



The State Bar Court of California

OPEN SESSION

AGENDA ITEM

50-7 MAY 2022

REGULATION AND DISCIPLINE COMMITTEE III.A

DATE: May 19, 2022

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

FROM: Michelle Cramton, Clerk of the State Bar Court
Erika Doherty, Projects Attorney, State Bar Court

SUBJECT: Proposed Amendments to Rules of Procedure of the State Bar, Rule 5.127
(Public and Private Reprovals) and Rule 5.155 (Actions by Review Department):
Return from Public Comment and Request for Adoption

EXECUTIVE SUMMARY

This item requests approval of amendments to two Rules of Procedure, rules 5.127 and 5.155, following a 45-day public comment period. The amendments to rule 5.127 will clarify when a reapproval takes effect. The amendments to rule 5.155 will permit any hearing judge to act in a Review Department judge's place when one or more Review Department judges are disqualified or unavailable to serve.

The State Bar received one public comment in support of the amendments.

BACKGROUND

On March 24, 2022, the [Regulation and Discipline Committee authorized](#) the State Bar to issue proposed amendments to rules 5.127 and 5.155 for a 45-day public comment period. The changes are summarized as follows:

Rule 5.127 Public and Private Reprovals

Current rule 5.127(A) states that a reapproval takes effect when the decision or order is final. The proposed amendment to rule 5.127(A) will provide sufficient time for a party to request

reconsideration in the Hearing Department, and clarity as to when a reproof takes effect if request for review is sought in the Review Department or at the California Supreme Court. Specifically, the proposed amendments will clarify that a reproof takes effect 60 days after the filing of a decision, opinion, or order by the State Bar Court unless a request for review is filed. If a request for review is filed in the California Supreme Court, the reproof will take effect 30 days after the filing of an opinion or order by the California Supreme Court, as set forth in rule 9.18(a) of the California Rules of Court.

Rule 5.155 Actions by Review Department

On January 18, 2022, the Supreme Court issued Administrative Order 2022-01-18 (Standing Order), included as Attachment D, permitting the State Bar Court presiding judge or acting presiding judge to assign as pro tempore in the Review Department any hearing judge of the State Bar Court. The proposed amendments to rule 5.155(F) will allow for the same hearing judge appointments as authorized by the Standing Order, permitting any hearing judge, including a judge appointed by the Supreme Court, the Governor, the Senate Committee on Rules, or the Speaker of the Assembly, to be temporarily elevated to the Review Department when necessitated due to one or more review judges being disqualified or unavailable to serve in a case.

DISCUSSION

The State Bar Court received one public comment from the Los Angeles County Bar Association Professional Responsibility and Ethics Committee (PREC), provided in Attachment B. PREC's comment supports the proposed amendments to rule 5.127 because they are clarifying and provide sufficient time for a party to request review of a State Bar Court decision. PREC's comment adds that the proposed amendments to rule 5.155 are administrative and not controversial.

The State Bar Court does not recommend any additional revisions to rules 5.127 and 5.155 based on PREC's public comment.

FISCAL/PERSONNEL IMPACT

None

AMENDMENTS TO RULES OF PROCEDURE

Title 5, Division 2, Chapter 6; Title 5, Division 3

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: 1. Protect the Public by Strengthening the Attorney Discipline System.

RECOMMENDATIONS

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

RESOLVED, the Regulation and Discipline Committee recommends that the Board of Trustees approve and adopt amendments to rules 5.127 and 5.155 of the Rules of Procedure of the State Bar of California, provided as Attachment A, effective May 19, 2022.

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

RESOLVED, the Board of Trustees, upon recommendation of the Regulation and Discipline Committee, hereby approves and adopts amendments to rules 5.127 and 5.155 of the Rules of Procedure of the State Bar of California, provided as Attachment A, effective May 19, 2022.

ATTACHMENTS LIST

- A.** Proposed Amended Rules 5.127 and 5.155 of the Rules of Procedure of the State Bar of California (clean copy)
- B.** Proposed Amended Rules 5.127 and 5.155 of the Rules of Procedure of the State Bar of California (redline copy)
- C.** Public Comment Received Regarding Proposed Amended Rules 5.127 and 5.155 of the Rules of Procedure of the State Bar of California
- D.** Supreme Court Administrative Order 2022-01-18

Rule 5.127 Public and Private Reprovals

- (A) **Decisions, Opinions, or Orders Imposing a Reproval.** The State Bar Court's decision, opinion, or order approving a stipulation may include a reproval. The decision, opinion, or order must specify whether the reproval is public or private. In the absence of a request for review, the reproval will take effect 60 days after the filing of a decision, opinion, or order. If review of the hearing department decision or order is requested pursuant to rule 5.151, the reproval will, in the absence of a request for review by the California Supreme Court, take effect 60 days after the filing of an opinion or order by the Review Department. If review by the California Supreme Court is sought pursuant to California Rule of Court 9.13, the reproval will take effect 30 days after the filing of an opinion or order by the California Supreme Court.
- (B) **Public Reproval.** A public reproval is part of the attorney's official State Bar attorney records, is disclosed in response to public inquiries, and is reported as a record of public discipline on the State Bar's web page. The record of the proceeding in which the public reproval was imposed is also public.
- (C) **Private Reproval Before Notice of Disciplinary Charges.** A private reproval imposed before a State Bar Court proceeding begins is part of the attorney's official State Bar attorney records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding is not available to the public unless it becomes part of the record of any later proceeding in which it is introduced as evidence of a prior record of discipline. The attorney is not obligated to pay discipline costs.
- (D) **Private Reproval After Notice of Disciplinary Charges.** A private reproval imposed on an attorney after the initiation of a State Bar Court proceeding is part of the attorney's official State Bar attorney records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page. The complainant is informed of the imposition of the private reproval. The attorney is not obligated to pay discipline costs.

Rule 5.155 Actions by Review Department

- (A) **Standard of Review under Rule 5.151.** The Review Department will independently review the record and may make findings, conclusions, or a decision or recommendation different from those of the hearing judge. The findings of fact of the hearing judge are entitled to great weight.
- (B) **Remand.** The Review Department may remand a proceeding to the Hearing Department for a new trial on specified issues, for a trial de novo, or for other

proceedings. If a proceeding is remanded, the same hearing judge will preside unless that judge is unavailable or the Review Department orders otherwise.

- (C) Issues Not Raised for Review.** The Review Department may take action on an issue that was not raised in the request for review or briefs of any party. Before it does so, the Review Department will notify the parties in writing of the issue before oral argument, and any party may file a supplemental brief about that issue. If the parties are not notified before oral argument, they may make a motion to file supplemental briefs or for reconsideration under rule 5.158.
- (D) En Banc Review.** The Review Department will decide matters before it en banc. Two judges constitute a quorum. A majority vote of the judges present and voting are sufficient to take any action or arrive at any decision.
- (E) Time for Opinion.** The Review Department will file its opinion within 90 days after the matter is submitted, unless the proceeding is expedited and a procedural rule, a statute, or a Supreme Court rule requires a shorter period for filing the opinion.
- (F) Disqualified Judge.** If one or more Review Department judges are disqualified or unavailable to serve, the Presiding Judge may designate a hearing judge appointed under Business and Professions Code § 6079.1 to act in the Review Department judge's place, if the designated hearing judge took no part in considering or deciding the matter in the Hearing Department. If the Presiding Judge is disqualified or unavailable to act and has not designated another judge to act in his or her place, the Acting Presiding Judge may act in place of the Presiding Judge.
- (G) Disbarment Recommendation.** If the Review Department recommends disbarment, it must include in its opinion an order that the attorney be enrolled as an inactive attorney under Business and Professions Code § 6007(c)(4). Unless otherwise ordered by the Court, the order takes effect on personal service or three days after service by mail, whichever is earlier.
- (H) State Bar Court's Annual Report.** By March 1 of each year, the State Bar Court must prepare and submit to the Chief Justice of the Supreme Court an annual report describing how the Review Department complied with the requirements of subsection (E) during the preceding calendar year.

Rule 5.127 Public and Private Reprovals

- (A) **Decisions, Opinions, or Orders Imposing a Stipulation and Reproval.** The State Bar Court's decision, opinion, or order approving a stipulation may include a reproval ~~that takes effect when the decision or order is final~~. The decision, opinion, or order must specify whether the reproval is public or private. In the absence of a request for review, the reproval will take effect 60 days after the filing of a decision, opinion, or order. If review of the hearing department decision or order is requested pursuant to rule 5.151, the reproval will, in the absence of a request for review by the California Supreme Court, take effect 60 days after the filing of an opinion or order by the Review Department. If review by the California Supreme Court is sought pursuant to California Rule of Court 9.13, the reproval will take effect 30 days after the filing of an opinion or order by the California Supreme Court.
- (B) **Public Reproval.** A public reproval is part of the attorney's official State Bar attorney records, is disclosed in response to public inquiries, and is reported as a record of public discipline on the State Bar's web page. The record of the proceeding in which the public reproval was imposed is also public.
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Rule 5.155 Actions by Review Department

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- (B) **Remand.** The Review Department may remand a proceeding to the Hearing Department for a new trial on specified issues, for a trial de novo, or for other

proceedings. If a proceeding is remanded, the same hearing judge will preside unless that judge is unavailable or the Review Department orders otherwise.

- (C) **Issues Not Raised for Review.** The Review Department may take action on an issue that was not raised in the request for review or briefs of any party. Before it does so, the Review Department will notify the parties in writing of the issue before oral argument, and any party may file a supplemental brief about that issue. If the parties are not notified before oral argument, they may make a motion to file supplemental briefs or for reconsideration under rule 5.158.
- (D) **En Banc Review.** The Review Department will decide matters before it en banc. Two judges constitute a quorum. A majority vote of the judges present and voting are sufficient to take any action or arrive at any decision.
- (E) **Time for Opinion.** The Review Department will file its opinion within 90 days after the matter is submitted, unless the proceeding is expedited and a procedural rule, a statute, or a Supreme Court rule requires a shorter period for filing the opinion.
- (F) **Disqualified Judge.** If one or more Review Department judges are disqualified or unavailable to serve, the Presiding Judge may designate a hearing judge appointed ~~by the Supreme Court~~ under Business and Professions Code § 6079.1 to act in the Review Department judge's place, if the designated hearing judge took no part in considering or deciding the matter in the Hearing Department. If the Presiding Judge is disqualified or unavailable to act and has not designated another judge to act in his or her place, the Acting Presiding Judge may act in place of the Presiding Judge.
- (G) **Disbarment Recommendation.** If the Review Department recommends disbarment, it must include in its opinion an order that the attorney be enrolled as an inactive attorney under Business and Professions Code § 6007(c)(4). Unless otherwise ordered by the Court, the order takes effect on personal service or three days after service by mail, whichever is earlier.
- (H) **State Bar Court's Annual Report.** By March 1 of each year, the State Bar Court must prepare and submit to the Chief Justice of the Supreme Court an annual report describing how the Review Department complied with the requirements of subsection (E) during the preceding calendar year.



LOS ANGELES COUNTY BAR ASSOCIATION

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Telephone: 213.627.2727 | www.lacba.org

May 10, 2022

Board of Trustees
State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: Proposed Amendments To Rules 5.127 and 5.155 of the Rules
of Procedure of the State Bar of California

Dear Trustees:

The Los Angeles County Bar Association Professional Responsibility and Ethics Committee ("PREC") has reviewed the proposed amendments to rules 5.127 and 5.155 of the Rules of Procedure of the State Bar of California. PREC supports the proposed amendments to Rule 5.127 because they clarify when a reproof takes effect while providing sufficient time for a party to request a review of a State Bar Court decision.

PREC also notes that the proposed amendments to Rule 5.155 appear to be administrative and not controversial.

Sincerely,

Kirsten H. Spira
Chair, Professional Responsibility and Ethics Committee
Los Angeles County Bar Association

ADMINISTRATIVE ORDER 2022-01-18

SUPREME COURT
FILED

JAN 18 2022

Jorge Navarrete Clerk

IN THE SUPREME COURT OF CALIFORNIA

EN BANC

Deputy

 TEMPORARY STANDING ORDER CLARIFYING APPOINTMENT POWER OF
 THE PRESIDING JUDGE OF THE STATE BAR COURT REVIEW DEPARTMENT

Notwithstanding rule 5.155(F) of the State Bar Rules of Procedure, if one or more State Bar Court Review Department judges are disqualified or unavailable to serve, the Presiding Judge may assign as pro tempore any hearing judge of the State Bar Court, if the designated hearing judge took no part in considering or deciding the matter in the Hearing Department. If the Presiding Judge of the State Bar Court is disqualified or unavailable to act and has not designated another judge to act in his or her place, the Acting Presiding Judge may act in place of the Presiding Judge for purposes of this order.

This standing order shall remain in effect until this court fills all vacancies in the Review Department of the State Bar Court or until the State Bar Board of Trustees amends rule 5.155(F) of the State Bar Rules of Procedure to conform with the 1999 amendments to Business and Professions Code, section 6079.1, subdivision (a), whichever comes first.

It is so ordered.

CANTIL-SAKAUYE

Chief Justice

CORRIGAN

Associate Justice

LIU

Associate Justice

KRUGER

Associate Justice

GROBAN

Associate Justice

JENKINS

*Associate Justice**Associate Justice*