

The State Bar of California
Rules of Procedure
Proposed Revision – Rule 323

Rule 323. Consideration of a Member's Resignation with Charges Pending.

(a) Resignations with charges pending are governed by rule 9.21 of the California Rules of Court and shall be in the form required by rule 9.21(b). Charges are pending when the member is the subject of an investigation by the Office of Investigations, or a disciplinary proceeding under these rules, or when the member is the subject of a criminal charge or investigation, or has been convicted of a felony or misdemeanor.

(b) When the Office of the Clerk of the State Bar Court receives a member's resignation, tendered in conformity with rule 9.21(b) of the California Rules of Court, it must promptly file the resignation and serve a copy on the Office of the Chief Trial Counsel of the State Bar. The Review Department must thereafter consider the member's resignation and recommend to the Supreme Court whether the resignation should be accepted and, if so, whether testimony should be preserved. The Office of the Clerk of the State Bar Court must transmit to the Clerk of the Supreme Court three certified copies of the Review Department's recommendation together with the member's resignation, when, by the terms of the Review Department's recommendation, the resignation should be transmitted to the Supreme Court.

(c) The Review Department may recommend that the Supreme Court decline to accept the member's resignation upon a finding that:

(1) Preservation of necessary testimony is not complete;

(2) After transfer to inactive status, the member has practiced law or has advertised or held himself or herself out as entitled to practice law;

(3) The member has failed to perform the acts specified by rule 9.20(a)-(b) of the California Rules of Court;

(4) The member has failed to provide proof of compliance as specified in rule 9.20(c) of the California Rules of Court;

(5) The Supreme Court has filed an order of disbarment as to the member; or

(6) On such other evidence as may show that acceptance of the resignation of the member will reasonably be inconsistent with the need to protect the public, the courts or the legal profession.

(d) Within 15 days of service of the member's resignation with charges pending, the Office of the Chief Trial Counsel may move the Court to recommend that the Supreme Court decline to accept the resignation based on any of the factors specified in section (c) of this rule. Within 10 days after service of the Office of the Chief Trial Counsel's motion, the member may file a reply. Proceedings under this section are governed by rule 105 of these rules.