



The State Bar of California

OPEN SESSION AGENDA ITEM 6.4 MAY 2025 BOARD OF TRUSTEES

DATE: May 22, 2025

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

FROM: Kathy Sher, Clerk of the State Bar Court

SUBJECT: Proposed New Rule 5.32 and Amendments to Rules 5.15, 5.151, 5.391, 5.441, 5.461, 3.125, and 4.47 of the Rules of the State Bar Regarding Waivers of State Bar Court Filing Fees and Transcript Costs: Request to Circulate for Public Comment

EXECUTIVE SUMMARY

This staff report seeks authorization to circulate for public comment proposed amendments to the State Bar Rules to allow the waiver of filings fees and transcript preparation costs for low-income litigants in State Bar Court proceedings. Currently, the State Bar Court charges filing fees to litigants initiating certain types of cases, including reinstatement cases and moral character proceedings. In addition, litigants who seek review of a Hearing Department decision are required to pay the cost of having a trial transcript prepared. Filing fees and transcript costs can in some cases make it impossible for a litigant to pursue their case due to a lack of means to pay these fees and costs. The proposed changes to the rules will create a procedure allowing waiver of filing fees for low-income litigants. The proposal also includes changes to the rules to allow for a waiver of payment of transcript costs; corresponding changes to create procedures for transcript cost waivers will be made in the State Bar Court's Rules of Practice.

RECOMMENDED ACTION

The Board is asked to authorize the release for public comment for a period of 45 days of proposed new State Bar Rule 5.32¹, proposed changes to rules 5.15, 5.151, 5.391, 5.441, and

¹ The Rules of Procedure that govern State Bar Court proceedings are set forth within Title 5 of the Rules of the State Bar. All further references to the Rules of Procedure are to Title 5 of the Rules of the State Bar. All further references to the Rules are to the State Bar Rules, including those rules within the Rules of Procedure, unless otherwise stated.

5.461, and proposed new footnotes to rules 3.125 and 4.47 to allow the waiver of filing fees and transcript preparation costs for low-income litigants in State Bar Court proceedings.

DISCUSSION

Although there are no filing fees in most types of proceedings in the State Bar Court (SBC), litigants who seek to file a petition for reinstatement, an appeal of an adverse determination of moral character, or an appeal of a denial, suspension, or revocation of a legal specialization certification must pay the applicable filing fee.² In addition, a litigant who seeks review of a Hearing Department decision must order a trial transcript and pay the transcript preparation cost. For low-income litigants, the filing fees and transcript costs may pose an insurmountable barrier to their ability to pursue their cases. This creates an unfair system where a higher-income person can petition for reinstatement, seek SBC review of an adverse moral character determination, or challenge an SBC Hearing Department decision, but a lower-income person may not be able to, regardless of the merits of that person's case. The Supreme Court of California, recognizing this unfairness, has expressed an interest in creation of procedures in State Bar Court to ensure that a lack of means to pay for a transcript does not prevent a litigant from seeking review of their case.

To address this inequity, proposed new rule 5.32 would create a procedure for low-income litigants to apply for a waiver of any applicable filing fee, with corresponding changes made in other provisions that refer to the required filing fees. Further changes in the Rules of Procedure are proposed to allow for a waiver of the transcript preparation costs when a request for review is filed. If the changes in the Rules of Procedure regarding transcript cost waivers are adopted, the SBC's Executive Committee will need to revise the Rules of Practice of the State Bar Court to create a procedure for litigants to apply for a waiver of the transcript costs.³

Filing Fee Waivers: Under proposed new rule 5.32, an applicant who is found to meet the eligibility criteria for fee scaling under rule 2.15 (currently, having a gross annual individual income below \$60,478.35) will be eligible for a filing fee waiver. The procedure is based on the fee waiver application procedure for litigants in Superior Courts, and simply requires submission of an application on a court-approved form. The details of the procedures for making the eligibility determination will be set out in SBC guidelines and procedures. In most cases it is expected that the determination will be made on the basis of the application alone without need for any further submission of evidence or for a hearing.

Additional changes are proposed in the Rules of Procedure to existing rules that refer to filing fee requirements to add language recognizing the availability of fee waivers. Footnotes are proposed to be added to those rules in other Titles of the State Bar Rules that refer to filing fee requirements to make clear that an applicant can apply for a waiver of the fee.

² Petitions for reinstatement and appeals of moral character determinations are common case types in the SBC, with six moral character cases and nine petitions for reinstatement having been filed in 2024. By contrast, there has not been a single case filed regarding legal specialization certification in at least six years.

³ Pursuant to Business and Professions Code sections 6086.5, subdivision (d)(2), the Executive Committee of the State Bar Court may adopt rules of practice for the State Bar Court, so long as those rules do not conflict with the rules of procedure adopted by the Board.

Transcript Cost Waivers: Rule 5.151 sets out the requirements for filing a request for review of an SBC Hearing Department decision, including that the party seeking review must submit an order for a trial transcript and payment for the transcript. Proposed amendments to rule 5.151 would allow a party to file a request for review without paying for the transcript, by instead filing an application to have those costs waived. Additional changes are proposed in the Rules of Procedure to recognize that transcript preparation costs may be waived in some cases.

The existing procedural requirements regarding payment of transcript preparation costs are set out in the Rules of Practice of the State Bar Court. If the proposed amendments to rule 5.151 are adopted, the SBC's Executive Committee will need to adopt changes to the Rules of Practice to create procedures and eligibility criteria for the transcript cost waiver program. The eligibility criteria and application procedures for waivers of transcript preparation costs will generally be the same as the criteria and procedures for filing fee waivers: an applicant who meets the eligibility criteria for fee scaling under rule 2.15 (having a gross annual individual income below \$60,478.35) will be able to apply for a waiver of transcript preparation costs by submitting an application on a court-approved form. The decision on an application for a waiver of transcript costs will be made by the Presiding Judge of the SBC.

Specific Proposed Changes to the State Bar Rules:

The proposed rule amendments and proposed new footnotes are attached in clean text (Attachment A) and as a redline showing changes from the current rules (Attachment B). The proposed changes are as follows:

- Rule 5.15 is amended to add language stating that payment of transcript costs may be waived pursuant to the provisions of the Rules of Practice governing such waivers.

- Rule 5.32 is added to set out procedures for applications for waivers of filing fees.
 - Rule 5.32(A) states that a party who meets the criteria for a reduction of license fees under rule 2.15 may request a waiver of any SBC filing fee by submitting an application on the court-approved form.
 - Rule 5.32(B) sets out protections for the confidentiality of information submitted in an application for a fee waiver. This provision is based on rule 3.54 of the California Rules of Court, which governs the confidentiality regarding fee waiver applications in the Superior Courts.
 - Rule 5.32(C) provides that if the court finds that the applicant meets the eligibility criteria, it will grant the application for waiver and makes this decision non-reviewable in the SBC.
 - Rule 5.32(D) sets out the procedures that apply if an application for a fee waiver is denied.

- Rule 5.151 is amended to add language allowing a litigant filing a request for review to submit an application for waiver for transcript costs, pursuant to the procedures set forth in the Rules of Practice, in lieu of submitting payment.

- Rule 5.391, regarding legal specialization proceedings, is amended to add a sentence stating that the attorney may apply for a waiver of the filing fee.
- Rule 5.441, regarding petitions for reinstatement, is amended to add language stating that the attorney may apply for a waiver of the filing fee and noting that the petition will be rejected if neither the filing fee nor an application for a fee waiver is submitted. In addition, the title of subsection 5.441(B)(2) is revised to reflect recent changes to that subsection to remove proof of payment of monetary sanctions as a pre-filing requirement.
- Rule 5.461, regarding moral character proceedings, is amended to add a sentence stating that the attorney may apply for a waiver of the filing fee.

Footnotes are proposed to be added to the State Bar Rules in two places to clarify that filing fee waivers are available. The proposed added footnotes are included in the draft proposed rules amendments, in clean text (Attachment A) and as a redline showing the addition of the footnotes (Attachment B). The changes are as follows:

- A footnote is proposed to be added to rule 3.125, regarding legal specialization proceedings, to state that an applicant may apply for a waiver of the filing fee charged for filing a petition under that rule.
- A footnote is proposed to be added to rule 4.47, regarding moral character proceedings, to state that an applicant may apply for a waiver of the filing fee charged for filing a request for hearing under that rule.

PREVIOUS ACTION

None

FISCAL/PERSONNEL IMPACT

The SBC estimates that the loss of revenue from the waiver of filing fees in eligible reinstatement cases and moral character proceedings will be less than \$10,000 each year.

The cost of allowing waivers of transcript preparation costs is more difficult to estimate, as the cost for a transcript varies greatly depending on how long the trial was. Based on data regarding the number of respondents in discipline cases who were eligible for fee scaling and the average length of trials, the SBC estimates that the cost to pay for trial transcript preparation in those cases where the litigant is granted a waiver will generally be between \$20,000 and \$50,000 each year, based on current rates charged by the service that prepares the transcripts.

AMENDMENTS TO RULES

Title 5, Division 1, Rule 5.15

Title 5, Division 2, Chapter 1, Rule 5.32

Title 5, Division 3, Rule 5.151
Title 5, Division 6, Chapter 6, Rule 5.391
Title 5, Division 7, Chapter 3, Rule 5.441
Title 5, Division 7, Chapter 4, Rule 5.461

Footnotes are proposed to be added to the following rules:

Title 3, Division 2, Chapter 2, Rule 3.125
Title 4, Division 1, Chapter 4, Rule 4.47

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS

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

- c. 3. Identify and implement strategies to address other disparities in discipline rates and outcomes, including those related to solo and small firm practitioners.

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 5.32, proposed amendments to rules 5.15, 5.151, 5.391, 5.441, and 5.461, and proposed footnotes to rules 3.125 and 4.47 of the Rules of the State Bar of California, as set forth in Attachments A and B; 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 new rule 5.32, proposed amendments to 5.15, 5.151, 5.391, 5.441, and 5.461, and proposed footnotes to rules 3.125 and 4.47 of the Rules of the State Bar of California – Clean Version
- B. Proposed new rule 5.32, proposed amendments to 5.15, 5.151, 5.391, 5.441, and 5.461, and proposed footnotes to rules 3.125 and 4.47 of the Rules of the State Bar of California – Redline to Current Rules