



# The State Bar of California

OFFICE OF GENERAL COUNSEL

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October 20, 2022

## ANTITRUST DETERMINATION 2022-0002

### A. Authority

This determination is made pursuant to California Supreme Court Administrative Order 2017-09-20, which mandates that the State Bar Office of General Counsel provide a determination on issues submitted to it for resolution of potential antitrust concerns.

### B. Issue Presented

Request for Antitrust Determination: On September 26, 2022, Todd Hill ("Requestor") submitted a Request for Antitrust Determination to the State (Request). A copy of that Request is attached hereto.

The Request states as follows:

THE STATE BAR HAS ALLOWED ENTITIES UNDER ITS REGULATORY AUTHORITY TO OPERATE WITH IMPUNITY VARIOUS SHERMAN ACT AND UNLAWFUL BUSINESS PRACTICE COMPLAINTS, INCORPORATED BY REFERENCE AND KNOWN, OR OTHERWISE OBLIGATED TO BE KNOWN, TO BOTH FORMER GENERAL COUNSEL, VANESSA HOLTON, AS WELL AS THE CURRENT GENERAL COUNSEL ELLIN DAVYTYAN.

PRESENT AND POTENTIAL SHERMAN ACT VIOLATIONS INCLUDE:

1. IMPLEMENTATION OF MULTIPLE UNLAWFUL POLICIES PURPORTING TO HAVE THE AUTHORITY OF IMPLEMENTATION, IMMO IN FACT OPERATING INFRA MODUS ULTRA VIRES INCLUDING, BUT NOT LIMITED TO CREATION OF A REGULATORY (sic) RULE SET THAT MAKES UNLAWFUL DISTINCTIONS OR INTERPRETATIONS FAR OUTSIDE ANY REASONABLE INTERPRETATION, INCLUDING BUT NOT LIMITED TO POLICIES DESIGNED TO INTENTIONLLY (sic) LIMIT THE SCOPE AND CAPTURE OF DATA THAT CLEARLY AND ACCURATELY IDENTIFIES THIS CONDUCT TO AVOID PROPER OVERSIGHT. THIS ALLOWS NON-COMPLIANT INSTITUTIONS TO OPERATE INDEFINITELY WITHOUT FEAR OF ENFORCEMENT TO THE DETRIMENT OF THE PUBLIC AND THE PUBLIC'S CONFIDENCE IN THE CALIFORNIA LEGAL SYSTEM.

C. Analysis

1. No Violation of the Sherman Act Has Been Stated in the Request.

Section 2 of the Sherman Act makes it an offense to monopolize, attempt to monopolize, or combine or conspire to monopolize any part of the nation's interstate or foreign commerce. See 15 U.S.C. § 2. Lawsuits brought under § 2 fall into four broad categories: actual monopolization, attempted monopolization, joint monopolization, and incipient conspiracies to monopolize. See William Holmes and Melissa Mangiaracina, Antitrust Law Handbook § 3:2.

Requestor does not specify what theory of liability he is pursuing. To the extent Requestor seeks to rely upon any previous unspecified complaints filed with the State Bar, or within the knowledge of its General Counsel, it is not incumbent upon the State Bar to guess what he is referring to and then analyze whether any unspecified information could form the basis of his Request.

2. Regulation of Unaccredited Law School Is State Action Immune From Antitrust Prohibitions.

The U.S. Supreme Court has held that the antitrust laws do not apply to state legislative enactments, regardless of anti-competitive intent or effect. (*See, e.g., Parker v. Brown* (1943) 317 U.S. 341, 350-51 ["We find nothing in the language of the Sherman Act or in its history which suggests that its purpose was to restrain a state or its officers or agents from activities directed by its legislature."]; *Hoover v. Ronwin* (1984) 466 U.S. 558, 568-69 ["When the conduct is that of the sovereign itself . . . the danger of unauthorized restraint of trade does not arise. Where the conduct is that of the state legislature or supreme court, we do not need to address the issues of clear articulation and active supervision."].) This immunity is known as the state action doctrine.

To the extent the Request pertains to oversight of unaccredited law schools, active supervision by the Court, consistent with *North Carolina State Board of Dental Examiners v. FTC* (2015) 547 U.S. 494, is established by Rule of Court 9.30. The Supreme Court has regulatory oversight over registered, unaccredited law schools (like People's College of Law, where Requestor went to school). Moreover, any decision by the State Bar related to such law schools could be the subject of a petition for review under Rule of Court 9.13(d) in light of the Supreme Court's oversight as described in Rule of Court 9.30. Thus, the conclusory statements in the Request do not establish any violations of federal antitrust laws.

D. Conclusion

Based on the foregoing analysis, there is no antitrust violation related to the State Bar's regulation of unaccredited law schools, which falls within the immunity of the state action doctrine.

E. Reviewability

OGC's determination of potential antitrust violations may be reviewed de novo by filing a petition with the California Supreme Court, pursuant to rule 9.13, subsections (d) through (f), California Rules of Court, **within 60 days of the date of this determination.**



# California Rules of Court

(Revised January 1, 2022)

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## Rule 9.13. Review of State Bar Court decisions

### (a) Review of recommendation of disbarment or suspension

A petition to the Supreme Court by a licensee to review a decision of the State Bar Court recommending his or her disbarment or suspension from practice must be served and filed within 60 days after a certified copy of the decision complained of is filed with the Clerk of the Supreme Court. The State Bar may serve and file an answer to the petition within 15 days after filing of the petition. Within 5 days after filing of the answer, the petitioner may serve and file a reply. If review is ordered by the Supreme Court, the State Bar must serve and file a supplemental brief within 45 days after the order is filed. Within 15 days after filing of the supplemental brief, the petitioner may serve and file a reply brief.

*(Subd (a) amended effective January 1, 2019; previously relettered and amended effective October 1, 1973; previously amended effective July 1, 1968, December 1, 1990, and January 7, 2007.)*

### (b) Review of recommendation to set aside stay of suspension or modify probation

A petition to the Supreme Court by a licensee to review a recommendation of the State Bar Court that a stay of an order of suspension be set aside or that the duration or conditions of probation be modified on account of a violation of probation must be served and filed within 15 days after a certified copy of the recommendation complained of is filed with the Clerk of the Supreme Court. Within 15 days after filing of the petition, the State Bar may serve and file an answer. Within 5 days after filing of the answer, the petitioner may serve and file a reply.

*(Subd (b) amended effective January 1, 2019; adopted effective October 1, 1973; previously amended effective December 1, 1990; and January 1, 2007.)*

### (c) Review of interim decisions

A petition to the Supreme Court by a licensee to review a decision of the State Bar Court regarding interim suspension, the exercise of powers delegated by rule 9.10(b)-(e), or another interlocutory matter must be served and filed within 15 days after written notice of the adverse decision of the State Bar Court is mailed by the State Bar to the petitioner and to his or her counsel of record, if any, at their respective addresses under section 6002.1. Within 15 days after filing of the petition, the State Bar may serve and file an answer. Within 5 days after filing of the answer, the petitioner may serve and file a reply.

*(Subd (c) amended effective January 1, 2019; adopted effective December 1, 1990; previously amended effective January 1, 2007.)*

### (d) Review of other decisions

A petition to the Supreme Court to review any other decision of the State Bar Court or action of the Board of Trustees of the State Bar, or of any board or committee appointed by it and authorized to make a determination under the provisions of the State Bar Act, or of the chief executive officer of the State Bar or the designee of the chief executive officer authorized to make a determination under article 10 of the State Bar Act or these rules of court, must be served and filed within 60 days after written notice of the action complained of is mailed to the petitioner and to his or her counsel of record, if any, at their respective addresses under Business and Professions Code section 6002.1. Within 15 days after filing of the petition, the State Bar may serve and file an answer and

brief. Within 5 days after filing of the answer and brief, the petitioner may serve and file a reply. If review is ordered by the Supreme Court, the State Bar, within 45 days after filing of the order, may serve and file a supplemental brief. Within 15 days after filing of the supplemental brief, the petitioner may serve and file a reply brief.

*(Subd (d) amended effective January 1, 2019; previously amended effective July 1, 1968, May 1, 1986, April 2, 1987, and January 1, 2007; previously relettered and amended effective October 1, 1973, and December 1, 1990.)*

#### **(e) Contents of petition**

- (1) A petition to the Supreme Court filed under (a) or (b) of this rule must be verified, must specify the grounds relied upon, must show that review within the State Bar Court has been exhausted, must address why review is appropriate under one or more of the grounds specified in rule 9.16, and must have attached a copy of the State Bar Court decision from which relief is sought.
- (2) When review is sought under (c) or (d) of this rule, the petition must also be accompanied by a record adequate to permit review of the ruling, including:
  - (A) Legible copies of all documents and exhibits submitted to the State Bar Court or the State Bar supporting and opposing petitioner's position;
  - (B) Legible copies of all other documents submitted to the State Bar Court or the State Bar that are necessary for a complete understanding of the case and the ruling; and
  - (C) A transcript of the proceedings in the State Bar Court leading to the decision or, if a transcript is unavailable, a declaration by counsel explaining why a transcript is unavailable and fairly summarizing the proceedings, including arguments by counsel and the basis of the State Bar Court's decision, if stated; or a declaration by counsel stating that the transcript has been ordered, the date it was ordered, and the date it is expected to be filed, which must be a date before any action is requested from the Supreme Court other than issuance of a stay supported by other parts of the record.
- (3) A petitioner who requests an immediate stay must explain in the petition the reasons for the urgency and set forth all relevant time constraints.
- (4) If a petitioner does not submit the required record, the court may summarily deny the stay request, the petition, or both.

*(Subd (e) amended effective January 1, 2019; previously repealed and adopted by the Supreme Court effective December 1, 1990, and February 1, 1991; previously repealed and adopted effective March 15, 1991; previously amended effective January 1, 2007.)*

#### **(f) Service**

All petitions, briefs, reply briefs, and other pleadings filed by a petitioner under this rule must be accompanied by proof of service of three copies on the General Counsel of the State Bar at the San Francisco office of the State Bar, and of one copy on the Clerk of the State Bar Court at the Los Angeles office of the State Bar Court. The State Bar must serve the licensee at his or her address under Business and Professions Code section 6002.1, and his or her counsel of record, if any.

*(Subd (f) amended effective January 1, 2019; adopted by the Supreme Court effective December 1, 1990; previously amended by the Supreme Court effective February 1, 1991; previously amended effective March 15, 1991, and January 1, 2007.)*

*Rule 9.13 amended effective January 1, 2019; adopted as rule 59 by the Supreme Court effective April 20, 1943, and by the Judicial Council effective July 1, 1943; previously amended and renumbered as rule 952 effective October 1, 1973, and as 9.13 effective January 1, 2007; previously amended effective July 1, 1976, May 1, 1986, April 2, 1987, December 1, 1990, February 1, 1991, and March 15, 1991.*





# The State Bar of California

## REQUEST FOR ANTITRUST DETERMINATION

Pursuant to Supreme Court of California Admin. Order 2017-09-20

### Requester Information

Date September 26, 2022

First Name TODD Last Name HILL  
Organization REQUEST MADE IN PROPRIA PERSONA AS MEMBER OF THE PUBLIC AND PCL CORP OFFICER  
Address 41459 ALMOND AVENUE  
City QUARTZ HILL State CA Zip Code 93551  
Email TODDRYANGREGORYHILL@GMAIL Phone [661] 899-8899 Fax EMAIL PREFERRED

It is the policy of the State Bar of California to comply with all laws. An important aspect of this policy is our commitment to obey the letter and the spirit of the antitrust laws. Pursuant to the Supreme Court of California's Administrative Order 2017-09-20, any member of the public may report a potential antitrust violation to the State Bar. When notifying the State Bar of your concerns, please include the following information:

- The nature of the potentially anticompetitive action;
- The department(s) or committee(s) of the State Bar undertaking the action;
- The specific type(s) of market impacts you believe may arise from that action; and
- Why you believe the State Bar does not enjoy immunity from antitrust laws for the action in question.

### Request for Antitrust Determination

*Please be as specific as possible. Attach additional sheets of paper as necessary.*

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### SUBMIT THIS FORM

1) *By E-mail:* [AntitrustRequest@calbar.ca.gov](mailto:AntitrustRequest@calbar.ca.gov) 2) *By Mail:*

The State Bar of California  
Office of General Counsel  
Attn: Antitrust Request  
180 Howard Street  
San Francisco, California 94105