

## TITLE 6. GOVERNANCE

### DIVISION 3. Access to State Bar Records

#### Rule 6.70 Intent, Application, Definitions and Construction

##### (A) Intent.

1. The Board of Trustees intends by this division to provide public access to the State Bar's nondeliberative and nonadjudicative records, budget and management information.
2. These rules clarify the public's right of access to State Bar records and must be broadly construed to further the public's right of access as provided in California Constitution, article 1, section 3, subdivision (b).

##### (B) Application.

1. These rules apply to public access to State Bar administrative records, including records of budget and management information.
2. These rules do not apply to, modify or otherwise affect existing law regarding public access to adjudicative records.
3. These rules do not restrict the rights to disclosure of information otherwise granted by law to a recognized employee organization.
4. These rules do not affect the rights of litigants, including parties to administrative proceedings, under the laws of discovery of California, nor do they limit or impair any rights of discovery in a criminal case.
5. These rules do not apply to electronic mail and text messages sent or received before \_\_\_\_\_, the effective date of these rules.

##### (C) Definitions.

As used in these rules:

1. "Adjudicative record" means any writing prepared for or filed or used in a court proceeding, the judicial deliberation process, or the assignment or reassignment of cases and of judges and judge pro tempore of the State Bar Court, or of counsel appointed or employed by the State Bar Court.

2. “Administrative record” means any writing containing information relating to the conduct of the people’s business that is prepared, owned, used, or retained by the State Bar regardless of the writing’s physical form or characteristics, except an adjudicative record. The term “administrative record” does not include records of a personal nature that are not used in or do not relate to the people’s business, such as personal notes, memoranda, electronic mail, calendar entries, and records of Internet use.
3. “Person” means any natural person, corporation, partnership, limited liability company, firm or association.
4. “Writing” means any handwriting, typewriting, printing, photographing, photocopying, electronic mail, fax, and every other means of recording on any tangible thing any form of communication or representation, including letters, words, pictures, sounds, symbols, or combinations, regardless of the manner in which the record has been stored.

(D) Construction.

1. Unless otherwise indicated, the terms used in these rules have the same meanings as under the Legislative Open Records Act (Gov. Code, § 9070 et seq.), the California Public Records Act (Gov. Code, § 6250 et seq.), and the Judicial Council’s rule on public access to judicial administrative records (Cal. Rules of Court, rule 10.500) and must be interpreted consistently with the interpretation applied to the terms under those acts. To the extent a term is defined differently under those laws, the definition which is most protective of the public’s right to access to government information shall control construction of these rules.
2. These rules do not require the disclosure of a record if the record is exempt from disclosure under these rules or is the type of record that would not be subject to disclosure under the Legislative Open Records Act, the California Public Records Act, or California Rule of Court 10.500, except that a record subject to disclosure under any of these laws shall be disclosable under these rules even if disclosure would be prohibited, or non-disclosure authorized, under another of these laws.

Rule 6.71 Public Access

(A) Access.

1. The State Bar must allow inspection and copying of administrative records unless the records are exempt from disclosure under these rules or by law.
2. Nothing in these rules requires the State Bar to create any record or to compile or assemble data in response to a request for administrative

records if the State Bar does not compile or assemble the data in the requested form for its own use or for provision to other agencies. For purposes of these rules, selecting data without alteration from extractable fields in a single database using software already owned or licensed by the State Bar does not constitute creating a record or compiling or assembling data.

3. If an administrative record contains information that is exempt from disclosure and the exempt portions are reasonably segregable, the State Bar must allow inspection and copying of the record after redaction of the portions that are exempt from disclosure. The State Bar is not required to allow inspection or copying of the portion of a writing that is an administrative record unless that portion is reasonably segregable from the portion that constitutes an adjudicative record.

(B) Examples.

Administrative records subject to inspection and copying unless exempt from disclosure under Rule 6.72 include, but are not limited to, the following:

1. Any budget, record of revenue received, and expenditure document pertaining to the State Bar, including quarterly financial statements and statements of revenue, expenditure, and reserves.
2. Actual and budgeted employee salary and benefit information.
3. Copies of executed contracts with outside vendors and payment information and policies concerning goods and services provided by outside vendors without an executed contract, provided that competing proposals for a contract with the State Bar need not be disclosed until a contract is awarded or the Bar determines to reject all proposals.
4. Final audit reports.
5. Employment contracts between the State Bar and its employees.

(C) Procedure for requesting records.

The State Bar must make available on its public Web site or otherwise publicize the procedure to be followed to request a copy of or to inspect an administrative record. At a minimum, the procedure must include the address to which requests are to be addressed, to whom requests are to be directed, and the office hours of the State Bar office to which such requests may be directed.

(D) Costs of duplication, search and review.

1. The State Bar, on request, must provide a copy of an administrative record not exempt from disclosure if the record is of a nature permitting copying, subject to payment of the fee specified in these rules or other applicable statutory fee. The State Bar may require advance payment of any fee.
2. The State Bar may impose on all requests a fee reasonably calculated to cover the State Bar's direct costs of duplication of a record or of production of a record in an electronic form under Rule 6.71(D)(2)(a) below. The fee includes:
  - a. A charge per page, per copy, or otherwise, as established in the Schedule of Charges and Deadlines, representing the direct costs of equipment, supplies, and staff time required to duplicate or produce (but not to identify or locate) the requested record.
  - b. Any other direct costs of duplication or production, including, but not limited to, third-party costs incurred by the State Bar in retrieving the record from a remote storage facility or archive and the postage or similar costs of delivering responsive records.

(E) Inspection.

The State Bar must make its administrative records that are not exempt from disclosure open to inspection at all times during its office hours. The State Bar may make records available on-line via its website or otherwise and, if it does so, shall have no obligation to provide physical copies to those who request such records.

(F) Time for determination of disclosable records.

The State Bar, on a request that reasonably describes an identifiable record or records, must determine, within 10 calendar days from receipt of the request, whether the request, in whole or in part, seeks disclosable administrative records and must promptly notify the requesting party of the determination and the reasons for the determination.

(G) Response.

If the State Bar determines that a request seeks disclosable administrative records, the State Bar must make the disclosable administrative records available promptly. The State Bar must include with the notice of the determination the estimated date and time when the records will be made available. If the State Bar determines that the request, in whole or in part, seeks nondisclosable administrative records, it must convey its determination in writing, include a contact name and telephone number to

which inquiries may be directed, and state the express provision of these rules or other law justifying the withholding of the records not disclosed.

(H) Extension of time for determination of disclosable records.

In unusual circumstances, to the extent reasonably necessary to the proper processing of the particular request, the State Bar may extend the time limit prescribed for its determination under Rule 6.71(F) by no more than 14 calendar days by written notice to the requesting party, stating the reasons for the extension and the date on which the State Bar expects to make a determination. As used in this section, “unusual circumstances” means the following:

1. The need to search for and collect the requested records from multiple locations or facilities;
2. The need to search for, collect, and appropriately examine a voluminous amount of records that are included in a single request; or
3. The need for consultation, which must be conducted with all practicable speed, with another judicial branch entity or other governmental agency having substantial subject matter interest in the determination of the request.

(I) Reasonable Efforts.

1. On receipt of a request to inspect or obtain a copy of an administrative record, the State Bar, to assist the requester in making a focused and effective request that reasonably describes an identifiable administrative record, must do all of the following to the extent reasonable under the circumstances:
  - a. Assist the requester in identifying records and information responsive to the request or to the purpose of the request, if stated;
  - b. Describe the information technology and physical location in which the records exist; and
  - c. Provide suggestions for overcoming any practical basis for denying inspection or copying of the records or information sought.
2. The requirements of Rule 6.71(I)(1) will be deemed to have been satisfied if the State Bar is unable to identify the requested information after making a reasonable effort to elicit additional clarifying information from the requester that helps identify the record or records.

3. The requirements of Rule 6.71(I)(1) do not apply to a request for administrative records if the State Bar makes the requested records available or determines that the requested records are exempt from disclosure under these rules.

(J) No obstruction or delay.

Nothing in these rules may be construed to permit the State Bar to delay or obstruct the inspection or copying of administrative records that are not exempt from disclosure.

(K) Greater access permitted.

Except as otherwise prohibited by law, the State Bar may adopt requirements for itself that allow for faster, more efficient, or greater access to administrative records than prescribed by the requirements of these rules.

(L) Control of Records.

The State Bar must not sell, exchange, furnish, or otherwise provide an administrative record subject to disclosure under these rules to a private entity in a manner that prevents the State Bar from providing the record directly under these rules. The State Bar must not allow a private entity to control the disclosure of information that is otherwise subject to disclosure under these rules.

## Rule 6.72 Exemptions

Nothing in these rules requires the disclosure of administrative records that are any of the following:

- (A) Preliminary writings, including drafts, notes, working papers, and inter-agency or intra-agency memoranda, that are not retained by the State Bar in the ordinary course of business, if the public interest in withholding those records clearly outweighs the public interest in disclosure;
- (B) Records pertaining to pending or anticipated claims or litigation to which the State Bar is a party or State Bar personnel or officers are parties, until the pending litigation or claim has been finally adjudicated or otherwise resolved;
- (C) Personnel, medical, or similar files, or other personal information the disclosure of which would constitute an unwarranted invasion of personal privacy, including, but not limited to, records revealing home addresses, home telephone numbers, cellular telephone numbers, private electronic mail addresses, and social security numbers of State Bar personnel or officers; and work electronic mail addresses and work telephone numbers of State Bar Court judges (including temporary and assigned judges), subordinate judicial officers, and their staff attorneys;

- (D) Test questions, scoring keys, and other examination materials or data used to develop, administer, and score examinations for employment, certification, licensure, or qualification;
- (E) Investigatory or security files compiled by the State Bar for employment, certification, licensing, or qualification purposes;
- (F) Examination records for employment, certification, licensure, or qualification, including scores, whether an exam was failed, and how many times an examination was taken;
- (G) Records whose disclosure is exempted or prohibited under state or federal law, including, without limitation, provisions of the California Evidence Code relating to privilege, the California Business and Professions Code, the California Rules of Court, by court order in any court proceeding, or by the State Bar Rules or the State Bar Rules of Procedure;
- (H) Records the disclosure of which would compromise the security of the public, the State Bar or the safety of State Bar personnel or officers, including but not limited to, security plans, and security surveys, investigations, procedures, and assessments;
- (I) Records related to member information where the member has opted to limit disclosure pursuant to Business and Professions Code section 6001, subdivision (g);
- (J) Personal, medical, or financial information submitted by State Bar members, applicants for membership in the State Bar, entities regulated by the State Bar, or members of the public, the disclosure of which would constitute an unwarranted invasion of personal privacy;
- (K) Records related to evaluations of, complaints regarding, or investigations of State Bar Court judges (including temporary and assigned judges), subordinate judicial officers, and applicants or candidates for judicial office;
- (L) The contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the State Bar related to the lease, acquisition or sale of property or to prospective public supply and construction contracts, until all of the property has been leased, acquired or sold, or the relevant contracts have been executed, or all proposals or projects to which those records pertain have been permanently rejected. This provision does not affect the law of eminent domain;
- (M) Records related to activities governed by Government Code sections 3500 et seq. that reveal deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy

or that provide instruction, advice, or training to employees who are not represented by employee organizations under those sections. Nothing in this subdivision limits the disclosure duties of the State Bar with respect to any other records relating to the activities governed by the employee relations acts referred to in these rules;

- (N) Records that reveal the identity of callers or issues raised by particular callers to the State Bar's Ethics Hotline;
- (O) Records that reveal the identity of or issues raised by persons requesting an ethics opinion from the State Bar's Committee on Professional Responsibility and Conduct as well as draft opinions, notes, deliberations, and correspondence relating to the development of ethics opinions;
- (P) Records that reveal the identity of or issues raised by persons calling the State Bar's lawyer referral hotline;
- (Q) Records that contain trade secrets or privileged or confidential commercial and financial information submitted in response to the State Bar's solicitation for goods or services or in the course of the State Bar's contractual relationship with a commercial entity. For purposes of these rules:
  - 1. "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:
    - a. Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and
    - b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy;
  - 2. "Privileged information" means material that falls within recognized constitutional, statutory, or common law privileges;
  - 3. "Confidential commercial and financial information" means information whose disclosure would:
    - a. Impair the State Bar's ability to obtain necessary information in the future; or
    - b. Cause substantial harm to the competitive position of the person from whom the information was obtained.
- (R) Records whose disclosure would disclose the State Bar's or State Bar personnel's or officers' decision-making process, provided that, on the facts of the specific

request for records, the public interest served by nondisclosure clearly outweighs the public interest served by disclosure of the record; or

- (S) If, on the facts of the specific request for records, the public interest served by nondisclosure of the record clearly outweighs the public interest served by disclosure of the record.

Rule 6.73 Computer software, copyrighted materials

- (A) Computer software developed by the State Bar or used by the State Bar for the storage or manipulation of data is not an administrative record under these rules. For purposes of these rules "computer software" includes computer mapping systems, computer graphic systems, and computer programs, including the source, object, and other code in a computer program.
- (B) This rule does not limit the State Bar's ability to sell, lease, or license computer software for commercial or noncommercial use.
- (C) This rule does not create an implied warranty on the part of the State Bar for errors, omissions, or other defects in any computer software.
- (D) This rule does not limit any copyright protection. The State Bar is not required to duplicate records under this rule in violation of any copyright.
- (E) Nothing in this rule is intended to affect the administrative record status of information merely because the information is stored in a computer. Administrative records stored in a computer will be disclosed as required in these rules.

Rule 6.74 Waiver of exemptions

- (A) Disclosure by a State Bar entity or State Bar personnel or officer, acting with authority and within the scope of his, her or its office or employment, of an administrative record that is exempt from disclosure under these rules or other provision of law constitutes a waiver of the exemptions applicable to that particular record.
- (B) This rule does not apply to disclosures:
  1. Made through discovery proceedings;
  2. Made through other legal proceedings or as otherwise required by law, including, without limitation, the California Rules of Court, or the State Bar Rules;

3. Made to another judicial branch entity or judicial branch personnel for the purposes of judicial branch administration;
4. Within the scope of a statute that limits disclosure of specified writings to certain persons or for certain purposes;
5. Made to any governmental agency, judicial branch entity or judicial branch personnel, other licensing or testing entity, or law school, if the material is provided with the understanding that the recipient will maintain its confidentiality; or
6. Of information about an individual not otherwise subject to disclosure disclosed to a third party with the express written permission of the individual to which it pertains.

Rule 6.75 Availability in electronic format

(A) If the State Bar has information that constitutes an identifiable administrative record not exempt from disclosure under these rules and that is in an electronic format, the State Bar must, on request, produce that information in the electronic format requested, provided that:

1. No law prohibits disclosure or authorizes non-disclosure;
2. The record already exists in the requested electronic format, or the State Bar has previously produced the administrative record in the requested format for its own use or for provision to other agencies; and
3. The disclosure does not jeopardize or compromise the security or integrity of the original record or the electronic system on which the original record is maintained.

(B) In addition to other fees imposed under these rules, the requester will bear the direct cost of producing a record if:

1. In order to comply with (A), the State Bar would be required to produce a record and the record is one that is produced only at otherwise regularly scheduled intervals; or
2. Producing the requested record would require data compilation or extraction or any associated programming that the State Bar is not required to perform under these rules but has agreed to perform in response to the request.

(C) Nothing in this subdivision shall be construed to require the State Bar to reconstruct a record in an electronic format if the State Bar no longer has the record available in an electronic format.

Rule 6.76      Public Access Disputes

Any person may institute proceedings for injunctive or declarative relief or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any administrative record under these rules.