



The State Bar of California

OPEN SESSION AGENDA ITEM 5.7 JULY 2024 BOARD OF TRUSTEES

DATE: July 18, 2024

TO: Members, Board of Trustees

FROM: Michelle Cramton, Clerk of the State Bar Court
Kathy Sher, Projects Attorney, State Bar Court

SUBJECT: Proposed Amendments to Rules of Procedure Regarding Remote Appearances in State Bar Court Proceedings (Rules 5.17 and 5.18): Request to Circulate for Public Comment and Request for Interim Adoption of Rule Changes

EXECUTIVE SUMMARY

This item requests that the Board of Trustees adopt interim amendments to rules 5.17 and 5.18 of the Rules of Procedure regarding remote appearances in the State Bar Court. In addition, this item seeks authorization to circulate these amendments for public comment. The changes will make it easier for parties to request to appear remotely at an evidentiary hearing or trial by allowing a request to be made orally at the initial status conference, by oral stipulation at the initial status conference, or by written stipulation within ten days after the court sends notice of the evidentiary hearing or trial. The changes will give the court more notice when the parties know in advance that they will appear remotely. The changes are urgently needed to give the court the tools it needs to manage its calendar when the San Francisco venue is reduced to one courtroom.

RECOMMENDED ACTION

This item seeks interim adoption of amendments to State Bar Rules 5.17 and 5.18 regarding remote and in-person appearances in the State Bar Court and authorization to circulate the amendments for public comment.

DISCUSSION

As part of the reconfiguration of the State Bar's San Francisco office space, the State Bar Court's footprint will be reduced to one courtroom. This one courtroom will need to accommodate all in-person and hybrid proceedings presided over by the court's two San Francisco Hearing Department judges and oral arguments held by the Review Department. Without changes to the procedures for parties to give notice of remote appearances, the court will face calendar management difficulties and some trials will need to be continued due to conflicting demands for use of the courtroom. In many cases, these conflicts would be avoidable if the court had more advance notice of a party's request to appear remotely.

The court seeks to amend the current rules regarding notice for remote appearances so that it will have the tools needed for efficient calendar management, and asks for interim adoption of the amendments so that those tools are available for immediate use as the court transitions to having only one San Francisco courtroom.

Under rule 5.17, the default for all settlement conferences and hearings in the State Bar Court other than trials and evidentiary hearings is for the parties to appear remotely. A party who wishes to appear in person for a hearing must file notice with the court and serve the opposing party no fewer than 10 days before the hearing; the opposing party can then respond to give notice of that party's intent to appear remotely. Under rule 5.18, the default for all trials and evidentiary hearings is for the parties to appear in person. A party who wishes to appear at trial¹ must file notice with the court and serve the opposing party no more than ten days after the court sends notice of the trial date. The opposing party may respond by giving notice of that party's intent also to appear remotely or may file a written opposition to the remote appearance.

Over the two years that these rules have been in effect, the need for modifications to clarify the rules and make the procedures more workable has become evident. The existing rules are cumbersome for the parties and needlessly hinder the court's ability to plan in advance for trials and other court events. Often the parties know early on, before a trial date is set, that one or both of them want to appear remotely but under the existing rule, the court receives notice of the remote appearances only after notice of the trial date has been served. The amendments proposed in rules 5.17 and 5.18 will make it easier for parties and for the court by providing more options for the parties to give notice of remote appearances and by giving the court the information it needs to better manage court calendars.

These amendments are critical given the impending loss of a courtroom in San Francisco. With more advance notice of fully remote trials, the court will be able to avoid unnecessary continuances of trials when one of those trials is going to proceed as remote. In addition, State Bar Court judges are sometimes assigned to cases outside of their usual venue. More advance notice of remote proceedings will reduce the need for judges to travel from one location to the other, thereby reducing travel costs.

¹ For the sake of brevity, the word "trial" is used in this memorandum to refer to both trials and other evidentiary hearings.

The proposed amendments to rule 5.17, regarding remote and in-person appearances at non-trial events, are attached in clean text (Attachment A) and in redline showing the changes from the current text of the rule (Attachment B). The proposed amendments to rule 5.17:

- Update the reference to Early Neutral Evaluation Conferences to reflect the recent renaming of them as Prefiling Settlement Conferences;
- Clarify that information on remote proceedings will be published on the court's website only for those proceedings open to the public;
- Eliminate the existing requirement that a party who non-electronically serves notice of intent to appear in person at a hearing must also give notice by telephone or in person to the opposing party, as the additional notice has not been needed for parties to receive the information in a timely manner; and
- Give the court full discretion to order a proceeding to be conducted remotely or continued when doing so is in the interests of justice by deleting the language limiting that discretion to when the court is scheduled to conduct an in-person hearing on the same day in a different venue.

The proposed amendments to rule 5.18, regarding in-person and remote appearances at trials, are attached in clean text (Attachment C) and in redline showing the changes from the current text of the rule (Attachment D). The proposed amendments to rule 5.18:

- Remove references to "witnesses" throughout the rule, as the rule applies to parties as defined in rule 5.4(48) of the Rules of Procedure of the State Bar.
- Allow the parties to provide notice to the court through a stipulation that either or both parties intend to appear remotely, allowing the parties to stipulate orally at the initial status conference or in writing within 10 days after the court serves notice of the trial;
- Allow a party to provide oral notice at the initial status conference of that party's intent to appear remotely at trial;
- Allow a party, in response to an oral notice of a remote appearance, to make an oral showing to the court as to why the remote appearance should not be allowed or to file a written opposition;
- Require the court to state in its order following the initial status conference whether any party gave notice of an intent to appear remotely and whether there was opposition;
- Eliminate the existing requirement that a party who non-electronically serves notice of intent to appear remotely must also give notice by telephone or in person to the

opposing party, as the additional notice has not been needed for parties to receive the information in a timely manner; and

- Clarify that the time for a written response or opposition to a notice of a remote appearance to be filed is five calendar days after the notice is served or five calendar days after the court's status conference order stating that such notice was given is served.

This agenda item requests that the proposed amendments be adopted on an interim basis pursuant to rule 1.10(C) of the Rules of the State Bar of California, which allows the Board of Trustees to adopt or amend a rule on an interim basis² without first circulating it for public comment in the case of an emergency. As noted above, the State Bar Court San Francisco venue will be reduced to having only one courtroom as soon as August 2024. Without the interim adoption of the amendments to rules 5.17 and 5.18 while these amendments go through the ordinary rule-making process for permanent adoption, the court will face enormous difficulties in managing its calendar, leading to delays of trials and other court proceedings.

PREVIOUS ACTION

None

FISCAL/PERSONNEL IMPACT

Potential cost savings from decreased need for State Bar Court judges to travel between the San Francisco and Los Angeles venues.

AMENDMENTS TO RULES

Title 5, Division 1

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS

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

² Rule 1.10(C) of the Rules of the State Bar of California permits interim rules to remain in effect for up to 120 days. This agenda item requests adoption of amendments to rules 5.17 and 5.18 effective July 29, 2024. If approved, these interim amendments must be repealed or replaced by amendments that have gone through the public comment process by no later than November 26, 2024. To meet this deadline, staff anticipates bringing the amendments back from public comment to the Board for approval at its November meeting.

RESOLUTIONS

Should the Board of Trustees, sitting as the Regulation and Discipline Committee, concur it is:

RESOLVED, that the Board of Trustees sitting as the Regulation and Discipline Committee, determines pursuant to rule 1.10(C) of the Rules of the State Bar of California that the impending loss of one of the State Bar Court's San Francisco courtrooms requires authorization of interim amendments to the Rules of Procedure without prior public comment to allow the court to manage its calendar efficiently through the transition; and it is

FURTHER RESOLVED, that the Board of Trustees sitting as the Regulation and Discipline Committee, having determined pursuant to rule 1.10(C) of the Rules of the State Bar of California that an emergency justifies the Board of Trustees sitting as the Regulation and Discipline Committee to adopt these amendments on an interim basis without public comment, hereby adopts on an interim basis, effective beginning July 29, 2024, the proposed amendments to rule 5.17 of the Rules of the State Bar of California, as set forth in Attachments A and B, and proposed amendments to rule 5.18 of the Rules of the State Bar of California, as set forth in Attachments C and D; and it is

FURTHER RESOLVED, that the Board of Trustees sitting as the Regulation and Discipline Committee authorizes staff to make available for public comment, for a period of 45 days, proposed amendments to rule 5.17 of the Rules of the State Bar of California, as set forth in Attachments A and B, and proposed amendments to rule 5.18 of the Rules of the State Bar of California, as set forth in Attachments C and D; 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 amendments to the Rules of the State Bar of California.

ATTACHMENTS LIST

- A. Proposed Amendments to Rule 5.17 – Clean Version
- B. Proposed Amendments to Rule 5.17 – Redline to Current Rule 5.17
- C. Proposed Amendments to Rule 5.18 – Clean Version
- D. Proposed Amendments to Rule 5.18 – Redline to Current Rule 5.18