

## Amendment to Expungement Proposal

by Eloise M. Rosenblatt

I make this motion to amend the expungement recommendation:

**Any record associated with an attorney's misdemeanor involving domestic violence, including the record of a restraining order, whether under PC 273.5 (battery as felony or misdemeanor); ( PC 243 (e)(1) (battery, crime of moral turpitude); or Fam. Code §6320 (as amended to include coercive control) shall be excluded from either an ENEC or expungement after 3 years, 5 years or 10 years. Rather, any record associated with domestic violence—misdemeanor or not-- remains on the State Bar disciplinary record of that attorney permanently in the interest of the State Bar's mission to protect the public, especially women. The State Bar does not initiate expungement of DV and restraining orders from attorney disciplinary records. Expungement of DV records is reserved to the procedures of a State court of proper jurisdiction.**

Reasons:

1. Any record associated with domestic violence is the tip of the ice-berg. Domestic abuse is a pervasive offense that affects 1 in 5 women nationally; 95-98% of victims are women. It is under-reported, like rape. By the time a complaint reaches the court, the multiple forms of abuse expressing an offender's power and control over a spouse, domestic partner or girlfriend, have escalated over weeks, months and years.
2. A "misdemeanor" can be misleading. Domestic violence charges under Penal Code § 273.5, Penal Code §243(e)(1) and Family Code § 6203 are frequently pleaded down. For example, a serious battery would be breaking the nose or arm of a girlfriend or wife, meeting the standard of felonious infliction of physical injury under Penal Code §273.5. But it could have been reduced to a misdemeanor so the abuser wouldn't lose his job, be deported, or be prevented from owning or carrying a gun in military service or as a policeman. Same for a victim's petition for a restraining order. It is often modified as a "peaceful contact" order so the offender can still own a gun, or avoid a DV offense record on his application for employment.
3. A petition for a restraining order in Family Court under Fam. Code § 6320 had included physical injury, sexual abuse, shoving, stalking, death threats, harassment by letter, phone, texts, threats to kidnap the children and injury to pets. Now the recently amended statute codifies "coercive control" as a DV offense—through destroying the peace of a victim, monitoring of phone or e-mail, financial exploitation, isolation from family or friends, or threats about a victim's immigration status. Is the State Bar going to independently over-ride a determination in Family Court that an attorney who got a DV Restraining Order, after being charged under "coercive control" with these "non-physical" and "misdemeanor" offenses, is entitled to have this record expunged from his disciplinary record so he can attract more clients?

4. Men with domestic violence impulses are likely to repeat their offenses in new relationships and in different forms; these offenses are gender-targeted and gender-specific. Women as a gender are the victims.
5. Unintended consequences of the expungement proposal: Women of color and ethnicity are 3 times more likely to be victims of domestic violence than white women. Thus, to privilege Black men in the expungement of a domestic violence record re-victimizes Black women. This makes Black women 3 times more likely than white women that they will suffer repeated acts of abuse from Black men in a dating relationship or the attorney-client relationship.
6. White women as well as women of color have a right to know if an attorney has a record associated with domestic violence for their own physical safety and the integrity of the attorney-client relationship. While potential male clients may feel brotherhood with an attorney who has a DV record, potential female clients have a right protect themselves by avoiding any association with a male attorney who had a “peaceful contact” order, a restraining order, or a “misdemeanor” under PC §243 (e )(1). Women are alert to detect what these records imply. Women have a right to choose an attorney they can trust to be “safe.”
7. Risk-management: The State Bar leaves itself open to individual and class action tort lawsuits for “failing to warn” if it expunges DV-associated “misdemeanors.” What if a woman client is later physically injured by her attorney, sexually or financially exploited, threatened or harassed by him? What if she discovers that her recidivist attorney once had a record of DV “misdemeanors” but that these were expunged by the State Bar? She can claim she would never have chosen such an attorney to represent her if she’d known his DV-associated history.
8. Comparing expungement schedules to “large jurisdictions” like Texas and Florida is misleading and might be re-thought. Texas has the most rapes of any state in the nation, the most liberal gun-ownership provisions, onerous laws against abortion, restrictions on women’s access to reproductive healthcare, lack of financial support for pre-natal care, high infant and maternal death rates, restrictive voting legislation which disproportionately affects voters of color and ethnicity, and hostility to immigrants. Why would the California State Bar justify its expungement time-table by comparison with states like Texas and Florida with their legislative histories that so contrast with the legal culture of California?