



# The State Bar of California

## **Ad Hoc Commission on the Discipline System Public Comments Received**

**December 2, 2022**

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## INTRODUCTION

On September 22, 2022, the State Bar Board of Trustees formally received the final report of the Ad Hoc Commission on the Discipline System. It directed staff to issue the report recommendations for a 60-day public comment period. The public was invited to comment on their agreement/disagreement with the recommendations, submit written comments, and provide supporting attachment materials. Attachments submitted are provided as links.

All comments received online as of November 28, 2022, are provided below without modification with the following exceptions. One participant submitted the text of a news article as a public comment for all recommendations and provided the article as an attachment as well; in this case, only the attachment was provided. In other cases, a few sentences and phrases were redacted because they contained obscenities and did not concern the recommendations or any State Bar business function. Non-redacted comments are available upon request.

## RECOMMENDATION 1. DISCIPLINE COSTS

*The Ad Hoc Commission on the Discipline System recommends the Board of Trustees reevaluate its current discipline cost model with a focus on reducing costs. This includes, but is not limited to, restructuring the costs structure so that attorneys are not penalized for going to trial or review and scaling fees when charges are dismissed.*

### AGREE ONLY IF MODIFIED

**Anonymous** the current discipline cost and sanction structure greatly favors St. Bar and unduly pressures attorneys to settle it is inconsistent with due process

**Barbara Beard** i believe they may be inadequate. I have been practicing for over 40 years. My first year my dues were late due to mailing address change from LA County to Orange County; thereafter from death in family due another move. Extreme upsets in my personal life. For the subsequent 39 or so years my Dues have been timely. I have committed no further wrongs in the sight of the State Bar. Although these Rule changes state they are intended to address "disciplinary" matters, I was never disciplined, only briefly suspended until my dues were received. The Rules should address "suspensions" in the same manner, but with an even lesser consequence. And, last but not least, I hereby request my "suspensions" be expunged in full. I believe a 38-year penalty is sufficient. Thank you.

**Cynthia** It has systemic racism structured right into it and homophobia. From the beginning to the end of a complaint the system is flawed because the people deciding to complain are using racism and homophobia whether they realize it or not. And then the decision on who to prosecute by letting the big firms off as systemic racism and systemic homophobia built in. Then during the prosecution when the judge is looking and listening at you and evaluating Who

You are and whether you're lying or not. There's all kinds of systemic racism and homophobia there. This includes the appellate judges within your system. When I take into consideration if you've had priors, well why do you have priors? You have priors because it was even more systemic racism and homophobia in the past than there is now. And then so you are denied employment. Our leaders and governing people who we depend on to get rid of the systemic racism and homophobia often come from lawyers. And so by prosecuting and harming with systemic racism you're making it so the system can never change. You'll never be able to see it and weed it out. So you need to just make some way for there to be an expungement procedure. So that later if the person draws attention to where there could have been systemic racism and homophobia along the way you can at least correct your mistakes when you listen to Why. Recently I ran into Lesbian Judges I'd known for a while, stated Oh you can get a job. With a vocational expert said. She said with my record nobody would ever hire me. I believe she had a reputation as a defense hack and was set to come in with the opposite opinion and hold me to making an assessed 250,000 a year. That was one of our best vocational experts in the entire Bay Area and she said the reason was because of the bar discipline on my record. It was a \$5,000 opinion and you know they call around and check real hard before they say something like that So I'm sure she's correct. I know you're thinking I did this to myself but really? I suppose this depends on how badly you want more lesbian Latino attorneys from ABA schools helping our community. I'm sorry I couldn't edit this but I'm dictating onto my phone sitting in my truck. I feel my view is important enough to share with you regardless of syntax and grammar. 133915. Have a look at the very first referral to the bar after a car accident from a white commissioner named Shapiro in Marin on my first family law case because I wrote a motion for reconsideration. Apparently, that was inappropriate to do. Since it was my first case, I didn't realize that you bend over backwards in family law to cooperate. I was thinking that zealously advocating for your client, and believing her, should take precedent. I wasn't used to hearing begging and crying in my office and I responded to it. The commissioner and family judges were later reprimanded I don't know if secretly or publicly for having a Golden boy network and not letting new lawyers in to the rich Marin divorces. I wonder how much this had to do with my referral to you, and getting a monetary sanction over the limit. In hindsight, it was a racist, very racist thing to do to a fledgling Latino lawyer, and probably had something to do with me being a lesbian, as well. That should be reversed for racism, or at least have some way to expunge it now 25 or 30 years later. I think the Injustice is absolutely obvious. I have no way of knowing how many others, who are Latino this has happened to. However, I did have a bar prosecutor friend Andrea, that told me that shhhh, there was a memo to target minority firms. You know this memo was there, and you need to go back through and reverse your decisions for unlawful profiling. You should especially do it where there was no stealing. I don't want to minimize my imperfections because I definitely have my flaws. But I do not believe that I am so bad as to have the community denied my services and for me to never be able to get a job. That's just a hideous result of what the bar is doing. If you have an expungement procedure you can apply Equity to that process and help to get the diversity that you need so desperately in the bar.

**David Griffin** There should be no sanctions in Nolo disposition. These matters, at least in my case, are extortionate. My settlement Judge was former adversary counsel who told me that I would lose, that Bar costs would likely exceed 50,000.00 and that a similar amount would be paid to my counsel. As a senior atty at age 70 with pre Judgement and post Judgment condemnation on the website, I was out of business, had no income and huge costs due. My case was one where I became ill with transient ischemia and referred my cases to other counsel. All of the mistakes by these counsel were attributed to me and were baseless claims except for a couple of missed appearance by these other counsel. I practiced law for over forty years without a single claim and then had a short suspension on a false claim that I put my personal funds in the trust account when it was a gross check for all costs and associated attorneys experts etc. The balance was mine only after every one else was paid. The balance was properly then moved to the operating account. But for these I was drummed out of the corps and rendered penniless due to the costs I couldn't pay for a settled charge. This has literally ruined my life.

[Jacqueline Anguiano](#), on behalf of Consumer Attorneys of California [See attached letter from the Consumer Attorneys of California in link provided.]

**Mya** Dear Bar This what's happening in courts. I am a member of a coalition of thousands of parents whose children were separated for years without advisement of rights to cross examine the social worker at the jurisdiction and disposition hearings that we now know after months of research, was a violation of WIC 317(e) and California Rule of Court Rule 5.674. We now know that unless we waived our rights under CRC Rule 5.674, you, as the lawyer and pursuant to the Contract with the Judicial Council, must cross examine the preparer of each status review report, each ex parte application, and each last minute information filed in court in compliance with WIC 317 (e) and CRC 5.674. And you also know from the minute orders in the first case that the social worker did not testify and the court sustained a petition based on false statements that would not have been sustained had I been afforded my statutory under CRC 5.674 to cross examine the CSW. Most shocking, I was not even advised that I had a right to cross examine the CSW by you or the court, nor was I asked if I waived CRC 5.674, nor did I waive CRC 5.674, nor did I sign the JV 190 Waiver of Rights, nor did the court follow CRC Rule 5.682 (e) and (f) by failing to find on the record that I understood the nature of the allegations and the consequences of not examining the CSW. The court did not make this determination, sustained the petition, no CSW testified during the life of my case for four years. Instead of due process, I was shamed, embarrassed, lied about, laughed at, cursed at, drug tested while being closely observed, not allowed to speak in court, not allowed to present a defense, not allowed to cross examine the social worker. The court terminated my right to reunify with my children and approved a Guardianship because I drug tested at a facility other than Pacific Toxicology even though all my test results were negative and there are claims that Pac Tox was conducting screens which is inadmissible junk science that were also falsified and that Pac tox also falsely accused parents of missing "tests" that were considered "positive". I had no knowledge, until now, that I had due process rights at each hearing, to cross examine the government agents who continued to separate my children from me for four years and I want to know why the

CSW never testified. Based on the above due process violations by this court, the Guardianship should be terminated immediately on the grounds that it is the interest of justice and welfare of my children to protect their liberty interest to be with their parents, their family, long recognized by the U.S. Supreme Court. As to the merits of the allegations, there were none. The sustained marijuana abuse allegation was a mockery of justice and should have been dismissed, not sustained. The definition of marijuana abuse for child welfare purposes is set forth in the Structured Decision Making Protocol (SDM) and requires a medical professional's opinion that I am a substance abuser as defined in the DSM 5th ed and that I am rendered unable to provide regular care, i.e. adequate shelter, food, clothing, and medical care for my children, that we in the coalition now know is the "nexus". If I had cross examined the CSW I would have proved that she had no evidence that met the SDM definition mandating dismissal of the WIC 300 (b) Petition. In my case and in all the substance abuse cases in the coalition, the shelter was more than adequate, our children were well fed, well cared for, including food, clothing, and medical care. Bottom line, there was no "nexus". The cross examination of the CSW, that takes about 5-15 minutes, would have proved there was no evidence to support the "conclusion" that I was rendered unable to provide regular care for my children, no nexus – case dismissed. No evidence at all. Any decent lawyer would ask the CSW on the witness stand what was the nexus? What regular care did I fail to provide that put my children at risk of future harm? The fact that my three year old was clever enough to get out of the house three times and was unharmed, shows a fierce curiosity that could have been remedied by securing our home. And, DCFS was obligated to provide reasonable efforts to prevent removal to preserve the family and to prevent "separation trauma" and PTSD. In addition, the quality of my care is best judged by the fact that all my children were well cared for proving I am perfectly capable of securing my home from a precocious three year old. Also, reunification was terminated and my children are in Guardianship because I drug tested at a different facility than Pacific Toxicology even though all my tests were false. In addition, I provided my children excellent care and there was no medical evidence that I abused marijuana as defined in the DSM 5th ed. That said, there was no evidence to meet the definition of marijuana abuse in the SDM definitions and DCFS Assessment of Drug Alcohol Abuse 0070.521.10. I should not lose my children because I refused to test at Pac Tox considering that DCFS is currently auditing Pac Tox for falsifying test (screen) results causing termination of reunification and parental rights. Accordingly, I intend to notify the Board of Supervisors that I lost my children because I refused to go to corrupt Pac Tox and ask the Board to take appropriate action to return my children and terminate the fraudulent Guardianship. I also want an explanation as to why the Board has not terminated the Pac Tox 1.5 million dollar contract given the massive number of children separated from their parents due to Pac Tox's corrupt operation and why are all the parents forced to go to corrupt Pac Tox or lose their children? We also reviewed the Maternal Substance Act, Penal Code section 11165.13 that states a positive drug screen at the time of delivery of an infant, in itself, is not child abuse or neglect and cannot be reported as such to the hotline. Yet, the hospitals violated section 11165.13 in all our cases, reported us to the DCFS hotline for drug abuse based on inadmissible drug screens when our children were full term, no withdrawal, between 4 and 9 pounds. DCFS takes the children based on inadmissible positive drug screens that the hospitals were forbidden to report as child abuse under section 11165.13 in the first place

because drug screens are inherently unreliable as documented in the Legislative Digest from two years of legislative hearings on whether to remove children based on an inherently unreliable drug screens and the legislature said No but that's happened in my case and thousands of other cases. DCFS also filed a petition on my new baby based on a substance abuse with no medical diagnosis consistent with the DSM 5th ed and no nexus and would have been dismissed at a contested hearing. There was no probability that my baby would be under the court's jurisdiction because there was no nexus. Again, if I had been offered the opportunity to cross examine the CSW, I would have shown that there was no diagnosis and no nexus and, hence, the allegations did not meet the SDM Definitions mandating dismissal. Accordingly, the WIC 301 should be dismissed. I want to work with LADL and CLC to return my children and end mass separation that is much worse than the border crisis. We all have the grounds for a WIC 390 motion to dismiss in the interest of justice and the welfare of the children. None of our children were abused or neglected as defined in the SDM Definitions. That said, had we been afforded our rights under CRC we would have our children. Instead, we were denied due process by the court that never advised us of our rights, never asked us if we waived our rights, never gave us the Judicial Council JV 190 Waiver of Rights, we never signed the JV 190, never waived our rights under CRC 5.674 to cross examine the preparer of each report filed in court, the CSW never testified, and, the court sustained the petition under WIC 355. Our coalition is also conducting an in depth review of the CLC and LADL contracts and discovered that under the payment section, monthly invoices on each case must be provided to the Judicial Council including who performed the work, how long did it take, what was the purpose, and the name of the hearing. I am requesting all the monthly invoices that CLC and LADL submitted to the Judicial Council on my case pursuant to the express terms of the Contract that totals 12 per year for more than four years, roughly 100 invoices from both CLC and LADL. As you know, under the Revenue Enhancement Statutes, I have to reimburse the state for LADL legal fees and CLC legal fees and I am entitled to and demand these invoices immediately. We are planning Legislative hearings similar to the hearings in 1994 that documented social workers were filing petitions that were false, that lawyers were not cross examining the social workers, and false petitions were rubber stamped by court hearing officers. This is still going on for almost forty years and must end now. No more mass separation based on due process violations. We want our children back to end the separation trauma and unbearable suffering. Some of the mothers have gone insane and others have taken their own lives... we are united in our mission to return our children and preserve our families...the soul of America. Please email my estimated 100 invoices as soon as possible. The coalition members will each be requesting their monthly invoices. Also, please advise by email why you never cross examined the CSW and never informed me of my rights to cross examine the CSW and how can the court sustain a petition with no CSW testimony and no waiver? Also, I intend to file a Motion to Dismiss the petition filed on my baby in the interest of justice based on due process violations and the welfare of my child.

**NC CARLSON** Public Dissent re Attorney Discipline System



1. Case Prioritizations - Complex cases and complaints against High Profile Attorneys and Professional Litigators OCTC routinely assigns to inexperienced lay investigators who simply closed cases..
2. Supporting Evidence - OCTC charges and places burden of evidence on complainants who must bear that expense including for all records demanded by OCTC which some lay complainants may not possess, know how to secure, and which Respondents failed & refused to provide.
3. Communications with Complaining Witness - OCTC has a record of not communicating with complaining witnesses during intake, often during the investigation process, before issuing a case closure letter.
4. Investigations - The OCTC investigations does not provide Claimant "Responses" and opportunity to impeach Respondents response, claims or evidence .
5. Complaint Review Unit - There is NO State Bar nor OGC portal, description, instructions nor procedure for complaint review program. OGC makes no effort to contact complainants. Tests proved OGC sent unsigned form letters within days requesting review of complex cases with conclusive evidence verifying bias and failure to protect the public.

**Terry Smith** 1. Attorney fees should not allowed to defer such cost to clients as “ court cost” or additional fees.

### **AGREE WITH PROPOSED RECOMMENDATION**

**Anonymous** A reasonable recommendation is to give trial judges more discretion when imposing disciplinary costs. In my case, I suffered from a severe methamphetamine addiction and had literally no money. I had four driving on a suspended license violations and a misdemeanor petty theft. Under the schedule, the State Bar imposed about \$20,000 in costs. Besides recovering from methamphetamine, the primary obstacle I faced was to financially support myself. I was suspended from practice and could not locate a regular job. I was in no condition to work a steady regular job since it was necessary to focus on my recovery. I was also saddled with Lawyers Assistance Program fees, drug testing costs, rehabilitation, and housing costs. I owed the IRS and the Franchise Tax Board among other obligations. I no longer owe the IRS and am making payments to the Franchise Tax Board. It would have been helpful if the Trial Judge would have had some discretion in setting disciplinary costs. I rented a two-bedroom apartment and at one time had three other roommates to lower my housing costs. I now am down to three persons in the same two-bedroom apartment.

**Benjamin Pavone** Please see attachment for criticisms of the State Bar system.

**Carmen Garcia** Agree that people should not be penalized for going to trial or defending themselves against the accusations.

**Chad pratt** Reduce and eliminate all costs. Assess more costs on site bar for frivolous trials."

**darryl genis** Until 'profit' is taken out of the equation, State Bar Disciplinary proceedings will never be fair or just. The easiest way to make thing fair if costs are to be allowed at all is to get rid of the illegal cost statute which is a veiled 'attorney's fees' statute that violates Equal Protection and Due Process (because it has a lower standard for the OCTC and a much much higher standatd for repsondents) and replace it with a legal 'reciprocal' attorney's fees statute that provides for reasonable fees to 'the prevailing party'.

[David C. Carr](#) Recommendation 1 Discipline Costs and Sanctions. Reevaluate the current discipline cost model with a focus on reducing costs. This includes, but is not limited to, restructuring the costs structure so that attorneys are not penalized for going to trial or review and scaling fees when charges are dismissed.

The unfairness of the discipline cost structure has been apparent to practitioners in State Bar Court for many years. It encourages overcharging and poor pre-filing analysis by the Office of Chief Trial Counsel (OCTC) and gives OCTC undue leverage in the settlement process. Costs should be awarded by a State Bar Court judge through a motion process, as exists in some disciplinary jurisdictions. The rigid cost structure was adopted in part because OCTC did not want to adopt a system for accounting for time. Adopting a motion procedure would make OCTC more accountable and more efficient. Respondents who are completely exonerated of all charges following trial should be awarded attorneys fees and costs.

**Edward O'Reilly** In my case, the cost of going to trial was prohibitive. The adversarial nature of disciplinary proceedings was very unsettling. I expected it to be a forum where peers can work together, and truth can be found. It is a system where those with means escape justice and those without means get treated harshly.

The costs should be reduced so that there is an even playing field. By the time an attorney reaches trial the costs already paid are exorbitant. Some estimates claim that an attorney will lose 70% of their business. The losses start mounting as soon as the State Bar posts online that a complaint has been filed. It is a financial penalty. It's not reasonable to expect an attorney to have the resources to go to trial after having their practice is disrupted, time and resources drained. Those with resources to withstand a prosecution are less likely to be disciplined. That is unfair.

In my case the judge opined in court that I should receive a private reproof, but the prosecutors insisted on taking the case to trial if I didn't stipulate. I believe that was partially because I was unrepresented. The prosecutors leaned on me heavily to stipulate.

**Edward Tabash** There should not be a trial penalty. Attorneys have a right to seek a full trial in matters that could be career ending. This should not be penalized

**Erika Roman** The costs of defense are cost prohibitive and to defend yourself as a solo practitioner or for many practitioners, it comes down to defending your name weighed against the exorbitant cost of litigating the matter.

**Erika Roman** The costs of defense are cost prohibitive and to defend yourself as a solo practitioner or for many practitioners, it comes down to defending your name weighed against the exorbitant cost of litigating the matter.

**Lenore Albert** It is unconstitutional and anticompetitive behavior. It also is a way to disbar attorneys you don't like. They are the highest in the nation.

Golden children get offers to stipulate to some lesser charge. However, the employees at OCTC trading ""favors"" with those outside the Bar to target a person do not get that opportunity to pay off the Bar at a lower rate."

**Mathew Higbee** I believe the State Bar should pay the opposing party's attorneys fees in any were a verdict is returned in favor of a defendant. An individual member should not be forced to incur the costs of defending themselves against charges that could not be proven.

**Melinda C Romines** The sanctions of \$2,500 on top of the court fees of over \$7,000 are obscene. With the suspension posting on my profile, and the allegations (not conviction) of a felony in a large red box have made my employment opportunities nill. I am about to lose my car to repossession and my home to eviction. I have nowhere to go! i never stole from any client and committed no moral turpitude. Do I have to be a rich old white man and buy the State Bar, Like Gird to find any sympathy?"

**Robert Kavianian** I feel that an Attorneys should have a set a market value per case 2001 under personal stress my Attorney' charged me \$5,000 per a misdemeanor DUI playing off my shame and embarrassment. 2003 I had a 2nd DUI and a more professional more organized Attorney charged me \$2,300."

**Robert Louis Ray** Attorneys need to be held accountable for their misdeeds

## **DISAGREE WITH PROPOSED RECOMMENDATION**

**Jack Woods** Greater emphasis should be placed on attorney interaction with potential jurors during the selections process. Attorneys should be dissuaded from staging aggressive and insightful commentary with the potential juror..

Disciplinary sanctions should not be eliminated as this serves as a deterrent to improper behavior in the court room. It is natural that an individual knowing there is no definitive and

anticipated corrective action to be concerned with will continue his/her improper actions without remorse.

**Jeremy Auslander** You don't reduce costs or award attorney's fees for a defendant when they are the prevailing party. Why should a lawyer have different rules?

Why don't you make the losing party pay opposing parties attorney's fees?

That would limit the number of frivolous lawsuits. I bet lawyers and plaintiff's would think twice before suing if there was a possibility of them having to pay legal fees and more if they lose.

They should not only pay for the costs associated with them having to defend the violations they are accused of, but they should be liable for any and all damages caused to their clients. Missed filing dates, missed court dates, failure to act as a reasonable attorney should, basic knowledge of the law and legal proceedings.

They only one hurt is the individual who trusted a lawyer who passed your BAR exam but was never taught how to be a lawyer.

**Maria cardenas** If a debt buying firm sue an individual that is far away thinking default judgement is very likely, there should be a rule that they have to be physically present at trial. Chances are they will not show up because the amount owed isn't worth the trip. If they are aloud to submit 1000s of claims and show up remotely than they will always be at an advantage and garnish people's money when they paid a cent and demand full smount plus court fees

**Nadia heshmati** "There are so many cooked, charlatan psychopath attorneys stealing money from innocent clients and victimizing them over & over again.

There must be a HARSH discipline system to punish them and suspend their licenses and sanction them to pay for cost of investigations & restitution to their victims.

Look at Tom Girardi and that's only one caught after years of getting away with so many criminal actions against innocent victims!

You must get tough on these thieves and crooks using the law to rip off & destroy clients lives! Enough is enough, a wolf shouldn't watch another wolf so get public involved in investigating these psychopaths and crooks that abuse the due process, abuse their law license and commit perjury & intimidate witnesses and steal from clients! Make an example out of them! "

**Paul Dougherty** Lawyers convicted of financial crimes and misdeeds should be disbarred for life.

**Stephanie Orouke** No need to reevaluate current discipline cost model, the costs should be increased. If the State Bar decides to a disciplinary investigation and court proceedings as directed by Business and Professions Code section 6086.10 then there are grounds for it, and the State Bar needs to recover its costs. Attorneys should not self govern themselves, and the State Bar should have 90% public on State Bar Discipline Board.

[Message from staff: in addition to the text above, Orourke submitted the text of the attached news item. Given its length, the text has been redacted from this comment. Please refer to the attachment in the link provided.]

**Steven** You are attorneys protecting Attorneys. Unless they are arrested and convicted. No disciplinary actions ever take place. They lie cheat steal and cover up. How about punishing Mary Elizabeth Cooper Mailibu CA for her repeated corruption  
Attorneys should be made to pay for trial and review. It's their criminal actions resulting in formal punishment. As of right now Attorneys can do and say whatever no punishment

## RECOMMENDATION 2. DISCIPLINARY SANCTIONS

*The Ad Hoc Commission on the Discipline System recommends that the State Bar seek a statutory amendment to eliminate disciplinary sanctions.*

### AGREE ONLY IF MODIFIED

**Mya**

Dear Bar fire judges and lawyers they are apart of this

This is to advise that I am a member of a coalition of thousands of parents whose children were separated for years without advisement of rights to cross examine the social worker at the jurisdiction and disposition hearings that we now know after months of research, was a violation of WIC 317(e) and California Rule of Court Rule 5.674.

We now know that unless we waived our rights under CRC Rule 5.674, you, as the lawyer and pursuant to the Contract with the Judicial Council, must cross examine the preparer of each status review report, each ex parte application, and each last minute information filed in court in compliance with WIC 317 (e) and CRC 5.674.

And you also know from the minute orders in the first case that the social worker did not testify and the court sustained a petition based on false statements that would not have been sustained had I been afforded my statutory under CRC 5.674 to cross examine the CSW. Most shocking, I was not even advised that I had a right to cross examine the CSW by you or the court, nor was I asked if I waived CRC 5.674, nor did I waive CRC 5.674, nor did I sign the JV 190 Waiver of Rights, nor did the court follow CRC Rule 5. 682 (e) and (f) by failing to find on the record that I understood the nature of the allegations and the consequences of not examining the CSW. The court did not make this determination, sustained the petition, no CSW testified during the life of my case for four years.

Instead of due process, I was shamed, embarrassed, lied about, laughed at, cursed at, drug tested while being closely observed, not allowed to speak in court, not allowed to present a defense, not allowed to cross examine the social worker. The court terminated my right to reunify with my children and approved a Guardianship because I drug tested at a facility other than Pacific Toxicology even though all my test results were negative and there are claims that Pac Tox was conducting screens which is inadmissible junk science that were also falsified and that Pac tox also falsely accused parents of missing “tests” that were considered “positive”. I had no knowledge, until now, that I had due process rights at each hearing, to cross examine the government agents who continued to separate my children from me for four years and I want to know why the CSW never testified.

Based on the above due process violations by this court, the Guardianship should be terminated immediately on the grounds that it is the interest of justice and welfare of my

children to protect their liberty interest to be with their parents, their family, long recognized by the U.S. Supreme Court.

As to the merits of the allegations, there were none. The sustained marijuana abuse allegation was a mockery of justice and should have been dismissed, not sustained. The definition of marijuana abuse for child welfare purposes is set forth in the Structured Decision Making Protocol (SDM) and requires a medical professional's opinion that I am a substance abuser as defined in the DSM 5th ed and that I am rendered unable to provide regular care, i.e. adequate shelter, food, clothing, and medical care for my children, that we in the coalition now know is the "nexus".

If I had cross examined the CSW I would have proved that she had no evidence that met the SDM definition mandating dismissal of the WIC 300 (b) Petition. In my case and in all the substance abuse cases in the coalition, the shelter was more than adequate, our children were well fed, well cared for, including food, clothing, and medical care. Bottom line, there was no "nexus".

The cross examination of the CSW, that takes about 5-15 minutes, would have proved there was no evidence to support the "conclusion" that I was rendered unable to provide regular care for my children, no nexus – case dismissed. No evidence at all. Any decent lawyer would ask the CSW on the witness stand what was the nexus? What regular care did I fail to provide that put my children at risk of future harm? The fact that my three year old was clever enough to get out of the house three times and was unharmed, shows a fierce curiosity that could have been remedied by securing our home. And, DCFS was obligated to provide reasonable efforts to prevent removal to preserve the family and to prevent "separation trauma" and PTSD. In addition, the quality of my care is best judged by the fact that all my children were well cared for proving I am perfectly capable of securing my home from a precocious three year old. Also, reunification was terminated and my children are in Guardianship because I drug tested at a different facility than Pacific Toxicology even though all my tests were false. In addition, I provided my children excellent care and there was no medical evidence that I abused marijuana as defined in the DSM 5th ed. That said, there was no evidence to meet the definition of marijuana abuse in the SDM definitions and DCFS Assessment of Drug Alcohol Abuse 0070.521.10.

I should not lose my children because I refused to test at Pac Tox considering that DCFS is currently auditing Pac Tox for falsifying test (screen) results causing termination of reunification and parental rights. Accordingly, I intend to notify the Board of Supervisors that I lost my children because I refused to go to corrupt Pac Tox and ask the Board to take appropriate action to return my children and terminate the fraudulent Guardianship. I also want an explanation as to why the Board has not terminated the Pac Tox 1.5 million dollar contract given the massive number of children separated from their parents due to Pac Tox's corrupt operation and why are all the parents forced to go to corrupt Pac Tox or lose their children?

We also reviewed the Maternal Substance Act, Penal Code section 11165.13 that states a positive drug screen at the time of delivery of an infant, in itself, is not child abuse or neglect and cannot be reported as such to the hotline. Yet, the hospitals violated section 11165.13 in all our cases, reported us to the DCFS hotline for drug abuse based on inadmissible drug screens when our children were full term, no withdrawal, between 4 and 9 pounds. DCFS takes the children based on inadmissible positive drug screens that the hospitals were forbidden to report as child abuse under section 11165.13 in the first place because drug screens are inherently unreliable as documented in the Legislative Digest from two years of legislative hearings on whether to remove children based on an inherently unreliable drug screens and the legislature said No but that's happened in my case and thousands of other cases. DCFS also filed a petition on my new baby based on a substance abuse with no medical diagnosis consistent with the DSM 5th ed and no nexus and would have been dismissed at a contested hearing. There was no probability that my baby would be under the court's jurisdiction because there was no nexus. Again, if I had been offered the opportunity to cross examine the CSW, I would have shown that there was no diagnosis and no nexus and, hence, the allegations did not meet the SDM Definitions mandating dismissal. Accordingly, the WIC 301 should be dismissed.

I want to work with LADL and CLC to return my children and end mass separation that is much worse than the border crisis. We all have the grounds for a WIC 390 motion to dismiss in the interest of justice and the welfare of the children. None of our children were abused or neglected as defined in the SDM Definitions. That said, had we been afforded our rights under CRC we would have our children. Instead, we were denied due process by the court that never advised us of our rights, never asked us if we waived our rights, never gave us the Judicial Council JV 190 Waiver of Rights, we never signed the JV 190, never waived our rights under CRC 5.674 to cross examine the preparer of each report filed in court, the CSW never testified, and, the court sustained the petition under WIC 355.

Our coalition is also conducting an in depth review of the CLC and LADL contracts and discovered that under the payment section, monthly invoices on each case must be provided to the Judicial Council including who performed the work, how long did it take, what was the purpose, and the name of the hearing. I am requesting all the monthly invoices that CLC and LADL submitted to the Judicial Council on my case pursuant to the express terms of the Contract that totals 12 per year for more than four years, roughly 100 invoices from both CLC and LADL. As you know, under the Revenue Enhancement Statutes, I have to reimburse the state for LADL legal fees and CLC legal fees and I am entitled to and demand these invoices immediately.

We are planning Legislative hearings similar to the hearings in 1994 that documented social workers were filing petitions that were false, that lawyers were not cross examining the social workers, and false petitions were rubber stamped by court hearing officers. This is still going on for almost forty years and must end now. No more mass separation based on due process violations.



We want our children back to end the separation trauma and unbearable suffering. Some of the mothers have gone insane and others have taken their own lives... we are united in our mission to return our children and preserve our families...the soul of America.

Please email my estimated 100 invoices as soon as possible. The coalition members will each be requesting their monthly invoices. Also, please advise by email why you never cross examined the CSW and never informed me of my rights to cross examine the CSW and how can the court sustain a petition with no CSW testimony and no waiver? Also, I intend to file a Motion to Dismiss the petition filed on my baby in the interest of justice based on due process violations and the welfare of my child.

**Terry Smith** Sanctions such only be allowed/ applied when “legitimately applicable “ and legally warranted.

**Daniel Geoulla** They should not be eliminated altogether. Instead, they can be reduced, or discretion should be given so they are proportionate to the violations.

#### **AGREE WITH PROPOSED RECOMMENDATION**

**Robert Louis Ray** I know of two attorney who ran for the position of City Attorney for the City of Compton, and neither of them lived in the City which is a violation of the City Charter.

**Chad pratt** Waive all costs

**darryl genis** This makes sense. Especially for misdemeanor conviction referrals that do not involve moral turpitude and did not result from the practice of law. The State Bar Court and OCTC do not follow their own rules anyway Attorney J. Tony Serra was convicted of 26 USC section 7203 three times in 31 years. His first in 1978 went unpunished. His second resulted in a 30 day suspension, and his third resulted in a 6 month suspension which he served concurrent with his prison sentence. Tax litigator James Patrick Kleier was convicted once and suspended for 3 months. I was convicted once and suspended for 24 months and not given credit for the 21 months I was in Federal Prison where it was illegal to practice law. That is a 300% greater punishment than Serra who pursuant to 1.8 should have been disbarred, and a 700% greater punishment than Kleier who the public should have been given the greatest protection from since he gives tax advice and violated tax laws.

**Lenore Albert** no comment

**David Speckman** Prolonged publication of prior discipline, when there has been no repeat offence, results in a continued punishment of the attorney. This, in turn, may result in severe financial loss, embarrassment, and loss of competent legal talent. I know of several instances in which an attorney has lost clients do to published discipline records having no reflection on the

attorney's skills, knowledge, ethics or competence. I have seen opposing attorney use prior discipline records to undermine the integrity of an attorney in the eyes of the court or even the attorney's own client. The continued unending publication of discipline records works to punish the attorney for the remainder of his/her legal career and often causes otherwise very good lawyers to seek an alternative profession.

**Melinda C Romines** I was required to pay the \$2,500 sanction after my 6-month suspension. I hadn't worked all year, and as a single mother of four children, from a poor drug-addicted family, I had no one. I had to sell all of my jewelry just to make it.

**Edward Tabash** Disciplinary sanctions should be eliminated. Most important of all, attorneys cleared of any charge should not have to pay the cost of State Bar prosecution of that charge. The practice of making lawyers pay costs of their prosecution even if they are acquitted is grossly unfair.

In fact, it should be the opposite. Attorneys who undergo State Bar prosecutions and are acquitted should have their costs and expenses of defending themselves fully reimbursed by the State Bar.

**Anonymous** if other states not require restitution then CA should also or pay in accordance with revenue.

**Erika Roman** The costs of defense are cost prohibitive and to defend yourself as a solo practitioner or for many practitioners, it comes down to defending your name weighed against the exorbitant cost of litigating the matter.

[David C. Carr](#) "Recommendation 2 Seek a statutory amendment to eliminate disciplinary sanctions.

Sanctions are punitive by nature and antithetical to the purposes of discipline, which is not punishment, but protection of the public, the courts and the legal profession, maintenance of the highest professional standards; and preservation of public confidence in the legal profession (Standard 1.1) Eliminating sanctions is essential to combat the inherent drift in the discipline system toward punishment and restore fairness.

#### **DISAGREE WITH PROPOSED RECOMMENDATION**

[Stephanie Orourke](#) Attorneys should not self govern themselves, and the State Bar should have 90% public on State Bar Discipline Board.

[Message from staff: in addition to the text above, Orourke submitted the text of the attached news item. Given its length, the text has been redacted from this comment. Please refer to the attachment in link provided.]

**Robert Kavianian** I've gone to College and have had friends that are Attorney's (2 of them disbarred) One thing I've noticed is there quality suffered and they seemed to go for more lucrative cases also there follow up with clients where terrible."

**Paul Dougherty** Disciplined lawyers should pay full costs before being allowed to practice law again.

**Jeremy Auslander** "I wasn't able to find the information on amending the statute regarding the elimination of disciplinary actions. However, if you are considering reducing statues to report violations made by an attorney I oppose that! It takes time to formulate the argument and research the violations a lawyer has broken.

As a victim of a malicious lawyer who filed frivolous charges against me, it took me a very long time to formulate my response. I tried to hire an attorney to help me but in this field only lawyers representing lawyers exist! Lawyers helping individuals who have been wronged are few and far between. Most likely because the courts are very lenient to lawyers and the monetary damages awarded are not worth hiring an attorney.

It's a terrible cycle of individuals getting harmed by lawyers with those individuals having little to no recourse and/or remedies."

**Maria cardenas** There should be disciplinary sanctions to protect fair practices .

**Jack Woods** I agree,with the valuation conference without modification

**Steven** I disagree you protect Attorneys no matter how sick or perverted

**Anonymous** It is easy to agree with eliminating disciplinary costs since the benefits to one group would be concentrated while the increased costs to other stakeholders would be widespread and hardly noticed. It seems the better recommendation is to give trial judges discretion.

**Carmen Garcia** Root & Rebound works with people who have been marginalized and are often in desperate situations, with very few financial resources. Many people who are taken advantage of by attorneys who have committed sanctionable conduct do not have the resources to hire an attorney to pursue a civil suit to obtain monetary damages. The Client Security Fund allows for clients to be reimbursed if they have lost money or property due to theft of dishonest conduct by a California attorney, without going through the court system, which, again, requires resources to hire an attorney or the ability to navigate the system on their own, which is unlikely. Although sanctions do not exist in other states, the model itself is not unprecedented - for example, this is the purpose of Victim's Compensation Funds.

### RECOMMENDATION 3. EXTEND DEADLINE FOR TRANSMITTAL OF CRIMINAL CONVICTION MATTERS

*The Ad Hoc Commission on the Discipline System recommends seeking a statutory amendment to extend the deadline for the transmission of criminal conviction matters in misdemeanor cases to allow for an Early Neutral Evaluation Conference.*

#### AGREE ONLY IF MODIFIED

**Cynthia** I have no idea what an ENC is. There is no way for me to submit this form without checking boxes on things I don't even understand. I don't think you need any deadlines extended unless they help the defendant for instance by giving them enough time to get a felony off their record and get it changed to a misdemeanor and get it expunged and criminal Court so that you don't have to address it. The less prosecuting the bar does the better. We all know that tough on crime means tough on minorities. If lawyers really commit crimes we have the criminal courts to deal with it we don't need the bar.

**Anonymous** I don't know enough about the situation. Is there a delay in transmitting the conviction due to a delay in the courts?

**Jeremy Auslander** "Is an individual convicted of a crime afforded the same opportunity? If so, then yes, a lawyer should be treated the same way.  
If no, then NO!  
Again, a lawyer should not receive special treatment. "

**Jack Woods** Agree, provided the reviewing committee be properly balanced through a selection committee comprised of Lay persons and Established professionals who have a background and have exhibited their understanding of the true nature of Discipline and its relative importance in maintaining an accepted level not only in conformity but in respect of the court.

#### AGREE WITH PROPOSED RECOMMENDATION

**Lenore Albert** no comment

**Edward Tabash** Yes, give lawyers a chance to explain or clarify a situation at the outset prior to a full blown trial or intermediate hearing.

**Anonymous** Early Neutral Evaluation Conferences are always helpful. I have attached a law review article that touches on issues related to addiction and also relevant to this recommendation. My petty theft incident occurred before the zero-bail movement. The judge would not release me unless I entered a plea. I was not in good condition. So, I pleaded as

charged. I assumed that since the violation was a misdemeanor it would not trigger disbarment or other serious State Bar consequences.

I could not afford an attorney and was unaware that a misdemeanor involving moral turpitude presumptively triggers disbarment. If I had been of sound mind and had the resources, I would have made bail with the opportunity fully explain the circumstances surrounding the petty theft incident. If I had been placed in sober living and come back six months later, I probably would have been eligible for a diversion program.

If there had been an Early Neutral Evaluation Conference, I would have been able to explain these circumstances to the Trial Counsel. The only caveat is that had I received a lesser punishment I may not have worked as hard at my recovery.

I was unaware at the time, but a methamphetamine addiction is much more serious than a cocaine or alcohol problem. Methamphetamine damages the self-control center of the brain. Holley, Mary (2006) ""How Reversible is Methamphetamine-Related Brain Damage?,"" North Dakota Law Review: Vol. 82 : No. 4 . Available at: <https://commons.und.edu/ndlr/vol82/iss4/2>. I have uploaded a copy of the referenced article by Dr. Holley with the key points highlighted. I relate to everything in the article."

**David C. Carr** "Recommendation 3: Early Neutral Evaluation Conferences Seek a statutory amendment to extend the deadline for the transmission of criminal conviction matters in misdemeanor cases to allow for an ENEC.

Early resolution of discipline cases should be a goal of the system. The Early Neutral Evaluation (ENEC) protocol needs to improved but it is not available for criminal conviction cases, which are significant part of the discipline caseload. ENEC should be available in all discipline cases.

## **DISAGREE WITH PROPOSED RECOMMENDATION**

**Stephanie Oourke** Attorneys should not self govern themselves, and the State Bar should have 90% public on State Bar Discipline Board.

[Message from staff: in addition to the text above, Oourke submitted the text of the attached news item. Given its length, the text has been redacted from this comment. Please refer to the attachment in link provided]

**Robert Kavianian** Extended a dead line is just more Legal Paperwork.

**Paul Dougherty** No transmission of criminal matters should ever be allowed.

**David Griffin** There should be a reasonable statute of limitation and a short period.

**Maria cardenas** If its a misdesminor allow to be spunged within 3 years

**Steven** They have a right to trial that's it. [sentence redacted]

## RECOMMENDATION 4A. ATTORNEY DISCIPLINE ON STATE BAR WEBSITE

*The Ad Hoc Commission on the Discipline System recommends the Board of Trustees adopt the following timelines for removal of the attorney discipline from the website attorney profile page:*

- *Private reproof: 1 year of when conditions are met*
- *Public reproof: 3 years*
- *Probation with stayed suspension: 3 years of conclusion of probation*
- *Probation with actual suspension: 5 years from reinstatement*
- *Disbarment: Public indefinitely (no change)*

### AGREE ONLY IF MODIFIED

**Nadia heshmati** Every disciplinary action against any attorney must be public info and they should be fully prosecuted! The ca bar must PROTECT the public from these wolves!

**Patricia Rodriguez, on behalf of Rodriguez Law Group, Inc.** Eligibility for expungement of the attorney discipline record would be based on no new discipline or active investigations during the period, and payment of all restitution.

What does active investigation mean? I think it should be clear only complaints that lead to filing of bar violation charges should stop eligibility. If someone has a complaint that is filed against them that is investigated and closed it should not impede removal or expungement of the disciplinary action. "

**Garo Ghazarian** REC4A\_ There need be a similar timeline for removal of the attorney discipline from the website attorney profile page of "attorneys who submitted a voluntary resignation with charges pending," who have subsequently been reinstated on the active roster of the California State Bar. Note: I am such an attorney who resigned in 1994 "while charges were pending," and though my petition for reinstatement was granted in 2003, and though I've been practicing since without any discipline, my State Bar website profile, on many occasions has caused many hardships. Despite not having been disciplined, many who have viewed my profile on the bar's website, have incorrectly surmised that I was disciplined and consequently disbarred. For context, you may view my profile (Cal. Bar #152790). Thank you. Garo Ghazarian"

**Mya** Help stop this mass separation fire judges and lawyers they are committing crimes against the public jail is all I see that's how parents feel with out their children stop ignoring the problem return Children to parents all case files paperwork are all false

**Melinda C Romines** FIVE years is far too long! It extends the punishment and unemployment of attorneys.

**David Griffin** There should be no publication of past charges settled and suspension served. These matters, at least in my case, are extortionate. My settlement Judge was former adversary counsel who told me that I would lose, that Bar costs would likely exceed 50,000.00 and that a similar amount would be paid to my counsel. As a senior atty at age 70 with pre Judgement and post Judgment condemnation on the website, I was out of business, had no income and huge costs due.

My case was one where I became ill with transient ischemia and referred my cases to other counsel. All of the mistakes by these counsel were attributed to me and were baseless claims except for a couple of missed appearance by these other counsel.

I practiced law for over forty years without a single claim and then had a short suspension on a false claim that I put my personal funds in the trust account when it was a gross check for all costs and associated attorneys experts etc. The balance was mine only after every one else was paid. The balance was properly then moved to the operating account.

But for these I was drummed out of the corps and rendered penniless dues to the costs I couldn't pay for a settled charge.

This has literally ruined my life. It not only defames me unjustly but is devastatingly punitive which is not the objective of the structure. If a lawyer is incompetent or commits moral turpitude that is one thing. But the micromanagement by Bar Bureaucrats who announce their conclusions and condemn decent practitioners with overwhelming negative ""finding"" to which the condemned is required to agree in this extortion is simply wrong."

**Ainhan Mina Tran** There should be some process for attorneys to request removal and/or expungement of disciplinary records based on the severity of the misconduct. Factors that could be considered are:

1. Level of harm to the client if any
2. Pattern of misconduct given the number of years in practice
3. ""Good behavior"" or other types of equities or extenuating circumstances

For solo or small firms, even three years can have a gross adverse impact on the attorney's ability to practice and make a living.

Thank you for the consideration.

**Cory Nikolaus** I agree that attorney discipline should be removed from the website attorney profile page. In the case of a probation with stayed suspension, I believe that the attorney discipline should be removed when the probation period ends so long as all of the terms of probation were met. It is overly punitive to keep the information public for three years if an attorney agreed to a stayed suspension and complied with all terms of their probation.



**Anonymous** Public reproof 2 years instead of 3 years

**MICHAEL J. BARS** With respect to ATTORNEY DISCIPLINE ON STATE BAR WEBSITE/EXPUNGEMENT, I am unclear as to the meaning of the statement ""Both proposals recommend that eligibility for removal of discipline history from the website be conditioned upon no new discipline or active investigations during this period, and payment of all restitution.""

I am unclear as to what is meant by the phrase ""during this period"". What is the period?

Also, I am unclear what the meaning of ""Active"" investigations means. What period of time? Would those include complaints that were investigated and closed by the Ca State Bar with no action?

I believe the committee's recommendations of removal of discipline history from the state website should be solely based upon expiration of time with respect to ""non client"" related bar discipline which results in actual suspension for 30 days. Such Ca State Bar discipline based upon criminal misdemeanor convictions should be removed from the website within 5 years from reinstatement and expunged. I am a sole practitioner who had two misdemeanor convictions (not related to the practice of law or my clients) in 2008 and 2010 due to alcoholism (a recognized medical condition). I have not had a disciplinary action in over 10 years and I have been admitted to the Ca State Bar bar for 30 years. The disciplinary information on the Ca State Bar website regarding me has nothing to do with my practice or my service to my clients but rather my personal trials due to alcoholism over ten years ago. I don't believe I should have a lifetime sentence of disciplinary information on the Ca State Bar website. I have practiced law honestly and with integrity and I have never harmed a client's interests. I have no client related discipline in my 30 years of practice. As it stands now my Ca State Bar website discipline information will remain until the time of my death. I request that the recommendations be adopted with the caveat/modification that the disciplinary information on the website will not be eligible for removal ONLY if there is a current active investigation (not to include closed investigations without action) or disciplinary action occurred in the 5 years prior to the request for expungement or removal of disciplinary action from the website. Closed investigations without action should not be a basis for denial of removal or expungement. On a personal note, i want to say that this is possible change to state bar regulations is the first light I have seen for hope of restoring my reputation in over ten years. My past personal failures over ten years ago haunt me everyday and I ask that removal of disciplinary actions from the website and expungement be based upon rehabilitation and a reasonable period of time of a history without State Bar discipline. Thank you for your consideration

**Barbara Beard REC4A\_** I believe they may be inadequate. I have been practicing for over 40 years. My first year my dues were late due to mailing address change from LA County to Orange County; thereafter from death in family due another move. Extreme upsets in my personal life. For the subsequent 39 or so years my Dues have been timely. I have committed no further

wrongs in the sight of the State Bar. Although these Rule changes state they are intended to address "disciplinary" matters, There no discipline, no reproof, no probation, no disbarment, only briefly suspended until my dues were received. The Rules should address "suspensions for failure to pay dues in timely manner" in the same manner, but with a lesser consequence. And, last but not least, I hereby request my "suspensions" be expunged in full. I believe a 38-year penalty is sufficient, even if consecutive. Thank you.

**George J, Gliaudys** Public reprovall should be removed after two years rather than as proposed three years.

**Anonymous** Private reproof should not be on the publicly available attorney profile page.

Bad-faith clients use the threat of ""reporting to the Bar"" to shake down the attorney for a variety of reasons of which the attorney is not at fault and has done nothing wrong. Anything posted publicly on the attorney's profile DOES affect business and will scare away potential clients. Therefore, if something is resolved through the Bar's non-public conflict resolution steps, it should NOT be listed on the attorney's public profile. If it is listed, the attorney will pay the cost in lost potential clients even if the attorney reaches a settlement with the bad-faith client through the non-public conflict resolution.

**Cristina Najarro** I think there should be a longer time if you are actually suspended, likely 7-10 years.

**Anonymous** the timeframes should be shortened

[Jacqueline Anguiano](#), on behalf of Consumer Attorneys of California [See attached letter from the Consumer Attorneys of California in link provided.]

**Carmen Garcia** Agree that there should be a removal process so people do not have their disciplinary histories follow them through the entirety of their careers. However, perhaps there should be a petition process for at least some of the categories, rather than automatic removal. Also want to highlight that it is important that the State Bar consider who is empowered to make complaints. We would encourage the State Bar to find ways to inform more people of their abilities to file complaints. For example, the State Bar could look to the Medical Board's policy that requires all Medical Board licensees to have a physical notice in the office that provides information about how to file a complaint with the Medical Board. Something similar could be implemented for CA attorneys so that both clients and other staff who observe malpractice or other action that warrants discipline have information about and can feel empowered to make a complaint. This is of particular importance for complainants who are not traditionally empowered to speak up against people with more social and financial leverage, as attorneys often are.

## AGREE WITH PROPOSED RECOMMENDATION

**Anonymous** I am writing to provide some feedback and commentary on your deliberations regarding expunging disciplined attorneys' State Bar online profiles.

I believe the proposed time periods presented on the slide during your 04/28/2022 meeting, which I recall were capped at 5 years after a period of actual suspension, are appropriate with one caveat; I think it may be appropriate to require respondents to file a motion for the expungement and make a showing that they are unlikely to reoffend in the future. I think this strikes a fair balance between the interests of the respondents and the interests of the public. This all assumes that the Commission wants disciplined attorneys to learn from their mistakes and go on to a successful legal career and a life of dignity and privacy. If, like the OCTC members of the Commission, the Commission doesn't care about the interests of disciplined attorneys, then the existing policy works very well.

A few points you may wish to consider:

- 1) It may be worth studying data on recidivism rates for disciplined attorneys who do not reoffend within 5 years of the conclusion of their discipline conditions. It seems that the longer a disciplined attorney goes without subsequent discipline, the less likely they are to reoffend.
- 2) It may be worth treating conviction matters differently than original matters, insofar as convictions that are unrelated to the practice of law and do not involve moral turpitude.
- 3) It may be worth allowing disciplined attorneys to resign without charges pending after they satisfy all of their discipline requirements on the condition that their State Bar website profile is expunged. This would accomplish OCTC's goal of preventing disciplined attorneys from ever practicing again and the disciplined attorneys' privacy interests and their ability to succeed in a different career.
- 4) It may be worth considering a change to the State Bar website whereby Google cannot index attorney profile pages. This is consistent with every other licensed profession in California. This provides at least some measure of privacy for respondents.
- 5) Arguments that because conviction matters are already public record, it doesn't matter if the State Bar makes them public on its website are absurd and made in bad faith. Take as an example that the LAPD arrests someone for some crime, the district attorney files charges, and finally a conviction results. None of this information is on the internet in any form whatsoever, with one exception: the LA Superior Court has the charges and dispositions on its website, but in order to find this information, one would have to go to the LASC website, provide a credit card, search for the defendant and pay a few dollars. No reasonable person would do this unless they were conducting a focused investigation of the defendant. Furthermore, once the defendant has satisfied all conditions of the conviction, they can easily get the conviction expunged in which case the LASC information is revised to state that the charges were

dismissed. When the State Bar puts conviction information on an attorney's profile on its website, the information is returned with a simple Google search of the person's name and the information remains unchanged for all time.

In closing, the comments by the OCTC commission members should be viewed with a healthy degree of skepticism. The fact that OCTC has a vote in this matter is no different than having members of the Westboro Baptist Church sit and vote on a committee making recommendations on LGBT+ rights and inclusion; in other words, they are not going grant concessions to a category of people they have utter, unwaivering contempt for. To the rest of the commission, I hope you have some compassion and I urge you to make a fair decision.

Thank you for taking the time to read and consider these thoughts. "

**Lenore Albert** The length should be parallel to the length of probation imposed. The suspension should be deleted upon completion of probation. Beyond that, there is no protection of the public being served and the Scarlet Letter is there only to punish or leave the attorney open to extortion and blackmail.

All members should be treated equally. Right now, they are not treated equally. If you are going to give your Scarlet Letter, give it to the State Bar golden children and post their NDCs and Opinions, too."

**David Speckman** See comments above.

**Scott W.** This seems like a fair timeline for removal of attorney discipline from the attorney profile and would be consistent with other state licensing boards.

**Matthew Abbasi, on behalf of Abbasi Law Corporation** I strongly believe that the proposed changes are fair and equitable for all concerned. Unfortunately, online an attorney's disciplinary records has become a weapon for rating companies which use such records to essentially black-mail lawyers into paying monthly protection money so that they will not look a criminal online for matters that took place many years ago. Also, clients are sometimes scared away from an attorney whom can help them for reasonable rates due to the manner an attorney's past records are posted on the website.

In sum, I believe that unscrupulous attorneys need to be disciplined and the public should know about it. However, an attorney that has gone through the system, paid all fines and clients, and satisfied all requirements for a probation should not be tarred and feathered for life. "

**Lubarsky, Alexander** I am a disciplined attorney. I was disciplined for making four errors on four different cases within a span of a few years after I had been practicing without any issues for over twenty years. I admitted the errors - I had practiced over twenty years without errors but was going through a difficult time personally due to extenuating family issues and lost

focus. I regret the errors that I made and how they negatively impacted my clients. I was not disciplined for or charged with anything related to moral turpitude/ethical violations. I have never been arrested or charged with any type of criminal offense beyond some traffic tickets.

Pursuant to a negotiated plea with counsel for the Bar, I was suspended for 90 days and given two years of probation. I am reinstated to practice now. I made restitution to my clients, attended ethics classes and took and passed the MPRE in addition to other conditions. It is an honor to continue in my practice and I strive to do well for my clients and my community. I regularly volunteer as a pro bono attorney for ALRP and other organizations and have done so for over twenty years.

My discipline has been nothing short of a scarlet letter ever since imposed and made public. A Google search quickly reveals it and this has caused problems with my ability to find outside non lawyering employment and lawyering employment alike. Some of my clients left me and others have stated they would not hire me given my discipline record. I have been unable to obtain insurance coverage and the several referral programs with which I participated for decades no longer will accept me as a member. Other attorneys who consult with prospective clients that are considering retaining me have told those prospective to steer clear of me. Even when friends socially 'Google' me to see what I've been up to in general, they are met with my discipline case/status and I am forced to have to explain myself. It is embarrassing and stressful.

It is very difficult to overcome the stigma of my suspension. Although it was a ninety-day suspension, its effects will hinder me for life. I do believe it is in the public interest to be able to learn about an attorney's discipline record but perhaps there is a less draconian 'middle ground' whereby it is not plastered over the internet for the world to see and judge on a permanent basis.

I am happy to provide additional feedback and perspective if asked to do so.

Thank you.

**kulvinder singh** It appears that a probation period is to complete certain responsibilities and pay fees. After that requirement is completed, probation should end and the expungement take place immediately. For that reason, this comment requests no 3 year or 5 year waiting period for removal of probation with stayed or actual suspension once the member has completed probation.

**Thomas E. Beck** These changes are long overdue. No legitimate purpose is served by continuing to post discipline that is 30 years old as has been my personal baggage since 1990. Police officers disciplinary records are required to be kept for only 5 years. Penal Code sec 1045. The public threat by a racist, vicious or dishonest cop is far greater than attorneys who don't have police powers and firearms at their immediate disposal. This is a welcome change.

**Cynthia** It's a good start.

**Jack Woods** I have no recommendations to add to item 4.A .

**Edward Tabash** Lawyers who rehabilitate themselves and who have "served their time" or in any way have completed the disciplinary process, should have a chance to have a clean record. For any violation, regardless of its severity or lack thereof to stay on a lawyer's record forever will hamper that attorney's ability to attract future clients. Lawyers who have taken steps to improve themselves shouldn't be forever hobbled like this.

**Josi Swonetz, on behalf of California Association of Black Lawyers** CABL advises the State Bar Board of Trustee to prioritize and implement Prof. Robertson's recommendations regarding expungement of five year old closed complaints and dismissed disciplinary proceedings.

**Richard Oberto** This is a much needed reform. I have attorney friends who have discipline records for minor infractions from decades ago that are publicly available on the Cal Bar website.

**Anonymous** This recommendation is long overdue. I suffered a misdemeanor conviction directly related a substance abuse problem. I successfully completed probation and the Superior Court granted my petition to expunge the conviction. If you Google my name, the first hit is my State Bar profile showing a criminal conviction. I am almost unemployable due to my State Bar profile even though I am in a better mental and emotional state than at any time in my life.

Under present practice, my history will remain forever even though I am almost ten years sober. I never suffered any criminal convictions before my methamphetamine addiction. I have had no traffic tickets or even police contacts since becoming sober. The State of California has expunged and dismissed my conviction. The State Bar should coordinate its policies with the California law. The legislature has authorized the expungement at the discretion of the State Bar and that discretion should be exercised. This is particularly true regarding substance abuse related offenses unrelated to the practice of law. The recommendation of the Ad Hoc Commission is well reasoned and should be adopted."

**Erika Roman** [see attached letter for comment]

**David C. Carr** The publication of attorney discipline of any degree on the State Bar's discipline inflicts substantial reputational damage on the discipline lawyer. The assumption that public protection public has a right to know about until the lawyer dies is questionable in most cases. This proposal is a reasonable one that addresses both the public's right to know and the punitive nature of undue reputational damage.

**Edward O'Reilly** This is very important. Indeed, to have your record on display permanently is an unfairly harsh punishment, especially in today's social environment is a modern version of the ""Scarlet Letter"". It is also a financial penalty because of lost business and that should be considered.

The attorney who lodged the complaint against me, Duane Westrup, was a bankrupt, convicted felon who went to jail at least twice. At the time he was making false allegations about me, he was being held in contempt in a case filed by his ex-wife's estate for fraud. He concealed that information from the State Bar while he was attacking my character through his State Bar complaint.

Westrup, who is deceased, was called out by numerous Judges throughout the state for fraudulent conduct connected to his work on class action lawsuits. However, he had the resources and right ""pedigree"" to escape any discipline over the years. Obviously, if I knew his background, I would not have worked with him. His State Bar record was impeccable.

As soon as the State Bar posts online that a case has been filed against an attorney, their practice and reputation will be irreparably harmed. Because of my bar record I have been subjected to harassment, threats, shunned, lied about and humiliated by bad actors misrepresenting the information they obtained from the State Bar website. It has affected me professionally and socially. Rumors have been spread about me.

Except for my relationship with Westrup, I have never had a single complaint against me from anyone. Not a client, member of the public or fellow attorney in almost 17 years. I have over 120 5-Star reviews on Google and Facebook a single negative remark or grade. Yet I carry the burden of my record being exploited online. It is reasonable to remove the attorney discipline information after a time.

After the closing of my case, and after years of avoiding it, Westrup provided his fingerprints to the State Bar. That is when negative information about Westrup's criminal record came to light, and after gaming the system for over 50 years he was suspended.

A record of discipline on the State Bar Website has a chilling effect on pro-bono work. I've always made it a point to give back to the community by providing people in need with help. Now, bad actors look me up online and use my record of discipline against me and the people I am trying to help.

For example, in a pro bono case, I am currently representing a single mother who is in fear of her life. Her violent ex-husband kidnapped their son and has turned him against her. On the same day my client received a bag of excrement in the mail, her ex-husband sent me an email me stating my "" professional record reflects you being discredited..."". This type of thing is a regular occurrence, and it feels like a slap in the face each and every time.

It's not only bad actors in the public. I have had opposing counsel in some cases try to use my record to their advantage, including sharing it with my clients. It's not fair.

The State Bar website is not friendly to lay people and can be a source of confusion. As soon as the State Bar posts online that a case has been filed against an attorney, their practice and reputation will be irreparably harmed. Because of my record I have been subjected to harassment, threats, shunned, lied about and humiliated by bad actors misrepresenting the information they obtained from the State Bar website.

### **DISAGREE WITH PROPOSED RECOMMENDATION**

[Stephanie Orourke](#) Attorneys should not self govern themselves, and the State Bar should have 90% public on State Bar Discipline Board.

[Message from staff: in addition to the text above, Orourke submitted the text of the attached news item. Given its length, the text has been redacted from this comment. Please refer to the attachment in link provided.]

**Paul Dougherty** Only persons of stalwart behavior should be allowed the extreme trust necessary to be allowed to practice law.

**Anonymous** "Private should not be on the website at all. Hence, ""private.""  
Public reproof one year. It is low level. 3 years is excessive.  
Probation, stayed, should be one year.  
Probation, actual, should be three years."

**Jeremy Auslander** This is a public safety issue. An individual must know if the individual they're hiring has been disciplined in the past and for what reason. The attorney has every opportunity to state their side of the case if they so choose."

**Steven** Disagree empowering corrupt attorneys with even more non punishment. There are consequences for bad behavior. We all see you protecting your best interests your corrupt low life attorneys [phrase redacted].



## RECOMMENDATION 4B. EXPUNGEMENT OF ATTORNEY DISCIPLINE RECORDS

*The Ad Hoc Commission on the Discipline System recommends the Board of Trustees adopt the following timelines for expungement of attorney discipline records:*

- *Private reproof: 1 year of when conditions are met*
- *Public reproof: 3 years*
- *Probation with stayed suspension: 3 years of conclusion of probation*
- *Probation with actual suspension: 5 years from reinstatement*
- *Disbarment: Public indefinitely (no change)*

### AGREE ONLY IF MODIFIED

**Patricia Rodriguez, on behalf of Rodriguez Law Group, Inc.** Eligibility for expungement of the attorney discipline record would be based on no new discipline or active investigations during the period, and payment of all restitution.

What does active investigation mean? I think it should be clear only complaints that lead to filing of bar violation charges should stop eligibility. If someone has a complaint that is filed against them that is investigated and closed it should not impede removal or expungement of the disciplinary action.

**Garo Ghazarian** REC4B\_ There need be a category for “voluntary resignation with charges pending,” who have subsequently been reinstated on the active roster of the California, and attorneys who have maintained a discipline free law practice of five (5) or more years after reinstatement should be eligible to have their “attorney discipline record” expunged.

Thank you.

Garo Ghazarian

Cal. Bar #152790"

**Melinda C Romines** FIVE years is far too long! It extends the punishment and unemployment of attorneys.

**David Griffin** Periods are too long. They should be expunged one year at most after completion of suspension not considering payments of costs and fees and certainly coincident with the term of probation.

**Ainhan Mina Tran** There should be some process for attorneys to request removal and/or expungement of disciplinary records based on the severity of the misconduct. Factors that could be considered are:

1. Level of harm to the client if any
2. Pattern of misconduct given the number of years in practice
3. ""Good behavior"" or other types of equities or extenuating circumstances

For solo or small firms, even three years can have a gross adverse impact on the attorney's ability to practice and make a living.

Thank you for the consideration. "

**Cory Nikolaus** I agree that attorney discipline should be expunged. In the case of a probation with stayed suspension, I believe that the attorney discipline should be removed when the probation period ends so long as all of the terms of probation were met. It is overly punitive to keep the information public for three years if an attorney agreed to a stayed suspension and complied with all terms of their probation.

**Cynthia** The quicker you can give a person an opportunity to expunge something on their record the better. Just like early termination of probation in a criminal matter, you should allow early expungement request.

**MICHAEL J. BARS** I AGREE ONLY if Modified "With respect to ATTORNEY DISCIPLINE ON STATE BAR WEBSITE/ EXPUNGEMENT, I am unclear as to the meaning of the statement ""Both proposals recommend that eligibility for removal of discipline history from the website be conditioned upon no new discipline or active investigations during this period, and payment of all restitution.""

I am unclear as to what is meant by the phrase ""during this period"". What is the period?

Also, I am unclear what the meaning of ""Active"" investigations means. What period of time? Would those include complaints that were investigated and closed by the Ca State Bar with no action?

I believe the committee's recommendations of removal of discipline history from the state website should be solely based upon expiration of time with respect to ""non client"" related bar discipline which results in actual suspension for 30 days. Such Ca State Bar discipline based upon criminal misdemeanor convictions should be removed from the website within 5 years from reinstatement and expunged. I am a sole practitioner who had two misdemeanor convictions (not related to the practice of law or my clients) in 2008 and 2010 due to alcoholism (a recognized medical condition). I have not had a disciplinary action in over 10 years and I have been admitted to the Ca State Bar bar for 30 years. The disciplinary information on the Ca State Bar website regarding me has nothing to do with my practice or my service to my clients but rather my personal trials due to alcoholism over ten years ago. I don't believe I should have a lifetime sentence of disciplinary information on the Ca State Bar website. I have practiced law honestly and with integrity and I have never harmed a client's interests. I have no client related discipline in my 30 years of practice. As it stands now my Ca State Bar website discipline information will remain until the time of my death. I request that the recommendations be adopted with the caveat/modification that the disciplinary information on the website will not be eligible for removal ONLY if there is a current active investigation (not to include closed

investigations without action) or disciplinary action within the 5 years prior to the request for expungement or removal of disciplinary action from the website. Closed investigations without action should not be a basis for denial of removal disciplinary action from the website or expungement. On a personal note, i want to say that this his possible change to state bar regulations is the first light I have seen for hope of restoring my reputation in over ten years. My past personal failures over ten years ago haunt me everyday due to the information on the Ca State website (opposing attorneys have referred to it in litigation) and I ask that removal of disciplinary actions from the website and expungement be based upon rehabilitation and a reasonable period of time of a history of without State Bar discipline. Thank you for your consideration"

**Barbara Beard REC4B\_** I believe they may be inadequate. I have been practicing for over 40 years. My first year my dues were late due to mailing address change from LA County to Orange County; thereafter from death in family due another move. Extreme upsets in my personal life. For the subsequent 39 or so years my Dues have been timely. I have committed no further wrongs in the sight of the State Bar. Although these Rule changes state they are intended to address "disciplinary" matters, There no discipline, no reproval, no probation, no disbarment, only briefly suspended until my dues were received. The Rules should address "suspensions for failure to pay dues in timely manner" in the same manner, but with a lesser consequence. And, last but not least, I hereby request my "suspensions" be expunged in full. I believe a 38-year penalty is sufficient, even if consecutive. Thank you.

**George J, Gliaudys** Public reproval should be removed after two years rather than as proposed three years.

**Anonymous** Private reproval should not be on the publicly available attorney profile page.

Bad-faith clients use the threat of ""reporting to the Bar"" to shake down the attorney for a variety of reasons of which the attorney is not at fault and has done nothing wrong. Anything posted publicly on the attorney's profile DOES affect business and will scare away potential clients. Therefore, if something is resolved through the Bar's non-public conflict resolution steps, it should NOT be listed on the attorney's public profile. If it is listed, the attorney will pay the cost in lost potential clients even if the attorney reaches a settlement with the bad-faith client through the non-public conflict resolution."

**Cristina Najarro** I think there should be a longer time if you are actually suspended, likely 7-10 years.

**Anonymous** the timeframes should be shortened

**Carmen Garcia** Agree with providing people with an opportunity with a second chance. There seems to be a need to create a formalized system for expungement, with a standard that

people must meet, and have that formalized system widely shared so there is less room for disparities based on social groups.

### AGREE WITH PROPOSED RECOMMENDATION

**Anonymous** I am writing to provide some feedback and commentary on your deliberations regarding expunging disciplined attorneys' State Bar online profiles.

I believe the proposed time periods presented on the slide during your 04/28/2022 meeting, which I recall were capped at 5 years after a period of actual suspension, are appropriate with one caveat; I think it may be appropriate to require respondents to file a motion for the expungement and make a showing that they are unlikely to reoffend in the future. I think this strikes a fair balance between the interests of the respondents and the interests of the public. This all assumes that the Commission wants disciplined attorneys to learn from their mistakes and go on to a successful legal career and a life of dignity and privacy. If, like the OCTC members of the Commission, the Commission doesn't care about the interests of disciplined attorneys, then the existing policy works very well.

A few points you may wish to consider:

- 1) It may be worth studying data on recidivism rates for disciplined attorneys who do not reoffend within 5 years of the conclusion of their discipline conditions. It seems that the longer a disciplined attorney goes without subsequent discipline, the less likely they are to reoffend.
- 2) It may be worth treating conviction matters differently than original matters, insofar as convictions that are unrelated to the practice of law and do not involve moral turpitude.
- 3) It may be worth allowing disciplined attorneys to resign without charges pending after they satisfy all of their discipline requirements on the condition that their State Bar website profile is expunged. This would accomplish OCTC's goal of preventing disciplined attorneys from ever practicing again and the disciplined attorneys' privacy interests and their ability to succeed in a different career.
- 4) It may be worth considering a change to the State Bar website whereby Google cannot index attorney profile pages. This is consistent with every other licensed profession in California. This provides at least some measure of privacy for respondents.
- 5) Arguments that because conviction matters are already public record, it doesn't matter if the State Bar makes them public on its website are absurd and made in bad faith. Take as an example that the LAPD arrests someone for some crime, the district attorney files charges, and finally a conviction results. None of this information is on the internet in any form whatsoever, with one exception: the LA Superior Court has the charges and dispositions on its website, but in order to find this information, one would have to go to the LASC website, provide a credit

card, search for the defendant and pay a few dollars. No reasonable person would do this unless they were conducting a focused investigation of the defendant. Furthermore, once the defendant has satisfied all conditions of the conviction, they can easily get the conviction expunged in which case the LASC information is revised to state that the charges were dismissed. When the State Bar puts conviction information on an attorney's profile on its website, the information is returned with a simple Google search of the person's name and the information remains unchanged for all time.

In closing, the comments by the OCTC commission members should be viewed with a healthy degree of skepticism. The fact that OCTC has a vote in this matter is no different than having members of the Westboro Baptist Church sit and vote on a committee making recommendations on LGBT+ rights and inclusion; in other words, they are not going grant concessions to a category of people they have utter, unwaivering contempt for. To the rest of the commission, I hope you have some compassion and I urge you to make a fair decision.

Thank you for taking the time to read and consider these thoughts. "

**Lenore Albert** The suspension should be deleted upon completion of probation. Beyond that, there is no protection of the public being served and the Scarlet Letter is there only to punish or leave the attorney open to extortion and blackmail.

Some attorneys in the OCTC withhold charges so that they can file successive Notice of Disciplinary charges. As such, there should not be any hold time for the later filed Notice of Disciplinary charges and Orders. If the State Bar does not add this section, the Orders will remain on the records that the State Bar OCTC office chooses indefinitely mooting out the policy reason to make this change.

**Scott W.** This seems like a fair timeline for expungement of attorney discipline and would be consistent with other state licensing boards.

**Matthew Abbasi, on behalf of Abbasi Law Corporation** I strongly believe that the proposed changes are fair and equitable for all concerned. Unfortunately, online an attorney's disciplinary records has become a weapon for rating companies which use such records to essentially black-mail lawyers into paying monthly protection money so that they will not look a criminal online for matters that took place many years ago. Also, clients are sometimes scared away from an attorney whom can help them for reasonable rates due to the manner an attorney's past records are posted on the website.

In sum, I believe that unscrupulous attorneys need to be disciplined and the public should know about it. However, an attorney that has gone through the system, paid all fines and clients, and satisfied all requirements for a probation should not be tarred and feathered for life. "

**kulvinder singh** It appears that a probation period is to complete certain responsibilities and pay fees. After that requirement is completed, probation should end and the expungement take place immediately. For that reason, this comment requests no 3 year or 5 year waiting period for removal of probation with stayed or actual suspension once the member has completed probation.

**anonymous** I agree if there is some consistency in determining private reproof, public reproof, etc.

**Jack Woods** I have no recommendations above the currently listed recommendations in item 4.B

**Edward Tabash** This seems fair and apportions the length of time for expungement to the seriousness of the violation prompting the discipline.

**[Josi Swonetz, on behalf of California Association of Black Lawyers](#)** CABL advises the State Bar Board of Trustees to prioritize and implement Prof. Robertson's recommendations regarding expungement of five year old closed complaints and dismissed disciplinary proceedings.

**Richard Oberto** This is a much needed reform. People should have a chance to clear their name after a reasonable period of time.

**Anonymous** I agree with this recommendation for the same reasons I agree with Recommendation 4A.

**[Erika Roman](#)** [See attached letter for comment]

**[David C. Carr](#)** The publication of attorney discipline of any degree on the State Bar's discipline inflicts substantial reputational damage on the discipline lawyer. The assumption that public protection public has a right to know about until the lawyer dies is questionable in most cases. This proposal is a reasonable one that addresses both the public's right to know and the punitive nature of undue reputational damage.

**Edward O'Reilly** I believe attorney records should be expunged.

#### **DISAGREE WITH PROPOSED RECOMMENDATION**

**[Stephanie Orourke](#)** "Attorneys should not self govern themselves, and the State Bar should have 90% public on State Bar Discipline Board.

[Message from staff: in addition to the text above, Stephanie Orourke submitted the text of the attached news item. Given its length, the text has been redacted from this comment. Please refer to the attachment in link provided.]

**Paul Dougherty** Disbarred them.

**Anonymous** "Private should not be on the website at all. Hence, ""private.""

Public reproof one year. It is low level. 3 years is excessive.

Probation, stayed, should be one year.

Probation, actual, should be three years."

**Jeremy Auslander** Disciplinary actions and violations should remain.

Your job is to protect the public, not a lawyer who failed to meet the standards of the license they were given.

## RECOMMENDATION 5. PRE-TRANSMITTAL MEETING FOR MISDEMEANOR CONVICTION MATTERS

*The Ad Hoc Commission on Discipline System recommends that the Board direct staff to work with stakeholders to study possible revisions to all applicable rules to determine the feasibility of conducting a pre-transmittal meeting similar to an Early Neutral Evaluation Conference in misdemeanor conviction matters subject to Rule 5.340 – 5.347 that would determine whether or not the facts and circumstances underlying the misdemeanor conviction involve moral turpitude or other misconduct warranting discipline, and if appropriate, evaluate a potential disposition of the matter.*

### AGREE ONLY IF MODIFIED

**Cynthia** It's awful going through bar processes and very expensive. Make it better than it is for litigants.

**Anonymous** I would like the stakeholders to be stated.

**Jack Woods** I believe public involvement would be a proper accent that would gain the trust of the public as lawyers have a reputation which brings into question they're trustworthiness, honesty, proficiency, and competence. The over-all goal is to increase the public's perception of those working in the field of Law.

### AGREE WITH PROPOSED RECOMMENDATION

**Chad pratt** Enec with superior court judges !

**Benjamin Pavone** See attachment for information about the problem with the limitless universe of ethical violations.

**Edward Tabash** It's important not to be too quick to pull the trigger on a charge of moral turpitude. The more safeguards there are the greater the fairness to the accused attorney.

**Anonymous** I will give the short, abbreviated version of my experience. I suspect that others have experienced similar experiences. My case is one example of how the State Bar's policy regarding misdemeanor convictions can at times be unduly harsh.

My arrest occurred on July 2, 2013, the last day to pay my State Bar dues. I appeared at the 1945 Hill Street with sufficient cash but was five minutes late. The cashier came down and told me it was too late to pay. (I signed the check-in sheet and if it is still available you will see my name.) I traveled to Los Alamitos to meet a friend at the Starbucks where I was planning to use my laptop to pay the fees online. I had very little sleep in two prior days and was in a rush to get my fees paid and avoid an administrative suspension.



I did not have a credit or ATM card, so I arranged to meet a friend in Los Alamitos at the Starbucks to use his credit card to pay my fees online. While at the Starbucks, my laptop ran out of power, and I did not have the charging cord. I saw a Target across the parking lot so I went over in a panic and grabbed an after-market charging cord that turned out would not have worked. As I was leaving the store, security approached me in the parking lot, and I returned the cord.

I thought that the incident was resolved. I saw a chain motel and the end of the long parking lot and knew from experience they probably had a computer in the lobby. While I was in the lobby logging onto the computer, the police pulled up and came into the motel lobby and arrested me.

I had completely forgotten about the bags covering my license plates and oblivious that a homeless person in a car with bags over the license plates might arouse suspicion. I did not travel to Los Alamitos to take-down a Target in Orange County! Unaware of what was in the police report, I pleaded guilty to a misdemeanor so I could get out of jail since the judge would not release me OR. I never imagined that a misdemeanor conviction could lead to disbarment or even a lengthy suspension. At the time I pleaded, I thought the State Bar would give me a drug program. I could not afford an attorney for my State Bar proceedings.

Still another revealing fact as to my condition is that I did not go into rehabilitation until September 20, 2013. In retrospect, I was almost in a psychotic state. It was only after the State Bar Trial Counsel called to inform me that they would seek disbarment that I went into sober living. I have been sober for over nine years. I am just very grateful that I have regained my mental health. If I had received lesser punishment, I may not have worked so hard to regain my mental health.

If I had not come to the attention of the State Bar and the Target security had not called the police, I might be dead. The law review article uploaded in response to Recommendation 3 describes the challenges a person faces recovering from methamphetamine addiction.

When the State Bar charges were brought, there was no opportunity to delve into the facts surrounding my conviction. When an attorney is convicted of a felony involving moral turpitude, disbarment is automatic. My experience was the Trial Counsel was trained to treat misdemeanor convictions in the same manner. I was told I was lucky to avoid disbarment, so I jumped at the opportunity to take a deal with a two-year suspension. There was no opportunity to discuss the facts surrounding my conviction and it was true that I committed the offense. The only caveat is that a kinder, gentler approach may not have given me the motivation to work as hard as I have."

[David C. Carr](#) Recommendation 5: Direct staff to work with stakeholders to study possible revisions to all applicable rules to determine the feasibility of conducting a pretransmittal

meeting similar to an ENEC in misdemeanor conviction matters subject to rule 5.340–5.347 that would determine whether or not the facts and circumstances underlying the misdemeanor conviction involve moral turpitude or other misconduct warranting discipline and if appropriate, evaluate a potential disposition of the matter.

See comments to Recommendation 3. The concept of moral turpitude is the problem child of disciplinary jurisprudence. Our system would be better off discarding it, as the American Bar Association did when it approved the Model Rules in 1983, and specifically Rule 8.4(d). Unfortunately we are bound by opaque and obsolete 19th century statutes in the State Bar Act that exercise pernicious effect both in our rulemaking process and the prosecution of misconduct. The time and zeal that the discipline system spends in chasing the question of whether specified conduct constitutes moral turpitude might inspire comparison with the Spanish Inquisition's tireless pursuit of heresy, except that this inquisition is expected and unfortunately necessary under current law. Moral turpitude is naturally confused with morality. Public protection seems to require retribution for some. If we must have a moral turpitude inquiry, let it be at an early stage of the proceeding and coupled with a good faith effort to resolve the matter.

**Carmen Garcia** Agree that it is very important to get stakeholder input throughout the process.

#### **DISAGREE WITH PROPOSED RECOMMENDATION**

**[Stephanie Oourke](#)** DISAGREE with the proposed recommendations "Attorneys should not self govern themselves, and the State Bar should have 90% public on State Bar Discipline Board.

[Message from staff: in addition to the text above, Stephanie Oourke submitted the text of the attached news item. Given its length, the text has been redacted from this comment. Please refer to the attachment in link provided.]

**Paul Dougherty** Disbarred only.

**Steven** Love how u waited until Thomas Giraldi was arrested and convicted with over 200 complaints in a 40 year period

## RECOMMENDATION 6. ALTERNATIVE DISCIPLINE PROGRAM

*The Ad Hoc Commission on the Discipline System recommends that the Board direct staff to work with stakeholders to study and clarify all applicable rules involving referrals to the Alternative Discipline Program (ADP), specifically concerning whether or not moral turpitude has resulted in significant harm to a client(s) or the administration of justice.*

### AGREE ONLY IF MODIFIED

**anonymous** I would like the stakeholders to be stated.

**Anonymous** Non-public alternative conflict resolution should be expanded.

The base assumption of the Bar should not be that attorneys are criminals or potential thieves or bad actors that must be proactively regulated, audited, and met with severe consequences if they make a mistake. The vast majority of attorneys practice ethically and in the best interests of their clients.

The overhead of running a law firm is complicated, and if something negative occurs, it is far more likely to be a result of mistake or misunderstanding rather than a will act of malfeasance.

**Cynthia** See above

**Jack Woods** I completely concur with item 6

**NC CARLSON** Moral Turpitude should remain in the file and be considered in the event of future misconduct in determining punishments

### AGREE WITH PROPOSED RECOMMENDATION

**Anonymous** I have uploaded my comments to Recommendation 5 which describe facts unique to me and equally applicable to Recommendation 8. Although my experience is a special case, it is illustrative of the potential problems with State Bar discipline as it relates to misdemeanor convictions related to substance abuse. I suspect that other attorneys have experienced similar issues.

**Carmen Garcia** Agree that it is very important to get stakeholder input throughout the process.

**Chad pratt** Moral Turpitude too loosely defined. State bar can argue every case (eg you took \$) is moral turpitude.

**David C. Carr** Recommendation 6: Direct staff to work with stakeholders to study and clarify all applicable rules involving referrals to the Alternative Discipline Program, specifically

concerning whether or not moral turpitude has resulted in significant harm to a clients or the administration of justice.

Current rules prevent participation in the Alternative Discipline Program for misconduct that is both moral turpitude, corruption or dishonesty and results in harm to clients or to the administration of justice. This recommendation suggests confusion between these two independent requirements.

**Edward Tabash** The purpose of attorney discipline is to protect the public and to ensure the delivery of competent and honest legal services. Punishing just for the sake of punishing is not in keeping with this goal. So, explorations of the alternative discipline systems and ways in which it might be expanded give a greater chance for accused lawyers to improve themselves, make amends, and to not jeopardize public safety

#### **DISAGREE WITH PROPOSED RECOMMENDATION**

**Stephanie Orourke** DISAGREE with the proposed recommendations "Attorneys should not self govern themselves, and the State Bar should have 90% public on State Bar Discipline Board.

[Message from staff: in addition to the text above, Orourke submitted the text of the attached news item. Given its length, the text has been redacted from this comment. Please refer to the attachment in the link provided.]

## RECOMMENDATION 7. EARLY NEUTRAL EVALUATION CONFERENCE RULES

*The Ad Hoc Commission on Discipline System recommends that the Board direct staff to work with stakeholders to propose revisions to all applicable rules to promote the use of Early Neutral Evaluation Conferences as a mechanism for arriving at pre-filing settlements of State Bar disciplinary proceedings.*

### AGREE ONLY IF MODIFIED

**Jack Woods** The individuals assigned to oversight review committee should have some degree of awareness that will show their Non Bias progressive direction and authority standings in the community they represent.

**Cynthia** See above

**Mya** Fire all that don't follow the law

**anonymous** depends on who the stakeholders are

### AGREE WITH PROPOSED RECOMMENDATION

**Edward Tabash** the option for trying to find a pre-filing settlements should always be there. However, again, lawyers who wish to waive themselves of a full trial should not be disciplined.

**David C. Carr** Recommendation 7: Direct staff to work with stakeholders to propose revisions to all applicable rules to promote the use of ENECs as a mechanism for arriving at pre-filing settlements of State Bar disciplinary proceedings. See Comments on Recommendations 3 and 5. The ENEC process was created in 1999 to deal the backlog of cases generated by the shutdown of the discipline system in 1998. It was such a good idea that it has continued to part of the State Bar Court since then. One problem is the short timelines that do not give judges sufficient time to evaluate the matter. OCTC should be required to file an opening statement with the draft notice of discipline charges at least 20 days before the conference with a reply from Respondent 15 days later. The existing Bench-Bar Committee could study the ENEC process and suggest more changes.

**Anonymous** I have uploaded my comments to Recommendation 5 which describe facts unique to me and equally applicable to Recommendation 7. Although my experience is a special case, it is illustrative of the potential problems with State Bar discipline as it relates to misdemeanor convictions related to substance abuse. I suspect that other attorneys have experienced similar issues.

**Carmen Garcia** Agree that it is very important to get stakeholder input throughout the process.

## DISAGREE WITH PROPOSED RECOMMENDATION

[Stephanie Orourke](#) Attorneys should not self govern themselves, and the State Bar should have 90% public on State Bar Discipline Board. [Message from staff: in addition to the text above, Orourke submitted the text of the attached news item. Given its length, the text has been redacted from this comment. Please refer to the attachment in link provided.]

## RECOMMENDATION 8. PROGRESSIVE DISCIPLINE

*The Ad Hoc Commission recommends to the State Bar Board of Trustees analyze and modify Standards 1.6 and 1.8 to permit the greater exercise of judicial discretion with regards to progressive discipline.*

### AGREE ONLY IF MODIFIED

**Jack Woods** There must be a system implemented that will Preserve the Separation Of all committees as it relates political Separation And/or involvement and relationship.

**Cynthia** See above. I have no idea what you're talking about but the judges are not immune from racism either. Any judge at the State Bar is going to be really pinched-faced. I would just dread giving them any more discretion unless it is only to move in the more lenient direction.

**Mya** Follow the law

**Carmen Garcia** Agree with the goal of reducing racial disparities in discipline. We would recommend engaging with experts to ensure that judicial discretion would actually be likely to address racial disparities as providing more discretion by humans who are vulnerable to biases could result in the opposite. We would also like to posit that any disparity also is a result of who feels comfortable and knowledgeable about making complaints, so it is also important to disseminate information widely about how to make complaints and the discipline process to stakeholders, including clients and attorneys' administrative staff. There can often be a culture of silence, especially around the actions of financially powerful white attorneys, which needs to be addressed.

**Anonymous** It should not be an ""automatic"" assumption that a prior complaint is an aggravating factor for determining discipline in the current complaint.

For example, there IS a difference between acts of malfeasance, acts of negligence that resulted in harm, harmless acts of negligence, and acts of ignorance or acts that are a result of an overwhelmed solo attorney or small firm without any ill-intent or obvious carelessness. "

### AGREE WITH PROPOSED RECOMMENDATION

**Edward Tabash** There should be increased discretion in meting out progressive discipline. The discipline should, as best as possible, always be apportioned to the violation. This will help avoid what I call the "death penalty for jaywalking syndrome."

**David C. Carr** Recommendation 8: Progressive Discipline Analyze and modify standards 1.6 and 1.8 to permit the greater exercise of judicial discretion regarding progressive discipline.

The Standards are ""mere guidelines"" and tempered by strong Supreme Court authority that the ultimate disposition in a discipline case should depend ""on a balanced consideration of the unique factors in each case"" (In the Matter of Van Sickle (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994 (petition for review denied.) This important Supreme Court principle states in concrete terms the important role that judicial discretion plays in the discipline process and should be incorporated verbatim somewhere in the standards, possibly 1.7. The standards as a whole should be looked at from the viewpoint of allowing appropriate judicial discretion consistent with Supreme Court decisions.

**Anonymous** One overriding issue that runs throughout the issues presented by the Ad Hoc Committee is that the guidelines are too inflexible. Judges should have more discretion.

**Lenore Albert** Right now OCTC splits the NDCs and refuses to bring all charges so that they can take advantage of the progressive discipline. Moreover, Judges jump from the 30 day to 6 months skipping the other steps that other judges do not skip over making the punishment disparate (it is a punishment).

Attorneys beat the scandalous charges and like a Southern Cop knocks out a tail light and then rights the attorney a ticket for a technical infraction that ends up in suspension."

**Raymond Scott Hayden** There is one item I have seen in attorneys going through ""corrective actions"" when they go awry, and this is the retaking of the MPRE exam.

I did not see any discussion in the suggestions above, but wherever it might be, the MPRE should not even exist in the corrective action, or the admission of a California Attorney.

Logically, the passing score of 86 is, in reality, a 36 as the MPRE range is 50 to 150, an 86 is a laughable failure, and it is the highest score required to ""pass"" it.

The California Bar is far superior in their efforts to correct bad actions by attorneys, and the process should stay there, with CalBar."

## DISAGREE WITH PROPOSED RECOMMENDATION

**darryl genis** unclear how this is phrased. From my experience, the court does not exercise any discretion to give downward variances only upward.

**Stephanie Orourke** Attorneys should not self govern themselves, and the State Bar should have 90% public on State Bar Discipline Board.

[Message from staff: in addition to the text above, Orourke submitted the text of the attached news item. Given its length, the text has been redacted from this comment. Please refer to the attachment in link provided.]



**Paul Dougherty** Disbarred, never allowed again to practice

**Steven** You need a civilian committee with non attorneys to expose all your corruption tyrants.  
[sentence redacted]

## RECOMMENDATION 9. ATTORNEY REPRESENTATION

*The Ad Hoc Commission on the Discipline System recommends the Board of Trustees implement a State Bar Appointed Counsel Program based on an hourly rate structure similar to the 6007 Court Appointed Counsel Program.*

### AGREE ONLY IF MODIFIED

**Jack Woods** I would like to see a review of the advantages and disadvantages of this the current process compared to a Salary payment position no further modification .

**Cynthia** You need to make it more like the public defender system criminal law. I'm sure we can afford it.

**Mya** Fire lawyers that violated our rights

**Carmen Garcia** Agree that this could help alleviate racial and socioeconomic discrepancies in discipline orders, but would want the State Bar to ensure this is financially feasible for the Bar based on the fiscal impact that will be reported in the final recommendations.

### AGREE WITH PROPOSED RECOMMENDATION

**Edward Tabash** Definitely. Administrative proceedings that affect one's very livelihood can be seen as quasi criminal proceedings. Accordingly, a somewhat similar process to providing attorneys to criminal defendants, who can't otherwise afford counsel, is fair when dealing with lawyers facing discipline charges who are unable to afford effective defense counsel.

**David C. Carr** Recommendation 9: Attorney Representation Implement a State Bar-Appointed Counsel Program based on an hourly rate structure similar to the State Bar Court's Appointed Counsel Program.

The discipline system is an adversarial system. It works better with knowledgeable advocates on both sides. The most important decision on due process in the discipline system describes discipline as ""quasi-criminal"" (In Re Ruffalo (1968) 390 U.S. 544, 551.) This is an administrative proceeding in the judicial branch concerning an important component of the justice system, lawyers, who are the key to access to justice. Inability to afford counsel is factor in many, if not most lawyers, self-representing in discipline proceedings. Appointed counsel would effectively address any disparate treatment of these litigants.

**Anonymous** I might be a special case, but I would have benefited greatly from representation. I would refer to my comments on Recommendations 5, 6 and 7. This recommendation might be costly. If Trial Counsel are trained to recognize cases with mitigating circumstances at an Early

Evaluation Conference, it might go a long ways towards addressing potential inequities in the disciplinary system.

**Melinda C Romines** ABSOLUTELY! A HUGE majority of the State Bar's targets are sole proprietors who are often the ones working for a discount and pro bono. To add a frivolous complaint, and take a convict at their word, but make the attorney prove innocence is absurd and the lawyers are SO expensive.  
1-attorney firms are bullied.

**Cristina Najarro** I strongly agree with this.

**Anonymous** St Bar should do more to ensure that complainant is actually the one that is filing complaint. Current scheme allows for too much ghost writing. Complaining party must generally understand what he/she is complaining about instead of being the tool of a 3rd party.

Just as State bar enforces rules on attorney conduct and UPL it should also not ignore the rule against frivolous complaints. It is a misdemeanor to file a frivolous complaint to the St. Bar. The misdemeanor language at end of complaint form should have meaning instead of being boilerplate. BPC and Rules are not boilerplate therefore admonition/ /warning should not be boilerplate.

Also since St Bar classifies certain groups as vulnerable such as the elderly or the undocumented for the sake of implementing harsher punishment, the St. Bar should warn attorneys at large that the breach of the ethics with respect to the vulnerable will result in harsher punishment. This warning may serve to dissuade attorneys without enough experience to confidently and competently tackle fields of law involving vulnerable groups. Otherwise the St Bar should not mete out harsher punishment for the breach of ethics involving representation of vulnerable groups.

If is unduly unfair to punish an attorney for attempting to represent a vulnerable group if he/she did not know that that increased punishment would arise in the event of an ethics breach.

**Erika Roman** It would balance the playing field so that attorneys would not be left without counsel and could afford to prepare a defense. Most attorneys especially solo practitioners cannot afford to hire represenatation.

## **DISAGREE WITH PROPOSED RECOMMENDATION**

**Stephanie Oourke** Attorneys should not self govern themselves, and the State Bar should have 90% public on State Bar Discipline Board.

[Message from staff: in addition to the text above, Orourke submitted the text of the attached news item. Given its length, the text has been redacted from this comment. Please refer to the attachment in link provided]

**Paul Dougherty** Only represent themselves.

**Steven** All your recommendations do nothing for the public. All your initiatives are self serving to further protect you spinless cowards. [sentence redacted]