

# **OPEN SESSION AGENDA ITEM**

## **54-121.1 SEPTEMBER 2018 REGULATION AND DISCIPLINE COMMITTEE ITEM II.A.1**

**DATE:** September 13, 2018

**TO:** **Members, Regulation and Discipline Committee  
Members, Board of Trustees**

**FROM:** Melanie J. Lawrence, Interim Chief Trial Counsel, Office of Chief Trial Counsel

**SUBJECT:** Changes in Board Policy Regarding Consumer Alerts – Return From Public Comment and Request for Approval

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### **EXECUTIVE SUMMARY**

The Office of Chief Trial Counsel (OCTC) proposes an amendment to Board policy that authorizes State Bar staff to post an online consumer alert when disciplinary proceedings are initiated against an attorney, when OCTC files a petition alleging that the attorney should be placed on inactive status because he or she poses a substantial threat of harm to the public or clients, when an attorney is charged with a felony, when the superior court assumes jurisdiction over an attorney's law practice, or when an attorney is involuntarily placed on inactive status. OCTC further proposes that upon a decision finding culpability or an order following a stipulation to culpability, a consumer alert directing the consumer to the "Disciplinary and Related Actions" section at the bottom of a licensee's State Bar Profile page would be posted. Under this proposal, this consumer alert would remain on the licensee's State Bar Profile page until completion of the reproval conditions, the term of probation, or upon a return to active status, whichever is later.

At the May 2018 meeting, in Item III.A.1., the Regulation and Discipline Committee resolved to send out for a 60-day public comment period the proposed amendments to the Board policy on consumer alerts. The close of public comment was July 31st. Five comments were received during the public comment period. Public comments were submitted by the Association of Discipline Defense Counsel (ADDC), the Los Angeles County Bar Association (LACBA), the Solo & Small Firm Section of the California Lawyers Association, the Orange County Bar Association (OCBA), and Ellen Pansky. The public comments are summarized in this agenda item and reproduced in their entirety in Attachment N.

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### **BACKGROUND**

Since approximately July 2005, the State Bar has posted disciplinary decisions and orders on stipulated dispositions on the licensee's State Bar Profile page. Since 2008, the State Bar has also posted a copy of any Notices of Disciplinary Charges (NDC), and the licensee's response to the charges, if any, in the "Disciplinary and Related Actions" section at the bottom of a licensee's State Bar Profile page. In May and July 2011, the Board determined that some matters warrant more conspicuous notices about disciplinary actions.

On May 13, 2011, the Board approved posting a high-visibility consumer alert that contained general information about the allegations, and a disclaimer at the top of the State Bar Profile page of any attorney against whom a NDC or a petition for involuntary inactive enrollment pursuant to Business and Professions Code section 6007(c) is filed wherein a major misappropriation of client funds is alleged.

On July 22, 2011, the Board approved posting a high-visibility consumer alert that contained general information about the allegations, and disclaimer at the top of the State Bar Profile page of any attorney against whom a NDC or a petition for involuntary inactive enrollment pursuant to Business and Professions Code section 6007(c) is filed alleging 15 or more cases of misconduct related to loan modification.

Under current Board policy, the consumer alert and disclaimer is removed from the licensee's profile page upon the filing of a decision or order of the State Bar Court adjudicating the disciplinary proceeding. The decision or order is posted in the State Bar Court Cases section of the licensee's State Bar Profile page. Actions affecting the status of the attorney's license to practice law is posted in the "Disciplinary and Related Actions" section of a licensee's State Bar Profile page.

In 2013, OCTC made a proposal to expand consumer alerts to include cases wherein: (1) the NDC or petition for involuntary enrollment alleges any misappropriation of \$25,000 or more (i.e. not limited to theft of client funds); (2) where the NDC or petition for involuntary enrollment alleges 15 or more cases of professional misconduct (i.e. not limited to loan modification misconduct); and (3) where the State Bar has filed an application seeking superior court assumption of an attorney's law practice, pursuant to Business and Professions Code section 6180 et. seq. or 6190 et. seq.

OCTC withdrew the proposal after receiving public comment to the effect that the proposed consumer alerts would be unfair to the affected attorneys. In its response to the public comment, OCTC noted that the State Bar's planned case management system would impact the scope and design of future consumer alerts because the public would be provided with more accessible and complete information in the case management system.

The proposed policy amendments would include posting a consumer alert on a State Bar licensee's profile page in the following situations:

1. Upon the filing of a Notice of Disciplinary Charges (NDC) or a Substantial Threat-of-Harm Proceeding.
2. Upon the imposition of discipline.
3. Upon discovery that felony charges were pending in Superior Court.
4. Upon the assumption of jurisdiction over attorney's practice by a Superior Court.
5. Upon an Inactive Enrollment, Suspension, Disbarment, or Resignation with Charges Pending.

## **DISCUSSION**

Consumer alerts contain information that is a matter of public record and is of current concern to clients and potential clients, opposing parties, and the courts. OCTC believes that consumer alerts are an effective way to provide clients and potential clients notice of important actions regarding a licensee. As such, consumer alerts have become a significant part of the State Bar's public protection efforts. However, the circumstances under which a consumer alert are

posted are limited. Therefore, the posting of a consumer alert is somewhat rare. OCTC believes that the consumer alert program should be expanded in order to better protect the public.

This proposal would expand current policy and authorize posting consumer alerts in the following situations:

1. Filing of a Notice of Disciplinary Charges (NDC) and Substantial Threat-of-Harm Proceedings.

This proposal would authorize posting consumer alerts whenever: (1) disciplinary charges are filed against an attorney, or (2) OCTC files a petition alleging that the attorney should be placed on inactive status because he or she poses a substantial threat of harm to the public or clients (Bus. & Prof. Code, § 6007(c)(1)-(3).) In order to make an informed and intelligent decision, clients and prospective clients need to know that their attorney or their prospective attorney is facing disciplinary charges. Similarly, opposing counsel and the courts need this information because a suspension or disbarment order may have a significant effect upon pending litigation.

This consumer alert will be removed from the licensee's State Bar profile page: (1) if the charges are dismissed, or (2) upon the filing of a decision or order of the State Bar Court adjudicating the disciplinary proceeding based upon the NDC.

Unrelated to this proposal, recently, the State Bar redesigned the State Bar Profile page of licensees. An example of the new licensee profile page is included as Attachment B. While different screen resolutions and zooming will affect the area of a website visible on a screen, an example of the visible text on the current licensee profile page without scrolling is in Attachment C. While the modified licensee profile page reformats the identifying information of the licensee and moves the Disciplinary and Related Actions section of the page into view when the consumer navigates to the webpage, it does not highlight that an NDC was filed.

If an alert upon the filing of any NDC is deemed overbroad or unnecessary, alternatively, alerts could be posted when charges raising significant public protection concerns are filed (e.g., misappropriation, allegations of moral turpitude, etc.).

A second alternative to this proposal is to change the words "Consumer Alert" to simply, "Notice." This seemingly would reduce the concern about stigmatizing the attorney while balancing the need to inform the public of the fact that disciplinary charges were filed.

2. Imposition of Discipline

If, after a decision finding culpability or an order adjudicating the disciplinary proceeding is issued, the attorney is placed on probation or is issued a public reproof with conditions, a consumer alert stating that the attorney has been placed on probation or issued a reproof with conditions, and informing the consumer that the order or decision is available in the "Disciplinary and Related Actions" section at the bottom of a licensee's State Bar Profile page would be posted to the licensee's State Bar Profile page.

This consumer alert would remain on the licensee's State Bar Profile page until completion of the reproof conditions or the end of the term of probation.

The attached modified licensee profile page brings the Disciplinary and Related Actions section of the page into view when the consumer navigates to the webpage. However, a consumer alert would proactively alert the consumer that discipline was imposed.

### 3. Felony Charges Pending in Court.

This proposal would authorize posting consumer alerts whenever felony charges are filed against an attorney in court. To make an informed and intelligent decision about their representation, clients and prospective clients need to know that their attorney or their prospective attorney is facing felony charges. Similarly, opposing counsel and the courts need this information because incarceration, or an order suspending or disbarring a licensee, might have a significant impact upon pending litigation.

Consumer alerts concerning pending criminal charges would only be posted if felony charges are filed in court. Prosecutors are required by law to disclose to the State Bar the pendency of an action against an attorney charging a felony or misdemeanor. (Bus. & Prof. Code § 6101(b)). Prosecutors are similarly required to notify the State Bar of the filing of an Information or Indictment charging an attorney with a felony. (Bus. & Prof. Code § 6068(o)(4)).

The State Bar is required by law to disclose to any member of the public so inquiring any information reasonably available to the State Bar pursuant to the above sections. (Bus. & Prof. Code, § 6086.1(c)). A member of the public navigating to a licensee's State Bar profile page should be deemed to be an inquiry as to the licensee's status and potential disciplinary actions. Therefore, consumer alerts for felony charges would assist the State Bar in complying with both statutorily mandated duties: disclosing information regarding pending felony charges and protecting the public.

This consumer alert would be removed from the licensee's State Bar profile page: (1) upon verification of notice to the State Bar that the charges have been dismissed, or reduced from a felony to a misdemeanor, or (2) upon the filing of a decision or order of the State Bar Court adjudicating a disciplinary proceeding based upon the facts underlying the felony prosecution.

In making this proposal, OCTC is mindful that information about felony charges would be posted prior to any conviction and recognizes that this is controversial. While OCTC believes that such a policy is required to comply with our statutory duty to disclose such information, we recognize that the current trend in handling criminal history information is to limit the circumstances under which people must release criminal history information, including "ban the box" initiatives. As a result, an alternative proposal could be that we post the alert only after any conviction in the matter. However, OCTC believes that statutory amendments may be required to permit more limited consumer alerts in this area.

### 4. Superior Court Assumption of Jurisdiction Over Attorney's Caseload.

This proposal would authorize consumer alerts whenever the superior court assumes jurisdiction over an attorney's caseload. A superior court order assuming jurisdiction requires a finding that: (1) the attorney has one or more active cases and (2) the attorney is unable to practice law because of death, incapacity, suspension from practice, or disbarment. (See Bus. & Prof. Code, §§ 6180, et seq. 6190 et seq.)<sup>1</sup> When an assumption order is issued, it is particularly important that the public, active clients, courts, and opposing counsel be informed.

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<sup>1</sup> Unlike the 2013 OCTC proposal to modify the consumer alert policy, under this proposal, a consumer alert would not be posted merely because the State Bar has filed a petition with the superior court to

This consumer alert would be removed from the licensee's State Bar profile page after the superior court order is rescinded or ended.

5. Inactive Enrollments, Suspensions, Disbarments, and Resignations with Charges Pending.

This proposal would protect the public by authorizing consumer alerts whenever an attorney is placed on involuntary inactive enrollment, suspended, disbarred, or resigned for one of the following reasons:

- The State Bar Court has recommended that the attorney be disbarred (Bus. & Prof. Code, § 6007(c)(4));
- The State Bar Court has found that the attorney violated his or her disciplinary probation (Bus. & Prof. Code, § 6007(d));
- The attorney has defaulted in a disciplinary proceeding (Bus. & Prof. Code, § 6007(e));
- The attorney is delinquent in his or her child support obligations (Fam. Code, §17520);
- The attorney has failed to pay a fee arbitration award (Bus. & Prof. Code, § 6203);
- The attorney has failed to comply with his or her MCLE obligations (Cal. Rule of Court 9.31);
- The attorney has been enrolled inactive because he or she has committed a disciplinary violation and has been enrolled inactive pursuant to the Alternative Discipline Program (Bus. & Prof. Code, § 6233); or
- The attorney has been placed on interim suspension pending finality of a conviction for a felony or misdemeanor involving moral turpitude (Bus. & Prof. Code, § 6102), resigns with disciplinary charges pending, or is suspended or disbarred by the Supreme Court.

Attorneys who are enrolled inactive, suspended, disbarred, or resign with disciplinary charges pending lose their right to practice law. (Bus. & Prof. Code, § 6125 et seq.) Therefore, it is imperative that clients, prospective clients, opposing counsel, and the courts receive clear notice that the licensee can no longer practice and cannot accept new cases.

When an attorney is enrolled inactive involuntarily for one of these reasons, suspended, disbarred, or resigned with disciplinary charges pending, a consumer alert will be posted stating that the attorney is not entitled to practice law and informing the consumer that the order or decision is available in the "Disciplinary and Related Actions" section at the bottom of a licensee's State Bar Profile page would be posted. This consumer alert would remain on the licensee's State Bar Profile page until a return to active status with the State Bar.

These consumer alerts will remain posted until such time as the attorney is reinstated to the practice of law, if ever. All consumer alerts must be removed upon the death of an attorney or former attorney.

Generally, a consumer alert would not apply to cases in which the attorney is enrolled inactive based on mental illness, mental disability, or substance dependency. (Bus. & Prof. Code, §§ 6007(a) & (b)(1) & (b)(3).) In these circumstances, a consumer alert is unnecessary because, in the experience of OCTC, attorneys who assert claims of being mentally incompetent, or have been determined to be unable to practice law due to a mental infirmity or substance dependency, commonly do not engage in the unauthorized practice of law.

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assume jurisdiction over an attorney's caseload. Rather, the alert would be posted after the petition is granted by the superior court.

A consumer alert would be authorized, however, when the superior court has been required to take over the law practice of a disabled attorney. (Bus. & Prof. Code, §§ 6190, 6007(b)(2).) In such situations, the consumer alert will assist the State Bar in notifying clients, courts, and opposing counsel that the State Bar is in the process of winding down the attorney's law practice.

### Public Comment

Five comments were received during the public comment period. Public comments were submitted by the Association of Discipline Defense Counsel (ADDC), the Los Angeles County Bar Association (LACBA), the Solo & Small Firm Section of the California Lawyers Association (SSF-CLA), the Orange County Bar Association (OCBA), and Ellen Pansky. The public comments are reproduced in their entirety in Attachment N.

The five comments received can be characterized as follows:

ADDC – Opposed to posting a consumer alert upon filing of an NDC; Opposed to posting an alert for certain inactive enrollments; general objections.

LACBA – Opposed to posting a consumer alert upon filing of a NDC. LACBA does not oppose the remaining proposals.

SSF-CLA – Opposed to posting a consumer alert upon filing of an NDC, a petition initiating substantial threat-of-harm proceedings, the filing of felony charges against an attorney in a criminal court, and for certain inactive enrollments.

OCBA – Opposed to blanket posting of an alert at the time of filing of an NDC, but does not oppose a consumer alert upon the filing of an NDC for more serious, client-threatening conduct; does not oppose consumer alerts being posted in situations 2 through 5 or for a substantial threat-of-harm proceeding.

Ellen Pansky – Opposed to proposal number one to post a consumer alert in each case in which charges have been filed; no objection to the other proposals.

In summary, the arguments made against the proposal are:

1. Filing of a Notice of Disciplinary Charges
  - a. Posting consumer alerts to the profile page of an attorney before the charges are proven is de facto discipline and attorneys have a due process right to defend themselves before discipline is imposed. (ADDC)
  - b. Posting consumer alerts to the profile page of an attorney before the charges are proven may negatively impact attorneys whose cases are later dropped, dismissed, or subsequently exonerated. According to the 2017 Annual Discipline Report, a significant number of lawyers have their disciplinary proceedings dismissed or closed by the Court with non-disciplinary action. (ADDC, LACBA, Ellen Pansky)
  - c. Public protection does not warrant posting a consumer alert for allegations of minor infractions which likely do not present a threat of harm to the public or involve a client's interests. (OCBA, Ellen Pansky)
  - d. The proposed consumer alert strongly implies that a potential client should not hire an attorney with disciplinary charges filed against him or her. This would

have a greater impact on solo and small firm practitioners who lack the resources to challenge disciplinary charges. (SSF-CLA)

- e. There is no evidence to support OCTC's position that clients and prospective clients need to know that charges have been filed, as opposed to proven, against attorneys to make informed and intelligent decisions. (SSF-CLA)
  - f. A large percentage of disciplinary matters are resolved with a disposition less than an actual suspension. Attorneys that do not receive an actual suspension likely committed offenses that were relatively minor and therefore, public protection does not require warning the public about the matter prior to the resolution of the matter. (LACBA)
  - g. The threat of the placement of a consumer alert on the profile page of an attorney will provide an unfair advantage to OCTC. Attorneys facing the filing of an NDC will be more likely to admit to allegations that are not true in order to avoid the posting of a consumer alert. (ADDC)
  - h. Matters in which an NDC has been filed may be abated. Matters can remain abated for months or years without proceeding to resolution. Posting a consumer alert in these circumstances would undercut the purpose of the abatement. (ADDC)
  - i. Posting a consumer alert upon the filing of the NDC is unnecessary because the State Bar already posts a copy of the NDC on the member's State Bar Profile page. (ADDC, SSF-CLA, Ellen Pansky)
  - j. OCTC charges a moral turpitude violation in nearly all NDCs. If the filing of an NDC is highlighted by a banner on the attorney profile page, many clients or potential clients will terminate or decline to enter into an attorney-client relationship with the attorney. The interference with the attorney client relationship is unwarranted because moral turpitude allegations are frequently rejected by the State Bar Court and dismissed by OCTC in stipulated dispositions. (LACBA, Ellen Pansky)
- 2. Substantial Threat-of-Harm Proceedings
    - a. There is no evidence to support OCTC's position that clients and prospective clients need to know that charges have been filed, as opposed to proven, against attorneys to make informed and intelligent decisions. (SSF-CLA)
  - 3. Felony Charges are Filed in Criminal Court
    - a. There is no evidence to support OCTC's position that clients and prospective clients need to know that charges have been filed, as opposed to proven, against attorneys to make informed and intelligent decisions. (SSF-CLA)
  - 4. Inactive Enrollments
    - a. Failure to pay child support, failure to pay a fee arbitration award, or failure to comply with MCLE requirements have little to do with public protection and consumer alerts should not be posted for these reasons. (ADDC, SSF-CLA)
  - 5. General Objections
    - a. The proposal does not include any proposed procedures, including time limits, for the removal of the consumer alert. (ADDC)

Other comments include urging the Board of Trustees to delay consideration of the posting of a consumer alert at the time of the filing of an NDC so research can be conducted in the following areas:

- 1. The number of cases filed with the State Bar Court that are dismissed outright by OCTC and those that are dismissed outright by the State Bar Court.
- 2. The average number of dismissals of individual counts included in the original NDC, whether the dismissals occurred either as a result of stipulation by the parties or by order of the court.

3. The percentage of cases in which charges of moral turpitude are included in the NDC, together with the percentage of cases in which the moral turpitude charges are dismissed either by stipulation or by court order.

### Response to Public Comment

OCTC submits the following comments in response to the public comments received:

1. Filing of a Notice of Disciplinary Charges

All five of the public comments received in response to the Consumer Alert agenda item expressed significant concern that the posting of alerts upon the filing of a Notice of Disciplinary Charges (NDC) would potentially prejudice attorneys who might later be exonerated or whose matters might later be dropped, dismissed, or subsequently reversed.

Two of the public comments received (LACBA and ADDC) cite to the State Bar's Annual Discipline Report for the proposition that large numbers of attorneys are charged with disciplinary offenses and subsequently exonerated. For example, "According to the draft 2017 State Bar Annual Discipline Report, **more than 200 lawyers had their disciplinary proceedings dismissed and 87 lawyers had their matters closed by the Court with non-disciplinary action in 2016 and 2017.**" (ADDC Public Comment – Consumer Notices and Alerts, p. 1. Emphasis in original.) These statistics appear to refer to data reported as "Closed by SBC with No Action" and "Closed by SBC with Non-Disciplinary Action" on page 8 of the 2017 Annual Discipline Report of the State Bar of California (ADR) (p. 34 of 112). Similarly, the LACBA states:

[O]ut of 334 total disciplinary proceedings filed in 2017, 117 were closed with no action or with no disciplinary action. This means that more than one-third of cases filed with the State Bar Court in 2017 were dismissed. The same report discloses that, in 2016, of 462 total cases filed in the State Bar Court, 86 were dismissed or closed with no discipline imposed, constituting over 18% of the cases filed in 2016. This means that, in just two years, **203 lawyers were publicly charged and the State Bar failed to prove that any disciplinary violation had occurred.** (LACBA, OCTC Public Comment – Consumer Notices and Alerts, p. 3. Emphasis Added.)<sup>2</sup>

The statistics cited above, "Closed with Non-Disciplinary Action" and "Closed with No Action" have specific definitions that are unrelated to the number of attorneys against whom OCTC has filed disciplinary charges and were later exonerated or had their matters dropped, dismissed, or subsequently reversed.

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<sup>2</sup> When OCTC reached out to the LACBA to determine where in the Annual Discipline Report the cited statistics appear, Ellen Pansky, one of the drafters of the LACBA comment noted the following, in part, "These numbers were extrapolated from the Case Inventory and Disposition attachment, on page 8 of the April 2018 annual discipline report. You have to add up the individual numbers to get the totals. Looking back at my notes, I believe that I added up the numbers under the individual categories listed on page 8, but cannot reconstruct the numbers I used in July. Nonetheless, looking back at that document now, you can see that, under the first heading on page 8 "Table 2. Inquiries and Complaints," for 2017, the report reflects that 483 total cases were filed (see third line down on page 8), 98 were closed by SBC with no action (fifth line), 82 were closed by SBC with "non-disciplinary action (sixth line)," for a total of 180 closed with no disciplinary action. This equals 37% of the total cases filed in 2017. This percentage is higher than the percentage I originally calculated."



For example, for purposes of the State Bar Court section of the ADR, the section from which both the ADDC and the LACBA take the cited statistics, “Closed with Non-Disciplinary Action” is defined as “Admonition or the granting of a petition pursuant to section 6007.” (State Bar Annual Discipline Report, 2017, pg. A-2 [69 of 112]). If the State Bar Court grants, for example, an OCTC petition to place someone on inactive status due to mental illness pursuant to Business and Professions Code section 6007(b)(3), the matter is properly counted as a matter that is “Closed with Non-Disciplinary action.” Such a disposition does not mean that OCTC filed an NDC and the attorney was later exonerated or had his or her matter dropped, dismissed, or subsequently reversed. While admonitions of attorneys are also counted in this statistic, of the 82 cases listed as having been “Closed with Non-Disciplinary Action,” only one matter was an admonition.

Reviewing the data in response to the public comments has been useful insofar as it revealed a number of coding errors that the State Bar will work to correct. It is important to point out, though, that the coding errors that were found do not support the assertion that NDCs filed by OCTC are routinely dismissed. To the contrary, in reviewing the data, we determined that 47 of the attorneys listed as having their cases “Closed with Non-Disciplinary Action” were, in fact, disbarred, and 29 others received some sort of disciplinary action, e.g., stayed suspension, actual suspension, probation, etc.). A few additional cases involved 6007(b)(3) petitions that were granted. The definition of “Closed with Non-Disciplinary Action” is inapplicable to the number of cases where an attorney was exonerated.

Similarly, while also not defined in statute, for purposes of the State Bar Court section of the ADR, “Closed with No Action” is defined as “Closed by the Court with dismissal, termination or denial of petition.” (Annual Discipline Report of the State Bar of California, 2017, pg. A-2 [69 of 112]). While OCTC files does file petitions, including, for example, substantial threat of harm proceedings (B&P 6007(c)) and petitions to place someone on inactive status due to mental illness, etc. (B&P 6007(b)(3)), among others, generally disciplinary cases are initiated with the filing of an NDC, not a petition. On the other hand, petitions are frequently filed in State Bar Court by disbarred attorneys seeking reinstatement and by suspended attorneys seeking relief from actual suspension under a disciplinary order that requires compliance with standard 1.2(c)(1). It is reasonable to believe that the vast majority of these dismissed or denied petitions do not represent failed prosecutions or exonerated attorneys, but rather petitions filed, in large part, by respondent attorneys themselves.

Further, while, as shown above, the cited statistics do not represent disciplinary cases that were either dismissed or closed without discipline, it is important to remember that the statistics cited measure the number of cases closed, not the number of attorneys who had cases closed. When OCTC files a Notice of Disciplinary Charges against an attorney in State Bar Court, we frequently file more than one case against the attorney in the same NDC. Despite being filed in the same NDC, these cases are counted separately. Therefore, even assuming the cited statistics meant disciplinary cases were, in fact, closed without disciplinary action, using statistics about the number of cases to say that 200 lawyers had disciplinary proceedings dismissed in 2016 and 2017 (i.e., substituting the number of attorneys for the number of cases) drastically overstates the number of attorneys who had cases closed or whose matters were later dropped, dismissed, or subsequently reversed.

Despite the fact that the cited statistics do not stand for the proposition that hundreds of attorneys were exonerated, undue prejudice to innocent practitioners is an understandable concern so, in response to the public comment, OCTC worked with the State Bar’s Office of Institutional Research and Accountability (ORIA) to determine the number of attorneys in 2017

who would have had a consumer alert posted to their profile page as a result of this proposal and were later exonerated or had their matters dropped, dismissed, or subsequently reversed.

To understand the impact of posting a consumer alert at the time of filing of an NDC, it is important to understand that OCTC only files an NDC in four types of cases:

- 1) J - Reciprocal discipline cases wherein the attorney was subjected to discipline in another jurisdiction,
- 2) O - Original matters,
- 3) H - Matters involving a violation of previously imposed terms of discipline, and
- 4) N - Rule 9.20 violations, which also arise from a failure to comply with the terms of a prior discipline.

In 2017, there were 17 cases dismissed after an NDC was filed in State Bar Court. Sixteen of those cases were O cases (Original matters) and one was an H case (involving a violation of previously imposed terms of discipline). In one of the O cases, while the Hearing Department initially dismissed the case, the Review Department reversed the decision and recommended that the attorney be disbarred. This disbarment recommendation was adopted by the Supreme Court. After eliminating that case, in order to determine the number of attorneys impacted, we also eliminated duplicates (i.e., attorneys who had two cases dismissed were counted only once). That brought the total number down to 13 unique respondents.

We then examined the outcome to see how many respondents received an “exoneration-type” dismissal. OCTC dismissed matters for five of the respondents for reasons unrelated to the culpability of the respondent. For example, four of the five respondents had their cases dismissed because the respondent had physical or mental health issues to such an extent that they could not be prosecuted. Several of those respondents died shortly after the dismissal.

Of the remaining respondents, four respondents had their cases dismissed on motion of OCTC after we discovered, post-filing, additional information that lead us to believe that the cases should be dismissed. For example, one respondent’s “O” case was related to her failure to timely file a 9.20 declaration after she was placed on interim suspension by the Review Department following her criminal conviction. After filing, we discovered that she did not timely comply because she was transferred between multiple correctional facilities which made compliance difficult. After that, she complied. We deemed the failure to comply not to be willful and dismissed the case. While this was not a situation where OCTC tried the matter and failed to prove culpability, this is an instance where later discovered information resulted in a full dismissal of the charges after filing of an NDC. Therefore, for purposes of this discussion, this case, like the other three respondents whose cases were dismissed by OCTC following the post-filing discovery of additional information, have been counted as an “exoneration-type” dismissal. The remaining four respondents were found not culpable after a State Bar Court trial and should also be counted as “exoneration-type” dismissals. In total, eight attorneys had their matters completely dismissed by OCTC or by the State Bar Court after filing of an NDC in State Bar Court.<sup>3</sup>

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<sup>3</sup> Some additional attorneys had C cases (Conviction referral matters) dismissed in 2017. These dismissals occurred, for example, as a result of a reversal of the criminal conviction which formed the basis of the C case. We did not include those attorneys in this discussion because OCTC does not file an NDC in C cases and therefore, the NDC consumer alert is inapplicable to a C case. Instead, a consumer alert would be posted, if approved by the Board, pursuant to Alert 3 in this agenda item, when OCTC discovers that felony charges are pending in superior court, not upon either the criminal conviction or the transmittal of the conviction to State Bar Court.

In 2017, cases involving 256 unique respondents were closed by the State Bar Court in which OCTC filed an NDC.<sup>4</sup> This means that the 2017 NDC “exoneration rate” was slightly more than 3%.<sup>5</sup> Therefore, charges were admitted or proven true against slightly less than 97% of the attorneys charged by NDC in 2017.

The “culpability rate,” above, is calculated by dividing the number of attorneys who were found culpable of a disciplinable offense by the total number of attorneys against whom the State Bar Court closed a case in which OCTC filed an NDC in 2017. While this culpability rate is calculated in a similar manner as the conviction rates published by the United States Department of Justice, local district attorney offices, and many other prosecution agencies (i.e., conviction of any charge counts as a conviction), it is important to recognize that the “culpability rate” does not mean that the respondent was found culpable of all charges, or even the most serious charge. While greater potential prejudice may inure to an attorney who had a consumer alert posted and is subsequently completely exonerated, an evaluation of consumer alerts being issued at the time of filing of the NDC should also include a discussion of the potential prejudice to attorneys who have serious charges filed against them, but are subsequently disciplined for less significant charges.

As a result, OCTC worked with ORIA to attempt to determine the disposition of individual allegations within cases in order to calculate the number of attorneys who were either:

- 1) Charged with moral turpitude allegations that were dismissed or were not proven, or
- 2) Charged with serious offenses but only disciplined for less serious offenses.

Unfortunately, the AS/400 mainframe case management system does not track the disposition of charges at an allegation level. Further, even if allegation-level dispositions were available, allegations may or may not be charged in order of significance, i.e., with the most serious count first, so an analysis cannot be based on the order of charges. Instead, a detailed ranking of the significance of charges would be required to properly analyze this issue.

In light of the inability to determine the number of attorneys against whom OCTC filed an NDC charging the attorney with serious misconduct, but the attorney was disciplined for less significant misconduct, we sought to find a surrogate method of analysis. Therefore, OCTC and ORIA looked to the outcomes of unique attorneys following the filing of an NDC in State Bar Court. Of the 256 unique attorneys against whom OCTC filed an NDC, 213 of them were either disbarred or received an actual or stayed suspension. To be clear, this does not show that these attorneys were found culpable of the most serious charges, but the fact that approximately 83% of the 256 attorneys charged by NDC were either disbarred or received an actual or stayed suspension tends to show that they were not found culpable of merely de minimis violations. Significantly, less than 20 attorneys against whom OCTC filed NDC received a public or private reproof.

Recommendation: In light of the small number of attorneys against whom OCTC filed an NDC when the attorney was later exonerated or had their matters dropped, dismissed, or subsequently reversed, and would thus be prejudiced by the NDC consumer alert, OCTC respectfully requests that the Board adopt the proposal as circulated for public comment.

Alternatively, the Board could sever the NDC portion of the proposal from the substantial threat of harm portion and the remainder of the agenda item. The Board could adopt the substantial

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<sup>4</sup> The total number of unique respondents against whom OCTC filed either an NDC or a stipulation pre-NDC in 2017 was 315.

<sup>5</sup> The cases disposed of by the State Bar Court in 2017 may not have been filed in 2017, so the “exoneration rate” is a generalization based on 2017 NDC filings and dispositions.

threat of harm and the rest of the agenda item and direct OCTC to submit for Board review, at a future date, a plan to post consumer alerts at the time of filing of NDCs which will reduce the number of consumer alerts issued where the alleged conduct is minor or de minimis.

Further, if the Board is concerned about the number of attorneys who are charged with moral turpitude allegations that are later dismissed or not proven, the Board could direct OCTC, following implementation of the new case management system, to submit for Board review, at a future date, a plan to post consumer alerts at the time of filing of NDCs with additional statistics regarding the charging and disposition of moral turpitude allegations.

## **2. Substantial Threat of Harm Proceedings**

OCTC respectfully disagrees with the public comment and believes that, consistent with public protection, members of the public have a right to know when a petition alleging that an attorney represents a substantial threat of harm has been filed.

## **3. Felony Charges are Filed in Criminal Court**

OCTC respectfully disagrees with the public comment and believes that the State Bar is required by statute to provide this information to the public.

## **4. Inactive Enrollments**

OCTC respectfully disagrees with the public comment and believes that a consumer alert is warranted because an attorney who has been enrolled inactive is ineligible to practice law.

## **FISCAL/PERSONNEL IMPACT**

Additional staff effort will be required to initiate, update, and remove the consumer alerts. Depending on the number of alerts issued, this may be significant. The new case management system may automate some portions of these efforts.

## **RULE AMENDMENTS**

Board policy regarding Consumer Alerts.

## **BOARD BOOK AMENDMENTS**

None

## **STRATEGIC PLAN GOALS & OBJECTIVES**

Goal: 2. Ensure a timely, fair, and appropriately resourced admissions, discipline, and regulatory system for the more than 250,000 lawyers licensed in California.

## **RECOMMENDATION**

**It is recommended that the Board of Trustees approve the following resolution:**

**RESOLVED**, that following a 60-day public comment period, the Board of Trustees hereby adopts the amendments the Board policy regarding consumer alerts as set forth

in Attachment A; and it is

**FURTHER RESOLVED**, that the amendment to Board policy is effective immediately and will apply to all pending and future matters.

#### **ATTACHMENT(S) LIST**

- A.** Proposed Board policy re Posting of Consumer Alerts
- B.** Current Licensee Profile Page Example (Full)
- C.** Current Licensee Profile Page Example (Visible Text With No Scrolling)
- D.** Example of Current Consumer Alert Placement and Format
- E.** Example of Proposed NDC Consumer Alert Placement and Format
- F.** Example of Proposed Threat of Harm Consumer Alert Placement and Format
- G.** Example of Proposed Discipline Consumer Alert Placement and Format
- H.** Example of Proposed Felony Consumer Alert Placement and Format
- I.** Example of Proposed Assumption Consumer Alert Placement and Format
- J.** Example of Proposed Involuntary Enrollment Consumer Alert Placement and Format
- K.** Example of Proposed Suspended Consumer Alert Placement and Format
- L.** Example of Proposed Disbarred Consumer Alert Placement and Format
- M.** Example of Proposed Resigned with Charges Pending Consumer Alert Placement and Format
- N.** Public Comments

## **ATTACHMENT A (Proposed Board Policy re Posting of Consumer Alerts)**

### **1. Filing of a Notice of Disciplinary Charges (NDC) and Substantial Threat-of-Harm Proceedings.**

When disciplinary proceedings are commenced in State Bar Court or when OCTC files a petition alleging that the attorney should be placed on inactive status because he or she poses a substantial threat of harm to the public or clients, the State Bar will post one or both of the following Consumer Alerts above the attorney's name on the licensee's State Bar profile page:

"CONSUMER ALERT: Formal disciplinary proceedings are pending against this attorney. Pursuant to State Bar policy, a copy of the State Bar's Notice of Disciplinary Charges and the attorney's reply, if filed, will remain posted in the Disciplinary and Related Actions section, below, until the proceedings have been adjudicated. Upon the filing of a court decision or order adjudicating the proceedings, that court decision or order will be posted in place of the Notice of Disciplinary Charges and the reply."

and:

"DISCLAIMER: Any Notice of Disciplinary Charges filed by the State Bar contains only allegations of professional misconduct. The attorney is presumed to be innocent of any misconduct warranting discipline until the charges have been proven."

and/or:

"CONSUMER ALERT: A petition for inactive enrollment is pending alleging that this attorney represents a substantial threat of harm to the interests of the attorney's clients or the public. Upon the filing of a court decision or order adjudicating the proceedings, that court decision or order will be posted in the Disciplinary and Related Actions section, below. Anyone who believes they have been the victim of attorney misconduct is urged to file a complaint with the State Bar."

and:

"DISCLAIMER: Petitions for inactive enrollment contain only allegations of professional misconduct. The attorney is presumed to be innocent of the allegations unless the State Bar Court finds the attorney culpable by clear and convincing evidence."

### **2. Imposition of Discipline.**

If, after a decision finding culpability or an order adjudicating the disciplinary proceeding is issued, the attorney is placed on probation or is issued a public reproof with conditions, the State Bar will post the following Consumer Alert above the attorney's name on the licensee's State Bar profile page:

"CONSUMER ALERT: This attorney has been placed on probation or been issued a reproof and ordered to comply with certain conditions. The decision(s)

or order(s) are posted in the Disciplinary and Related Actions section, below. The State Bar posts consumer alerts online whenever attorneys are placed on probation or issued a reproof with conditions. This alert will remain online until the attorney has completed any conditions of reproof or until the end of the term of probation. Anyone who believes they have been the victim of attorney misconduct is urged to file a complaint with the State Bar.”

The consumer alert will be removed from the licensee’s profile page posting when the period of probation is over or the conditions of reproof have been met.

### **3. Felony Charges**

When the State Bar learns that an attorney has been charged in court with a felony, the State Bar will post the following Consumer Alert above the attorney’s name on the licensee’s State Bar profile page:

“CONSUMER ALERT: This attorney has been charged with a felony. For more information, contact the State Bar. The State Bar posts consumer alerts online when lawyers are charged in court with felonies. Anyone who believes they have been the victim of attorney misconduct is urged to file a complaint with the State Bar.

“DISCLAIMER: The filing of criminal charges does not constitute a finding of guilt or professional misconduct. Criminal defendants are presumed to be innocent until proven guilty in a court of law.”

This consumer alert will be removed from the licensee’s State Bar profile page: (1) upon verification of notice to the State Bar that the charges have been dismissed or reduction from a felony to a misdemeanor, or (2) upon the filing of a decision or order of the State Bar Court adjudicating a disciplinary proceeding based upon the facts underlying the felony prosecution.

### **4. Superior Court Assumptions of Law Practices.**

When the superior court issues an order assuming jurisdiction over a law practice of lawyer or former lawyer (Bus. & Prof. Code, §§ 6180 et seq., 6190, et seq.), the State Bar will post the following Consumer Alert above the attorney’s name on the licensee’s State Bar profile page:

“CONSUMER ALERT: The superior court has assumed jurisdiction over this attorney’s former law practice and has appointed the State Bar to arrange for the return of client files, to notify parties and the courts, and to perform other related duties. Please contact the Office of Chief Trial Counsel if you have questions or concerns about this attorney’s former law practice. The State Bar posts consumer alerts online when the superior court assumes jurisdiction over an attorney’s or former attorney’s caseload. Anyone who believes they have been the victim of attorney misconduct is urged to file a complaint with the State Bar.”

This consumer alert text will be removed from the licensee’s State Bar profile page immediately after the superior court order is rescinded or ended.

## 5. Involuntary Inactive Enrollments.

When the State Bar places an attorney on inactive enrollment pursuant to Business and Professions Code sections 6007(c)(4)), 6007(d)), 6007(e)), 6203, or 6233, Family Code section 17520, or rule 9.31, California Rules of Court, is placed on interim suspension pending the finality of a conviction for a felony or misdemeanor involving moral turpitude (Bus. & Prof. Code, § 6102), is suspended, disbarred, or resigned from the practice of law by the Supreme Court, the State Bar will post the following Consumer Alert above the attorney's name on the licensee's State Bar profile page:

"CONSUMER ALERT: The State Bar has placed this attorney on involuntary inactive status. As a result, the attorney is ineligible to practice law. The State Bar posts consumer alerts online in most instances when attorneys are placed on involuntary inactive status. The decision(s) or order(s) are posted in the Disciplinary and Related Actions section, below. Anyone who believes they have been the victim of attorney misconduct is urged to file a complaint with the State Bar."

or

"CONSUMER ALERT: This attorney is suspended from the practice of law. As a result, the attorney is ineligible to practice law. The State Bar posts consumer alerts online when attorneys are suspended from practice. The decision(s) or order(s) are posted in the Disciplinary and Related Actions section, below. Anyone who believes they have been the victim of attorney misconduct is urged to file a complaint with the State Bar."

or

"CONSUMER ALERT: This attorney is disbarred from the practice of law. As a result, the attorney is ineligible to practice law. The State Bar posts consumer alerts online when attorneys are disbarred. The decision(s) or order(s) are posted in the Disciplinary and Related Actions section, below. Anyone who believes they have been the victim of attorney misconduct is urged to file a complaint with the State Bar."

or

"CONSUMER ALERT: This attorney has resigned from the practice of law with disciplinary charges pending. As a result, the attorney is ineligible to practice law. The State Bar posts consumer alerts online when attorneys resign with disciplinary charges pending. The decision(s) or order(s) are posted in the Disciplinary and Related Actions section, below. Anyone who believes they have been the victim of attorney misconduct is urged to file a complaint with the State Bar."

These consumer alerts will remain posted until such time as the attorney is reinstated to the practice of law, if ever. All consumer alerts must be removed upon the death of an attorney or former attorney.



## ATTACHMENT B (Current Licensee Profile Page Example (Full))

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### Attorney Licensee Profile

#### License Status: Active

Address:

County:

Phone Number:

Fax Number

Email:

Law School:

#### License Status, Disciplinary and Administrative History

Below you will find all changes of license status due to both non-disciplinary administrative matters and disciplinary actions.

Date	License Status	Discipline	Administrative Action
Present	Active		
2018		Notice of Disc Charges Filed in SBCT	
			Admitted to The State Bar of California

#### CLA Sections:

None

California Lawyers Association (CLA) is an independent organization and is not part of The State Bar of California.

#### State Bar Court Cases:

Below you will find documents filed in State Bar Court cases. For additional documents, you must request them from the State Bar Court.

Effective Date	Case Number	Description
Pending	-O-	Initiating Document [PDF]

#### Additional Information:

- [Explanation of licensee status](#)
- [Explanation of disciplinary action](#)
- [Explanation of administrative actions, which are non-disciplinary](#)
- [Copies of official licensee discipline records are available upon request](#)

**NOTE:** The State Bar Court began posting public discipline documents online in 2005. The format and pagination of documents posted on this site may vary from the originals in the case file as a result of their translation from the original format into Word and PDF. Copies of additional related documents in a case are available upon request. Only opinions designated for publication in the State Bar Court Reporter may be cited or relied on as precedent in State Bar Court proceedings. For further information about a case that is displayed here, please refer to the State Bar Court's online docket.

**DISCLAIMER:** Any posted Notice of Disciplinary Charges, Conviction Transmittal or other initiating document, contains only allegations of professional misconduct. The licensee is presumed to be innocent of any misconduct warranting discipline until the charges have been proven.

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## ATTACHMENT C (Current Licensee Profile Page Example (Visible Text With No Scrolling)).



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### Attorney Licensee Profile

#### License Status: Active

Address: [REDACTED]

County: [REDACTED]

Phone Number: [REDACTED]

Fax Number: [REDACTED]

Email: [REDACTED]

Law School: [REDACTED]

#### License Status, Disciplinary and Administrative History

Below you will find all changes of license status due to both non-disciplinary administrative matters and disciplinary actions.

Date	License Status	Discipline	Administrative Action
Present	Active		

Notice of Disc Charges Filed in SBCT

# ATTACHMENT D (Example of Current Consumer Alert Placement and Format)

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Attorney Licensee Profile

CONSUMER ALERT

The State Bar of California has filed disciplinary charges against this licensee alleging that the licensee engaged in a major misappropriation of client funds. You may read the Notice of [Disciplinary Charges](#) filed by the State Bar against the licensee, and any [reply](#) filed by the licensee. You may also learn more about the general nature of [misappropriation](#) of client funds.

DISCLAIMER: Any Notice of Disciplinary Charges filed by the State Bar contains only allegations of professional misconduct. The licensee is presumed to be innocent of any misconduct warranting discipline until the charges have been proven.

License Status: Not Eligible to Practice Law (Suspended, failed to pay Bar membr. fees)

Address:

County:

Phone Number:

Fax Number:

Email:

Law School:

License Status, Disciplinary and Administrative History

Below you will find all changes of license status due to both non-disciplinary administrative matters and disciplinary actions.

Date	License Status	Discipline	Administrative Action
Present	Not Eligible To Practice Law in California		
/2018	Not Eligible To Practice Law in California		Suspended, failed to pay Bar membr. fees
/2018	Not Eligible To Practice Law in California	Ordered inactive	
/2007	Admitted to The State Bar of California		

CLA Sections:

None

California Lawyers Association (CLA) is an independent organization and is not part of The State Bar of California.

State Bar Court Cases:

Below you will find documents filed in State Bar Court cases. For additional documents, you must request them from the State Bar Court.

Effective Date	Case Number	Description
Pending	-O	Decision <a href="#">[PDF]</a>

Additional Information:

• [Explanation of licensee status](#)

• [Explanation of disciplinary action](#)

• [Explanation of administrative actions, which are non-disciplinary](#)

• [Copies of official licensee discipline records are available upon request](#)

NOTE: The State Bar Court began posting public discipline documents online in 2005. The format and pagination of documents posted on this site may vary from the originals in the case file as a result of their translation from the original format into Word and PDF. Copies of additional related documents in a case are available upon request. Only opinions designated for publication in the State Bar Court Reporter may be cited or relied on as precedent in State Bar Court proceedings. For further information about a case that is displayed here, please refer to the State Bar Court's online docket.

DISCLAIMER: Any posted Notice of Disciplinary Charges, Conviction Transmittal or other initiating document, contains only allegations of professional misconduct. The licensee is presumed to be innocent of any misconduct warranting discipline until the charges have been proven.

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## Attorney Licensee Profile

### CONSUMER ALERT

The State Bar of California has filed disciplinary charges against this licensee alleging that the licensee engaged in a major misappropriation of client funds. You may read the Notice of **Disciplinary Charges** filed by the State Bar against the licensee, and any **reply** filed by the licensee. You may also learn more about the general nature of **misappropriation** of client funds.

**DISCLAIMER:** Any Notice of Disciplinary Charges filed by the State Bar contains only allegations of professional misconduct. The licensee is presumed to be innocent of any misconduct warranting discipline until the charges have been proven.

**License Status: Not Eligible to Practice Law (Suspended, failed to pay Bar membr. fees)**

Address:

County:

Phone Number:

Fax Number:

Fax Number:

Email:

Law School:

### License Status, Disciplinary and Administrative History

Below you will find all changes of license status due to both non-disciplinary administrative matters and disciplinary actions.

Date	License Status	Discipline	Administrative Action
Present	Not Eligible To Practice Law in California		
2018	Not Eligible To Practice Law in California		Suspended, failed to pay Bar membr. fees
2018	Not Eligible To Practice Law in California	Ordered inactive	
/2007	Admitted to The State Bar of California		

**CLA Sections:** None

California Lawyers Association (CLA) is an independent organization and is not part of The State Bar of California.

### State Bar Court Cases:

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#### State Bar Court Cases:

Below you will find documents filed in State Bar Court cases. **For additional documents, you must request them from the State Bar Court.**

Effective Date	Case Number	Description
Pending	19-0-12345	Decision <a href="#">[PDF]</a>

#### Additional Information:

- [Explanation of licensee status](#)
- [Explanation of disciplinary action](#)
- [Explanation of administrative actions, which are non-disciplinary](#)
- [Copies of official licensee discipline records are available upon request](#)

NOTE: The State Bar Court began posting public discipline **documents** online in 2005. The format and pagination of documents posted on this site may vary from the originals in the case file as a result of their translation from the original format into Word and PDF. Copies of additional related documents in a case are **available upon request**. Only **opinions designated for publication in the State Bar Court Reporter** may be cited or relied on as precedent in State Bar Court proceedings. **For further information about a case that is displayed here, please refer to the State Bar Court's online docket.**

DISCLAIMER: Any posted Notice of Disciplinary Charges, Conviction Transmittal or other initiating document, contains only allegations of professional misconduct. The licensee is presumed to be innocent of any misconduct warranting discipline until

# ATTACHMENT E (Example of Proposed NDC Consumer Alert Placement and Format)

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## Attorney Licensee Profile

### CONSUMER ALERT

Formal disciplinary proceedings are pending against this attorney. Pursuant to State Bar policy, a copy of the State Bar's [Notice of Disciplinary Charges](#) and the attorney's [reply](#), if filed, will remain posted in the Disciplinary and Related Actions section, below, until the proceedings have been adjudicated. Upon the filing of a court decision or order adjudicating the proceedings, that court decision or order will be posted in place of the Notice of Disciplinary Charges and the reply.

DISCLAIMER: Any Notice of Disciplinary Charges filed by the State Bar contains only allegations of professional misconduct. The attorney is presumed to be innocent of any misconduct warranting discipline until the charges have been proven.

## License Status: Active

Address:

County:

Phone Number:

Fax Number:

Email:

Law School:

## License Status, Disciplinary and Administrative History

Below you will find all changes of license status due to both non-disciplinary administrative matters and disciplinary actions.

Date	License Status	Discipline	Administrative Action
Present	Active		
2018		Notice of Disc Charges Filed in SBCT -O-	
2017	Active		
2017	Not Eligible To Practice Law in California	Discipline w/actual suspension -O-	
1994	Admitted to The State Bar of California		

**CLA Sections:** None

California Lawyers Association (CLA) is an independent organization and is not part of The State Bar of California.

## State Bar Court Cases:

# ATTACHMENT F (Example of Proposed Substantial Threat Consumer Alert Placement and Format)

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## Attorney Licensee Profile

### CONSUMER ALERT

A petition for inactive enrollment is pending alleging that this attorney represents a substantial threat of harm to the interests of the attorney's clients or the public. Upon the filing of a court decision or order adjudicating the proceedings, that court decision or order will be posted in the Disciplinary and Related Actions section, below. Anyone who believes they have been the victim of attorney misconduct is urged to file a complaint with the State Bar.

DISCLAIMER: Petitions for inactive enrollment contain only allegations of professional misconduct. The attorney is presumed to be innocent of the allegations unless the State Bar Court finds the attorney culpable by clear and convincing evidence.

## License Status: Active

Address: [REDACTED]

County: [REDACTED]

Phone Number: [REDACTED]

Fax Number: [REDACTED]

Email: [REDACTED]

Law School: [REDACTED]

## License Status, Disciplinary and Administrative History

Below you will find all changes of license status due to both non-disciplinary administrative matters and disciplinary actions.

Date	License Status	Discipline	Administrative Action
Present	Active		
2018		Notice of Disc Charges Filed in SBCT -O-	
2017	Active		
2017	Not Eligible To Practice Law in California	Discipline w/actual suspension -O-	
1994	Admitted to The State Bar of California		

**CLA Sections:** None

California Lawyers Association (CLA) is an independent organization and is not part of The State Bar of California.

## State Bar Court Cases:

# ATTACHMENT G (Example of Proposed Discipline Consumer Alert Placement and Format)

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## Attorney Licensee Profile

### CONSUMER ALERT

This attorney has been placed on probation or been issued a reproof and ordered to comply with certain conditions. The decision(s) or order(s) are posted in the Disciplinary and Related Actions section, below. The State Bar posts consumer alerts online whenever attorneys are placed on probation or issued a reproof with conditions. This alert will remain online until the attorney has completed any conditions of reproof or until the end of the term of probation. Anyone who believes they have been the victim of attorney misconduct is urged to file a complaint with the State Bar.

### License Status: Active

Address: [REDACTED]  
County: [REDACTED]  
Phone Number: [REDACTED]  
Fax Number: [REDACTED]  
Email: [REDACTED]  
Law School: [REDACTED]

### License Status, Disciplinary and Administrative History

Below you will find all changes of license status due to both non-disciplinary administrative matters and disciplinary actions.

Date	License Status	Discipline	Administrative Action
Present	Active		
2018		Public reproof with/duties -H-	
2014		Public reproof with/duties -O-	
2012	Active		
2012	Not Eligible To Practice Law in California	Ordered inactive -O-	
1992	Admitted to The State Bar of California		

CLA Sections: None

California Lawyers Association (CLA) is an independent organization and is not part of The State Bar of California.

### State Bar Court Cases:

Below you will find documents filed in State Bar Court cases. For additional documents, you must request them from the State Bar Court.

Effective Date	Case Number	Description
2014	-O-	Decision [PDF] [WORD]



## ATTACHMENT H (Example of Proposed Felony Consumer Alert Placement and Format)

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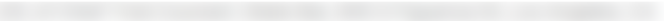
### Attorney Licensee Profile

#### CONSUMER ALERT


This attorney has been charged with a felony. For more information, contact the State Bar. The State Bar posts consumer alerts online when lawyers are charged in court with felonies. Anyone who believes they have been the victim of attorney misconduct is urged to file a complaint with the State Bar.

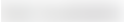
DISCLAIMER: The filing of criminal charges does not constitute a finding of guilt or professional misconduct. Criminal defendants are presumed to be innocent until proven guilty in a court of law.

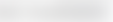
### License Status: Active

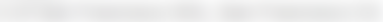
Address: 

County: 

Phone Number: 

Fax Number: 

Email: 

Law School: 

### License Status, Disciplinary and Administrative History

Below you will find all changes of license status due to both non-disciplinary administrative matters and disciplinary actions.

Date	License Status	Discipline	Administrative Action
Present	Active		
1997	Admitted to The State Bar of California		

**CLA Sections:** None

California Lawyers Association (CLA) is an independent organization and is not part of The State Bar of California.

#### Additional Information:

- [Explanation of licensee status](#)
- [Explanation of disciplinary action](#)
- [Explanation of administrative actions, which are non-disciplinary](#)
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# ATTACHMENT I (Example of Proposed Assumption Consumer Alert Placement and Format)

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## Attorney Licensee Profile

### CONSUMER ALERT



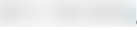


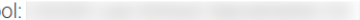
The superior court has assumed jurisdiction over this attorney's former law practice and has appointed the State Bar to arrange for the return of client files, to notify parties and the courts, and to perform other related duties. Please contact the Office of Chief Trial Counsel if you have questions or concerns about this attorney's former law practice. The State Bar posts consumer alerts online when the superior court assumes jurisdiction over an attorney's or former attorney's caseload. Anyone who believes they have been the victim of attorney misconduct is urged to file a complaint with the State Bar.

### CONSUMER ALERT

This attorney is disbarred from the practice of law. As a result, the attorney is ineligible to practice law. The State Bar posts consumer alerts online when attorneys are disbarred. The decision(s) or order(s) are posted in the Disciplinary and Related Actions section, below. Anyone who believes they have been the victim of attorney misconduct is urged to file a complaint with the State Bar.





  
This licensee is prohibited from practicing law in California by order of the California Supreme Court.

## License Status: Disbarred

Address:   
County:   
Phone Number:   
Fax Number:   
Email:   
Law School: 

## License Status, Disciplinary and Administrative History

Below you will find all changes of license status due to both non-disciplinary administrative matters and disciplinary actions.

Date	License Status	Discipline	Administrative Action
Present	Disbarred		
 /2016	Disbarred	Disbarment  -N-	
 /2015	Not Eligible To Practice Law in California	Ordered inactive  -N-	
	Not Eligible To		Admin Inactive/MCLE

# ATTACHMENT J (Example of Proposed Involuntary Enrollment Consumer Alert Placement and Format)

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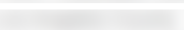
## Attorney Licensee Profile

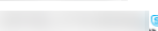
### CONSUMER ALERT

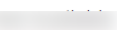
The State Bar has placed this attorney on involuntary inactive status. As a result, the attorney is ineligible to practice law. The State Bar posts consumer alerts online in most instances when attorneys are placed on involuntary inactive status. The decision(s) or order(s) are posted in the "Disciplinary and Related Actions" section towards the bottom of this page. Anyone who believes they have been the victim of attorney misconduct is urged to file a complaint with the State Bar.

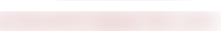
### License Status: Not Eligible to Practice Law (Ordered inactive)


Address: 

County: 

Phone Number: 



Fax Number: 

Email: 

Law School: 

### License Status, Disciplinary and Administrative History

Below you will find all changes of license status due to both non-disciplinary administrative matters and disciplinary actions.

Date	License Status	Discipline	Administrative Action
Present	Not Eligible To Practice Law in California		
 2018	Not Eligible To Practice Law in California	Ordered inactive 	
5/6/2018	Not Eligible To Practice Law in California	Vol.inactive(tender of	

# ATTACHMENT K (Example of Proposed Suspended Consumer Alert Placement and Format)

**PUBLIC:** [Free Legal Information](#) | [Complaints & Claims](#) | [Need Legal Help](#) | [More Languages](#)

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## Attorney Licensee Profile

### CONSUMER ALERT

This attorney is suspended from the practice of law. As a result, the attorney is ineligible to practice law. The State Bar posts consumer alerts online when attorneys are suspended from practice. The decision(s) or order(s) are posted in the Disciplinary and Related Actions section, below. Anyone who believes they have been the victim of attorney misconduct is urged to file a complaint with the State Bar.

### License Status: Not Eligible to Practice Law (Discipline w/actual suspension)

Address:   
County:   
Phone Number:    
Fax Number:   
Email:   
Law School:

### License Status, Disciplinary and Administrative History

Below you will find all changes of license status due to both non-disciplinary administrative matters and disciplinary actions.

Date	License Status	Discipline	Administrative Action
<b>Present</b>	Not Eligible To Practice Law in California		
<b>/2018</b>	Not Eligible To Practice Law in California	Discipline w/actual suspension <b>-O-</b>	
<b>/2016</b>	Not Eligible To Practice Law in California	Suspended, failed to pass Prof.Resp.Exam <b>.J-O</b>	
<b>2016</b>	Not Eligible To Practice Law in California		Suspended, failed to pay Bar membr. fees

# ATTACHMENT L (Example of Proposed Disbarred Consumer Alert Placement and Format)

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## Attorney Licensee Profile

### CONSUMER ALERT

This attorney is disbarred from the practice of law. As a result, the attorney is ineligible to practice law. The State Bar posts consumer alerts online when attorneys are disbarred. The decision(s) or order(s) are posted in the Disciplinary and Related Actions section, below. Anyone who believes they have been the victim of attorney misconduct is urged to file a complaint with the State Bar.

**This licensee is prohibited from practicing law in California by order of the California Supreme Court.**

### License Status: Disbarred

Address: [REDACTED]

County: [REDACTED]

Phone Number: [REDACTED]

Fax Number: [REDACTED]

Email: [REDACTED]

Law School: [REDACTED]

### License Status, Disciplinary and Administrative History

Below you will find all changes of license status due to both non-disciplinary administrative matters and disciplinary actions.

Date	License Status	Discipline	Administrative Action
Present	Disbarred		
2016	Disbarred	Disbarment -N-	
2015	Not Eligible To Practice Law in California	Ordered inactive -N-	
2015	Not Eligible To Practice Law in California		Admin Inactive/MCLE noncompliance
2015		Discipline, probation; no actual susp. -O-	
2014	Not Eligible To Practice Law in California	Discipline w/actual suspension -O-	

# ATTACHMENT M (Example of Proposed Resigned with Charges Pending Consumer Alert Placement and Format)

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## Attorney Licensee Profile

### CONSUMER ALERT

This attorney has resigned from the practice of law with disciplinary charges pending. As a result, the attorney is ineligible to practice law. The State Bar posts consumer alerts online when attorneys resign with disciplinary charges pending. The decision(s) or order(s) are posted in the Disciplinary and Related Actions section, below. Anyone who believes they have been the victim of attorney misconduct is urged to file a complaint with the State Bar.

### License Status: Resigned

Address: [REDACTED]

County: [REDACTED]

Phone Number: [REDACTED]

Fax Number: [REDACTED]

Email: [REDACTED]

Law School: [REDACTED]

### License Status, Disciplinary and Administrative History

Below you will find all changes of license status due to both non-disciplinary administrative matters and disciplinary actions.

Date	License Status	Discipline	Administrative Action
Present	Resigned		
[REDACTED]/2006	Resigned	Resignation with charges pending [REDACTED]-Q-[REDACTED]	
[REDACTED]/2005	Not Eligible To Practice Law in California	Vol.inactive(tender of resign.w/charges) [REDACTED]-Q-[REDACTED]	
[REDACTED] 1998	Active		
[REDACTED] 1993	Resigned	Resignation with charges pending [REDACTED]-Q-1-[REDACTED]	
[REDACTED] 1992	Not Eligible To Practice Law in California	Vol.inactive(tender of resign.w/charges, [REDACTED]-Q-[REDACTED]	

**ATTACHMENT N (Public Comments)**

# ASSOCIATION OF DISCIPLINE DEFENSE COUNSEL

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July 24, 2018

**VIA EMAIL: OCTC Rules@calbar.ca.gov**

*Re: Public Comment – Consumer Notices and Alerts*

Dear State Bar of California:

On behalf of the Association of Discipline Defense Counsel (“ADDC”), we thank you for the opportunity to comment on the Reinstatement Cases proposal.

The ADDC supports the public protection mission of the State Bar of California. However, the ADDC strongly opposes applying a consumer alert badge to State Bar member profile pages before a final determination has been made as to whether those members have committed an ethical violation. This portion of the proposal is unnecessary to protect the public, and unfairly serves as *de facto* discipline of all attorneys who have been charged with a violation, even those who, as may later be determined, may not have violated their ethical duties.

The history of California’s disciplinary process that gave rise to the consumer alert badge stems from the 2008/2009 mortgage crisis, where certain attorney misconduct involved serious client harm to a large group of people. Now, the State Bar is seeking to expand that red-letter alert to cover allegations of even the most trivial offense. Applying a consumer alert badge upon the filing of every Notice of Disciplinary Charges (“NDC”) is unfair because attorneys whose profile page contains the consumer alert may be stigmatized, notwithstanding the fact that the language in the alert mentions the attorney has not yet been found in violation of any statute. After all, the intent of the alert is to “warn” consumers, not to assure them attorneys *should* be presumed innocent.

The State Bar proposes to affix this alert on the profile page of charged attorneys *before* any of those charges have been proven. This will have, as an unintended consequence, the possible prejudice of attorneys who might later be exonerated or whose matters might later be dropped, dismissed or subsequently reversed. Indeed, according to the draft 2017 State Bar Annual Discipline Report, **more than 200 lawyers had their disciplinary proceedings dismissed and 87 lawyers had their matters closed by the Court with non-disciplinary action in 2016 and 2017.** (Can you cite to a page?) Many of those attorneys might have had their businesses impacted, been unable to find new jobs, or harmed in some other way had this current proposal been in effect at that time. This current proposal is a form of prospective economic punishment on a licensee who has a due process right to defend him or herself *before* discipline is imposed.

21515 HAWTHORNE BOULEVARD, SUITE 610, TORRANCE, CALIFORNIA 90503  
(310) 642-4600 • FAX (310) 642-4646  
ZDW@ZDW.LAW.COM  
WWW.DISCIPLINEDFENSECOUNSEL.ORG



The appearance and the prominence of the bright red consumer alert badge at the top of the page will short circuit that process; the prospective consumer will see the badge first, as it is designed to be seen first, and naturally regard it as providing all the information they need to decide not to employ the attorney, while the lawyer's response will remain at the bottom of the page. After all, the badge is designed to **warn** consumers. It cannot, simultaneously, serve as both a warning and a notice of presumed innocence.

The threat of the placement of a consumer alert badge on the profile page will also give OCTC an unfair advantage, leveraging the possible harm its placement could cause an even innocent attorney, to extract a settlement that otherwise might not be appropriate. This would be particularly unfair where the conduct at issue is minor. The potential onus of the proposed alert, which could prospectively cripple an attorney's practice or career, makes an accused attorney even more likely to admit to allegations that may not be true, solely to avoid the more likely harm the mere filing of an NDC, red badge and all, could possibly cause.

The disclaimer on the consumer alert badge may pay lip service to the notion that a particular attorney is innocent until proven guilty, but its effect would cause all charged members to suffer the effects of the unfair presumption of guilt. Because of this, the consumer alert proposal effectively allows OCTC to harm or even destroy an attorney's practice without having to prove their charges, with clear and convincing evidence in State Bar Court.

The current proposal also seeks to impose the consumer alert badge whenever an attorney is inactively enrolled, regardless of the reason for that inactive enrollment. Failure to pay child support, failure to pay a fee arbitration award, or failure to comply with MCLE requirements have little to do with protection of the public. We believe posting of the proposed consumer alert in cases such as these would serve little purpose without providing a corresponding benefit.

In light of the delays our organization generally experiences in having the notice of an NDC removed from an attorney's membership profile following exoneration, the badge that is proposed to be administratively posted on the website will likely linger long after an exoneration, reversal or dismissal has occurred. Currently, there is no proposed procedure, including time limits, regarding the circumstances under which such a proposed consumer warning should be removed.

Furthermore, certain cases that are abated remain public as pending matters, and can stay abated for many months, and sometimes years, without proceeding to resolution. If an attorney's profile were to have a consumer alert badge posted throughout the pendency of the proceeding, its posting would undercut the purpose of the abatement.

The California State Bar already gives the public notice that an attorney is the subject of a disciplinary proceeding by posting the NDC on the member's State Bar profile. However, the discipline system is not punishment. It is laudably intended to protect the public, the courts, and our profession; to maintain the highest professional standards; and to preserve public confidence in the legal profession.

The consumer alert badge proposal is overbroad. It will result in changing our system of discipline into one that is truly punitive without demonstrating the current system of posting NDCs does not accomplish its purpose. We respectfully urge the State Bar Board of Trustees to disapprove the proposal that consumer alert badges be applied to profile pages of members who have merely been the subject of an NDC, but not yet determined to have committed a violation.

Sincerely,



Zachary D. Wechsler  
President, ADDC



**Los Angeles County Bar Association**

1055 West 7th Street, Suite 2700 | Los Angeles, CA 90017-2553

Telephone: 213.627.2727 | [www.lacba.org](http://www.lacba.org)

July 26, 2018

***Via Email and U.S. Mail***

OCTC Public Comment – Consumer Notices and Alerts  
The State Bar of California  
180 Howard St.  
San Francisco, CA 94105  
Email: [OCTC\\_Rules@calbar.ca.gov](mailto:OCTC_Rules@calbar.ca.gov)

Dear California State Bar:

The Los Angeles County Bar Association (LACBA) respectfully opposes, in one respect only, the request of the Office of Chief Trial Counsel (OCTC) of the State Bar of California (State Bar) to post an electronic consumer alert “banner” on the membership profile page of a member of the State Bar who has had a Notice of Disciplinary charges (NDC) filed against him or her. LACBA is not proposing rejection of any of the remaining four proposals for the posting of the electronic banner, but strongly believes that the first proposal—to include the banner each and every time an NDC is filed—is inappropriate for the reasons set forth in this letter. Additionally, LACBA is not proposing any change to the State Bar’s current practice of including on the member’s State Bar profile page, a notice that the NDC has been filed, including a link to the actual NDC and the response, if any.

As the State Bar Board of Trustees knows, OCTC has proposed an amendment to Board policy which would authorize State Bar staff to post an online consumer alert: (1) when any disciplinary proceedings are initiated against a member of the State Bar (member); (2) when OCTC files a petition alleging that a member should be placed on inactive status because he or she poses a substantial threat of harm to the public or clients; (3) when a member is charged with a felony; (4) when the Superior Court assumes jurisdiction over a member’s law practice; or (5) when a member is involuntarily placed on inactive status. OCTC further proposes that, upon a decision finding culpability or an order following a stipulation and culpability, a consumer alert directing the consumer to the disciplinary and related action section shall be posted at the bottom of a member’s State Bar profile page. Under this proposal, the consumer alert would remain on the member’s State Bar profile page until completion of the reprobation conditions, the term of probation or upon a return to active status, whichever is latest.

Regarding proposed change number 1, OCTC recommends that the following language, enclosed in a red-lined box, be posted at the top of an attorney's page (see attachment I):

CONSUMER ALERT: Formal disciplinary proceedings are pending against this attorney. Pursuant to State Bar policy, a copy of the State Bar's Notice of Disciplinary Charges and the member's Response, if filed, will remain posted in the Disciplinary and Related Actions section, until the proceedings have been adjudicated. Upon the filing of a court decision or order adjudicating the proceedings, that court decision or order will be posted in place of the Notice of Disciplinary Charges and the Response, along with: "DISCLAIMER: Any Notice of Disciplinary Charges filed by the State Bar contains only allegations of professional misconduct. The attorney is presumed to be innocent of any misconduct warranting discipline until the charges have been proven."

The Los Angeles County Bar Association (LACBA) opposes the proposal to post a consumer alert upon the filing of any Notice of Disciplinary Charges, and urges the State Bar's Board of Trustees to reject this proposal. LACBA does not oppose the remaining proposals.

### **Background**

For many years, the State Bar has posted disciplinary decisions and orders on stipulated decisions on a member's State Bar Profile page. Since 2008, the State Bar has also posted a copy of any Notices of Disciplinary Charges (NDC) and the member's Response to the charges in the "Disciplinary and Related Actions" section at the bottom of the member's profile page. In 2011, in strictly limited circumstances, the Board approved posting, an additional consumer alert that contains general information about the allegations, and a banner that was prominently displayed at the top of the State Bar profile page of any member of the State Bar against whom: 1) a NDC or a petition for inactive enrollment is sought based upon an allegation that a major misappropriation of client funds had occurred; or 2) where an NDC had been filed against a member which alleged at least 15 separate instances of violations in connection with loan modification legal services.

### **Rationale for the Proposal**

OCTC has proffered public protection as the basis for the new expansive, and in LACBA's view, overbroad new consumer alert banner displays: "In order to make an informed and intelligent decision, clients and prospective clients need to know that their attorney or their prospective attorney is facing disciplinary charges. Similarly, opposing counsel and the courts need the information because a suspension or disbarment order may have a significant effect upon pending litigation."

### **The Grounds for LACBA's Opposition to Proposal 1**

According to the official year-end report by OCTC submitted to the Board of Trustees on April 30, 2018, out of 334 total disciplinary proceedings filed in 2017, 117 were closed with no action or with no disciplinary action. This means that more than one-third of cases filed with the State Bar Court in 2017 were dismissed. The same report discloses that, in 2016, of 462 total cases filed in the State Bar Court, 86 were dismissed or closed with no discipline imposed, constituting over 18% of the cases filed in 2016. This means that, in just two years, 203 lawyers were publicly charged and the State Bar failed to prove that any disciplinary violation had occurred. Imagine the injustice that would have occurred if each of these 203 lawyers had had a banner across their State Bar website, warning the public about a non-existent violation of legal ethics.

Also, a large percentage of disciplinary dispositions are resolved with reprimands or probationary terms with no actual suspension from practice. OCTC should provide updated statistical information to the Board of Trustees on this issue as well. LACBA believes that if most attorneys who actually receive discipline are not suspended from practice, this evidences that the offenses were relatively minor, and there is little public protection concern to warn the public about in advance of an ultimate determination. When most disciplined lawyers are not deemed to have acted so improperly that they should suffer even a brief suspension from practice, it would be unfair to characterize them as likely to be found to have committed serious ethical violations before any due process hearing has occurred.

Further, OCTC charges a moral turpitude violation (under Business & Professions Code § 6106) in nearly all NDCs, and regularly asserts that any act of negligence constitutes moral turpitude.<sup>1</sup> These moral turpitude allegations are frequently rejected by the State Bar Court and often are voluntarily dismissed by OCTC in stipulated dispositions. If NDCs are emphasized by banners prominently displayed as the current proposal recommends, many potential clients and clients who read the moral turpitude allegation will decide either to refrain from entering an attorney-client relationship, or will terminate an existing attorney-client relationship. There also will be many situations in which a client will not be able to terminate his or her attorney for financial reasons or due to the status of the representation, such as being in trial or in the midst of a business negotiation. In those situations the predictable result will be an interference with the relationship of trust and confidence that is essential to the proper functioning of the attorney-client relationship. See, e.g., *Tucker Ellis LLP v. Superior Court*, 12 Cal. App. 5th 1233, 1247 (2017), reh'g denied (July 18, 2017): "The effective functioning of the fiduciary relationship between attorney and client depends on the client's trust and confidence in counsel. [Citation.] The courts will protect clients'

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<sup>1</sup> The State Bar Court Review Department stated in *In the Matter of Respondent H* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234, 241, " . . . the Supreme Court has always required a certain level of intent, guilty knowledge or willfulness before placing the serious label of moral turpitude on the attorney's conduct. [Citations]." The *Respondent H* decision went on to cite to *Giovanazzi v. State Bar* (1980) 28 Cal.3d 465, 475-476 and *In The Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83, 91, for the proposition that "at the very least, gross negligence has been required" before a finding of moral turpitude is made. OCTC regularly interprets cases such as these as justifying a moral turpitude allegation in every case in which gross negligence is charged.

legitimate expectations of loyalty to preserve this essential basis for trust and security in the attorney-client relationship." (*People ex rel. Dept. of Corporations v. Speedee Oil Change Systems, Inc.* (1999) 20 Cal.4th 1135, 1146–1147, 86 Cal.Rptr.2d 816, 980 P.2d 371.)"

The "consumer alert" would be inconsistent with the acknowledged need to respect the interests of the questioned lawyer. For example, long-standing Supreme Court precedent makes clear that, in a State Bar disciplinary proceeding, reasonable doubts are to be resolved in favor of the attorney. Not only is there no support or showing that the filing of an NDC is tantamount to a finding of culpability, OCTC's own statistics support the conclusion that a significant number of NDCs are dismissed with prejudice without any discipline of any kind, or with a relatively low level of professional discipline.

There should also be concern that substantial prejudice may result—not just to the member facing disciplinary charges, but to his or her client as well—when opposing counsel, the courts, or others involved in the subject of a representation learn of a consumer alert based on the mere fact that a member faces potential discipline charges. Obviously, a member's breach of ethics in an unrelated matter could have no impact at all in a pending unrelated litigation or transactional matter. Indeed, opposing counsel is not permitted to raise a threat of disciplinary action as leverage in a pending matter. (See existing Rule of Professional Conduct 5-100, subd. (A) and new Rule 3.10.) Similarly, a court should have no interest in the fact that a member appearing before it is the subject of possible disciplinary allegations. One predictable consequence of the consumer alert being published in an unrelated matter would be to prejudice the court or others against that member and the member's client.

### **Conclusion**

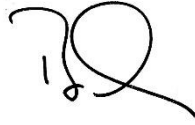
Because there is no sound public policy for posting a consumer alert upon the filing of unproven charges at the top of an attorney's State Bar Profile page, and because of the unfairness inherent in posting charges that may ultimately be dismissed, LACBA opposes proposed change number 1 and urges the Board of Trustees to reject it.

LACBA strongly recommends that, in the event that the Board of Trustees is not willing to reject Proposal 1 at this time, that at a minimum, the Board of Trustees delay final consideration of the pending proposal so that further research can be conducted. In that event, we would recommend that the Board of Trustees require OCTC to provide detailed statistics regarding the number of cases filed with the State Bar Court that are dismissed outright by OCTC and those that are dismissed outright by the State Bar Court. Likewise, OCTC should be required to detail the statistics reflecting the average number of dismissals of individual counts included in the original NDC, whether the dismissals occurred either as a result of stipulation by the parties or by order of the court. And, OCTC should be required to provide statistics regarding the percentage of cases in which charges of moral turpitude are included in the NDC, together with the percentage of cases in which the moral turpitude charges are dismissed either by stipulation or by court order. If the statistics bear out that duplicative charges and/or overcharging occurs on a regular basis, LACBA

believes the State Bar Board of Trustees will share our concern that the posting of unproven charges will be unfair and grossly prejudicial to members.

The proposed consumer alert to be posted upon the mere filing of as yet unproven charges should not be approved because it would be unjust as to both members and their existing and prospective clients and would harm those relationships.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'BK' with a stylized flourish.

Brian S. Kabateck, President  
Los Angeles County Bar Association

cc: Stanley Bissey, Executive Director  
Neil J. Wertlieb, Chair, Professional Responsibility and Ethics Committee





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BAR ASSOCIATION**

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OC CHAPTER

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FEDERAL BAR ASSOC.,

OC CHAPTER

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OC JEWISH BAR ASSOC.

OC KOREAN AMERICAN BAR ASSOC.

OC LAVENDER BAR ASSOC.

OC TRIAL LAWYERS ASSOC.

OC WOMEN LAWYERS ASSOC.

THURGOOD MARSHALL BAR ASSOC.

July 30, 2018

**OCTC Public Comment – Consumer Notices and Alerts**

The State Bar of California

180 Howard St.

San Francisco, CA 94105

Re: Public Comment – Consumer Notices and Alerts

To Whom It May Concern:

The Orange County Bar Association (OCBA) respectfully submits the following comments concerning the State Bar of California's request for public comment regarding Proposed Changes in the State Bar Board Policy Regarding Consumer Notices and Alerts.

Founded over 100 Years ago, the OCBA has over 7,400 members, making it one of the largest voluntary bar associations in California. The OCBA Board of Directors, made up of practitioners from large and small firms, with varied civil and criminal practices, of differing ethnic backgrounds and political leanings, has approved these comments prepared by the OCBA's Administration of Justice Committee.

The OCBA does not oppose consumer alerts being posted for situations 2 through 5 or for a Substantial Threat-of-Harm proceeding as outlined by the Office of Chief Trial Counsel's (OCTC) proposal dated May 17, 2018, as they appear necessary to further the State Bar's goal of protecting consumers. We also agree with the proposal that any consumer notice which is posted on a licensee's online profile under the aforementioned situations must also be accompanied by the appropriate specific informational text and a disclaimer.

The OCBA has significant concerns, however, about the proposed online posting of a consumer alert upon the mere filing of a Notice of Disciplinary Charges (NDC) without regard for the underlying grounds for the issuance of the NDC. It is our understanding that an NDC may be issued against a licensee not only for egregious misconduct that may warrant disbarment, but also for minor infractions which likely do not present a threat of harm to the public or involve a client's interests. Such minor alleged misconduct is often dismissed by the OCTC based upon further investigation by Bar prosecutors or simple corrective action by the licensee without any disciplinary action resulting against the licensee. In those cases, consumer protection would not appear to require or warrant the posting of a consumer alert before the disciplinary process has run its course.



To be clear, the OCBA does not oppose a consumer alert upon the filing of an NDC for more serious, client-threatening conduct, which may be a predicate for further disciplinary action (including conduct within the purview of situations 2 through 5 or a Substantial Threat-of Harm proceeding). In those situations, the threat to consumers may be significant enough to outweigh the attorney's due process concerns. But in those instances where an NDC is issued for reasons which do not involve public protection or a client's interests, we believe the harm to the licensee's professional reputation, financial well-being, client retention and future client retainment is not only substantial but unnecessary, and, most importantly, outweighs any potential harm to consumers. In an age of consumer awareness and comparison "shopping" via the internet, even the slightest negative comment about a lawyer, even if unrelated to the quality or integrity of the service provided, can have long-lasting detrimental effects to the point of irreparability.

Accordingly, the posting of all NDCs as consumer alerts is overbroad and does not further the proffered rationale as articulated by the OCTC. In lieu of immediate adoption, this proposal should be further refined as to the underlying grounds in which an NDC may be posted as a consumer alert, in an attempt to better balance the protection of the public against the potential harm to a licensee's practice.

Thank you for considering our comments.

Sincerely,

ORANGE COUNTY BAR ASSOCIATION

A handwritten signature in blue ink, appearing to read 'Nikki Miliband', with a horizontal line extending to the right.

Nikki Miliband  
2018 President

c: OCTC\_Rules@calbar.ca.gov

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July 31, 2018

**VIA EMAIL: OCTC Rules@calbar.ca.gov**  
**AND FIRST-CLASS MAIL**

OCTC Public Comment – Consumer Notices and Alerts  
The State Bar of California  
180 Howard St.  
San Francisco, CA 94105

*Re: Public Comment – Consumer Notices and Alerts*

Dear State Bar of California:

Please accept this letter as this office's public comment on the State Bar Office of Chief Trial Counsel's ("OCTC") proposition regarding the proposed electronic consumer alert posting on membership profiles.

OCTC urges that a consumer alert "banner" is necessary in every publicly filed discipline case to inform and protect the public, but both the empirical data and anecdotal experience belies this assertion: to the contrary, the publication of unproved charges, a significant portion of which will not be proven, according to the State Bar's published statistics, will not protect the public. Nor has OCTC provided any data to demonstrate that the public is not adequately placed on notice regarding disciplinary charges filed against an attorney by the current system of posting the Notice of Disciplinary Charges ("NDC") or other initiating document, along with subsequent stipulated disposition or decision, on the member's electronic State Bar membership profile page.

State Bar discipline cases are often overcharged, creating the impression an attorney engaged in greater misconduct than has actually occurred. OCTC routinely includes charges of moral turpitude based on gross negligence or the "totality of the circumstances," as well as including duplicative causes of action in the NDC. The consumer alert badge will overshadow the disclaimer that the attorney is presumed innocent until charges have been proven. It is inappropriate and unfair to warn the public to be wary of an attorney with pending, unproven disciplinary charges when in many instances the charges are relatively minor, some will be dismissed by stipulation or after trial, and where an attorney is charged and then fully exonerated.

According to the State Bar's annual discipline report, scores of disciplinary charges are dismissed each year. It will be difficult, if not impossible, to measure the damage to those attorneys, including loss of current and potential clients who may have seen the consumer alert badge while the case was pending and decided to terminate or refrain from using the attorney's services while the disciplinary case is pending.

July 31, 2018

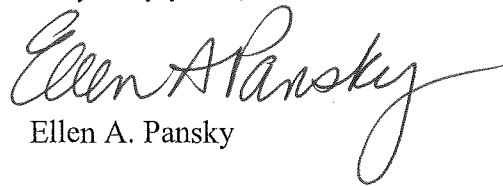
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In a legal market where finding a lawyer who is able and willing to take on a case can sometimes be difficult for clients, the proposed overly broad consumer alert simply because charges have been filed are likely to dissuade prospective clients from hiring otherwise competent and ethically responsible attorneys. A consumer alert which is posted before an attorney has been found culpable of any wrongdoing in a proceeding that does not involve involuntary or voluntary transfer of the attorney to inactive status, and where the allegations do not involve serious defalcations, misappropriation, incapacity to practice, or other instances which truly pose a public protection concern, is simply unfair.

Finally, the resolution of a client's case is often affected by the reputation of the client's attorney. The posting of an alert in every case in which charges have been filed may provide opposing counsel with an unfair advantage, and could be used to disparage the attorney before the court. A client's case should not be prejudiced by the fact that the client's attorney is facing unproven disciplinary charges in an unrelated matter.

I respectfully urge the Board of Trustees to reject proposal number 1 in the proposal to post a consumer alert banner on the member's electronic profile in each case in which charges have been filed. I have no objection to the remaining proposals.

Very truly yours,

A handwritten signature in cursive script that reads "Ellen A. Pansky". The signature is fluid and extends to the right with a long, sweeping tail.

Ellen A. Pansky

EAP/vm



July 27, 2018

Melanie Lawrence  
Interim Chief Trial Counsel  
Office of Chief Trial Counsel  
The State Bar of California  
180 Howard St.  
San Francisco, CA 94105

Re: Public Comment – Consumer Notices and Alerts

Dear Ms. Lawrence:

The Executive Committee of the Solo and Small Firm Section of the California Lawyers Association (“SSF”) submits these comments in response to the proposed amendments to the State Bar’s policy regarding consumer notices and alerts. These comments are submitted on behalf of SSF only, and not on behalf of the California Lawyers Association as a whole. SSF strongly supports protection of the public. However, we have concerns about this proposal, and question how it would ultimately result in additional and meaningful public protection.

SSF’s comments are aimed primarily at the portion of this proposal that would expand existing State Bar policy and authorize consumer alerts in various new circumstances where charges have been filed or allegations have been made, but no misconduct has been proven. Specifically, the proposal would authorize consumer alerts whenever (1) disciplinary charges are filed against an attorney; (2) the Office of Chief Trial Counsel (“OCTC”) files a petition alleging that the attorney should be placed on inactive status because he or she poses a substantial threat of harm to the public or clients; and (3) felony charges are filed against an attorney in court.

As a matter of public protection, we believe notice of charges *filed* differs significantly from notice of charges *proven*, but this proposal appears to merge a similar justification for both. With respect to notice of disciplinary charges and substantial threat-of-harm proceedings, the May 17, 2018 Agenda Item addressed to the Regulation and Discipline Committee provides the following justification:

In order to make an informed and intelligent decision, clients and prospective clients need to know that their attorney or their prospective attorney is facing *disciplinary charges*. Similarly, opposing counsel and the courts need this

information because a *suspension or disbarment order* may have a significant effect upon pending litigation.

(emphasis added).

With respect to felony charges filed against an attorney, the Agenda Item provides the following justification:

To make an informed and intelligent decision about their representation, clients and prospective clients need to know that their attorney or their prospective attorney is facing *felony charges*. Similarly, opposing counsel and the courts need this information because incarceration, or an *order suspending or disbaring a licensee*, might have a significant impact upon pending litigation.

(emphasis added).

The material provided in connection with this proposal does not fully explain the basis for the conclusion that informed and intelligent decisions require clients and prospective clients to know that *charges have been filed* against an attorney. The material also does not explain why that information—as currently displayed on a licensee’s State Bar profile page—is inadequate and needs to rise to the level of a high-visibility consumer alert. The material does not explain the *actual* public protection problem that is being addressed here. Is there evidence that clients are hiring attorneys with all types of disciplinary charges filed against them and being harmed by those same attorneys? Is there evidence that the existing licensee profile page does not provide adequate notice to protect the public?

As noted in the May 17, 2018 Agenda Item, in 2013 OCTC made a proposal to expand consumer alerts but withdrew the proposal after receiving public comment to the effect that the proposed consumer alerts would be unfair to the affected attorneys. In 2013, OCTC responded to the public comment noting, among other things, its view that “the public has an important interest in knowing whether the State Bar has filed formal disciplinary charges against an attorney...Any inquiring member of the public may review the filed allegations and the attorney’s response to weigh the seriousness of the allegations or to make other informed decisions. A Consumer Alert notifies the public that formal charges have been filed and the public is entitled to that information.”

This new proposal does not provide any significant developments since 2013 that would change the view that the consumer alerts would be unfair to the affected attorneys. Although SSF does not believe “unfairness” to attorneys is the *only* factor to consider, we believe all relevant factors should be considered and balanced. We believe the proposed consumer alert strongly implies that a potential client should not even consider hiring an attorney with disciplinary charges filed against him or her. Although the proposed consumer alert would include a disclaimer noting that charges filed contain allegations only, and that an attorney is presumed innocent until the charges have been proven, we seriously question whether the disclaimer language would have an impact

on decision-making. More likely, we believe potential clients will think the State Bar is posting a prominent “CONSUMER ALERT” for important reasons, and that the disclaimer would not negate, or even diminish, the likely warning message. If the consumer alert is *not* intended to have any material significance, because an attorney is innocent until charges have been proven, then why post it at all? And, if the consumer alert *is* intended to have material significance, the message appears to be that unproven charges should result in avoiding an attorney. Absent evidence that attorneys with pending charges filed against them should be avoided because they are harming the public, we do not perceive, on balance, that this proposal would advance the goal of public protection.

Significantly, the proposed consumer alert would have a potentially negative impact on an attorney before the attorney has been given an opportunity to challenge the charges. Although due process protections would be in place, insofar as an attorney would be able to challenge charges before actual culpability is imposed, to the extent an attorney loses an employment opportunity and resulting income—as a result of accusations rather than proof—there is a potential property interest that would be deprived, before an opportunity to contest the charges. We believe this would have a disproportionate impact on solo and small firm practitioners, who lack the resources to challenge disciplinary charges that are available to practitioners in large law firms.

Finally, this proposal would expand consumer alerts to situation in which an attorney is placed on involuntary inactive enrollment, suspended, disbarred, or resigned for one of the specified reasons, including when the attorney is delinquent in his or her child support obligations or the attorney has failed to comply with his or her MCLE obligations. We believe this expansion of consumer alerts should be reconsidered in light of the information already available on a licensee’s State Bar profile page and because the additional consumer alert seems unwarranted in many of the specified situations.

For these reasons, SSF urges the Board of Trustees not to adopt the proposed amendments to the State Bar’s policy regarding consumer notices and alerts. We appreciate your consideration of these comments. If you have any questions or would like to discuss this matter further, please feel free to contact me at (626) 765-1946 or [ritzel@gmail.com](mailto:ritzel@gmail.com).

Sincerely,

/s/

Ritzel S. Ngo, Chair  
Executive Committee, Solo and Small Firm Section