



The State Bar of California

Discussion and Approval of the Final Report of the Ad Hoc Commission on the Discipline System Report and Recommendations

Lisa Chavez, Director, Mission Advancement & Accountability Division

Board of Trustees, January 19, 2023

Timeline

Board of Trustees

- Received commission report and issued recommendations for public comment

Ad Hoc Commission

- Review public comments
- Considered new recommendations
- Updated report

Board of Trustees

- Receive updated final report
- Consider:
 - Commission recommendations
 - New recommendations
 - Staff amendments to commission recommendations
 - Additional staff recommendation
- Direct staff to update Board Sept. 2023

**60-Day Public Comment
Period**

September
2022

September–
November

December 5, 2022

January
2023

Summary of Public Comments





60-Day Public Comment period ended November 28, 2022

Received 78 responses; 54 were from attorneys

Respondents asked to “vote” on recommendations and offered opportunity write comments

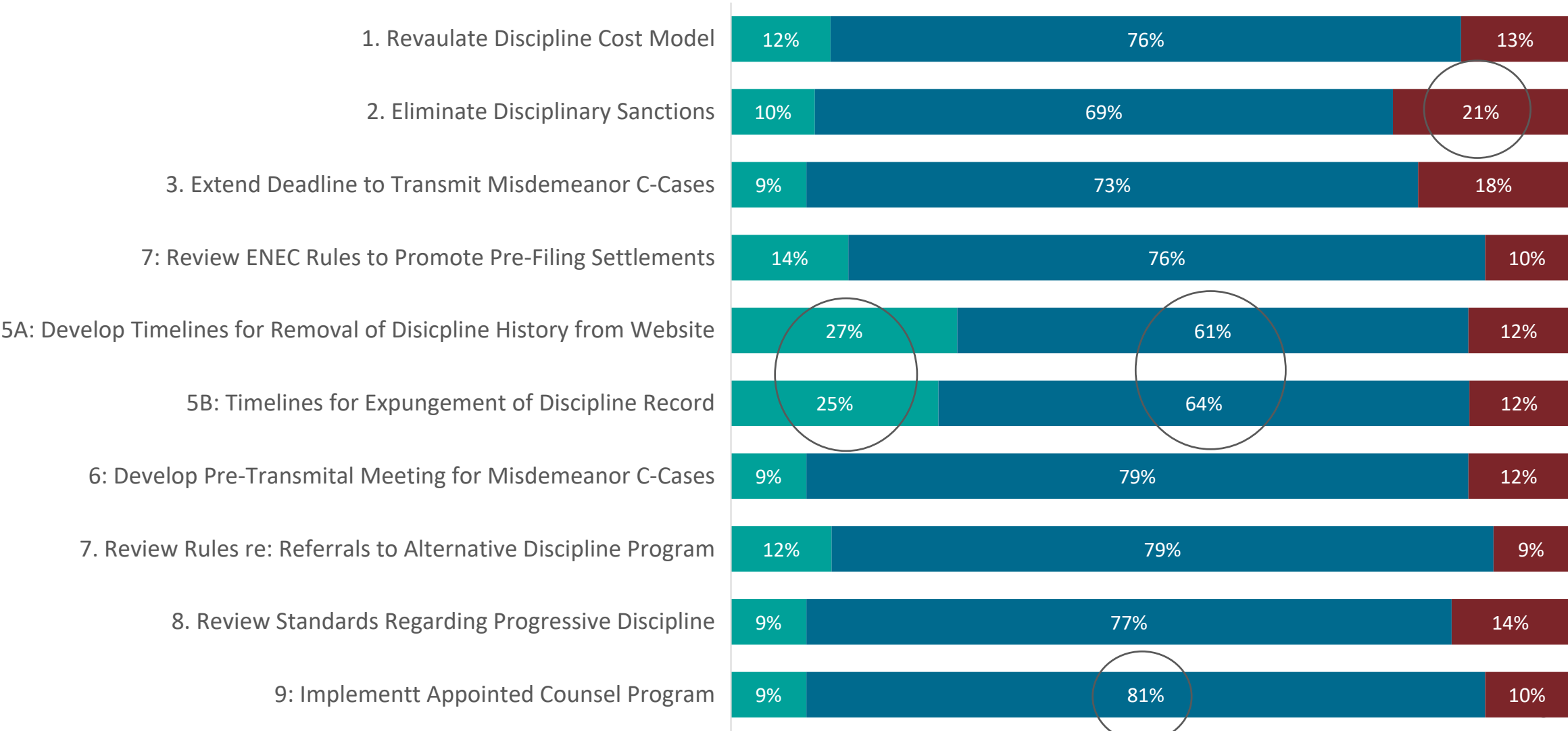
- Agree only if modified
- Agree with proposed recommendation
- Disagree with the proposed recommendation



Report for all public comments: Appendix J of commission final report; contains all comments received for each recommendation; contains names, organizations, and links to attachments submitted.

Summary of Results

■ Agree only if modified ■ Agree with proposed recommendation ■ Disagree with proposed recommendation



Commission Recommendations



Commission Adopted Recommendations

**Staff
Recommendation
to Board**

Discipline Costs

1. 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.

Adopt

Early Neutral Evaluation Conference (ENEC)

3. Seek 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.

Adopt



Commission Recommendation

Staff Recommendation to Board

Moral Turpitude

6. 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.

Adopt

Moral Turpitude

7. Direct staff to work with stakeholders to study and clarify all applicable rules involving referrals to the Alternative Discipline Program (ADP).

Adopt

Progressive Discipline

8. Analyze and consider modifying Standards 1.6 and 1.8 to permit the greater exercise of judicial discretion with regard to progressive discipline.

Adopt



Commission Recommendations

Staff Recommendation to Board

Discipline Costs

2. Seek a statutory amendment to eliminate disciplinary sanctions.

**Direct Staff to
Study Further**



Business and Professions Code section 6086.13 appears to have permissive language

“any order of the Supreme Court imposing suspension or disbarment of a licensee of the State Bar or accepting a resignation with a disciplinary matter pending **may** include an order that the licensee pay a monetary sanction” [emphasis added]



State Bar Rule 5.137(A) implements this statute; staff will explore its modification given the discretionary statutory language and consider the concerns expressed by the commission



Commission Recommendations

Staff Recommendation to Board

Early Neutral Evaluation Conference (ENEC)

4. 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.

**Adopt with
deletion of word
“pre-filing”**

- ✓ The State Bar’s proposal for new case processing standards suggested changing the ENEC to a post-filing activity.
- ✓ The Legislative Analyst’s Office (LAO) recently issued its analysis of the State Bar’s proposal and identified the ENEC’s timelines and process as appropriate for further study.
- ✓ Modification of the recommendation will allow flexibility when exploring this topic.



Commission Recommendations

Staff Recommendation to Board

Discipline on Attorney Profiles and Record Expungement

5. Adopt the following timelines for removal of attorney discipline from the attorney profile page and for expungement of attorney discipline records:

- Private reproval: 1 year of when conditions are met
- Public reproval: 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)

Direct staff to develop alternative timelines and define expungement

- ✓ Staff anticipate public protection concerns; proposed timelines are inconsistent with that Medical Board of California (which only allows for removal of public suspensions) and longer than those of Nursing Board.
- ✓ Need to update analysis of all 50 states' practices for removal of discipline history from website.
- ✓ Need to define what it would mean to expunge discipline records.



Commission Recommendations

Staff Recommendation to Board

Attorney Representation

9. Implement a State Bar Appointed Counsel Program based on an hourly rate structure similar to the 6007 Court Appointed Counsel Program

**Adopt and
consider
funding at mid-
year budget
review**

- ✓ Significant General Fund deficit projected for 2023.
- ✓ Staff will generate an implementation plan in the interim and immediately launch program if funding approved.



New Recommendations in Response to Public Comment



New Recommendations

Staff Recommendation to Board

Discipline on Attorney Profiles and Record Expungement

10. For attorneys who satisfy all discipline requirements and resign without pending discipline charges, remove all discipline history from attorney profiles on the State Bar website and expunge discipline records (including disbarments) upon resignation.
11. For attorneys who resign with charges pending, develop a timeline and procedure for removing the notice of resignation from attorney profiles on the State Bar website and expungement of this notice.

**Substitute with
recommendation
below**

Direct staff to develop a proposal that addresses the website posting of discipline history for attorneys who resign with or without charges pending and the implications of future reinstatement and submit the proposal to the Board for approval.



Attorney Online Profiles

12. Develop a timeline and procedure for removing administrative inactive enrollments from attorney profiles on the State Bar website and submit the proposal to the Board for approval.

Adopt



Nondisciplinary administrative matters that lead to inactive enrollment include:

- Noncompliance with Minimum Continuing Legal Education (MCLE)
- Failure to pay license fees
- Fingerprinting noncompliance

License status on attorney profile indicates: “inactive” or “not eligibility to practice law in CA”



Attorneys may petition for removal of administrative matters from profile page on a one-time basis.



New Recommendations

**Staff
Recommendation
to Board**

Website and Attorney Profile Pages

13. Configure the State Bar website so internet browsers cannot index attorney profile pages.

Do not adopt

- ✓ The Department of Consumer Affairs, which develops and manages the Medical Board of California's website function that allows the public to look up doctors, does not configure its website to prevent indexing.
- ✓ Preventing indexing would raise concerns about public protection and transparency.



New Recommendation Developed by Staff



Discipline on Attorney Profiles

14. Direct staff to explore the removal of criminal conviction transmittals and discipline from the profile page where the sole underlying basis for discipline was a criminal conviction that was expunged pursuant to Penal Code section 1203.4 and submit the proposal to the Board for approval.

Adopt



This recommendation is aligned with the commission's interest in allowing attorneys to move past imposed discipline.



Options to explore:

- expedited removal of notice of criminal conviction transmittals and discipline
- align with timelines adopted for removal of other discipline



Next Steps

Board consider
recommendations

Review funding for
Attorney Appointed Counsel Program

Staff update Board on all
proposal development

January
2023

Midyear Budget Review

September
2023

