

ARTICLE 5 [PROPOSED]

Article 5

THE STATE BAR OF CALIFORNIA RECORDS MANAGEMENT POLICY: RETENTION AND DESTRUCTION OF DISCIPLINARY RELATED FILES

§1. **Rule of Court [Proposed]**

The State Bar shall establish a record retention and destruction policy under rules adopted by the Board of Governors and approved by the Court. The rules may provide for the destruction of the files of all closed disciplinary proceedings that did not result in the initiation of formal proceedings in the State Bar Court.

§2. **Relevant Statutory Authority**

- a. The Board shall keep a record of all disciplinary proceedings. In all disciplinary proceedings resulting in a recommendation to the Supreme Court for disbarment or suspension, the board shall keep a transcript of the evidence and proceedings therein and shall make findings of fact thereon. The Board shall render a decision to be recorded in its minutes. In disciplinary proceedings in which no discipline has been imposed, the records thereof may be destroyed after five (5) years. (Bus. & Prof. Code, § 6080.)
- b. Hearings and records of original disciplinary proceedings in the State Bar Court shall be public, following a notice to show cause. (Bus. & Prof. Code, §6086.1(a).)
- c. In addition to any other duties specified by law, the disciplinary agency shall ... Maintain permanent records of discipline and other matters within its jurisdiction, and compile statistics to aid in the administration of the system, including, but not limited to, a single log of all complaints received, investigative files, statistical summaries of docket processing and case dispositions, transcripts of all proceedings which have been transcribed, and other records as the disciplinary agency or court require to be maintained. (Bus. & Prof. Code, §6092.5(d).)
- d. In addition to any other duties specified by law, the disciplinary agency shall ... Expunge records of the agency as directed by the California Supreme Court. (Bus. & Prof. Code, §6092.5(e).)

§3. **Definition of Terms**

As used in this policy, the words and phrases listed below have the following meanings:

- a. “Complaint” is a written communication received by the Office of the Chief Trial Counsel which is found to warrant an investigation of alleged misconduct of a State Bar member which, if the allegations are proven, may result in discipline of the member.

“Complaint Open in Error” is a complaint that should not have been opened against a member but that was opened erroneously due to error in the identity of the member or error in categorizing the matter as a complaint.

- b. “Disciplinary Proceeding” includes, but is not limited to, every inquiry, complaint, investigation, evidence of criminal conviction or of a civil claim or proceeding involving the alleged conduct of a member of the State bar for which discipline could be imposed or recommended. A “disciplinary proceeding” begins with the receipt of an inquiry or complaint or the receipt of other information regarding the member’s conduct and may continue into the initiation of a “formal disciplinary proceeding.” A “formal disciplinary proceeding” is a proceeding that is filed in the State Bar Court.

- c. “File” pertains to information retained by the Office of the Chief Trial Counsel with respect to any disciplinary proceeding that did not result in a proceeding in the State Bar Court. A file may include information such as complaints and inquiries.

- d. “Inquiry” is a communication, oral or written, concerning the conduct of a member of the State Bar received by the Office of the Chief Trial Counsel which is designated for evaluation to determine if any action is warranted by the State Bar.

“Inquiry Opened in Error” is an inquiry opened due to error in the identity of the member or error categorizing the matter as an inquiry.

“Inquiry Purged” is a communication or complaint received by telephone, categorized as an inquiry for administrative purposes, and removed from the system when no further information has been received from the complainant or other source.

- e. “Notice of Disciplinary Charges” is a pleading filed in the State Bar Court that contains formal disciplinary charges against an accused attorney. Filing a Notice of Disciplinary Charges in the State Bar Court causes the disciplinary proceeding to become a formal disciplinary proceeding. A Notice of Disciplinary Charges includes a Notice to Show Cause and pleadings of similar purpose.

- f. “Record Destruction” is the destruction of written disciplinary complaints and inquiries and all related materials from State Bar files and records, including electronic records and indices. Electronic records include computer entries except to the extent that computer information is kept for statistical purposes.
- g. “Record of a formal disciplinary proceeding” includes the notice of disciplinary charges or other initial pleading filed in the State Bar Court, and all other pleadings, motions, applications, statements, briefs, stipulations, exhibits and other writings contemplated by the Rules of Procedure of the State Bar or by the California Rules of Court. It also includes any order, decision or opinion filed in the matter by either the State Bar Court or the Supreme Court and any reporter’s transcript, audio-recording or other record of the testimony or other proceedings conducted by the State Bar Court and the Supreme Court. Additionally, the phrase “record of a formal disciplinary proceeding” includes a member’s resignation from the State Bar with disciplinary charges pending against him or her, the Supreme Court’s order accepting or rejecting the resignation, and all documents relating to the processing of the member’s resignation.
- h. “Reportable Action” is a claim, civil action or criminal action against a member which is reported to the State Bar by the member, a court, a professional liability insurance company, a district attorney or other prosecuting agency pursuant to statutory requirement. Reportable actions are not part of the public membership records, but those reportable actions referenced in Business and Professions Code section 6086.1(c) shall be disclosed if reasonably available.
- i. “State Bar Court” is the State Bar adjudicative tribunal or its predecessor entities.

§ 4 **Permanent Retention of Disciplinary Records**

- a. The record of a formal disciplinary proceeding, whether or not the proceeding resulted in the imposition or recommendation of discipline, shall be retained permanently.
- b. All files and documents relating to a disciplinary proceeding against a member pending at the time the member resigned from the State Bar or was disbarred in a separate formal disciplinary proceeding shall be permanently retained.
- c. All files and documents maintained by the Office of the Chief Trial Counsel relating to a formal disciplinary proceeding shall be retained permanently.
- d. All files and documents of a disciplinary proceeding relating to civil litigation in which the State Bar is a party may be retained permanently.

- e. All files and documents of historical or institutional significance, including, but not limited to, those containing research and other materials of value with respect to such matters as confidentiality of State Bar records, discovery procedures, and the practices and history of a particular industry or business, may be retained permanently.

§5 **Destruction of Disciplinary Proceeding Files**

- a. One Year Retention After Closure. The following files may be destroyed by the State Bar one year after the closing of the disciplinary matter. These are for all members.
 - i. Complaints and Inquiries opened in error, and
 - ii. Inquiries Purged.
- b. Ten Year Retention After Closure. The following files may be destroyed by the State Bar ten years after the closing of the disciplinary proceeding. These pertain to members who have not been disciplined, members who do not have any complaints designated for preparation of a Notice of Disciplinary Charges, and members who do not have any pending proceedings in State Bar Court.
 - i. Reportable actions;
 - ii. Inquiries closed prior to forwarding for investigation;
 - iii. Complaints closed prior to the filing of a Notice of Disciplinary Charges;
 - iv. Alternative dispositions to discipline, including admonitions, warning letters, and agreements in lieu of discipline, if issued or entered into prior to the filing of a Notice of Disciplinary Charges.
- c. Deceased Members. The disciplinary files of deceased members who have not been disciplined, disbarred, or who did not resign with charges pending may be destroyed in conformity with the provisions of subparagraphs (a) and (b) of this section 5, unless said files are to be retained pursuant to section 4 of this article. The files of deceased members who have been disciplined must be permanently retained in conformity with section 4 of this article.
- d. Approval of destruction. A file may not be destroyed until its destruction has been approved by designated management personnel. Until such proceedings are

concluded, no file should be destroyed that is necessary to comply with any audit requirement or any legal notice or subpoena.