



Ad Hoc Commission on the Discipline
System Recommendations:

**Status Update Regarding
Board Directed Follow Up Work**

FRAMING

Large number of recommendations generated.

Today's presentation focuses on those with multiple options, significant conflicting or negative feedback, or meaningful potential fiscal impact.

Board asked to provide feedback to inform staff next steps.





RECOMMENDATIONS ADDRESSED



- Discipline Cost Model
 - Monetary Sanctions
- Expungement
- Website Removal
 - Discipline history
 - Criminal conviction history
- Pre-Transmittal ENEC
- Appointed Counsel Program



DISCIPLINE COST MODEL

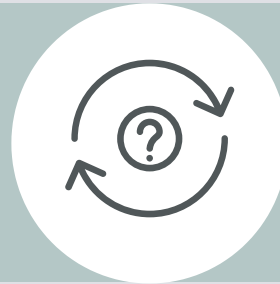
Key Issues

California's highest
in nation



State Bar out of line with
DCA boards in penalizing
respondents for going to trial

Modifying cost structure
may result in increased trials



Bad actors shouldn't
benefit from revised cost
model



DISCIPLINE COST MODEL

Current Proposal



- Increase court's ability to modify/waive fees assessed but do not eliminate costs for hearing and review
 - Add the ability to modify fees based on "substantially prevailing"
 - Could result in up to \$350K annually in reduced assessment
- * Little collected

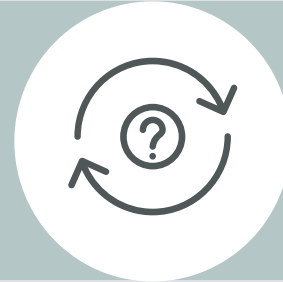
MONETARY SANCTIONS

Key Issues

California only state
to assess



Discipline costs already high



Default to \$0 for all but
disbarment cases may not
be appropriate in all cases



Revenue collected
supports the Client
Security Fund

MONETARY SANCTIONS

Current Proposal



- **DISCIPLINE LESS THAN DISBARMENT**
Sanctions set at \$0

- **DISBARMENT**
Sanctions set at up to \$1,000 with discretion to go up to \$50,000

- **SUPREME COURT**
Retains ability to impose sanctions as it sees fit

EXPUNGEMENT

Key Issues

Racial disparities in
discipline

Disclosure requirements
impact employment



Discipline history used in
subsequent investigations and
prosecution


Societal goal of
rehabilitation

Timeline for eligibility

- ✓ Removed from profile page
- ✓ Deemed to have not occurred*
- ✓ Cannot be used for aggravation or mitigation
- ✓ Cannot be used to identify patterns of misconduct
- * limited exceptions



**DEFINITION OF
EXPUNGEMENT**
**Current
Proposal**



Implementation Options



OPTION 1

Status Quo: respondent petitions
Supreme Court



OPTION 2

Automatic within established
timeframes if conditions met

PROFILE PAGE DISCIPLINE HISTORY

Key Issues

"Scarlet Letter"

Public display = public
protection



Racial disparities in
discipline

Societal goal of
rehabilitation

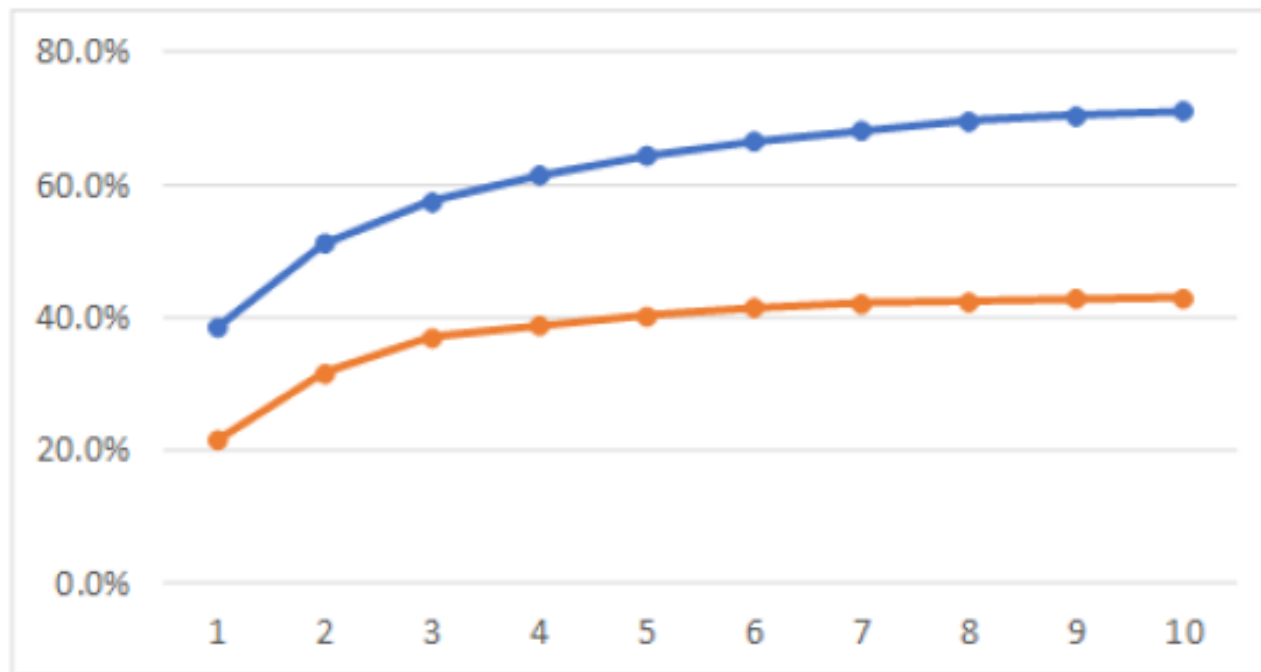
Timelines for Removal of Discipline History

3 Options

Discipline Type	Option 1: Medical Board	Option 2: Nursing Board	Option 3: State Bar/Recidivism	Commission
Reprovals	10 years	3 years	TBD	1—3 years
Suspension/Probation	Indefinitely	10 years	TBD	3—5 years
Disbarment	Indefinitely	Indefinitely	Indefinitely	Indefinitely

Recidivism-Based Removal

Recidivism flatlines after 5 years



New Complaints

Complaints Filed

Years

PROFILE PAGE CRIMINAL CONVICTION HISTORY

Key Issues

Societal goal of
rehabilitation



Public display = public
protection



Racial disparities in criminal
justice system carried over
to discipline system

Need to align discipline
removal standards
across State Bar

Timelines for Removal of Criminal Conviction if Expunged: 3 Options

Discipline Type	Option 1: Medical Board	Option 2	Option 3
Transmittal	Indefinitely	Removed w/in 6 months of notice	Removed w/in 6 months of notice
Discipline	Posted per removal policy	Posted per removal policy adopted	Removed w/in 6 months of notice
Notice	Notification of relief posted w/in 6 months	X	X

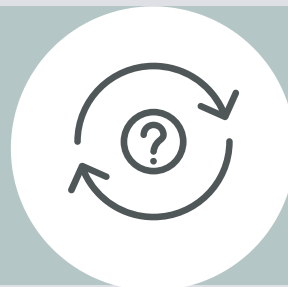
PRE-TRANSMITTAL ENEC

Key Issues

Once transmittal has occurred it is public



Key issue is question of moral turpitude



OCTC has discretion regarding what and when to transmit

Must occur within 30 days



Racial disparities in criminal justice system being compounded

Option 1:
OCTC may

Option 2:
OCTC must

- ✓ Meet and confer prior to settlement conference
- ✓ Require settlement conference statements



**PRE-TRANSMITTAL
ENEC
Current Proposal**

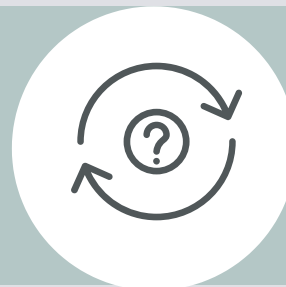
APPOINTED COUNSEL PROGRAM

Key Issues

Representation highly
correlated with
disciplinary outcomes



State Bar currently
provides counsel in
very limited situations



Racial disparities in
discipline correlated with
lack of representation



Deployment at scale would be
very costly; pilot program may
not be financially feasible at
this time

APPOINTED COUNSEL PROGRAM

Current Proposal



- **INDEPENDENT ADMINISTRATOR**
Could absorb existing 6007 program

- **HOURLY RATES**
\$300/hour up to \$250,000 for pilot

- **LIMITED ELIGIBILITY**
Respondents eligible for fee waivers