rule 5.26.2(B) which covers documents not under penalty of perjury, is based on Code of Civil Procedure 1010.6(b)(2)(A). Subdivision (2) of 5.26.2(B), pertaining to documents requiring the signatures of two parties not under the penalty of perjury, is based on rule 2.257(c)(2) of the California Rules of Court. Proposed new rule 5.26.2(C) is based on Code of Civil Procedure section 1010.6(b)(2)(B) and rule 2.257(b)(1) and (b)(2) of the California Rules of Court.

Leading up to the proposal, OCTC engaged with the State Bar Court and the Association of Discipline Defense Counsel, two important stakeholders, in discussions about the proposed changes. During discussions with the Association of Discipline Defense Counsel and the State Bar Court, they expressed concern that rule 5.26.2 was too convoluted, and specifically that Government Code section 16.5, which was adopted in 1995, was antiquated and obsolete as a result of the ubiquitous use of electronic communication. OCTC does not disagree that Government Code section 16.5 is technical, but OCTC’s proposed rules try to mitigate the negative effects of this. First, the definition of “electronic signature” in 5.4(30) includes “a copy of an original signature placed into the document by electronic means” (e.g., a scanned image) and “includes a typographic signature that includes ‘/s/’ followed by the signer’s name, e.g., ‘/s/ John Doe.’” Proposed rule 5.26.2(B)(1), dealing with documents not signed under penalty of perjury, permits the use of either a scanned image of a signature or a typographic signature that includes “/s/”, when the document is served by the signer of the document or a person acting at signer’s direction. Proposed rule 5.26.2(B)(2) provides methods for signing documents such as stipulations that require the signatures of multiple parties.

Proposed rule 5.26.2(C), addressing documents signed under penalty of perjury, permits the use of such a signature when the document is served by the declarant or declarant’s counsel. Additionally, if a party chooses to avail themselves of the procedure to sign and maintain a printed copy of a document under penalty of perjury as evidence that the electronic signature

² American Bar Association, Commission on Lawyer Assistance Programs, Report from the National Task Force on Lawyer Well-Being, <https://www.americanbar.org/content/dam/aba/images/abanews/ThePathToLawyerWellBeingReportRevFINAL.pdf> (Last visited July 2, 2020).

is legitimate, proposed rule 5.26.2(C)(2) eliminates the Rule of Court requirement to maintain the document after final disposition of the matter.³

Proposed amendments to rule 5.27 provide that a proof of service for a document served electronically shall be made pursuant to proposed new rule 5.27.1 and clarifies that Code of Civil Procedure 1013a still applies to documents served by US Mail, overnight mail, fax, or State Bar interoffice mail.

Proposed new rule 5.27.1 regarding proof of electronic service is largely based on rule 2.251 of the California Rules of Court and Code of Civil Procedure section 1013b, however, references to e-filing have been removed.

The proposed amendment to 5.28 extends the time to act or respond by two court days when service is made electronically.

Current rule 5.101.1 requires the parties to provide tabbed, labeled binders of exhibits to the opposing party. Proposed rule 5.101.1 permits the parties instead to provide electronic copies of exhibits to opposing parties unless a respondent establishes that they do not have a computer or cannot otherwise reasonably access electronic exhibits. During discussions about the proposed rule change, the court expressed concern that OCTC would provide electronic versions of exhibits to a respondent with limited computer access (or limited technological capability), which may require such a respondent to print out the exhibits, which, depending on the number and size of exhibits, could be expensive. OCTC understands the concern, and altered the language to include a meet and confer process about the format of the exhibits exchanged. Further, no party is required to provide exhibits electronically.

Rule 5.101.1 currently provides that each party to a State Bar Court action, in addition to providing original exhibits for the Supreme Court, must lodge with the State Bar Court two copies of all exhibits for the use of the court and witnesses. Under current rules, the two copies of exhibits lodged with the court “must be presented in a tabbed exhibit binder, which binder must bear on both its front and spine affixed labels identifying the case name and number and the identity of the proffering party.” Rule 5.101.1(D)(2). Proposed amendments to Rule 5.101.1 instead require the parties to lodge with the court only one additional copy of exhibits in either electronic or paper form, as ordered by the court. During discussions about the proposed rule change, the court expressed a desire to maintain the requirement that the court be given a paper copy of the exhibits in a tabbed binder with labels and that, if the parties exchange electronic exhibits that the court would also receive an electronic copy of the exhibits. OCTC is concerned about enshrining in the rule a requirement that the parties provide the court with additional exhibits in paper format and instead proposes a more flexible approach that still permits the court to order the parties to provide a paper copy of the exhibits in individual cases. OCTC respectfully declined to accept the suggestion that we provide an additional electronic copy of exhibits if the parties exchange exhibits electronically because we were concerned about building a requirement that we perform redundant work into the rule.

³ The language limiting the need to maintain the physical document comes from Code of Civil Procedure section 1010.6(b)(2)(B)(i).

In proposed rule 5.101.1, parties must still supply witnesses with copies of relevant exhibits, but do not need to provide each witness all exhibits. The format of the exhibits for witnesses (e.g., paper or electronic) will be as ordered by the court.

Proposed amendments to rule 5.101.1 also set forth the requirements for electronic exhibits. These requirements include that the exhibit must be capable of being read using software in the public domain or generally available at a reasonable cost, be text searchable when technologically feasible without impairment of the document's image, and include electronic bookmarks with links to the first page of each exhibit and with bookmark titles that identify the exhibit number or letter and briefly describe the exhibit. The requirements for electronic exhibits are from rule 2.256(b) of the California Rules of Court. Under the proposed rule, paper exhibits must be presented in the same form as the current rule.

In addition to the specific concerns of the court, the court expressed general support for retaining Interim Rule 5.26.1 until e-filing is implemented. The court's position is that there will be at least four sets of Rules of Procedure revisions in a short period of time (the pre-COVID rules, the interim COVID rules, these proposed rules, and any changes after implementation of e-filing). They also believe that revisions to the Rules of Practice may be necessary in light of the various changes to the Rules of Procedure. The court is concerned that multiple rule changes may be confusing for respondents and their counsel. OCTC agrees that ideally fewer rule changes would be required, but notes the significant work associated with providing multiple tabbed binders of exhibits. Further, the timeline for e-filing is unclear at the moment.

This proposal also includes nonsubstantive clean-up of various rules, including:

- Moving the definitions of "Confidential Information" and "Confidential Proceeding" from rule 5.4(56) and (57), respectively, to rule 5.4(16) and (17) so they are in alphabetical order
- Separating the definition of "Office of Chief Trial Counsel" from the definition of "Notice of Disciplinary Charges" in rule 5.4(37) to proposed rule 5.4(46) and adding "investigates and" to the current definition. The definitions of "Office of Chief Trial Counsel" and "Notice of Disciplinary Charges" were previously combined unintentionally into one definition.
- Eliminating the definition of "President of the State Bar" because the title no longer exists and because there is no other reference to the title in the rules.
- Replacing the word "subsection" with the word "subdivision" in various places.

FISCAL/PERSONNEL IMPACT

None

AMENDMENTS TO RULES OF THE STATE BAR

Title 5, Division 1, Chapter 1, Rule 5.4, Rules of Procedure of the State Bar;
Title 5, Division 2, Chapter 1, Rule 5.26, Rules of Procedure of the State Bar;
Title 5, Division 2, Chapter 1, Rule 5.27, Rules of Procedure of the State Bar;
Title 5, Division 2, Chapter 1, Rule 5.28, Rules of Procedure of the State Bar;

Title 5, Division 2, Chapter 5, Rule 5.101.1, Rules of Procedure of the State Bar; and proposed new rules 5.26.1, 5.26.2, and 5.27.1.

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: None

Objective: 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 authorize staff to make available, for public comment for a period of 30-days, proposed amendments to:
Title 5, Division 1, Chapter 1, Rule 5.4, Rules of Procedure of the State Bar;
Title 5, Division 2, Chapter 1, Rule 5.26, Rules of Procedure of the State Bar;
Title 5, Division 2, Chapter 1, Rule 5.27, Rules of Procedure of the State Bar;
Title 5, Division 2, Chapter 1, Rule 5.28, Rules of Procedure of the State Bar;
Title 5, Division 2, Chapter 5, Rule 5.101.1, Rules of Procedure of the State Bar; and
proposed new rules 5.26.1, 5.26.2, and 5.27.1, as set forth in Attachment A; and it is

FURTHER RESOLVED, that this authorization for release for public comment is not, and shall not be construed as, a statement or recommendation of approval of the proposed amended Rules of Procedure of the State Bar of California.

ATTACHMENT(S) LIST

- A.** Proposed Amended Rules 5.4, 5.26, 5.27, 5.28, and 5.101.1, and Proposed New Rules 5.26.1, 5.26.2, AND 5.27.1 (Clean Version)
- B.** Proposed Amended Rules 5.4, 5.26, 5.27, 5.28, and 5.101.1, and Proposed New Rules 5.26.1, 5.26.2, AND 5.27.1 (Redline Version)

**PROPOSED AMENDED RULES 5.4, 5.26, 5.27, 5.28, AND 5.101.1, AND PROPOSED NEW
RULES 5.26.1, 5.26.2, AND 5.27.1
(CLEAN VERSION)**

RULE 5.4 DEFINITIONS

These definitions apply to all rules, unless otherwise stated. Defined terms are not capitalized unless they are proper names.

- (1) “Appellant” means a party who makes a request for review or summary review by the Review Department.
- (2) “Appellee” means a party opposing an appellant in a State Bar Court proceeding.
- (3) “Applicant” means a party seeking admission to the State Bar in a moral character proceeding under these rules.
- (4) “Assigned judge” means the hearing judge assigned to adjudicate a State Bar Court proceeding.
- (5) “Attorney” means an attorney subject to the disciplinary or regulatory jurisdiction of the State Bar.
- (6) “Board of Trustees” means the Board of Trustees of the State Bar or its designee.
- (7) “Board of Trustees Discipline Oversight Committee” means the committee designated by the Board of Trustees to address attorney discipline matters.
- (8) “California State Bar Court Reporter” means the publication of the State Bar of California containing the opinions of the State Bar Court, Review Department.
- (9) “Chief Trial Counsel” means the chief trial counsel of the State Bar appointed in accordance with Business and Professions Code § 6079.5, or the counsel’s designee.
- (10) “Clerk” means the Clerk of the State Bar Court or the clerk’s designee.
- (11) “Client Security Fund” means the Client Security Fund established by the State Bar under Business and Professions Code § 6140.5 to compensate victims of attorney dishonesty.
- (12) “Committee of Bar Examiners” means the committee appointed by the Board of

Trustees under Business and Professions Code §§ 6046–6046.5 to address admissions matters.

(13) “Consumer” means a consumer within the meaning of Code of Civil Procedure § 1985.3(a)(2).

(14) “Complaint” means a communication alleging misconduct by a State Bar attorney sufficient to warrant an investigation that may result in discipline of the attorney if the allegations are proved.

(15) “Complainant” means a person who alleges misconduct by a State Bar attorney.

(16) “Confidential Information” means (a) sensitive personally identifiable information of any individual, including but not limited to social security numbers, dates of birth, home addresses, driver’s license numbers, names of minor children, and medical information (including information regarding mental health and substance abuse); and (b) personally identifiable financial information such as bank or other financial account numbers, including routing numbers. Such information should be redacted in any document, including but not limited to pleadings and exhibits, meant to become part of the court record, unless accompanied by a motion to seal or filed in a confidential proceeding. Social security numbers and account numbers can be redacted to show the last four digits.

(17) “Confidential Proceeding” means any proceeding so defined by rule or statute as being confidential. Confidential proceedings will not appear on the State Bar Court’s publicly accessible portal or docket.

(18) “Counsel” means an active attorney of the State Bar, or an attorney admitted pro hac vice, who is counsel of record for a party in a State Bar Court proceeding.

(19) “Court” means the State Bar Court, Hearing Department, Review Department, or any associated judge.

(20) “Court days” are the days that the State Bar Court is open for business, published in an annual calendar that indicates holidays and is available from the Clerk.

(21) “Customer” means a customer within the meaning of Government Code § 7465.

(22) “Days” are all calendar days, including days on which the State Bar Court is not open for business.

(23) “Declaration” means an affidavit or writing that complies with the requirements of Code of Civil Procedure § 2015.5.

(24) “Deputy Trial Counsel” means the attorney from the Office of Chief Trial Counsel

who represents the State Bar in a State Bar Court proceeding – other than the Chief Trial Counsel.

(25) “Disciplinary proceeding” means a proceeding initiated for the purpose of seeking the imposition of discipline against a State Bar attorney.

(26) “Document” means any submission in paper format or any electronic submission that is capable of being read using software in the public domain or generally available at a reasonable cost and is text searchable when technologically feasible without impairment of the document’s image.

(27) “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.

(28) “Electronic service,” or “serve electronically,” means service of a document, on a party or other person, by either electronic transmission or electronic notification. Electronic service may be performed directly by a party or other person, by an agent of a party or other person, including the party or other person’s attorney, or through an electronic filing service provider. Prior consent of the party or other person to be served electronically is not required to serve documents as provided in these rules.

(29) “Electronic service address” means an email address at or through which the party or other person is deemed to have authorized electronic service. The initial electronic service address, as set forth below, is deemed valid for a party or other person if the party or other person has not filed and served notice of a change of electronic service address pursuant to subdivision (E) of rule 5.26.1:

- (a) For employees of the Office of Chief Trial Counsel, the State Bar email address,
- (b) For State Bar licensees, 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, and
- (c) For other parties and persons, including Special Deputy Trial Counsel handling matters pursuant to rule 2201, the email address provided to the court and all parties for service of documents.

(30) “Electronic signature” means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign a document or record created, generated, sent, communicated, received, or stored by electronic means. Electronic signature includes a copy of an original signature placed into the document by electronic means and includes a

typographic signature that includes “/s/” followed by the signer’s name, e.g., “/s/ John Doe.” For purposes of these rules, a “digital signature” as defined in subdivision (d) of Section 16.5 of the Government Code is a type of electronic signature. A typewritten name created in a word processing program, regardless of the use of a cursive font, that is not preceded by “/s/” is not an electronic signature unless it otherwise complies with Government Code section 16.5.

(31) “Electronic transmission” means the transmission of a document by electronic means to an electronic service address.

(32) “Executive Committee” means the committee of the State Bar Court appointed by the Presiding Judge under Business and Professions Code § 6086.65(b).

(33) “Executive Director” means the Chief Executive Officer of the State Bar or the officer’s designee.

(34) “Financial institution” has the meaning provided in Government Code § 7465(a).

(35) “Formal proceeding” means a proceeding in the State Bar Court, including any disciplinary proceeding.

(36) “General Counsel” means the General Counsel of the State Bar or the counsel’s designee.

(37) “Hearing” means a proceeding on the record before a judge of the Hearing Department, including:

- (a) a conference – but not a settlement conference;
- (b) a hearing on a motion;
- (c) evidentiary hearing;
- (d) a trial; or
- (e) any other proceeding before a judge of the Hearing Department.

(38) “Hearing Department” means the trial department of the State Bar Court established by Business and Professions Code §§ 6079.1 and 6086.5.

(39) “Hearing judge” means a judge of the Hearing Department.

(40) “Initial pleading” means the notice of disciplinary charges, notice of hearing, petition, or other pleading that begins a State Bar Court proceeding.

(41) “Inquiry” means an evaluation to decide whether any action is warranted by the State Bar based on information relating to the conduct of a State Bar attorney and received by the Office of Chief Trial Counsel.

(42) “Investigation” means the process of obtaining, evaluating, and reviewing evidence

and information.

(43) “Judge” means a judge or judge pro tempore of the State Bar Court appointed in accordance with Business and Professions Code § 6079.1 or § 6086.65.

(44) “Judicial Nominees Evaluation Commission” means the State Bar agency that evaluates candidates for state judicial office under Government Code § 12011.5.

(45) “Notice of Disciplinary Charges” means the initial pleading that provides notice of the rules, statutes, or orders the attorney is alleged to have violated.

(46) “Office of Chief Trial Counsel” or “Office of Trials” means the State Bar office that investigates and prosecutes attorney discipline and regulatory matters under the direction of the Chief Trial Counsel.

-(47) “Overnight mail” means any method of overnight delivery service authorized by Code of Civil Procedure § 1013.

(48) “Party” means the State Bar or a respondent, petitioner, applicant, or attorney who is the subject of a State Bar Court proceeding.

(49) “Petitioner” means a party who has filed a petition permitted in State Bar Court proceedings, such as a petition for reinstatement or a petition for transfer to active enrollment.

(50) “Pleading” means any paper filed by a party as part of the record in a State Bar Court proceeding – except a transcript or an exhibit.

(51) “Presiding Judge” means the judge who presides over the State Bar Court and is appointed in accordance with Business and Professions Code §§ 6079.1 and 6086.65, or the judge’s designee.

(52) “Reasonable cause” means a situation that would lead a person of ordinary care and prudence to believe, or entertain a strong suspicion, that something is true.

(53) “Respondent” means an attorney who is the subject of a disciplinary proceeding in the State Bar Court.

(54) “Response” means a responsive pleading or answer.

(55) “Review Department” means the appellate department of the State Bar Court established in accordance with Business and Professions Code § 6086.65.

(56) “Settlement Conference” means a meeting between parties conducted to reach a

compromise without trial.

(57) “State Bar” means the State Bar of California.

(58) “State Bar Court” means the adjudicative tribunal established in accordance with Business and Professions Code §§ 6079.1, 6086.5, and 6086.65.

(59) “State Bar Court proceeding” means a proceeding in the State Bar Court, including a formal proceeding.

(60) “Supervising Judge” means the supervising judge of the Hearing Department.

(61) “Supreme Court” means the Supreme Court of California.

(62) “Trial” means an evidentiary hearing on the merits of a State Bar Court proceeding before a hearing judge – not including a hearing on a motion or probable cause hearing under Business and Professions Code § 6007(b).

(63) “Trust Account Financial Record” means a financial record that an attorney must maintain in accordance with the Rules of Professional Conduct of the State Bar.

Rule 5.26 Service of Later Pleadings

- (A) **Proof.** Proof of service on all other parties must accompany any pleading, except joint pleadings, filed after the initial pleading.
- (B) **Service on the State Bar.** To serve the State Bar, a party must serve the designated deputy trial counsel of the Office of the Chief Trial Counsel.
- (C) **Service on an Attorney.** A party must serve an attorney at the attorney’s address in the State Bar’s attorney records—unless the attorney has expressly requested that service be made to a different address or has asked for service to his or her counsel.
- (D) **Service on a Nonattorney.** When serving a nonattorney, a party must serve the person at the address given in the most recent pleading the person has filed. But if the person has not provided an address, the party may accomplish service by any method permitted under the Code of Civil Procedure.
- (E) **Change of Address.** When a person’s address changes while a proceeding is pending, or the person wants to be served with pleadings and notices at a different address, the person must file and serve all other parties with a written notice of change of address and a specific request that future service be made to the new address.

- (F) **Method of Service.** A party must serve later pleadings by United States mail, overnight mail, personal delivery, State Bar interoffice mail, electronic service as set forth in rule 5.26.1, or, if the receiving party consents, by fax.
- (G) **Service by Fax.** Service by fax is equal to service by overnight mail. The proof of service must state:
 - (1) that the receiving party consented;
 - (2) the date and time of the fax;
 - (3) the telephone numbers of the transmitting and receiving machines; and
 - (4) that the transmitting machine reported a complete transmission without error.
- (H) **Notice Period; Time for Response.** Rule 5.28 applies to notices and responses.

Rule 5.26.1 Electronic Service by Parties or Court

- (A) **Electronic Service by the Court.** The Clerk may electronically serve any document issued by the court to a party's or other person's electronic service address as defined in rule 5.4(29) and as provided in this rule.
- (B) **Electronic Service By a Party.** A document that is not an initial pleading may be served electronically to a party's or other person's electronic service address as defined in rule 5.4(29) and as provided in this rule.
- (C) **When Authorized.** When a document may be served by United States mail, overnight mail, State Bar interoffice mail, or, by fax, the document may be served electronically. If a document is required to be served by personal delivery or by certified mail, electronic service of the document is not authorized unless the court has ordered electronic service on the party or other person. Prior consent of the party or other person to be served electronically is not required to serve documents as provided in this rule.
- (D) **Initial Electronic Service Address.** The initial electronic service address, as defined in rule 5.4(29), is deemed valid for a party or other person if the party or other person has not filed and served notice of a change of electronic service address pursuant to subdivision (E).
- (E) **Change of Electronic Service Address.** A party or other person whose electronic service address changes while the action or proceeding is pending must promptly file a notice of change of electronic service address electronically with the court and must serve this notice electronically on all other parties and all other persons required to be served.
- (F) **Timing of Service.** Any document that is served electronically between 12:00 a.m. and 4:59:59 p.m. on a court day shall be deemed served on that court day. Any document that is served electronically between 5:00 p.m. and 11:59:59 p.m. on a court day or at any time on a noncourt day shall be deemed served on the next court day.

- (G) **Perfection of Service.** Electronic service of a document is deemed complete at the time of the electronic transmission of the document or at the time that the electronic notification of service of the document is sent.
- (H) **Sealed Materials or Documents or Other Materials Containing Unredacted Confidential Information.** A party seeking to submit sealed materials or documents or other materials containing unredacted confidential information must comply with rule 5.4(16) and rule 5.12. 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.
- (I) **Legal Effect.** A document that is served electronically shall have the same legal effect as an original paper document.
- (J) **Signature.** A document that is served electronically may be signed as set forth in rule 5.26.2.
- (K) **Other Methods of Service Permitted.** Any document in electronic format that is not an initial pleading can also be served by United States mail, overnight mail, personal delivery, or State Bar interoffice mail, as set forth in rule 5.26.

Rule 5.26.2 Electronic Signature

- (A) **Deemed to Be Original.** Notwithstanding any provision of law to the contrary, including Evidence Code sections 255 and 260, an electronic signature is deemed to be an original signature if either subdivision (B) or subdivision (C) applies.
- (B) **Not Under Penalty of Perjury.**
 - (1) When a document to be filed or served requires the signature of any person, not under penalty of perjury, the document is deemed to have been signed by the person whose electronic signature is attached or logically associated with the document provided the document was served by the signer or a person acting at the signer's direction.
 - (2) When a document, such as a stipulation, requires the signatures of opposing parties or persons other than the party serving the document not under penalty of perjury, the following procedures apply:
 - (a) If the opposing party signed the document using an ink signature, the person serving the document represents, by the act of serving electronically, that, prior to serving the document on the court, all parties have signed the document and that the serving party has the original, including any ink signatures, in their possession. The party serving the document electronically on the court must maintain the printed form of the document bearing the

original ink signature(s) until final disposition of the case, and make it available for review and copying upon the request of the court or any party to the proceeding in which it is filed; or

(b) The opposing party or other person has signed the document using an electronic signature and that electronic signature is unique to the person using it, capable of verification, under the sole control of the person using it, and linked to data in such a manner that if the data are changed, the electronic signature is invalidated.

(C) **Under Penalty of Perjury.** When a document to be filed or served electronically provides for a signature under penalty of perjury of any person, the document is deemed to have been signed by the person whose electronic signature is attached or logically associated with the document if the document was served by the person or an agent of the person and either of the following conditions is satisfied:

- (1) The declarant has signed the document using an electronic signature and declares under penalty of perjury under the laws of the state of California that the information submitted is true and correct. If the person serving the document is not declarant or declarant's counsel, the electronic signature must be unique to the declarant, capable of verification, under the sole control of the declarant, and linked to data in such a manner that if the data are changed, the electronic signature is invalidated; or
- (2) The declarant, before serving the document, has physically signed a printed form of the document. The person serving the document represents, by the act of serving electronically, that the declarant has complied with this subdivision. The person serving the document electronically on the court must maintain the printed form of the document bearing the original signature until final disposition of the case, and make it available for review and copying upon the request of the court or any party to the proceeding in which it is filed.

Rule 5.27 Proof of Service

- (A) **By a Party or Other Person.** A party or other person serving a document by United States mail, overnight mail, fax, or State Bar interoffice mail must make proof of service pursuant to Code of Civil Procedure § 1013a. A party or other person serving a document electronically must make a proof of service pursuant to rule 5.27.1.
- (B) **By the Clerk.** The Clerk must make proof of service pursuant to Code of Civil Procedure § 1013a(4) for documents served by United States mail, overnight mail, fax, or State Bar interoffice mail and pursuant to rule 5.27.1 for documents served electronically.
- (C) **Filing Proof of Service**
The proof of service must be attached to all pleadings at the time of filing with the court.

Rule 5.27.1 Proof of Electronic Service

- (A) **Methods.** Proof of electronic service may be made by any of the following methods:
- (1) An affidavit setting forth the exact title of the document served and filed in the cause, showing the name and residence or business address of the person making the service, and that he or she is over the age of 18 years.
 - (2) A certificate setting forth the exact title of the document served and filed in the cause, showing the name and business address of the person making the service, and showing that he or she is an active licensee of the State Bar of California.
 - (3) In case of service by the Clerk, a certificate by that Clerk setting forth the exact title of the document served and filed in the cause, showing the name of the Clerk.
- (B) **Required Elements.** Proof of electronic service shall include all of the following:
- (1) The electronic service address and the residence or business address of the person making the electronic service.
 - (2) The date of electronic service.
 - (3) The name and electronic service address of the person served.
 - (4) A statement that the document was served electronically.
- (C) **Signature.** Proof of electronic service must be signed as provided in rule 5.26.2(C).
- (D) **Electronic Format.** Proof of electronic service may be in electronic form and may be submitted electronically to the court.

Rule 5.28 Computing Time

- (A) **Method.** In State Bar Court proceedings, time is computed under Code of Civil Procedure §§ 12, 12a, 12b, 13, 13a, or 13b. Code of Civil Procedure § 1013(a) applies to service by United States mail or State Bar interoffice mail. When service is made electronically, by overnight mail, or by fax, the prescribed period to act or respond is extended by two court days.
- (B) **Calendar Days and Court Days.** “Days” means calendar days when referring to the period within which an act must be performed or a specified period of notice. But “days” means court days when the period is five days or fewer and not extended by the manner of service.

Rule 5.101.1 Trial Exhibits

- (A) **Marking of Exhibits.** Each proposed exhibit for trial must be pre-marked by the parties for identification using a system of letters or numbers as ordered by the court. Any exhibit consisting of more than a single page must be pre-marked on the initial page with the exhibit number or letter, with each individual page within the exhibit, commencing with the first page of the exhibit, being paginated in numerical sequence. Upon request, a party must make the original or underlying document of any proffered exhibit available for inspection and copying.

- (B) **Exchange of Exhibits by Parties.** Unless otherwise ordered by the court, at least 10 days prior to the pretrial conference, the parties must exchange copies of all documents to be offered as exhibits or otherwise used at trial. Exhibits may be exchanged in electronic or paper form. If a party establishes to the Office of Chief Trial Counsel after a meet and confer that they do not have a computer or otherwise cannot reasonably access electronic exhibits, the Office of Chief Trial Counsel will provide exhibits to the party in paper form.
- (C) **Format of Electronic Exhibits:** Electronic exhibits must be pre-marked and paginated, as set forth in subdivision (A). Electronic exhibits must be capable of being read using software in the public domain or generally available at a reasonable cost, be text searchable when technologically feasible without impairment of the document's image, and include electronic bookmarks with links to the first page of each exhibit and with bookmark titles that identify the exhibit number or letter and briefly describe the exhibit.
- (D) **Format of Paper and Oversized Exhibits:** Except for oversized exhibits (large exhibits which cannot be reasonably copied or presented in a binder), all paper exhibits exchanged by the parties must be pre-marked and paginated, as set forth in subdivision (A), and be in the same form as those lodged with the court pursuant to paragraph (2) of subdivision (F). The parties may exchange an alternative form of any oversized paper exhibit by reasonably duplicating that exhibit.
- (CE) **Proposed Exhibit List.**
- (1) **Contents; restriction on evidence of prior discipline.** Together with the pretrial statement, each party must submit, as a separate document, a proposed exhibit list of all documents and other items to be offered by such party as exhibits at trial, properly described and indexed. Records of prior discipline to be used solely as evidence in aggravation must not be included in the proposed exhibit list.
 - (2) **Format of exhibit list.** The proposed exhibit list must be in the format approved by the court for use as the master exhibit list at trial. No exhibits are to be attached to the pretrial statement or the proposed exhibit list.
- (DF) **Lodging and Offering of Exhibits at Trial**
- (1) **Exhibits to be formally offered:** At the time trial commences, or as otherwise ordered by the court, each party must supply to the Clerk the original exhibits identified in such party's proposed exhibit list. Each exhibit must be top-hole-punched, pre-marked, and paginated as described above, and, if over 30 pages, top-bound with a clasp. These original exhibits are not to be presented to the Clerk in binders. A copy of such exhibits, pre-marked and paginated as described above, must have been previously provided to opposing counsel. Except as provided below, these exhibits will become part of the official court record.
 - (2) **Exhibits lodged for use of court:** In addition to the exhibits to be formally offered, at the time trial commences or by the date ordered by the court, each party must lodge one set of its proposed exhibits for the use of the court, in either paper or electronic format, as ordered by the court. Exhibits must be

formatted pursuant to subdivision (C) or (D). Paper exhibits must be presented in a tabbed exhibit binder, which binder must bear on both its front and spine affixed labels identifying the case name and number and the identity of the proffering party.

- (3) **Exhibits lodged for use of witnesses:** Unless otherwise ordered by the court, at the time trial commences or as soon as practicable, the parties must provide to each witness a copy of any exhibit(s) relevant to the witness. The exhibit(s) must be in paper or electronic format as ordered by the court.
 - (4) **Witnesses:** No exhibit may be shown to a witness during trial until opposing counsel has had an opportunity to examine it.
- (G) **Withdrawn Exhibits.** A proposed exhibit which is withdrawn or not offered into evidence will not become part of the official record.
- (H) **Exhibits Judicially Noticed.** Requests for judicial notice will be governed by California Evidence Code sections 450 et seq. Any document for which judicial notice is requested must be pre-marked, disclosed to the other parties, and lodged with the court in accordance with subdivision (F) of this rule.
- (I) **Failure to Comply.** Failure to comply with this rule without good cause may constitute grounds for such orders as the court deems proper, including, but not limited to, exclusion of exhibits from evidence.

**PROPOSED AMENDED RULES 5.4, 5.26, 5.27, 5.28, AND 5.101.1, AND PROPOSED NEW
RULES 5.26.1, 5.26.2, AND 5.27.1
(REDLINE VERSION)**

RULE 5.4 DEFINITIONS

These definitions apply to all rules, unless otherwise stated. Defined terms are not capitalized unless they are proper names.

- (1) “Appellant” means a party who makes a request for review or summary review by the Review Department.
- (2) “Appellee” means a party opposing an appellant in a State Bar Court proceeding.
- (3) “Applicant” means a party seeking admission to the State Bar in a moral character proceeding under these rules.
- (4) “Assigned judge” means the hearing judge assigned to adjudicate a State Bar Court proceeding.
- (5) “Attorney” means an attorney subject to the disciplinary or regulatory jurisdiction of the State Bar.
- (6) “Board of Trustees” means the Board of Trustees of the State Bar or its designee.
- (7) “Board of Trustees Discipline Oversight Committee” means the committee designated by the Board of Trustees to address attorney discipline matters.
- (8) “California State Bar Court Reporter” means the publication of the State Bar of California containing the opinions of the State Bar Court, Review Department.
- (9) “Chief Trial Counsel” means the chief trial counsel of the State Bar appointed in accordance with Business and Professions Code § 6079.5, or the counsel’s designee.
- (10) “Clerk” means the Clerk of the State Bar Court or the clerk’s designee.
- (11) “Client Security Fund” means the Client Security Fund established by the State Bar under Business and Professions Code § 6140.5 to compensate victims of attorney dishonesty.
- (12) “Committee of Bar Examiners” means the committee appointed by the Board of Trustees under Business and Professions Code §§ 6046–6046.5 to address admissions matters.

(13) “Consumer” means a consumer within the meaning of Code of Civil Procedure § 1985.3(a)(2).

(14) “Complaint” means a communication alleging misconduct by a State Bar attorney sufficient to warrant an investigation that may result in discipline of the attorney if the allegations are proved.

(15) “Complainant” means a person who alleges misconduct by a State Bar attorney.

(16) “Confidential Information” means (a) sensitive personally identifiable information of any individual, including but not limited to social security numbers, dates of birth, home addresses, driver’s license numbers, names of minor children, and medical information (including information regarding mental health and substance abuse); and (b) personally identifiable financial information such as bank or other financial account numbers, including routing numbers. Such information should be redacted in any document, including but not limited to pleadings and exhibits, meant to become part of the court record, unless accompanied by a motion to seal or filed in a confidential proceeding. Social security numbers and account numbers can be redacted to show the last four digits.

(17) “Confidential Proceeding” means any proceeding so defined by rule or statute as being confidential. Confidential proceedings will not appear on the State Bar Court’s publicly accessible portal or docket.

~~(16)~~(18) “Counsel” means an active attorney of the State Bar, or an attorney admitted pro hac vice, who is counsel of record for a party in a State Bar Court proceeding.

~~(17)~~(19) “Court” means the State Bar Court, Hearing Department, Review Department, or any associated judge.

~~(18)~~(20) “Court days” are the days that the State Bar Court is open for business, published in an annual calendar that indicates holidays and is available from the Clerk.

~~(19)~~(21) “Customer” means a customer within the meaning of Government Code § 7465.

~~(20)~~(22) “Days” are all calendar days, including days on which the State Bar Court is not open for business.

~~(21)~~(23) “Declaration” means an affidavit or writing that complies with the requirements of Code of Civil Procedure § 2015.5.

~~(22)~~(24) “Deputy Trial Counsel” means the attorney from the Office of Chief Trial Counsel who represents the State Bar in a State Bar Court proceeding – other than the

Chief Trial Counsel.

~~(23)~~(25) “Disciplinary proceeding” means a proceeding initiated for the purpose of seeking the imposition of discipline against a State Bar attorney.

(26) “Document” means any submission in paper format or any electronic submission that is capable of being read using software in the public domain or generally available at a reasonable cost and is text searchable when technologically feasible without impairment of the document’s image.

(27) “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.

(28) “Electronic service,” or “serve electronically,” means service of a document, on a party or other person, by either electronic transmission or electronic notification. Electronic service may be performed directly by a party or other person, by an agent of a party or other person, including the party or other person’s attorney, or through an electronic filing service provider. Prior consent of the party or other person to be served electronically is not required to serve documents as provided in these rules.

(29) “Electronic service address” means an email address at or through which the party or other person is deemed to have authorized electronic service. The initial electronic service address, as set forth below, is deemed valid for a party or other person if the party or other person has not filed and served notice of a change of electronic service address pursuant to subdivision (E) of rule 5.26.1:

- (a) For employees of the Office of Chief Trial Counsel, the State Bar email address,
- (b) For State Bar licensees, 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, and
- (c) For other parties and persons, including Special Deputy Trial Counsel handling matters pursuant to rule 2201, the email address provided to the court and all parties for service of documents.

(30) “Electronic signature” means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign a document or record created, generated, sent, communicated, received, or stored by electronic means. Electronic signature includes a copy of an original signature placed into the document by electronic means and includes a typographic signature that includes “/s/” followed by the signer’s name, e.g., “/s/ John

Doe.” For purposes of these rules, a “digital signature” as defined in subdivision (d) of Section 16.5 of the Government Code is a type of electronic signature. A typewritten name created in a word processing program, regardless of the use of a cursive font, that is not preceded by “/s/” is not an electronic signature unless it otherwise complies with Government Code section 16.5.

(31) “Electronic transmission” means the transmission of a document by electronic means to an electronic service address.

~~(24)~~(32) “Executive Committee” means the committee of the State Bar Court appointed by the Presiding Judge under Business and Professions Code § 6086.65(b).

~~(25)~~(33) “Executive Director” means the Chief Executive Officer of the State Bar or the officer’s designee.

~~(26)~~(34) “Financial institution” has the meaning provided in Government Code § 7465(a).

~~(27)~~(35) “Formal proceeding” means a proceeding in the State Bar Court, including any disciplinary proceeding.

~~(28)~~(36) “General Counsel” means the General Counsel of the State Bar or the counsel’s designee.

~~(29)~~(37) “Hearing” means a proceeding on the record before a judge of the Hearing Department, including:

- (a) a conference – but not a settlement conference;
- (b) a hearing on a motion;
- (c) evidentiary hearing;
- (d) a trial; or
- (e) any other proceeding before a judge of the Hearing Department.

~~(30)~~(38) “Hearing Department” means the trial department of the State Bar Court established by Business and Professions Code §§ 6079.1 and 6086.5.

~~(31)~~(39) “Hearing judge” means a judge of the Hearing Department.

~~(32)~~(40) “Initial pleading” means the notice of disciplinary charges, notice of hearing, petition, or other pleading that begins a State Bar Court proceeding.

~~(33)~~(41) “Inquiry” means an evaluation to decide whether any action is warranted by the State Bar based on information relating to the conduct of a State Bar attorney and received by the Office of Chief Trial Counsel.

~~(34)~~(42) “Investigation” means the process of obtaining, evaluating, and reviewing

evidence and information.

~~(35)~~(43) “Judge” means a judge or judge pro tempore of the State Bar Court appointed in accordance with Business and Professions Code § 6079.1 or § 6086.65.

~~(36)~~(44) “Judicial Nominees Evaluation Commission” means the State Bar agency that evaluates candidates for state judicial office under Government Code § 12011.5.

~~(37)~~(45) “Notice of Disciplinary Charges” means the initial pleading that provides notice of the rules, statutes, or orders the attorney is alleged to have violated. ~~“Office of Chief Trial Counsel” or “Office of Trials” means the State Bar office that prosecutes attorney discipline and regulatory matters under the direction of the Chief Trial Counsel.~~

(46) “Office of Chief Trial Counsel” or “Office of Trials” means the State Bar office that investigates and prosecutes attorney discipline and regulatory matters under the direction of the Chief Trial Counsel.

~~(38)~~(47) “Overnight mail” means any method of overnight delivery service authorized by Code of Civil Procedure § 1013.

~~(39)~~(48) “Party” means the State Bar or a respondent, petitioner, applicant, or attorney who is the subject of a State Bar Court proceeding.

~~(40)~~(49) “Petitioner” means a party who has filed a petition permitted in State Bar Court proceedings, such as a petition for reinstatement or a petition for transfer to active enrollment.

~~(41)~~(50) “Pleading” means any paper filed by a party as part of the record in a State Bar Court proceeding – except a transcript or an exhibit.

~~(42) “President of the State Bar” means the chief officer of the State Bar elected in accordance with Business and Professions Code § 6020.~~

~~(43)~~(51) “Presiding Judge” means the judge who presides over the State Bar Court and is appointed in accordance with Business and Professions Code §§ 6079.1 and 6086.65, or the judge’s designee.

~~(44)~~(52) “Reasonable cause” means a situation that would lead a person of ordinary care and prudence to believe, or entertain a strong suspicion, that something is true.

~~(45)~~(53) “Respondent” means an attorney who is the subject of a disciplinary proceeding in the State Bar Court.

~~(46)~~(54) “Response” means a responsive pleading or answer.

~~(47)~~(55) “Review Department” means the appellate department of the State Bar Court established in accordance with Business and Professions Code § 6086.65.

~~(48)~~(56) “Settlement Conference” means a meeting between parties conducted to reach a compromise without trial.

~~(49)~~(57) “State Bar” means the State Bar of California.

~~(50)~~(58) “State Bar Court” means the adjudicative tribunal established in accordance with Business and Professions Code §§ 6079.1, 6086.5, and 6086.65.

~~(51)~~(59) “State Bar Court proceeding” means a proceeding in the State Bar Court, including a formal proceeding.

~~(52)~~(60) “Supervising Judge” means the supervising judge of the Hearing Department.

~~(53)~~(61) “Supreme Court” means the Supreme Court of California.

~~(54)~~(62) “Trial” means an evidentiary hearing on the merits of a State Bar Court proceeding before a hearing judge – not including a hearing on a motion or probable cause hearing under Business and Professions Code § 6007(b).

~~(55)~~(63) “Trust Account Financial Record” means a financial record that an attorney must maintain in accordance with the Rules of Professional Conduct of the State Bar.

~~(56) “Confidential Information” means (a) sensitive personally identifiable information of any individual, including but not limited to social security numbers, dates of birth, home addresses, driver’s license numbers, names of minor children, and medical information (including information regarding mental health and substance abuse); and (b) personally identifiable financial information such as bank or other financial account numbers, including routing numbers. Such information should be redacted in any document, including but not limited to pleadings and exhibits, meant to become part of the court record, unless accompanied by a motion to seal or filed in a confidential proceeding. Social security numbers and account numbers can be redacted to show the last four digits.~~

~~(57) “Confidential Proceeding” means any proceeding so defined by rule or statute as being confidential. Confidential proceedings will not appear on the State Bar Court’s publicly accessible portal or docket.~~

Rule 5.26 Service of Later Pleadings

- (A) **Proof.** Proof of service on all other parties must accompany any pleading, except joint pleadings, filed after the initial pleading.
- (B) **Service on the State Bar.** To serve the State Bar, a party must serve the designated deputy trial counsel of the Office of the Chief Trial Counsel.
- (C) **Service on an Attorney.** A party must serve an attorney at the attorney's address in the State Bar's attorney records —unless the attorney has expressly requested that service be made to a different address or has asked for service to his or her counsel.
- (D) **Service on a Nonattorney.** When serving a nonattorney, a party must serve the person at the address given in the most recent pleading the person has filed. But if the person has not provided an address, the party may accomplish service by any method permitted under the Code of Civil Procedure.
- (E) **Change of Address.** When a person's address changes while a proceeding is pending, or the person wants to be served with pleadings and notices at a different address, the person must file and serve all other parties with a written notice of change of address and a specific request that future service be made to the new address.
- (F) **Method of Service.** A party must serve [later](#) pleadings by United States mail, overnight mail, personal delivery, State Bar interoffice mail, [electronic service as set forth in rule 5.26.1](#), or, if the receiving party consents, by fax.
- (G) **Service by Fax.** Service by fax is equal to service by overnight mail. The proof of service must state:
 - (1) that the receiving party consented;
 - (2) the date and time of the fax;
 - (3) the telephone numbers of the transmitting and receiving machines; and
 - (4) that the transmitting machine reported a complete transmission without error.
- (H) **Notice Period; Time for Response.** Rule 5.28 applies to notices and responses.

[Rule 5.26.1 Electronic Service by Parties or Court](#)

- (L) [Electronic Service by the Court.](#) The Clerk may electronically serve any document issued by the court to a party's or other person's electronic service address as defined in rule 5.4(29) and as provided in this rule.
- (M) [Electronic Service By a Party.](#) A document that is not an initial pleading may be served electronically to a party's or other person's electronic service address as defined in rule 5.4(29) and as provided in this rule.

- (N) **When Authorized.** When a document may be served by United States mail, overnight mail, State Bar interoffice mail, or, by fax, the document may be served electronically. If a document is required to be served by personal delivery or by certified mail, electronic service of the document is not authorized unless the court has ordered electronic service on the party or other person. Prior consent of the party or other person to be served electronically is not required to serve documents as provided in this rule.
- (O) **Initial Electronic Service Address.** The initial electronic service address, as defined in rule 5.4(29), is deemed valid for a party or other person if the party or other person has not filed and served notice of a change of electronic service address pursuant to subdivision (E).
- (P) **Change of Electronic Service Address.** A party or other person whose electronic service address changes while the action or proceeding is pending must promptly file a notice of change of electronic service address electronically with the court and must serve this notice electronically on all other parties and all other persons required to be served.
- (Q) **Timing of Service.** Any document that is served electronically between 12:00 a.m. and 4:59:59 p.m. on a court day shall be deemed served on that court day. Any document that is served electronically between 5:00 p.m. and 11:59:59 p.m. on a court day or at any time on a noncourt day shall be deemed served on the next court day.
- (R) **Perfection of Service.** Electronic service of a document is deemed complete at the time of the electronic transmission of the document or at the time that the electronic notification of service of the document is sent.
- (S) **Sealed Materials or Documents or Other Materials Containing Unredacted Confidential Information.** A party seeking to submit sealed materials or documents or other materials containing unredacted confidential information must comply with rule 5.4(16) and rule 5.12. 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.
- (T) **Legal Effect.** A document that is served electronically shall have the same legal effect as an original paper document.
- (U) **Signature.** A document that is served electronically may be signed as set forth in rule 5.26.2.
- (V) **Other Methods of Service Permitted.** Any document in electronic format that is not an initial pleading can also be served by United States mail, overnight mail, personal delivery, or State Bar interoffice mail, as set forth in rule 5.26.

Rule 5.26.2 Electronic Signature

- (D) **Deemed to Be Original.** Notwithstanding any provision of law to the contrary, including Evidence Code sections 255 and 260, an electronic signature is deemed to be an original signature if either subdivision (B) or subdivision (C) applies.
- (E) **Not Under Penalty of Perjury.**
- (1) When a document to be filed or served requires the signature of any person, not under penalty of perjury, the document is deemed to have been signed by the person whose electronic signature is attached or logically associated with the document provided the document was served by the signer or a person acting at the signer's direction.
 - (2) When a document, such as a stipulation, requires the signatures of opposing parties or persons other than the party serving the document not under penalty of perjury, the following procedures apply:
 - (a) If the opposing party signed the document using an ink signature, the person serving the document represents, by the act of serving electronically, that, prior to serving the document on the court, all parties have signed the document and that the serving party has the original, including any ink signatures, in their possession. The party serving the document electronically on the court must maintain the printed form of the document bearing the original ink signature(s) until final disposition of the case, and make it available for review and copying upon the request of the court or any party to the proceeding in which it is filed; or
 - (b) The opposing party or other person has signed the document using an electronic signature and that electronic signature is unique to the person using it, capable of verification, under the sole control of the person using it, and linked to data in such a manner that if the data are changed, the electronic signature is invalidated.
- (F) **Under Penalty of Perjury.** When a document to be filed or served electronically provides for a signature under penalty of perjury of any person, the document is deemed to have been signed by the person whose electronic signature is attached or logically associated with the document if the document was served by the person or an agent of the person and either of the following conditions is satisfied:
- (1) The declarant has signed the document using an electronic signature and declares under penalty of perjury under the laws of the state of California that the information submitted is true and correct. If the person serving the document is not declarant or declarant's counsel, the electronic signature must be unique to the declarant, capable of verification, under the sole control of the declarant, and linked to data in such a manner that if the data are changed, the electronic signature is invalidated; or

- (2) The declarant, before serving the document, has physically signed a printed form of the document. The person serving the document represents, by the act of serving electronically, that the declarant has complied with this subdivision. The person serving the document electronically on the court must maintain the printed form of the document bearing the original signature until final disposition of the case, and make it available for review and copying upon the request of the court or any party to the proceeding in which it is filed.

Rule 5.27 Proof of Service

- (A) **By a Party or Other Person.** A party or other person serving a document by United States mail, overnight mail, fax, or State Bar interoffice mail must make proof of service ~~under~~pursuant to Code of Civil Procedure § 1013a. A party or other person serving a document electronically must make a proof of service pursuant to rule 5.27.1.
- (B) **By the Clerk.** The Clerk must make proof of service ~~under~~pursuant to Code of Civil Procedure § 1013a(4) for documents served by United States mail, overnight mail, fax, or State Bar interoffice mail and pursuant to rule 5.27.1 for documents served electronically.
- (C) **Filing Proof of Service**
The proof of service must be attached to all pleadings at the time of filing with the court.

Rule 5.27.1 Proof of Electronic Service

- (A) **Methods.** Proof of electronic service may be made by any of the following methods:
- (1) An affidavit setting forth the exact title of the document served and filed in the cause, showing the name and residence or business address of the person making the service, and that he or she is over the age of 18 years.
 - (2) A certificate setting forth the exact title of the document served and filed in the cause, showing the name and business address of the person making the service, and showing that he or she is an active licensee of the State Bar of California.
 - (3) In case of service by the Clerk, a certificate by that Clerk setting forth the exact title of the document served and filed in the cause, showing the name of the Clerk.
- (B) **Required Elements.** Proof of electronic service shall include all of the following:
- (1) The electronic service address and the residence or business address of the person making the electronic service.
 - (2) The date of electronic service.
 - (3) The name and electronic service address of the person served.
 - (4) A statement that the document was served electronically.
- (C) **Signature.** Proof of electronic service must be signed as provided in rule 5.26.2(C).
- (D) **Electronic Format.** Proof of electronic service may be in electronic form and may be submitted electronically to the court.

Rule 5.28 Computing Time

- (A) **Method.** In State Bar Court proceedings, time is computed under Code of Civil Procedure §§ 12, 12a, 12b, 13, 13a, or 13b. Code of Civil Procedure § 1013(a) applies to service by United States mail or State Bar interoffice mail. When service is made electronically, by overnight ~~mail~~mail, or by fax, the prescribed period to act or respond is extended by two ~~Court~~court days.
- (B) **Calendar Days and Court Days.** “Days” means calendar days when referring to the period within which an act must be performed or a specified period of notice. But “days” means ~~Court~~court days when the period is five days or fewer and not extended by the manner of service.

Rule 5.101.1 Trial Exhibits

- (A) **Marking of Exhibits.** Each proposed exhibit for trial must be pre-marked by the parties for identification using a system of letters or numbers as ordered by the court. Any exhibit consisting of more than a single page must be pre-marked on the initial page with the exhibit number or letter, with each individual page within the exhibit, commencing with the first page of the exhibit, being paginated in numerical sequence. Upon request, a party must make the original or underlying document of any proffered exhibit available for inspection and copying.
- (B) **Exchange of Exhibits by Parties.** Unless otherwise ordered by the court, at least 10 days prior to the pretrial conference, the parties must exchange copies of all documents to be offered as ~~exhibits,~~exhibits or otherwise used at trial. Exhibits may be exchanged in electronic or paper form. If a party establishes to the Office of Chief Trial Counsel after a meet and confer that they do not have a computer or otherwise cannot reasonably access electronic exhibits, the Office of Chief Trial Counsel will provide exhibits to the party in paper form. ~~Except for oversized exhibits (large exhibits which cannot be reasonably copied or presented in a binder), all exhibits exchanged by the parties must be pre-marked and paginated, as set forth above, and be in the same form as those lodged with the court. The parties may exchange an alternative form of any oversized exhibit by reasonably duplicating that exhibit.~~
- (C) **Format of Electronic Exhibits:** Electronic exhibits must be pre-marked and paginated, as set forth in subdivision (A). Electronic exhibits must be capable of being read using software in the public domain or generally available at a reasonable cost, be text searchable when technologically feasible without impairment of the document’s image, and include electronic bookmarks with links to the first page of each exhibit and with bookmark titles that identify the exhibit number or letter and briefly describe the exhibit.
- (D) **Format of Paper and Oversized Exhibits:** Except for oversized exhibits (large exhibits which cannot be reasonably copied or presented in a binder), all paper exhibits exchanged by the parties must be pre-marked and paginated, as set forth ~~above~~in

subdivision (A), and be in the same form as those lodged with the court pursuant to paragraph (2) of subdivision (F). The parties may exchange an alternative form of any oversized paper exhibit by reasonably duplicating that exhibit.

(CE) Proposed Exhibit List.

- (1) **Contents; restriction on evidence of prior discipline.** Together with the pretrial statement, each party must submit, as a separate document, a proposed exhibit list of all documents and other items to be offered by such party as exhibits at trial, properly described and indexed. Records of prior discipline to be used solely as evidence in aggravation must not be included in the proposed exhibit list.
- (2) **Format of exhibit list.** The proposed exhibit list must be in the format approved by the court for use as the master exhibit list at trial. No exhibits are to be attached to the pretrial statement or the proposed exhibit list.

(DE) Lodging and Offering of Exhibits at Trial

- (1) **Exhibits to be formally offered:** At the time trial commences, or as otherwise ordered by the court, each party must supply to the Clerk the original exhibits identified in such party's proposed exhibit list. Each exhibit must be top-hole-punched, pre-marked, and paginated as described above, and, if over 30 pages, top-bound with a clasp. These original exhibits are not to be presented to the Clerk in binders. A copy of such exhibits, pre-marked and paginated as described above, must have been previously provided to opposing counsel. Except as provided below, these exhibits will become part of the official court record.
- (2) **Exhibits lodged for use of court and witnesses:** In addition to the ~~original~~ exhibits to be formally offered, at the time trial commences or by the date ordered by the court, or as otherwise ordered by the court, each party must lodge ~~two~~ one separate sets ~~set~~ of its proposed exhibits for the use of the court, in either paper or electronic format, pre-marked and paginated as described above, as ordered by the court. ~~One of these sets is for the use of the court and the other is for the use of witnesses at trial. Each such set~~ Exhibits must be formatted pursuant to subdivision (C) or (D). Paper exhibits must be presented in a tabbed exhibit binder, which binder must bear on both its front and spine affixed labels identifying the case name and number and the identity of the proffering party.
- (3) **Exhibits lodged for use of witnesses:** Unless otherwise ordered by the court, at the time trial commences or as soon as practicable, the parties must provide to each witness a copy of any exhibit(s) relevant to the witness. The exhibit(s) must be in paper or electronic format as ordered by the court.
- ~~(3)~~(4) **Witnesses:** No exhibit may be shown to a witness during trial until opposing counsel has had an opportunity to examine it.

(EG) Withdrawn Exhibits. A proposed exhibit which is withdrawn or not offered into evidence will not become part of the official record.

(FH) Exhibits Judicially Noticed. Requests for judicial notice will be governed by California Evidence Code sections 450 et seq. Any document for which judicial notice is requested

must be pre-marked, disclosed to the other parties, and lodged with the court in accordance with ~~subsection~~ subdivision (D) of this rule.

- (G) **Failure to Comply.** Failure to comply with this rule without good cause may constitute grounds for such orders as the court deems proper, including, but not limited to, exclusion of exhibits from evidence.