



The State Bar of California

Proposed Amendments to Rules 5.30 and 5.341

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Board of Trustees Meeting, November 16–17, 2023

Overview

- ENEC is a mandatory (unless waived by both parties) prefiling conference overseen by a State Bar Court Judge
 - Timing is important
 - Filing provides public notice of pending discipline
- Intended to give both sides a sense of SBC views on the case
 - May lead to modification of charges or case resolution



Overview

- Unique to California
- Subject matter experts consulted by State Bar as part of SB211 process:
 - ENECs can significantly slow the charging stage
 - Eliminate ENEC in favor of mandatory evaluation/settlement conference conducted with court post-filing **or**
 - Consider cases completed by OCTC for purposes of time standards before ENEC
 - SB211 proposed case processing standards reflect this second alternative recommendation



Ad Hoc Commission Recommendations

- ENECs should generally be more effective vehicles for pre-filing settlements
- An option similar to an ENEC should be provided to respondents subject to misdemeanor criminal conviction transmittals to the State Bar Court
 - Transmittal provides public notice of disciplinary proceeding based on a criminal conviction



Board Direction based on Ad Hoc Commission Recommendations

- January 19–20, 2023
 - propose revisions to all applicable rules to promote the use of Early Neutral Evaluation Conferences as a mechanism for arriving at settlements
 - study possible revisions to rules to determine the feasibility of conducting a pre-transmittal meeting similar to an ENEC in misdemeanor conviction matters
- September 21–22, 2023
 - proceed with revised proposal for ENEC revisions developed by State Bar Court working group after input from Office of Chief Trial Counsel and Association of Discipline Defense Counsel
 - proceed with second of two alternatives presented for consideration regarding misdemeanor criminal convictions – amendments to rules to provide OCTC with the option of requesting a pre-transmittal conference



Rule 5.30: Proposed Amendments

- Intended to increase effectiveness in encouraging pre-filing settlements
- Change name of conference from “Early Neutral Evaluation Conference” to “Prefiling Settlement Conference” (PSC)
- Encourage settlement by ensuring that parties come prepared to the conference
 - Require parties to meet and confer prior to PSC
 - Require parties to submit settlement conference statements
 - Allow flexibility in scheduling if necessary to ensure parties’ preparation
- Eliminate the requirement for the judge to give an oral evaluation of the facts and charges and the potential for imposing discipline
 - SBC working group finds this is not generally useful in helping the parties reach settlement and often calls on the ENEC judge to make determinations without sufficient information
 - Judge will continue to express views regarding the facts and charges and potential for imposing discipline to encourage the parties to arrive at settlements at the PSC if possible.



Rule 5.341: Proposed Amendments

- Provide OCTC with option to request pre-transmittal settlement conference in misdemeanor criminal conviction matters
 - OCTC has obligation to make final determination whether transmittal is required by statute
 - Avoids waste of OCTC and court resources where OCTC has determined that conference will not alter its determination that it is required to transmit
 - Transmittal will be of information already publicly available – record of respondent’s misdemeanor criminal conviction
- Multiple provisions to ensure conference is scheduled and conducted within the 30-day time limit for transmittal
 - Include authorization for OCTC to proceed with transmittal if requested conference cannot be scheduled or conducted within the mandatory time frames
- Provisions to ensure that parties come prepared for the conference
 - Requires parties to meet and confer before conference
 - Requires parties to submit settlement conference statements

