



# The State Bar of California

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## **OPEN SESSION**

## **AGENDA ITEM**

**50-3 JANUARY 2022**

## **REGULATION AND DISCIPLINE COMMITTEE III.C**

**DATE:** January 20, 2022

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

**FROM:** George Cardona, Chief Trial Counsel

**SUBJECT:** Amendment to Rules 5.65, 5.337, and 5.345 of the Rules of Procedure  
(Discovery): Return from Public Comment and Request for Approval

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### **EXECUTIVE SUMMARY**

At its November 18, 2021 meeting, the State Bar Regulation and Discipline Committee (RAD) authorized a 45-day public comment period on a proposal to amend various rules of the Rules of Procedure of the State Bar to:

- Authorize discovery of a respondent's financial records and other evidence of financial hardship where the respondent intends to request that monetary sanction be waived, in whole or in part, that monetary sanctions be paid in installments, or that the time to pay be extended.
- Authorize discovery of the names, addresses, and telephone numbers of any person or entity to which the attorney was required by rule 9.20 to provide notice of a disbarment, suspension, or resignation; deliver papers or property; or refund fees that had not been earned, in matters in which a violation of rule 9.20 of the California Rules of Court is alleged.
- Authorize the Office of Chief Trial Counsel (OCTC) to take the respondent's deposition after service of the answer to the notice of hearing on conviction following transmittal of a certified record of conviction.

The State Bar received three public comments by the January 7, 2022 public comment deadline, one in favor of the proposed amendments and two opposed to certain of the proposed amendments. In addition, on January 6, 2022, the State Bar Court informally communicated

with the OCTC regarding the third proposal. After consideration of the public comments and the communication with the State Bar Court, the OCTC is recommending the addition of a clarifying sentence that the respondent's deposition may be conducted remotely in accordance with Code of Civil Procedure section 2025.310. No other change is proposed. This item requests approval of the proposed rule amendments.

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## **BACKGROUND**

### **FINANCIAL RECORDS**

Effective January 1, 1993, Business and Professions Code section 6086.13, allows monetary sanctions to be ordered against attorney respondents in disciplinary proceedings. The amounts collected must be deposited into the Client Security Fund (Bus. & Prof. Code § 6086.13(b)). The statute states that "the State Bar shall, with the approval of the Supreme Court, adopt rules setting forth guidelines for the imposition and collection of monetary sanctions under this section" (Bus. & Prof. Code, § 6086.13(c)).

On March 23, 2020, the California Supreme Court approved rule 5.137, which sets forth guidelines for the imposition of monetary sanctions pursuant to Business and Professions Code section 6086.13(c), with an effective date of April 1, 2020. At its meeting on November 19, 2021, the Board of Trustees approved changes to rules 5.56, 5.57, 5.101, 5.137, 5.138, 5.139, 5.343, and 5.427 of the Rules of Procedure of the State Bar to provide a process for attorneys to seek reduction, waiver, or extension of time to pay imposed sanctions.

While the Rules of Procedure of the State Bar provide a process for attorneys to seek reduction, waiver, or extension of time to pay monetary sanctions, there is no rule that permits the OCTC to assess the financial condition of a respondent who intends to seek a reduction, waiver, or extension of time to pay monetary sanctions. The proposed amendment to add rule 5.65(C)(4) would permit the OCTC to request financial records and other proof of financial hardship, including a completed State Bar Court Financial Declaration, if the disclosing party intends to request that any monetary sanction be waived, in whole or in part, or be paid in installments, or the time to pay be extended. Such records would allow the OCTC to evaluate the need for a reduction, waiver, or extension and make an informed decision as to whether to stipulate, submit, or oppose such a motion.

### **NOTICE PROVIDED UNDER RULE 9.20**

Rule 9.20 of the California Rules of Court provides that the Supreme Court, in any order disbaring or suspending a licensee of the State Bar, or accepting their resignation, may direct the attorney to:

- Notify all clients with pending matters and any co-counsel of their disbarment, suspension, or resignation;
- Notify all clients with pending matters to seek legal advice elsewhere, calling attention to any urgency in seeking the substitution of another attorney or attorneys;
- Deliver to all clients in pending matters any papers or other property to which the

clients are entitled;

- Refund any part of fees paid that have not been earned;
- Notify opposing counsel in pending litigation or, in the absence of counsel, the adverse parties of the disbarment, suspension, or resignation; and
- File a notice with the court, agency, or tribunal before which any litigation is pending for inclusion in the respective file or files.

Similarly, the State Bar Court may order respondents to comply with rule 9.20 of the California Rules of Court, for example, when placing a respondent on interim suspension. Violations of rule 9.20 of the California Rules of Court when compliance with that rule was ordered by the State Bar Court are generally charged as violations of Business and Professions Code section 6103 [Failure to Obey a Court Order].

Rule 5.337 provides for discovery in matters involving a violation of rule 9.20 of the California Rules of Court as ordered by the Supreme Court. The proposed change to rule 5.337 permits discovery that more closely parallels the notice requirements of rule 9.20. The proposed addition of “co-counsel” to subparagraphs (B)(1)(c) and (B)(2) is consistent with the language of rule 9.20(a)(1). The proposed addition of “(or in the absence of counsel, the adverse party)” to subparagraphs (B)(1)(c) and (B)(2) permits discovery of the notice required in rule 9.20(a)(4). The proposed addition of subparagraph (B)(1)(d) permits discovery of information relevant to 9.20(a)(2) and (a)(3).

When an allegation of a violation of Business and Professions Code section 6103 is based on the respondent’s failure to comply with the State Bar Court’s order to comply with rule 9.20 of the California Rules of Court, an original (O) case type is opened. As a result, the OCTC is not entitled to the specific discovery listed in rule 5.337, because rule 5.330 provides that rule 5.337 only applies to 9.20 proceedings (N case type). Rule 5.65 governs discovery where a violation of Business & Professions Code section 6103 is alleged based on failure to comply with rule 9.20 of the California Rules of Court as ordered by the State Bar Court. The proposed amendment to rule 5.65(C)(5) would permit the same discovery in prosecutions of violations of rule 9.20 regardless of the court that ordered the respondent to comply with rule 9.20.

## **DEPOSITION IN CRIMINAL CONVICTION MATTERS**

A criminal conviction matter is initiated by the transmittal of a certified record of conviction. Subdivision (c) of Business and Professions Code section 6101 states that within 30 days of receipt of the record of any conviction which involves or may involve moral turpitude the OCTC shall transmit the record of conviction, which initiates disciplinary proceedings. In addition to crimes which involve moral turpitude as a matter of law (moral turpitude *per se*) and crimes that involve moral turpitude based on the facts and circumstances of the offense (may involve moral turpitude), an attorney can also be disciplined for the commission of crimes wherein their conduct amounts to “other conduct warranting discipline.” Rule 5.345 governs the Hearing Department proceedings in matters based on criminal convictions.

While the certified record of conviction, may establish that a crime was moral turpitude per se, the certified record of conviction is generally insufficient to establish that the crime committed was moral turpitude based on the facts and circumstances of the offense or that the commission of the crime constituted other conduct warranting discipline.

Because by statute, criminal conviction matters must be referred within 30 days of the receipt of a certified record of conviction, there is no investigation period. As a result, the OCTC generally does not have sufficient time to establish the facts and circumstances underlying the offense. Even when the OCTC has time to request police reports and other court records, frequently, those records no longer exist or are not provided. Therefore, it is appropriate to permit the OCTC to depose the respondent, to obtain the underlying facts and records. The proposed amendment to 5.345 would permit the OCTC to conduct one deposition of the respondent in criminal conviction matters.

The language in 5.345(D) which states that a respondent who does not reside in California must be given 30 days' written notice of the time and place of the deposition and must appear for it in California at his or her own expense tracks similar provisions in rule 5.405(A), pertaining to discovery in proceedings to demonstrate rehabilitation, fitness, and present learning and ability in the law according to Standard 1.2(c)(1), and rule 5.443(D), pertaining to discovery in reinstatement proceedings. SB 1146, effective September 18, 2020, amended Code of Civil Procedure 2025.310 to provide that a deponent is not required to be physically present with the deposition officer when being sworn in at the time of the deposition, and that any party or attorney of record may, but is not required to, be physically present at the location of the deponent, subject to any protective order. This supplanted California Rule of Court Emergency Rule 11, which had authorized remote depositions during the COVID-19 emergency and was repealed effective November 13, 2020.

## **DISCUSSION**

The specific amendments proposed are shown in redline in Attachments B, D, and F and were discussed at the November 2021 meeting, as reflected in November 2021 Regulation and Discipline Committee Agenda Item III.C (Attachment I).

During the 45-day public comment period, the State Bar received three public comments, two from individuals (Attachment G) and one on behalf of the California Association of Black Lawyers (CABL) (Attachment H).

One individual public comment generally agreed with all of the amendments, providing no specific discussion of the proposed amendments but noting that the State Bar “needs to do a better job to protect the public from shady, unprofessional, greedy, unethical extortionist lawyers.”

Neither the second individual comment nor the CABL comment disagrees with the proposed amendments to rule 5.65.

The second individual comment disagrees with the proposed addition to rule 5.337(B)(1)(c) that would permit the OCTC to discover the names, addresses and telephone numbers of “co-counsel” in litigation pending at the time a rule 9.20 order was filed. The comment argues: “The addition of the word ‘co-counsel’ is suspect. It looks like a deep pocket, or a means of scaring off co-counsel, so you would not be able to risk assisting an attorney in trouble, and if you needed help you would make it so you could not find anyone willing to stick their neck out.” As noted above, however, the proposed addition of “co-counsel” to subparagraphs (B)(1)(c) and (B)(2) is consistent with the language of rule 9.20(a)(1), which already requires notice to co-counsel.

Both the second individual comment and the CABL comment disagree with the proposed addition to rule 5.345 of new subsection (D), which, in proceedings resulting from an attorney’s criminal conviction, would authorize the OCTC to take the respondent’s deposition after service of the answer to the notice of hearing on conviction is filed. These comments make three primary contentions with respect to this proposed amendment.

First, the CABL comment states that its “greatest concern is that compelling a respondent to appear for deposition may have adverse effects on their Fifth Amendment rights against self-incrimination.” In support, CABL states, among other things, that “respondents may not understand how such testimony may adversely impact them or otherwise subject them to further adverse consequences” and that “such testimony may undermine a respondent’s ability to appeal their convictions based on ineffective counsel, Brady violations, and numerous types of police and prosecutorial misconduct.” The individual comment contends that this proposed amendment would violate “due process and equal protection and 5th Amendment, possibly 6th if one cannot afford counsel this fast after conviction. No other criminal defendant is forced to open their mouth and speak during the appeal period, or lose their license.”

Rule 5.345 applies only after referral of a conviction proceeding under rule 5.344, which occurs only after the conviction is final, that is, after the resolution of any appeal (though prior to any collateral challenge pursuant to habeas or otherwise). Moreover, to the extent a respondent retains Fifth Amendment rights, they also would retain the ability to assert them, without that assertion being used against them in the disciplinary proceeding. See Business & Professions Code section 6068(i) (requirement of cooperation in disciplinary proceeding “shall not be construed to deprive an attorney of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States” and “exercise of any constitutional or statutory privilege shall not be used against the attorney in a regulatory or disciplinary proceeding”). In addition, nothing in the amendment would prevent a respondent from retaining counsel. As a result, the OCTC does not believe the proposed amendment would violate any constitutional provision or have adverse effects on respondents’ Fifth Amendment rights.

Second, both the individual comment and CABL comment contend that adoption of the proposed amendment will have a disparate impact on minorities. The individual comment requests “an analysis first if the disparate impact is on minorities,” and contends that in the absence of such an analysis “this is suspect as a means of white washing the bar.” The CABL comment notes Dr. Farkas’s findings that Black male and female attorneys have the highest

average number of complaints against them, that Black male attorneys have higher disbarment/resignation rates and probation rates than white attorneys, and that a higher number of Black than white attorneys are unrepresented in disciplinary proceedings, and contends that the proposed amendment “will continue to increase the racial disparities and inequities within the attorney discipline system identified by Dr. Farkas.”

The State Bar takes seriously the racial disparities in the discipline system identified by Dr. Farkas and has taken affirmative steps to attempt to address them, including efforts to encourage the retention of counsel and make counsel available to those unable to afford it. The proposed amendment to rule 5.345 does not alter the criteria for discipline based on criminal convictions; rather it establishes a discovery mechanism (a respondent’s deposition) for eliciting evidence as to whether a particular criminal conviction satisfies these criteria. The current rules provide no such discovery mechanism and require referral of the criminal conviction within 30 days of receipt of the record of conviction, a time period too short for the OCTC to perform a thorough pre-initiation investigation as CABL prefers. In other noncriminal conviction matters where there is more time available before the initiation of disciplinary proceedings, a more thorough pre-initiation investigation can be conducted, and can include a deposition of the respondent. *See* Business and Professions Code sections 6049 (“in the conduct of investigations” OCTC “may compel by subpoena, the attendance of witnesses”), 6068(i) (attorneys have duty “to cooperate and participate in any disciplinary investigation”). The proposed amendment, therefore, would simply make available to OCTC post-initiation in criminal conviction matters a discovery mechanism that it has available pre-initiation in other matters. The CABL comment appears to concur in the need for some post-initiation discovery mechanism in criminal conviction matters but contends that alternatives such as serving written discovery would be less burdensome while providing the same advantages as a deposition. The OCTC disagrees that written discovery would be equivalent to a deposition. In contrast to written discovery, a deposition allows a witness to be confronted with documents in real time and permits clarifying and follow-up questions to be asked immediately based on a witness’s answers. The burden of a deposition, including the concerns raised in the CABL comment regarding the timing and cost of in-person appearances, is also significantly reduced by the ability to conduct those depositions remotely in accordance with Code of Civil Procedure section 2025.310; the OCTC proposes adding a clarifying sentence (shown in green in the redline version in Attachment F) that such remote depositions are authorized. The OCTC recognizes the concerns with racial disparities identified by both CABL and the individual commenter and will monitor the use of depositions in criminal conviction matters to attempt to detect and address any such disparities should they arise in the implementation of the proposed rule should it be adopted.

Third, the individual comment contends that the proposed amendment results in a “broadening of criminal prosecution into other matters of vague moral turpitude. This just invites bias and prejudice.” As noted above, however, the proposed amendment does not alter the criteria for discipline based on criminal convictions, which already authorize discipline for criminal convictions (including those in other states) that involve moral turpitude as a matter of law (moral turpitude per se), moral turpitude based on the facts and circumstances of the offense,

or conduct amounting to “other conduct warranting discipline.” See Business and Professions Code sections 6101, 6102; *In re Kelley* (1990) 52 Cal. 3d 487, 494-95.

For all the above reasons, other than the addition of the clarifying sentence regarding the ability to conduct remote depositions, the OCTC does not recommend any changes to the proposed amendments based on the three public comments.

In addition to the three public comments, the State Bar Court informally inquired whether “OCTC considered following the changes to Code of Civil Procedure section 2025.310 (adopting California Rule of Court Emergency Rule 11 on a permanent basis), which would allow for the deposition to occur remotely.” As noted above, the OCTC is proposing the addition of a clarifying sentence that such remote depositions are authorized. As also noted above, the proposed amendment to rule 5.345(D) is consistent with the deposition requirements already set forth in other places in the Rules of Procedure, e.g., rule 5.405(A) [Deposition in Proceedings to Demonstrate Rehabilitation, Fitness, and Present Learning and Ability in the Law according to Standard 1.2(c)(1)], rule 5.443(D) [Deposition in Reinstatement Proceedings], and rule 5.463(B) [Deposition in Moral Character Proceedings]. The OCTC will consider returning with a more general rule proposal to clarify that depositions may be conducted remotely in accordance with Code of Civil Procedure section 2025.310 in all these circumstances.

## **FISCAL/PERSONNEL IMPACT**

None

## **AMENDMENTS TO RULES OF PROCEDURE**

Title 5, Division 2, Chapter 3, Rule 5.65

Title 5, Division 6, Chapter 1, Rule 5.337

Title 5, Division 6, Chapter 2, Rule 5.345

## **AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL**

None

## **STRATEGIC PLAN GOALS & OBJECTIVES**

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

## **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 and adopt proposed rules 5.65, 5.337, and 5.345 of the Rules of

Procedure of the State Bar of California, attached hereto as Attachments A, C, and E 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, hereby approves and adopts rules 5.65, 5.337, and 5.345 of the Rules of Procedure of the State Bar of California, attached hereto as Attachments A, C, and E respectively.

### **ATTACHMENT(S) LIST**

- A.** Proposed Rule 5.65 (Clean Version)
- B.** Proposed Rule 5.65 (Redline Version)
- C.** Proposed Rule 5.337 (Clean Version)
- D.** Proposed Rule 5.337 (Redline Version)
- E.** Proposed Rule 5.345 (Clean Version)
- F.** Proposed Rule 5.345 (Redline Version)
- G.** Individual Public Comments
- H.** Letter from California Association of Black Lawyers
- I.** November 2021 Regulation and Discipline Committee Agenda Item III.C (without attachments)



**Proposed Rule 5.65 (Clean Version)**

## Rule 5.65 Discovery Procedures

- (A) **Generally.** The procedures in this rule constitute the exclusive procedures for discovery. No other form of discovery is permitted without prior Court order under rules 5.66 or 5.68.
- (B) **Timing of Discovery Requests.** All requests for discovery must be made in writing and served on the other party within 10 days after service of the answer to the notice of disciplinary charges, or within 10 days after service of any amendment to the notice.
- (C) **Scope of Discovery.** Upon request, a party must provide to the other party:
- (1) The name, address and telephone number of each individual likely to have discoverable information – along with the subjects of that information – that the disclosing party may use to support its allegations or defenses, including in mitigation and aggravation;
  - (2) The name (and, if not previously provided, the address and telephone number) of each individual the disclosing party then intends to call as a witness, including expert witnesses and those it may call if the need arises, including in mitigation and aggravation;
  - (3) A copy – or description by category and location – of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its allegations or defenses, including in mitigation and aggravation. This includes:
    - (a) all statements about the subject matter of the proceedings, including any impeaching evidence, made by any witness then intended to be called or may be called if the need arises by the disclosing party;
    - (b) all statements about the subject matter of the proceedings made by a person named or described in the notice, or amendment to the notice, other than the attorney when it is claimed that an act or omission of the attorney as to the person named or described is a basis for the discipline proceeding;
    - (c) all investigative reports made by or on behalf of the disclosing party about the subject matter of the proceeding;
    - (d) all reports of mental, physical, and blood examinations then intended to be offered in evidence by the disclosing party.
  - (4) Financial records and/or other proof of financial hardship, including a completed State Bar Court Financial Declaration, if the disclosing party intends to request that any monetary sanction be waived, in whole or in part, or be paid in installments, or the time to pay be extended.
  - (5) When a violation of Business and Professions Code section 6103 is alleged based on a failure to comply with rule 9.20 of the California Rules of Court as ordered by the State Bar Court, discovery is permitted as provided by rule 5.337(B).

- (D) **Definition of Statement.** For purposes of these procedures, statement means either:
- (1) a written statement that the person has signed or otherwise adopted or approved; or
  - (2) a contemporaneous stenographic, mechanical, electrical, or other recording – or a transcription of it – that recites substantially verbatim the person’s oral statement.
- (E) **Form and Time of Response.** All responses under subdivision (C) must be in writing, signed and served within 20 days after service of the request. All documents and tangible things described but not served with the responses must be made available for inspection and copying by the requesting party within the same time period.
- (F) **Basis for Initial Disclosure; Unacceptable Excuses.** A party must make its disclosures based on the information then reasonably available to it. A party is not excused from making its disclosures because it has not fully investigated the case or because it challenges the sufficiency of another party’s disclosures or because another party has not made its disclosures.
- (G) **Continuing Duty.** If a party receives a written request for discovery, the party receiving the request has a continuing duty to provide discovery of items listed in the request until proceedings before the Court are concluded. When a written request for discovery is made in accordance with these rules, discovery must be provided within a reasonable time after any discoverable items become known to the party obligated to provide discovery.
- (H) **Failure to Comply with Discovery Request.**
- (1) Inadmissible. If any party fails to comply with a discovery request as authorized by these procedures, the items withheld are inadmissible or, if the items have been admitted into evidence, may be stricken from the record. If testimony is elicited during direct examination and the party eliciting the testimony withheld any statement of the testifying witness in violation of these discovery procedures, the testimony may be ordered stricken from the record.
  - (2) Reasonable Continuance. Upon a showing of good cause for failure to comply with a discovery request, the Court may admit the items withheld or direct examination testimony of a witness whose statement was withheld upon condition that the party against whom the evidence is sought to be admitted is granted a reasonable continuance to prepare against the evidence, or may order the items or testimony suppressed or stricken from the record.
- (I) **Privileged or Protected Material.**
- (1) Applicable. Nothing in these procedures authorizes the discovery of any writing or thing which is privileged from disclosure by law or is otherwise protected.

Statements of any witness interviewed by the deputy trial counsel, by any investigators for either party, by the attorney, or by the attorney's counsel are not protected as work product.

- (2) **Information Withheld.** When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or otherwise protected, the party must make the claim expressly and must describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable the other party to assess the applicability of the privilege or protection.

- (J) **Protective Orders.** The Court may, upon application supported by a showing of good cause, issue protective orders to the extent necessary to maintain in effect such privileges and other protections as are otherwise provided by law.

- (K) **Discovery requests.** Requests served upon an opposing party, as opposed to motions to compel discovery, must not be filed with the court unless attached as an exhibit to a motion.

**Proposed Rule 5.65 (Redline Version)**

## Rule 5.65 Discovery Procedures

- (A) **Generally.** The procedures in this rule constitute the exclusive procedures for discovery. No other form of discovery is permitted without prior Court order under rules 5.66 or 5.68.
- (B) **Timing of Discovery Requests.** All requests for discovery must be made in writing and served on the other party within 10 days after service of the answer to the notice of disciplinary charges, or within 10 days after service of any amendment to the notice.
- (C) **Scope of Discovery.** Upon request, a party must provide to the other party:
- (1) The name, address and telephone number of each individual likely to have discoverable information – along with the subjects of that information – that the disclosing party may use to support its allegations or defenses, including in mitigation and aggravation;
  - (2) The name (and, if not previously provided, the address and telephone number) of each individual the disclosing party then intends to call as a witness, including expert witnesses and those it may call if the need arises, including in mitigation and aggravation;
  - (3) A copy – or description by category and location – of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its allegations or defenses, including in mitigation and aggravation. This includes:
    - (a) all statements about the subject matter of the proceedings, including any impeaching evidence, made by any witness then intended to be called or may be called if the need arises by the disclosing party;
    - (b) all statements about the subject matter of the proceedings made by a person named or described in the notice, or amendment to the notice, other than the attorney when it is claimed that an act or omission of the attorney as to the person named or described is a basis for the discipline proceeding;
    - (c) all investigative reports made by or on behalf of the disclosing party about the subject matter of the proceeding;
    - (d) all reports of mental, physical, and blood examinations then intended to be offered in evidence by the disclosing party.
  - (4) Financial records and/or other proof of financial hardship, including a completed State Bar Court Financial Declaration, if the disclosing party intends to request that any monetary sanction be waived, in whole or in part, or be paid in installments, or the time to pay be extended.
  - (5) When a violation of Business and Professions Code section 6103 is alleged based on a failure to comply with rule 9.20 of the California Rules of Court as ordered by the State Bar Court, discovery is permitted as provided by rule 5.337(B).

- (D) **Definition of Statement.** For purposes of these procedures, statement means either:
- (1) a written statement that the person has signed or otherwise adopted or approved; or
  - (2) a contemporaneous stenographic, mechanical, electrical, or other recording – or a transcription of it – that recites substantially verbatim the person’s oral statement.
- (E) **Form and Time of Response.** All responses under subdivision (C) must be in writing, signed and served within 20 days after service of the request. All documents and tangible things described but not served with the responses must be made available for inspection and copying by the requesting party within the same time period.
- (F) **Basis for Initial Disclosure; Unacceptable Excuses.** A party must make its disclosures based on the information then reasonably available to it. A party is not excused from making its disclosures because it has not fully investigated the case or because it challenges the sufficiency of another party’s disclosures or because another party has not made its disclosures.
- (G) **Continuing Duty.** If a party receives a written request for discovery, the party receiving the request has a continuing duty to provide discovery of items listed in the request until proceedings before the Court are concluded. When a written request for discovery is made in accordance with these rules, discovery must be provided within a reasonable time after any discoverable items become known to the party obligated to provide discovery.
- (H) **Failure to Comply with Discovery Request.**
- (1) Inadmissible. If any party fails to comply with a discovery request as authorized by these procedures, the items withheld are inadmissible or, if the items have been admitted into evidence, may be stricken from the record. If testimony is elicited during direct examination and the party eliciting the testimony withheld any statement of the testifying witness in violation of these discovery procedures, the testimony may be ordered stricken from the record.
  - (2) Reasonable Continuance. Upon a showing of good cause for failure to comply with a discovery request, the Court may admit the items withheld or direct examination testimony of a witness whose statement was withheld upon condition that the party against whom the evidence is sought to be admitted is granted a reasonable continuance to prepare against the evidence, or may order the items or testimony suppressed or stricken from the record.
- (I) **Privileged or Protected Material.**
- (1) Applicable. Nothing in these procedures authorizes the discovery of any writing or thing which is privileged from disclosure by law or is otherwise protected.

Statements of any witness interviewed by the deputy trial counsel, by any investigators for either party, by the attorney, or by the attorney's counsel are not protected as work product.

- (2) **Information Withheld.** When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or otherwise protected, the party must make the claim expressly and must describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable the other party to assess the applicability of the privilege or protection.

- (J) **Protective Orders.** The Court may, upon application supported by a showing of good cause, issue protective orders to the extent necessary to maintain in effect such privileges and other protections as are otherwise provided by law.
- (K) **Discovery requests.** Requests served upon an opposing party, as opposed to motions to compel discovery, must not be filed with the court unless attached as an exhibit to a motion.

**Proposed Rule 5.337 (Clean Version)**

## Rule 5.337 Expedited Proceeding; Limited Discovery

- (A) **Expedition.** A proceeding charging a failure to comply with a rule 9.20 order will be expedited.
- (B) **Discovery By Chief Trial Counsel.** After the due date for filing the response, the Office of Chief Trial Counsel may conduct discovery without leave of court only for the following limited issues:
  - (1) For all matters that were pending when the rule 9.20 order was filed, counsel may discover:
    - (a) the names, addresses and telephone numbers of clients;
    - (b) the case numbers and names of any litigation filed in a court, and the names of the courts in which pending litigation was filed; and
    - (c) the names, addresses and telephone numbers of co-counsel and opposing counsel (or in the absence of counsel, the adverse party) in pending litigation; and
    - (d) the names, addresses and telephone numbers of any person or entity to which the attorney was required by rule 9.20 to deliver papers or property or refund fees that had not been earned, including whether such delivery or refund was actually accomplished.
  - (2) The documents used to provide notice, as required by rule 9.20, to clients, courts, co-counsel, and opposing counsel (or in the absence of counsel, the adverse party).
- (C) **Other Discovery.** Neither party may conduct any other discovery unless the Court allows it for good cause shown.
- (D) **Applicable Rules.** Unless specific to another proceeding by their terms, all other rules apply.

**Proposed Rule 5.337 (Redline Version)**

## Rule 5.337 Expedited Proceeding; Limited Discovery

- (A) **Expedition.** A proceeding charging a failure to comply with a rule 9.20 order will be expedited.
- (B) **Discovery By Chief Trial Counsel.** After the due date for filing the response, the Office of Chief Trial Counsel may conduct discovery without leave of court only for the following limited issues:
- (1) For all matters that were pending when the rule 9.20 order was filed, counsel may discover:
    - (a) the names, addresses and telephone numbers of clients;
    - (b) the case numbers and names of any litigation filed in a court, and the names of the courts in which pending litigation was filed; and
    - (c) the names, addresses and telephone numbers of co-counsel and opposing counsel (or in the absence of counsel, the adverse party) in pending litigation; and
    - (d) the names, addresses and telephone numbers of any person or entity to which the attorney was required by rule 9.20 to deliver papers or property or refund fees that had not been earned, including whether such delivery or refund was actually accomplished.
  - (2) The documents used to provide notice, as required by rule 9.20, to clients, courts, co-counsel, and opposing counsel (or in the absence of counsel, the adverse party).
- (C) **Other Discovery.** Neither party may conduct any other discovery unless the Court allows it for good cause shown.
- (D) **Applicable Rules.** Unless specific to another proceeding by their terms, all other rules apply.



**Proposed Rule 5.345 (Clean Version)**

## Rule 5.345 Hearing Department Proceedings

- (A) **Referred Proceeding; Notice.** When a conviction proceeding is referred under rule 5.344, the Clerk will file and serve under rule 5.25 a notice of hearing on conviction. A copy of the order of referral must be attached to the notice as an exhibit. The notice must state that the attorney may be ordered to pay costs pursuant to Business and Professions Code section 6086.10 and monetary sanctions pursuant to section 6086.13 and rule 5.137 of the Rules of Procedure of the State Bar, and must include the following language in capital letters:

“IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT THE STATE BAR COURT TRIAL:

(1) YOUR DEFAULT WILL BE ENTERED;

(2) YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU WILL NOT BE PERMITTED TO PRACTICE LAW;

(3) YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION AND THE DEFAULT IS SET ASIDE; AND

(4) YOU WILL BE SUBJECT TO ADDITIONAL DISCIPLINE. SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN ORDER RECOMMENDING YOUR DISBARMENT AND MAY RECOMMEND THE IMPOSITION OF MONETARY SANCTIONS WITHOUT FURTHER HEARING OR PROCEEDING. (SEE RULES PROC. OF STATE BAR, RULES 5.80 ET SEQ. & 5.137). UNDER THE RULES OF PROCEDURE OF THE STATE BAR, YOU MUST FILE YOUR WRITTEN RESPONSE TO THIS NOTICE WITHIN 20 DAYS AFTER THIS NOTICE IS SERVED.”

- (B) **Response to Notice.** The attorney must file and serve a response to the notice within 20 days after it is served, unless the court grants an extension. The response must state the attorney’s position on the issues stated in the order of referral and must contain an address for service on the attorney.
- (C) **State Bar Court Record.** The State Bar Court record includes all court orders and documents on file with the Clerk of the State Bar Court in the proceeding, whether or not introduced in evidence. The evidence may include that permitted by Business and Professions Code section 6102, subdivision (g).
- (D) **Deposition.** The Office of Chief Trial Counsel may take the respondent’s deposition after service of the answer to the notice of hearing on conviction is filed. A respondent who does not reside in California must be given 30 days’ written notice of the time and place of the deposition and must appear for it in California at his or her own expense. The deposition may, however, be conducted remotely in accordance with Code of Civil Procedure section 2025.310.

**Proposed Rule 5.345 (Redline Version)**

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Commenter	Agree/ Disagree	Comment
Nadia Heshmati, Los Angeles, California	AGREE	<p>The Ca Bar Association, needs to do a better job to protect the public from shady, unprofessional, greedy, unethical extortionist lawyers! Ca bar Association doesn't prosecute these lawyers No sanctions them!</p> <p>It's time for the member of public to be involved in investigation and punishing unethical and extortionist lawyers violating ca bar association rules!</p>
Cynthia Hernandez, San Francisco, California	DISAGREE	<p>Deposition for criminal conviction: Absolutely not. This violates due process and equal protection and 5th Amendment, possibly 6th if one cannot afford counsel this fast after conviction. No other criminal defendant is forced to open their mouth and speak during the appeal period, or lose their license. They are upset. What if that emotional distress makes them lie? This is putting a human being in an untenable position. Also, I would like an analysis first if the disparate impact is on minorities. I would expect that analysis to be done right, scaled to the percent of minorities in the Bar before the impact ratio is analyzed. Until then, this is suspect as a means of white washing the bar. Further, depositions cost money. This just grows litigation. Spend that money on getting more minority attorneys.</p> <p>With respect to the other enhancements and broadening of criminal prosecution into other matters of vague moral turpitude. This just invites bias and prejudice. You can call this Karen's rule. That is not the kind of notice that we need for due process.</p> <p>With respect to extending to orders of any other court's orders, beyond the State Bar Court: We did not elect those courts to oversee our licences. They have enough referral power already. Our State Bar judges have to go by clear cut rules and those rules are best kept at the State Bar, with it's own judges, that we can monitor and fire if we need to. The addition of the word "co counsel" is suspect. It looks like a deep pocket, or a means of scaring off co counsel, so you would not be able to risk assisting an attorney in trouble, and if you needed help you would make it so you could not find anyone willing to stick their neck out. It's already enough like that. In essence, it makes us weaker, and have less resources and possibly less work. It sounds fraught with liability for lawyers. You, at the State Bar work for us. Keep our jobs nice. The public has more than the Bar to protect it. They can sue. This sounds like one more money making scheme after another, and that is not the purpose of the Bar, to grow themselves into big government for the sake of raking it in and spending. What is the laudable goal? You need to spell that out more. Otherwise it sounds you are complaining, it's too hard to prosecute, and we need more money. In criminal law, it is better to let one or two guilty go free, than to prosecute and convict an innocent. Please remember why. Also, the license is property. Don't take it without due process and don't make up a conflagration of laws to circumvent it. We have enough laws and processes at the Bar for you to enjoy right now. Please put more effort into mentoring minorities instead.</p>

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**January 7, 2022**

## California State Bar

180 Howard Street  
 San Francisco, CA 94105

### **RE: Proposed Regulatory Reform to Rule 5.345 to the Rules of Procedure** **— Deposition in Criminal Conviction Matters**

The California Association of Black Lawyers ("CABL") is forwarding this statement to express its concerns over the California State Bar's ("State Bar") initiative to amend Rules 5.65, 5.337 and 5.345 of the State Bar Rules of Procedure. Specifically, we strongly oppose the State Bar's proposed regulatory reform to Rule 5.345 to permit the Office of Chief Trial Counsel ("OCTC") to conduct one deposition of the respondent in criminal conviction matters as a means of establishing the facts and circumstances of the underlying defense.

We write on behalf of CABL, an association that represents 6,000 African American attorneys, judges, law professors and students. CABL was organized in 1977 to address issues facing black lawyers and judges, and one of our objectives is to vigorously defend black people from those who would consciously or otherwise deny them basic human and legal rights. Since CABL's inception, we have been instrumental in increasing the number of African-American judges throughout California, and we meet annually with state legislators to advocate for social justice reform that impact persons of color, and the African American community. Through our Executive Committee and Board of Directors, CABL acts for and represents the interests of our members.

Racial and gender disparities in the attorney discipline system are disturbing. According to a 2019 report produced by University of California, Irvine Professor George Farkas, the disbarment/ resignation rate for Black male attorneys is 3.9% compared to 1.0% for White males. (Farkas Report, p. 2). The probation rate for Black male attorneys is 3.2% while that for White male attorneys is 0.9%. (Farkas Report, p. 16). Black male and female attorneys have the highest average number of complaints filed against them. (Farkas Report, p. 4.) In addition to a greater number of complaints against Black attorneys, "the strongest inference for the higher probation rates of Blacks is that a higher percentage of Black than White attorneys do not have counsel when they undergo an investigation, and that at each of these







investigations, Black attorneys have a larger number of prior disciplines than White attorneys.” (Farkas Report, p. 12.) We firmly believe this reform will continue to increase the racial disparities and inequities within the attorney discipline system identified by Dr. Farkas.

Under the Business and Professions Code § 6101(c) the OCTC is required, upon notice from the city attorney, district attorney or prosecuting agency, to transmit the record of conviction, which initiates disciplinary proceedings in the State Supreme Court. The OCTC contends that it does not have the time, resources, or expertise to conduct an investigation that is thorough-enough to uncover all of the substantive evidence relating to a criminal matter. In lieu of completing a skillful, thorough, and complete investigation, the proposed change would permit the OCTC to depose a respondent for the purpose of discovering this critical evidence.

It is our position that this proposed change is unfair to the respondent attorney for several reasons. The basis for the proposed amendment, the OCTC’s lack of resources and time, do not rise to the level to justify the burden placed on the respondent. There are measures which would be less burdensome on the respondent that would secure the same advantages as a deposition. For example, the State Bar could serve written discovery to the respondent in lieu of seeking to depose respondents. The State Bar should be required to perform its own due diligence rather than shifting the burden to the respondent attorney.

Additionally, the amendment is completely silent as to what, if any, notice will be provided to attorneys that reside in California. The amendment provides for notice only if the respondent does not reside in California, and then only a 30-day written notice of the time and place for the deposition.<sup>1</sup> The respondent must appear for the deposition at his or her own expense. This allows the prosecutor, who is not going to experience a financial burden as a result of the deposition, to control the time, place and manner of the deposition. Thus, a prosecutor could require an attorney residing in Southern California to travel to Northern California to attend the deposition. The determination of how the deposition is conducted, in person or virtually, should be the decision of the party who bears the financial burden, the respondent. By placing the financial burden on the respondent, the proposed amendment can create a barrier to justice.

The amendment is also silent on whether a respondent would be entitled to representation during a deposition. As found in Dr. Farkas’s study, the percentage of cases in which the respondent attorney is not represented by counsel was a statistically significant predictor of attorney discipline. Dr. Farkas also concluded that African American respondents were much less likely to be represented by counsel when facing a disciplinary investigation. By failing to provide or subsidize attorney legal representation in these and other matters, the State Bar will only perpetuate the existing disparities within the legal community facing African American Attorneys.

Our greatest concern is that compelling a respondent to appear for a deposition may have adverse effects on their Fifth Amendment rights against self-incrimination. It is important to consider that respondents may not understand how such testimony may adversely impact them or otherwise subject them to further adverse consequences. The State Bar should not promulgate rules that have a reasonable likelihood of infringing the constitutional rights of any respondent.

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<sup>1</sup> The proposed amendment is vague as to whether the respondent will be subject to consequences for failing to appear at a deposition.





Here, despite the reality that respondents have been convicted of a crime, it remains unconstitutional to compel anyone to testify against themselves given the possibility that such testimony may lead to new charges, and may expose respondents to civil liability. Additionally, such testimony may undermine a respondent's ability to appeal their convictions based on ineffective counsel, Brady violations, and numerous types of police and prosecutorial misconduct.

Accordingly, even if a respondent has the ability to invoke their 5th Amendment rights and choose not to testify in a deposition, respondents may feel pressured to provide deposition testimony with hopes of protecting their law license and ability to practice law.

Professor Farkas's study revealed that race is one of most critical issues/disparities that plague the attorney discipline system. We believe that requiring a respondent, who has been convicted of a crime, to appear at an OCTC deposition at his or her own expense, further exacerbates the inequities and disparities that exist within the discipline system. Therefore, we urge the State Bar not implement the proposed amendment to Rule 5.345.

Respectfully submitted,

Aileen F. Casanave  
President  
California Association of Black Lawyers





**OPEN SESSION**

**AGENDA ITEM**

**REGULATION AND DISCIPLINE COMMITTEE III.C**

**DATE:** November 18, 2021

**TO:** Members, Regulation and Discipline Committee

**FROM:** George Cardona, Chief Trial Counsel

**SUBJECT:** Proposed Amendment to Rules 5.65, 5.337, and 5.345 of the Rules of Procedure: Request for Public Comment

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**EXECUTIVE SUMMARY**

This proposal would amend various rules of the Rules of Procedure of the State Bar to:

1. Authorize discovery of a respondent's financial records and other evidence of financial hardship where the respondent intends to request that monetary sanction be waived, in whole or in part, that monetary sanctions be paid in installments, or that the time to pay be extended;
2. Authorize discovery of the names, addresses, and telephone numbers of any person or entity to which the attorney was required by rule 9.20 to provide notice of a disbarment, suspension, or resignation; deliver papers or property; or refund fees that had not been earned, in matters in which a violation of rule 9.20 of the California Rules of Court is alleged; and
3. Authorize the Office of Chief Trial Counsel (OCTC) to take the respondent's deposition after service of the answer to the notice of hearing on conviction following transmittal of a certified record of conviction.

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**BACKGROUND**

**FINANCIAL RECORDS**

Effective January 1, 1993, Business and Professions Code section 6086.13, allows monetary sanctions to be ordered against attorney respondents in disciplinary proceedings. The amounts

collected must be deposited into the Client Security Fund (Bus. & Prof. Code § 6086.13(b)). The statute states that “the State Bar shall, with the approval of the Supreme Court, adopt rules setting forth guidelines for the imposition and collection of monetary sanctions under this section” (Bus. & Prof. Code, § 6086.13(c)).

On March 23, 2020, the California Supreme Court approved rule 5.137, which sets forth guidelines for the imposition of monetary sanctions pursuant to Business and Professions Code section 6086.13(c), with an effective date of April 1, 2020. At its meeting on November 19, 2020, the Board of Trustees approved changes to rules 5.56, 5.57, 5.101, 5.137, 5.138, 5.139, 5.343, and 5.427 of the Rules of Procedure of the State Bar to provide a process for attorneys to seek reduction, waiver, or extension of time to pay imposed sanctions.

### **NOTICE PROVIDED UNDER RULE 9.20**

Rule 9.20 of the California Rules of Court provides that the Supreme Court, in any order disbarring or suspending a licensee of the State Bar, or accepting their resignation, may direct the attorney to:

- Notify all clients with pending matters and any co-counsel of their disbarment, suspension, or resignation;
- Notify all clients with pending matters to seek legal advice elsewhere, calling attention to any urgency in seeking the substitution of another attorney or attorneys;
- Deliver to all clients in pending matters any papers or other property to which the clients are entitled;
- Refund any part of fees paid that have not been earned;
- Notify opposing counsel in pending litigation or, in the absence of counsel, the adverse parties of the disbarment, suspension, or resignation; and
- File a notice with the court, agency, or tribunal before which any litigation is pending for inclusion in the respective file or files.

Similarly, the State Bar Court may order respondents to comply with rule 9.20 of the California Rules of Court, for example, when placing a respondent on interim suspension. Violations of rule 9.20 of the California Rules of Court when compliance with that rule was ordered by the State Bar Court are generally charged as violations of Business and Professions Code section 6103 [Failure to Obey a Court Order].

Rule 5.337 provides for discovery in matters involving a violation of rule 9.20 of the California Rules of Court as ordered by the Supreme Court. Rule 5.65 governs discovery where a violation of Business and Professions Code section 6103 is alleged based on failure to comply with rule 9.20 of the California Rules of Court as ordered by the State Bar Court.

### **DEPOSITION IN CRIMINAL CONVICTION MATTERS**

Subdivision (c) of Business and Professions Code section 6101 states that within 30 days of receipt of the record of any conviction which involves or may involve moral turpitude the OCTC shall transmit the record of conviction, which initiates disciplinary proceedings. In addition to crimes which involve moral turpitude as a matter of law (moral turpitude *per se*) and crimes



that involve moral turpitude based on the facts and circumstances of the offense (may involve moral turpitude), an attorney can also be disciplined for the commission of crimes wherein their conduct amounts to “other conduct warranting discipline.” Rule 5.345 governs the Hearing Department proceedings in matters based on criminal convictions.

## **DISCUSSION**

### **FINANCIAL RECORDS**

While the Rules of Procedure of the State Bar provide a process for attorneys to seek reduction, waiver, or extension of time to pay monetary sanctions, there is no rule that permits the OCTC to assess the financial condition of a respondent who intends to seek a reduction, waiver, or extension of time to pay monetary sanctions.

The proposed amendment to add rule 5.65(C)(4) would permit the OCTC to request financial records and other proof of financial hardship, including a completed State Bar Court Financial Declaration, if the disclosing party intends to request that any monetary sanction be waived, in whole or in part, or be paid in installments, or the time to pay be extended. Such records would allow OCTC to evaluate the need for a reduction, waiver, or extension and make an informed decision as to whether to stipulate, submit, or oppose such a motion.

### **NOTICE PROVIDED UNDER RULE 9.20**

The proposed change to rule 5.337 permits discovery that more closely parallels the notice requirements of rule 9.20. The proposed addition of “co-counsel” to subparagraphs (B)(1)(c) and (B)(2) is consistent with the language of rule 9.20(a)(1). The proposed addition of “(or in the absence of counsel, the adverse party)” to subparagraphs (B)(1)(c) and (B)(2) permits discovery of the notice required in rule 9.20(a)(4). The proposed addition of subparagraph (B)(1)(d) permits discovery of information relevant to 9.20(a)(2) and (a)(3).

When an allegation of a violation of Business & Professions Code section 6103 is based on the respondent’s failure to comply with the State Bar Court’s order to comply with rule 9.20 of the California Rules of Court, an original (O) case type is opened. As a result, the OCTC is not entitled to the specific discovery listed in rule 5.337, because rule 5.330 provides that rule 5.337 only applies to 9.20 proceedings (N case type). The proposed amendment to rule 5.65(C)(5) would permit the same discovery in prosecutions of violations of rule 9.20 regardless of the court that ordered the respondent to comply with rule 9.20.

### **DEPOSITION IN CRIMINAL CONVICTION MATTERS**

A criminal conviction matter is initiated by the transmittal of a certified record of conviction. However, while the certified record of conviction, may establish that a crime was moral turpitude *per se*, the certified record of conviction is generally insufficient to establish that the crime committed was moral turpitude based on the facts and circumstances of the offense or that the commission of the crime constituted other conduct warranting discipline.

Because by statute, criminal conviction matters must be referred within 30 days of the receipt of a certified record of conviction, there is no investigation period. As a result, the OCTC generally does not have sufficient time to establish the facts and circumstances underlying the offense. Even when the OCTC has time to request police reports and other court records, frequently, those records no longer exist or are not provided.

Therefore, it is appropriate to permit the OCTC to depose the respondent, to obtain the underlying facts and records. The proposed amendment to 5.345 would permit the OCTC to conduct one deposition of the respondent in criminal conviction matters.

The language in 5.345(D) which states that a respondent who does not reside in California must be given 30 days' written notice of the time and place of the deposition and must appear for it in California at his or her own expense tracks similar provisions in rule 5.405(A), pertaining to discovery in proceedings to demonstrate rehabilitation, fitness, and present learning and ability in the law according to Standard 1.2(c)(1), and rule 5.443(D), pertaining to discovery in reinstatement proceedings.

## **FISCAL/PERSONNEL IMPACT**

None

## **AMENDMENTS TO RULES OF PROCEDURE**

Title 5, Division 2, Chapter 3, Rule 5.65

Title 5, Division 6, Chapter 1, Rule 5.337

Title 5, Division 6, Chapter 2, Rule 5.345

## **AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL**

None

## **STRATEGIC PLAN GOALS & OBJECTIVES**

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

## **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 45 days proposed amendments to rules 5.65, 5.337, and 5.345 of the Rules of Procedure of the State Bar of California, 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 Rule 5.65 (Clean Version)
- B.** Proposed Rule 5.65 (Redline Version)
- C.** Proposed Rule 5.337 (Clean Version)
- D.** Proposed Rule 5.337 (Redline Version)
- E.** Proposed Rule 5.345 (Clean Version)
- F.** Proposed Rule 5.345 (Redline Version)