

AGENDA ITEM

March 123

Modification of Board Policy Regarding Posting of Documents in State Bar Disciplinary and Regulatory Proceedings

DATE: February 14, 2013

TO: Members, Regulation, Admissions and Discipline Oversight
Members, Board of Trustees

FROM: Jayne Kim, Chief Trial Counsel

SUBJECT: Modification of Board Policy Regarding Posting of Filings in
State Bar Disciplinary and Regulatory Proceedings

EXECUTIVE SUMMARY

The Office of Chief Trial Counsel (OCTC) seeks modification to the State Bar's policy statement regarding the posting of public notices of disciplinary charges (NDCs) and other initial pleadings on the State Bar's website in order to further promote public protection, to fulfill the State Bar's duty to inform the public about the work of the State Bar and to promote its policy of making public records more readily available to interested members of the public and the profession. The State Bar's existing policy statement authorizes the posting of public NDCs on the State Bar's website after a respondent has filed a response to the NDC or after the period to file a response to the NDC has expired, whichever occurs first.

This agenda item seeks Board approval to modify the State Bar's existing policy statement to explicitly authorize the immediate posting of public NDCs, petitions for reinstatements and other public disciplinary proceeding records on the State Bar's website.

BACKGROUND

During its July 11, 2008 meeting and upon recommendation by the Board Committee on Regulations, Admissions and Discipline Oversight, the Board of Governors of the State Bar of California approved and adopted the State Bar's existing policy statement regarding the posting of public notices of disciplinary charges (NDCs) on the State Bar's website.

OCTC recommends the following modifications to the State Bar's policy statement in order to make disciplinary hearing proceedings more readily or easily accessible by the public:

***[PROPOSED] STATE BAR POLICY
RE POSTING OF NOTICES OF DISCIPLINARY CHARGES
ON THE STATE BAR'S WEBSITE***

As the administrative arm of the California Supreme Court in matters relating to the admission, discipline and regulation of attorneys, the State Bar's duty to assist the Supreme Court and to protect the public includes the duty, among other things, to inform the public about the work of the State Bar, about the right of all persons to make complaints against attorneys and about the nature and procedures of the discipline system.

Although the records and court hearings relating to ~~disciplinary~~ proceedings ~~before the State Bar Court~~ against California attorneys become public upon the filing of the notice of disciplinary charges ("NDC") ~~or other initial pleading in the State Bar Court~~, the Board of ~~Trustees~~ ~~Governors~~ concludes that this information should be more ~~is currently not~~ readily or easily accessible by the public. The Board of ~~Trustees~~ ~~Governors~~ further concludes that, in order to promote public protection, to fulfill the State Bar's duty to inform the public about the work of the State Bar and to promote its policy of making its public records more readily available to interested members of the public and the profession, the State Bar should post NDCs and other initial pleadings filed in the State Bar Court on the ~~respondent~~ attorney's member profile page on the State Bar's website (www.calbar.ca.gov) as follows:

1. Following the proper filing of a notice of disciplinary charges or other initial pleading ~~in a disciplinary proceeding ("NDC") in the State Bar Court, the service of that NDC upon the respondent attorney and/or his counsel and (a) the respondent attorney's filing of a response to the NDC; or (b) expiration of the time (including any agreed upon or ordered extensions) for filing a response to the NDC, whichever is earlier, the State Bar Court will post a true and correct copy of the filed NDC and the respondent attorney's response to the NDC, if any, pleading on the member profile page of the respondent attorney. The State Bar will also post a true and correct copy of the filed response, if any, on the member profile page of the attorney.~~
2. There shall be a notice in the State Bar Court Cases or the Disciplinary and Related Actions portion of the member profile page that notifies individuals accessing the attorney's page that an NDC sets forth only misconduct that is alleged to have been committed but has not yet been proved and that the respondent attorney is presumed to be innocent of the charged misconduct unless and until a State Bar Court decision or order approving a stipulated disposition is filed, finding that one or more charges of misconduct have been established by clear and convincing evidence.

3. The initial and responsive pleadings NDC and the respondent attorney's response to the NDC will remain posted on the attorney's member profile page on the State Bar's website until either (a) a State Bar Court decision or order approving a stipulated disposition is filed in the State Bar Court finding the respondent attorney culpable of one or more acts of professional misconduct; or (b) a State Bar Court order or decision exonerating the respondent attorney or otherwise dismissing the proceeding without a finding of professional misconduct is filed in the State Bar Court.

In the former case, the NDC and the respondent attorney's response to the NDC will be removed from the member profile page contemporaneously with the posting of the State Bar Court decision or order approving a stipulated disposition. In the latter case, the decision or order dismissing the proceeding and/or exonerating the respondent attorney will be immediately posted on the member profile page and will, along with the NDC and the attorney's response to NDC, remain on the member profile page for a period of 60 days, unless the respondent attorney requests that those documents be removed earlier. The documents will, thereafter, be removed.

4. The State Bar may post other public records on the State Bar's website, including on an attorney's member profile page, consistent with its mission to protect the public, the courts and the legal profession.

ISSUE

Whether the Board of Trustees should approve, upon recommendation of the Committee on Regulation, Admissions and Discipline Oversight, modification to the State Bar's Policy Re Posting of Notices of Disciplinary Charges on the State Bar's Website, as set forth herein.

CONCLUSION

OCTC recommends that the Board of Trustees approve, upon recommendation of the Committee on Regulations, Admission and Discipline Oversight, modification to the State Bar's Policy Re Posting of Notices of Disciplinary Charges on the State Bar's Website as set forth herein.

DISCUSSION

Disciplinary proceeding hearings and records are public, pursuant to Business and Professions Code section 6086.1, and existing State Bar policy already authorizes the posting of initial disciplinary pleadings and responses on an attorney's member profile page. The modification sought in this agenda item merely authorizes a more expedient

and prompt posting of public disciplinary pleadings and records on an attorney's member profile page.

The existing policy statement states as follows:

**STATE BAR POLICY
RE POSTING OF NOTICES OF DISCIPLINARY CHARGES
ON THE STATE BAR'S WEBSITE**

As the administrative arm of the California Supreme Court in matters relating to the admission, discipline and regulation of attorneys, the State Bar's duty to assist the Supreme Court and to protect the public includes the duty, among other things, to inform the public about the work of the State Bar, about the right of all persons to make complaints against attorneys and about the nature and procedures of the discipline system.

Although the records and court hearings relating to disciplinary proceedings against California attorneys become public upon the filing of the notice of disciplinary charges ("NDC") in the State Bar Court, the Board of Governors concludes that this information is currently not readily or easily accessible by the public. The Board of Governors further concludes that, in order to promote public protection, to fulfill the State Bar's duty to inform the public about the work of the State Bar and to promote its policy of making its public records more readily available to interested members of the public and the profession, the State Bar should post NDCs filed in the State Bar Court on the respondent attorney's member profile page on the State Bar's website (www.calbar.ca.gov) as follows:

1. Following the filing of a notice of disciplinary charges or other initial pleading in a disciplinary proceeding ("NDC") in the State Bar Court, the service of that NDC upon the respondent attorney and/or his counsel and (a) the respondent attorney's filing of a response to the NDC; or (b) expiration of the time (including any agreed-upon or ordered extensions) for filing a response to the NDC, whichever is earlier, the State Bar Court will post a true and correct copy of the filed NDC and the respondent attorney's response to the NDC, if any, on the member profile page of the respondent attorney.
2. There shall be a notice in the State Bar Court Cases or the Disciplinary and Related Actions portion of the member profile page that notifies individuals accessing the attorney's page that an NDC sets forth only misconduct that is alleged to have been committed but has not yet been proved and that the respondent attorney is presumed to be innocent of the charged misconduct unless and until a State Bar Court decision or order approving a stipulated disposition is filed, finding that one or more charges of misconduct have been established by clear and convincing evidence.

3. The NDC and the respondent attorney's response to the NDC will remain posted on the attorney's member profile page on the State Bar's website until either (a) a State Bar Court decision or order approving a stipulated disposition is filed in the State Bar Court finding the respondent attorney culpable of one or more acts of professional misconduct; or (b) a State Bar Court order or decision exonerating the respondent attorney or otherwise dismissing the proceeding without a finding of professional misconduct is filed in the State Bar Court.

In the former case, the NDC and the respondent attorney's response to the NDC will be removed from the member profile page contemporaneously with the posting of the State Bar Court decision or order approving a stipulated disposition. In the latter case, the decision or order dismissing the proceeding and/or exonerating the respondent attorney will be immediately posted on the member profile page and will, along with the NDC and the attorney's response to NDC, remain on the member profile page for a period of 60 days, unless the respondent attorney requests that those documents be removed earlier. The documents will, thereafter, be removed.

Under the State Bar's existing policy statement, the State Bar does not post a public NDC on the State Bar's website until after either the respondent files a response to the NDC or the time to file a response has expired. Pursuant to rule 5.43 of the Rules of Procedure of the State Bar of California, excluding an agreement or order extending time to file a response, a respondent has 20 days to file a response to the NDC. During that time period, if a member of the public were to conduct an attorney search of that respondent on the State Bar's website, there would be no indication on the respondent's member profile page that formal disciplinary charges had been filed. In addition, the current policy statement does not explicitly authorize the posting of other public initial pleadings on an attorney's member profile page, such as petitions for reinstatement to the practice of law or filings for involuntary inactive enrollment. Such pleadings are public, pursuant to Business and Professions Code section 6086.1(a)(2).

Modifying the State Bar's policy statement to authorize the immediate posting of public pleadings on the State Bar's website affords greater protection to the public and serves the mission of the State Bar.

FISCAL / PERSONNEL IMPACT:

None.

RULE AMENDMENTS:

None.

BOARD BOOK IMPACT:

None.

RECOMMENDATION

OCTC recommends approval of the proposed modification to the State Bar's policy statement regarding posting of public NDCs and initial pleadings on the State Bar's website by the Board of Trustees, upon recommendation by the Committee on Regulation, Admissions and Discipline Oversight.

PROPOSED BOARD COMMITTEE RESOLUTION:

Should the Regulation, Admissions and Discipline Oversight Committee agree with the above recommendation, the following resolution would be appropriate:

RESOLVED, that the Regulation, Admissions and Discipline Oversight Committee recommends that the Board approve the proposed modification to the State Bar's Policy Re Posting of Notices of Disciplinary Charges on the State Bar's Website in the form attached hereto as Attachment A.

PROPOSED BOARD OF TRUSTEES RESOLUTION:

Should the Board concur with the Committee on Regulation, Admissions and Discipline Oversight's recommendation, the following resolutions would be in order:

RESOLVED, that upon the recommendation of the Committee on Regulation, Admissions and Discipline Oversight, the Board hereby approves the modification to the State Bar's Policy Re Posting of Notices of Disciplinary Charges on the State Bar's Website in the form attached hereto as Attachment A.