

## Proposed Revisions to the Rules of Procedure, July 2003

### **RULE 23. ORDERS SEALING PORTIONS OF RECORD.**

- (a) As used in this rule, the term “protected material” includes a hearing, testimony, exhibit, pleading or other document, which is part of the record in a public proceeding but has been ordered sealed under this rule.
- (b) A motion to seal protected material must be filed in the hearing department and, absent a showing of good cause for the delay, the motion may not be made for the first time on review.
- (c) A motion for an order sealing a portion of the record shall be supported by a showing of specific facts establishing that a statutory privilege or constitutionally protected interest of a party, non-party or witness outweighs the compelling public interest in the public nature of the proceeding. The relief sought shall be narrowly tailored to serve the specific interest sought to be protected. The motion may be filed under seal and if so filed shall be treated as protected material, until further order of the court.
- (d) Protected material shall be kept under seal by the Clerk, and shall be marked and maintained by other custodians in a manner calculated to prevent improper disclosure.
- (e) All persons to whom protected material is disclosed shall be given a copy of the applicable order sealing a portion of the record by the person making the disclosure.
- (f) Unless otherwise ordered, protected material may only be disclosed to:
  - (1) Parties to the proceeding and counsel;
  - (2) Personnel of the Supreme Court, the State Bar Court and independent audiotape transcribers; and
  - (3) Personnel of the Probation Unit, ~~Office of the Chief Trial Counsel~~, when necessary for their official duties.
- (g) Orders of the Hearing Department under this rule shall be reviewable by the Review Department under rule 300. The hearing judge or the Presiding Judge may order that the materials be sealed pending further order of the Review Department or the Supreme Court.
- (h) Nothing in this rule shall prohibit a party from requesting that portions of evidence be redacted or from filing motions in limine.

**Eff. January 1, 1995. Revised: January 1, 1996. Source: New.**

**RULE 550. MOTIONS FOR MODIFICATION OR EARLY TERMINATION OF PROBATION.**

- (a) ~~A party~~**Either the respondent or the Probation Unit** may move for early termination of probation no earlier than six (6) months after the effective date of the order imposing probation; a motion for modification of probation may be made at any time. A motion for modification or early termination of probation shall state facts which show that the request is consistent with the protection of the public; the successful rehabilitation of the respondent, including the degree of compliance with the conditions of probation; and the maintenance of the integrity of the legal profession. When considering motions for modification or early termination, the State Bar Court shall balance the interests of the respondent and the public and determine whether modification or termination of probation serves the objectives of probation.
- (b) Unless expressly authorized by the Supreme Court, no motion or stipulation will be considered by the State Bar Court to modify an actual or stayed period of suspension whether it is a condition of probation or not.
- (c) The motion must set forth clearly the specific relief requested and be accompanied by one or more declarations setting forth with particularity facts showing:
- (1) that the requested relief is warranted; and
  - (2) that granting the request will be fully consistent with the objectives of probation as provided in this rule.
- (d) A response to the motion shall be filed within thirty (30) days following service of the motion. A party may file and serve a written request for a hearing at the time of filing the motion or within ten (10) days following service of the response. Failure to request a hearing shall constitute a waiver of hearing.
- (e) The party filing the motion shall serve it in compliance with the rule for service of initial pleadings (rule 60), **except that service upon the State Bar pursuant to rule 60(c) shall be made upon the Probation Unit at 1149 S. Hill Street, Los Angeles, CA 90015-2299.**
- (f) The Court shall hold a hearing if timely requested by either party or if the Court determines that a hearing will materially contribute to the Court's consideration of the motion. The hearing shall be set on an expedited basis.

**Eff. January 1, 1995. Source: New (but see TRP 614.5(f) and rule 1400(b), Provisional Rules of Practice).**

**RULE 552. BURDEN OF PROOF; DISCOVERY; EVIDENCE.**

- (a) The burden of proof on a motion for modification or early termination of probation shall be by clear and convincing evidence.
- (b) Unless the Court orders otherwise, discovery shall not be afforded, except that the ~~Office of Trials~~**Probation Unit** may take the ~~moving party's~~**respondent's** deposition promptly after filing of the motion, provided that the taking of such deposition shall not extend any time limit provided under these rules unless ordered by the Court for good cause.
- (c) If no hearing is held, the declarations offered in support of and in response to the motion shall be received in evidence, subject to the Court's ruling on any written objections thereto filed and served by a party within ten (10) days after the filing of the response to the motion.
- (d) If a hearing is held:
  - (1) The declarations submitted in support of and in response to the motion shall be admitted in evidence, subject to appropriate objection, as the direct testimony of the respective declarants, and
  - (2) The party which filed a declaration shall produce the declarant for cross-examination at the hearing if an opposing party so requests in a writing filed and served no later than five (5) days after the service of the declaration in question.

Eff. January 1995. Source: New.

**RULE 560. PROBATION REVOCATION PROCEEDINGS.**

Upon reasonable cause to believe that a condition or conditions of probation have been violated, the ~~Office of the Chief Trial Counsel~~**Probation Unit** may charge the probation violation in either or both: a probation revocation proceeding governed by these rules.:

- ~~(a) an original disciplinary proceeding based on the respondent's violation of Business and Professions Code section 6068(k), governed by the rules for disciplinary proceedings generally, or~~
- ~~(b) A probation revocation proceeding governed by these rules.~~

**Alternatively, the Office of the Chief Trial Counsel may charge the probation violation in an original disciplinary proceeding, based on the respondent's violation of Business and Professions Code section 6068(k), governed by the rules for disciplinary proceedings generally.**

Eff. January 1, 1995.  
Source: TRP 610(a) (eff. 1/1/93).

**RULE 563. CONDUCT OF PROBATION REVOCATION PROCEEDINGS.**

Probation revocation proceedings shall be conducted as follows:

- (a) The proceeding shall be initiated by the filing of a motion to revoke probation, which shall be accompanied by one or more declarations setting forth all facts relied on in support of the motion. If a hearing on the motion is requested, the motion shall so state. Failure to request a hearing shall waive any right to a hearing. The motion and all supporting pleadings and evidence, including declarations and a copy of an approved response form, shall be served on the respondent pursuant to the rule for service of initial pleadings (rule 60).
- (b) The respondent shall file a response to the motion.
  - (1) Such response, including any opposition, shall be filed and served within twenty (20) days of the service of the motion. All facts relied on in the response or opposition shall be set forth in one or more accompanying declarations.
  - (2) If the respondent desires a hearing on the motion, the response shall so state, regardless of whether the motion requested a hearing. If the respondent desires to cross-examine the declarants at the hearing, the response shall so state.
  - (3) Failure to file a response requesting a hearing shall constitute waiver by the respondent of any right to request a hearing, and failure to file any response shall constitute an admission of the factual allegations contained in the motion and supporting documents.
- (c) No discovery shall be conducted except by leave of the Court upon good cause shown.
- (d) The Court shall hold a hearing if timely requested by any party or if the Court determines that a hearing will materially contribute to the consideration of the motion. If a hearing is held:
  - (1) The hearing shall be set on an expedited basis.
  - (2) At the hearing, the declarations submitted in support of the motion shall be admitted in evidence, subject to appropriate objection, as the direct testimony of the respective declarants, provided that if the respondent filed a timely response to the motion in which the respondent expressly requested a hearing and the opportunity to cross-examine the declarants, ~~the deputy trial counsel~~ **for the Probation Unit** shall produce the declarants at the hearing, and the respondent shall have the right to cross-examine the declarants.
  - (3) If the respondent filed declarations in response to the motion, such declarations shall be admitted in evidence as the direct testimony of the respective declarants subject to appropriate objection, only if (A) the respondent produces the declarant at the hearing for cross-examination, or (B) ~~the deputy trial counsel~~ **for the Probation Unit** waives the right to cross-examine the declarant.
- (e) If no hearing is held, the declarations and exhibits submitted in support of and in opposition to the motion shall be received in evidence, subject to the Court's ruling on any appropriate objections thereto asserted by the respondent in the response to the motion or by the ~~Office of the Chief Trial Counsel~~ **Probation Unit** in a writing filed and served not more than ten (10) court days after the service of the response to the motion.
- (f) In probation revocation proceedings, the Court shall issue a written order stating its reasons for the recommended action.

**Eff. January 1, 1995. Source: TRP 612 and 613 (eff. 1/1/93) (substantially revised).**

### **RULE 581. SERVICE AND FILING OF DECLARATIONS OF COMPLIANCE.**

- (a) All declarations of compliance shall be accompanied by proof of service on the Probation Unit; ~~Office of Trials.~~
- (b) All declarations of compliance shall be filed by the Clerk of the State Bar Court, regardless of their form or the date of their submission.
- (c) A declaration of compliance received by the Clerk of the State Bar Court which is not accompanied by proof of service on the Probation Unit, ~~Office of Trials~~ shall be filed, and the Clerk shall serve it on the Probation Unit, ~~Office of Trials.~~

**Eff. January 1, 1995.**

**Source: New.**

### **RULE 582. TIME FOR FILING PROCEEDING BASED ON UNTIMELY OR FORMALLY DEFECTIVE DECLARATION.**

Any notice of disciplinary charges which alleges that a declaration of compliance was untimely filed or was defective in form must be filed within ninety (90) days after the service of such declaration of compliance on the Probation Unit, ~~Office of Trials~~, unless a later filing is permitted by the Court for good cause shown. This time limit does not apply to a notice of disciplinary charges alleging a substantive defect in a declaration of compliance, or alleging failure to file any declaration of compliance. For purposes of this rule, any failure of a declaration of compliance to aver in substance that the respondent fully complied with the requirements of rule 955(a) shall be considered a defect in substance and not a defect in form covered by this rule.

**Eff. January 1, 1995.**

**Source: New.**

### ~~**RULE 2303. DISCLOSURE OF PROBATION REPORTS.**~~

~~Probation reports filed with the Office of the Chief Trial Counsel are not confidential. The probation file, however, is confidential.~~

~~**Eff. March 2, 1996.**~~

~~**Source: New.**~~

## ~~**CHAPTER 7. DIVISION III. PROBATION UNIT**~~

### **RULE 2701. PROBATION UNIT.**

The Probation Unit, ~~Office of the Chief Trial Counsel~~, including probation monitor referees, shall supervise members placed on probation **or conditions attached to reprovls** by disciplinary orders of the Supreme Court or the State Bar Court or pursuant to the terms of agreements in lieu of disciplinary prosecution.

**Eff. January 1, 1996.**

**Source: TRP 605 (substantially revised).**

**RULE 2702. DUTIES OF PROBATION MONITOR REFEREES.**

It shall be the duty of a probation monitor referee to:

- (a) Review the applicable disciplinary order or agreement in lieu of disciplinary prosecution and any conditions of probation or reprobation applicable to the member;
- (b) Promptly review with the member the conditions of probation or reprobation and establish a manner and schedule of compliance and reports of compliance to the probation monitor;
- (c) Report to the Probation Unit, ~~Office of the Chief Trial Counsel~~, 1149 South Hill Street, Los Angeles, CA 90015-2299, within forty-five (45) days of receipt of the conditions of probation or reprobation, upon the manner and schedule of compliance, and thereafter on a quarterly basis upon the compliance of the member;
- (d) Determine from time to time, after assessment of the relevant facts, the extent and degree of the member's compliance with the conditions of probation or reprobation; and
- (e) After assessment of the relevant facts and making a determination that a member has failed to comply with the conditions of probation or reprobation or agreement in lieu of disciplinary prosecution, report such failure to the Probation Unit.

Eff. January 1, 1996.

Source: TRP 614.5 (substantially revised).

**Rule 2703. CONFIDENTIALITY OF PROBATION FILES.**

**Except as otherwise provided by law or by these rules, the files and records of the Probation Unit are confidential.**

Eff. [Insert Date when approved]

Source: New.

**STATE BAR COURT NOTE:**

***Division III. Disqualification and MCLE Credit and Division IV. Provisions Applicable to Various Proceedings shall be re-numbered to Division IV and Division V, respectively.***