



The State Bar *of California*

OPEN SESSION AGENDA ITEM 5.8 JULY 2024 BOARD OF TRUSTEES

DATE: July 18, 2024

TO: Members, Board of Trustees
Sitting as the Regulation and Discipline Committee

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

SUBJECT: Proposed New Rule of Procedure Regarding Vexatious Litigants in State Bar Court: Request to Circulate for Public Comment

EXECUTIVE SUMMARY

The State Bar Court seeks to address the problem of vexatious litigants in the court, i.e., litigants who impose a disproportionate burden on resources by filing frivolous pleadings or by repeatedly attempting to relitigate issues that have already been resolved by the court. This item seeks authorization to circulate for public comment proposed new State Bar Rule 5.19 to give the court tools to control the behavior of vexatious litigants and prevent them from overtaxing the court's resources. The proposed rule sets out the criteria for a litigant to be declared a vexatious litigant, creates procedures for the court to make its determination, gives the litigant the opportunity to be heard, and sets forth the restrictions that can be imposed on a vexatious litigant to control the litigant's conduct. Those restrictions may include, when appropriate, a requirement that the litigant seek court approval before submitting pleadings for filing with the State Bar Court.

RECOMMENDED ACTION

This item seeks authorization to circulate for public comment proposed new State Bar Rule 5.19 regarding vexatious litigants in the State Bar Court.

DISCUSSION

The judges and staff of the State Bar Court (SBC) struggle with the workload burden imposed by

certain litigants who file frivolous pleadings, repeatedly attempt to relitigate issues that have been finally determined, and engage in other abusive litigation tactics. Though few in number, these vexatious litigants place a disproportionate burden on the court's resources as time must be spent reviewing and responding to their repetitive and unmeritorious filings. The court therefore now seeks to create a Rule of Procedure that will give it the tools it needs to control the abusive behaviors of vexatious litigants.

California state courts have long had a powerful tool to control the conduct of litigants who repeatedly file unmeritorious lawsuits or engage in abusive litigation tactics: the California vexatious litigant statute, Code of Civil Procedure §391 *et seq.* The statute, first enacted in 1963, sets out the criteria for declaring a litigant to be a vexatious litigant and the procedures for a court to make that determination. Code Civ. Proc. §§391 to 391.3. Once an individual has been declared a vexatious litigant, the statute allows the court to impose restrictions that may include a requirement for the litigant to get court approval before filing any new litigation. Code Civ. Proc. §391.7. California's statute has been found by both federal and state courts to meet the due process requirements applicable when a law places limitations on an individual's access to the courts. *Wolfe v. George* (9th Cir 2007) 486 F. 3d 1120; *Wolffgram v. Wells Fargo Bank* (1997) 53 Cal.App. 43.

The State Bar rule regarding vexatious complainants served as an additional model for the proposed vexatious litigant rule. Under rule 2605 of the State Bar Rules of Procedure, the Office of Chief Trial Counsel (OCTC) may designate a person as a "vexatious complainant" if, within the preceding two-year period, that person has submitted to the State Bar 10 or more communications alleging attorney misconduct that were closed without investigation because they did not allege sufficient factual or legal grounds. OCTC then may decline to review and process any subsequent communications from someone designated a vexatious complainant unless the communication is verified by the complainant under penalty of perjury and submitted on their behalf by a licensed California attorney. Rule 2605 provides a streamlined process for a person designated as a vexatious litigant to seek review of that designation in the Review Department of the State Bar Court. The court reviews the designation solely to determine whether the person meets the criteria of having filed 10 or more complaints that were finally closed at the inquiry stage and makes its determination on the basis of the written submissions.

Proposed rule 5.19 is modeled on California's vexatious litigant statute and provides similar protections for the rights of litigants. Rule 2605 was an additional model, particularly as to the timeline for processing a motion to designate someone a vexatious litigant and allowing the court to rule on the basis of documentary evidence. The proposed rule sets out the criteria for a litigant to be declared a vexatious litigant, creates procedures for the court to make its determination, gives the litigant the opportunity to be heard, and sets forth the restrictions that can be imposed on a vexatious litigant to control their conduct.

Specifically, the proposed new rule:

- Defines "vexatious litigant" as a litigant who:

- repeatedly relitigates or attempts to relitigate an issue of law or fact that has been finally determined by the SBC or by the Supreme Court; or
- repeatedly files unmeritorious motions, pleadings or other papers or engages in other bad faith or frivolous litigation tactics; or
- has previously been declared to be a vexatious litigant in any state or federal court;
- Allows the court, on its own motion or the motion of a party, to issue an order declaring a party to be a vexatious litigant and imposing requirements on that party as appropriate to control their conduct;
- Allows the court to impose appropriate requirements to control the conduct of a vexatious litigant;
- Provides that no party may be declared a vexatious litigant without being given notice and the opportunity to be heard, and sets forth the procedures for a party to file a response to a motion to declare that party a vexatious litigant;
- Permits interlocutory review of a ruling on a motion to declare a party a vexatious litigant; and
- Specifically permits the court, in an order declaring a party to be a vexatious litigant, to prohibit the vexatious litigant from filing a motion, supplement or amendment to any pleading in any matter before the SBC without first obtaining leave of the court.

The full text of the proposed new rule is attached in Attachment A.

The court believes that adoption of rule 5.19 will give the court a much-needed tool to shut down excessive and burdensome litigation tactics. Adoption of the rule will allow the court to preserve court resources and protect the rights of all litigants to have their cases processed fairly and efficiently.

PREVIOUS ACTION

None

FISCAL/PERSONNEL IMPACT

None

AMENDMENTS TO RULES

Title 5, Division 1, Section 5.19

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS

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

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 authorizes staff to make available for public comment, for a period of 45 days, proposed new rule 5.19 of the Rules of the State Bar of California, as set forth in Attachment A; and it is

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

ATTACHMENT LIST

A. Proposed New Rule 5.19