

NO. S269401

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

LOS ANGELES TIMES COMMUNICATIONS LLC,

Petitioner,

v.

STATE BAR OF CALIFORNIA,

Respondent.

THOMAS V. GIRARDI,

Real Party In Interest.

**RESPONSE OF PETITIONER LOS ANGELES TIMES
COMMUNICATIONS LLC TO RESPONDENT'S
SUPPLEMENTAL BRIEF;
DECLARATION OF DAN LAIDMAN**

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TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF
JUSTICE OF THE STATE OF CALIFORNIA, AND THE
HONORABLE ASSOCIATE JUSTICES OF THE SUPREME
COURT OF THE STATE OF CALIFORNIA:

Petitioner Los Angeles Times Communications LLC (“The Times”) respectfully submits this Response to the Supplemental Brief filed by the State Bar of California on October 7, 2022 (“Supp. Br.”). More than 20 months after The Times made its requests for information and records concerning prior State Bar investigations of Thomas V. Girardi, and after strenuously resisting any disclosures during 16 months of litigation, the State Bar now concedes that it has the authority under Business & Professions Code § 6086.1(b)(2) to release information about the disgraced lawyer, and that it is in the public interest for it to do so.¹ But although this change in the State Bar’s position is a step in the right direction, the State Bar has released zero

¹ Specifically, the State Bar’s Supplemental Brief says that based on its “current understanding,” of its “public protection mission and policy of transparency,” it now agrees with The Times that disclosures of disciplinary information under Section 6086.1, subdivision (b)(2) are not limited to pending investigations, but also may be made about closed investigations. Supp. Br. at 3. The Bar also states that it intends to release some unspecified information about past disciplinary investigations concerning Girardi – although inexplicably, it does not intend to do so for another thirty days. See Supp. Br. at 3-4.

records or information concerning Mr. Girardi, and these concessions do not dispose of the issues raised in the Petition. Nor is there any reason for this Court to delay resolution of this matter, which will shed light on the State Bar's decisions to never bring public charges against Mr. Girardi despite decades of complaints that he misappropriated money from vulnerable clients. Consequently, The Times respectfully requests that this Court schedule this matter for oral argument on the earliest available date, preferably on either the Court's November or December 2022 hearing calendar.

First, even if an underlying matter has been entirely resolved (which is not the case here), it is well-established that this Court has the power to decide cases of public significance where there is a need for clarification of the law. That is especially true where, as here, a governmental body has changed course voluntarily in the course of ongoing litigation. As this Court recognized more than four decades ago, the "voluntary discontinuance of alleged illegal practices does not remove the pending charges of illegality from the sphere of judicial power or relieve the court of the duty of determining the validity of such charges where by the mere volition of a party the challenged

practices may be resumed.” Marin County Bd. of Realtors, Inc. v. Palsson, 16 Cal. 3d 920, 929 (1976) (quotation omitted). “It is equally well settled that an appeal will not be rendered moot if the parties raise substantial questions of public interest that are likely to recur.” Id.

Applying these principles, this Court recently proceeded to issue a decision in Serova v. Sony Music Entertainment, 13 Cal. 5th 859 (2022), even though the parties had “reached an agreement to settle the case independent of the outcome of the opinion from this Court.” Id. at 871. As this Court explained, “[w]hether or not the yet-to-be-approved settlement moots the parties’ dispute, we render this opinion [i]n light of the important issues presented.” Id. (quotation omitted).

The same rationale squarely applies here. Whether or not the State Bar’s yet-to-be-seen release of unspecified information about the Girardi investigations resolves some of the issues raised by the Petition, it nonetheless presents important issues of statewide concern that are likely to reoccur, which should be addressed by this Court.

For example, the State Bar’s Supplemental Brief does not even mention the first question presented in this Court’s Order to

Show Cause (“OSC”): whether this Court has the authority to reverse a discretionary decision by State Bar officials not to waive confidentiality under Section 6086.1(b)(2). The Bar has since confirmed that it has not changed its position on this issue. See Laidman Decl. ¶ 4. This underlying question of law goes to the heart of this Court’s authority and oversight over the State Bar, and is not resolved by the State Bar’s change in position about exercising its discretionary authority in one particular case. See The Times’ Petition, Memorandum of Points and Authorities (“MPA”) at 4-9; Reply in Support of Petition at 11-23.

Furthermore, although the State Bar’s Supplemental Brief states that its “current” understanding is that Section 6086.1(b)(2) permits disclosure of information about closed investigations (Supp. Br. at 3), nothing short of a decision by this Court about this statutory provision would prevent the Bar from changing its position again in response to a future request for disclosure, which means that the Court should adjudicate the second issue as well. See Palsson, 16 Cal. 3d at 929.

As the State Bar acknowledges, its concessions do not resolve the third issue identified in the Court’s OSC, because the parties dispute the nature and scope of permissible disclosures

under Section 6086.1(b)(2). See Supp. Br. at 5. The State Bar has declined to provide The Times with any additional details about the information that it intends to produce. See Laidman Decl. ¶ 5. But it is apparent from the Supplemental Brief that without an opinion from this Court the promised disclosures will be insufficient.

For example, the State Bar “maintains its prior position regarding the limited scope of information the statute permits to be disclosed,” which it characterizes as “the fact of any prior investigation, the procedural status of any such investigation, and defense of the former licensee’s right to a fair hearing.” Supp. Br. at 4-5 (emphasis added). But the State Bar mischaracterizes the statute, which provides for disclosure of information “clarifying the procedural aspects **and** current status” of the relevant investigations. Bus. & Prof. Code § 6086.1(b)(2) (emphasis added). The State Bar has omitted this key language, as information “clarifying the procedural aspects” of an investigation is an independent category separate and apart from identifying its “status,” and one that provides for robust disclosure of meaningful information about how the State Bar

handled the relevant investigations, which goes to the heart of the public interest in this information. See Reply at 39-46.²

In short, The Times' Petition raises important legal questions regarding this Court's oversight over the State Bar, the Bar's regulation of the legal profession in California, and the public's ability to hold judicial branch officials accountable for their performance in protecting members of the public from attorney misconduct. This Court's guidance on these issues remains as critical as ever, and the Petition has not been rendered moot by the State Bar's new positions. See Palsson, 16 Cal. 3d at 929; Serova, 13 Cal. 5th at 871.

Second, the State Bar is proposing an unjustifiably drawn-out procedure that appears designed to delay the resolution of this long-standing matter well into next year. Such a delay would frustrate the public's ability to scrutinize the State Bar's performance during a crucial time period in which reform efforts

²As explained in The Times' briefing, additional information and documents from investigations that reached the pre-filing stage – and thus were found to involve sufficient evidence of an ethical violation to warrant discipline, even if no public charges were filed – are subject to disclosure by statute and under this Court's precedents. See Petitioner's Reply at 37-39. The Supplemental Brief indicates that the State Bar will not be releasing such information or records, underscoring the necessity of this Court's review and guidance. See Supp. Br. 4-5.

are underway. The State Bar acknowledges, as it must, that the Girardi scandal has prompted widespread debate in the legal profession and inspired discussions about reform at various levels of government, including the judicial branch and the Legislature. See Supp. Br. at 1-2. Yet although The Times' Petition has been pending since June 2021, during that sixteen-month period, the State Bar made no effort whatsoever to "confer" with The Times' counsel about a resolution to the issues it raised. Consequently, while the State Bar's new positions (raised for the first time in its filing of a Supplemental Brief with this Court), may reflect a genuine recognition that its prior positions were without merit, it may be simply a politic reaction to the overwhelming public outcry about the Girardi scandal, and a desire to delay the proceedings in this Court until the window for regulators and lawmakers to focus on the issue and enact reforms is closed. Id.

The State Bar's unilaterally proposed 30-day timeline for any action suggests the latter. Under this timeline, the Bar says that it would release certain information about the Girardi investigations by November 6, at which point the parties would *begin* a meet-and-confer process, and submit a joint report before oral argument is scheduled. That inexplicable delay is

unreasonable. See Supp. Br. at 5. Given that this action has been pending in this Court for well over a year, it would defy credibility for the Bar to suggest that it has not yet gathered or reviewed the files in its possession about Girardi,³ or that it has not yet decided what information or documents it intends to release. But no doubt anticipating that this matter would soon be set for hearing, the State Bar filed a Supplemental Brief on October 7, proposing a 30-day delay before they produce a single document or piece of information, coupled with an open-ended “meet and confer” process and submission of a new joint report before oral argument is scheduled. Supp. Br. at 5.

These facts, and the circumscribed wording in the Supplemental Brief about what the State Bar may ultimately release, suggest that the primary purpose of the Supplemental Brief is to convince this Court not to schedule this matter for hearing in 2022, and to delay the resolution of the parties’ dispute about the nature and scope of the disclosures until well into 2023. Meanwhile, the public will continue to lack information it needs to properly evaluate the pending reform

³ The State Bar undoubtedly has reviewed all of the relevant information as part of the other inquiries referenced in its brief. Id. at 1-2.

efforts, and to ensure that policies adopted in the wake of the Girardi scandal are effective.

Under analogous circumstances, courts have recognized the need for prompt adjudication of public access cases. See Powers v. City of Richmond, 10 Cal.4th 85, 118 (1995) (George, J. concurring) (recognizing that cases about disclosure of public records are given priority to promote “disclosure of public information at a time when the material still was newsworthy or of particular importance to the plaintiff”); NBC Subsidiary (KNBC-TV), Inc. v. Superior Court, 20 Cal.4th 1178, 1211 (1999) (delaying public access is inconsistent with “utilitarian values”). Similarly here, the Court’s resolution of the underlying issues should occur at the earliest possible opportunity.

For all of these reasons, The Times respectfully requests that this Court proceed to schedule the matter for oral argument

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on the earliest available date, on this Court's November or
December 2022 calendar.

Dated: October 11, 2022

DAVIS WRIGHT TREMAINE LLP
KELLI L. SAGER
DAN LAIDMAN
SAM F. CATE-GUMPERT

LOS ANGELES TIMES
COMMUNICATIONS LLC
JEFF GLASSER

By /s/ Kelli L. Sager
Kelli L. Sager

Attorneys for Petitioner
LOS ANGELES TIMES
COMMUNICATIONS LLC

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DECLARATION

DECLARATION OF DAN LAIDMAN

I, Dan Laidman, declare:

1. I am an attorney licensed to practice before the courts of the State of California and before this Court. I am a partner in the law firm of Davis Wright Tremaine LLP (“DWT”), and I am one of the attorneys representing Petitioner Los Angeles Times Communications LLC (“The Times”) in this matter. The matters stated below are true of my own personal knowledge, except for those matters stated on information and belief, which I am informed and believe to be true.

2. Respondent the State Bar of California did not contact Petitioner to discuss its change of position in this matter before filing Respondent’s Supplemental Brief on October 7, 2022.

3. At Petitioner’s request, counsel for Petitioner and Respondent met and conferred about Respondent’s Supplemental Brief on October 11, 2022. I participated in this conference.

4. During the parties’ meet-and-confer session, counsel for Respondent indicated that the State Bar has not changed its position on the first issue identified in the Court’s September 1, 2021 Order to Show Cause (“OSC”).

5. Counsel for Respondent also indicated that the State Bar is not prepared at this point to provide additional details about the information that it plans to disclose in response to Petitioner’s request, beyond what is in the Supplemental Brief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that

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this declaration was executed on October 11, 2022, at Los Angeles, California.

By: /s/ Dan Laidman
Dan Laidman

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PROOF OF SERVICE

I, the undersigned, declare that I am over the age of 18 years, employed in the City and County of Los Angeles, California, and not a party to the within-entitled action. I am an employee of DAVIS WRIGHT TREMAINE LLP, and my business address is 865 South Figueroa Street, Suite 2400, Los Angeles, CA 90017.

I certify that I electronically filed and served the attached **RESPONSE OF PETITIONER LOS ANGELES TIMES COMMUNICATIONS LLC TO RESPONDENT'S SUPPLEMENTAL BRIEF; DECLARATION OF DAN LAIDMAN** with the Clerk of the California Supreme Court via the Court's e-filing system (TrueFiling—TF.3). I certify that participants in the case who are registered TrueFiling users will be served via the electronic filing system pursuant to California Rules of Court, Rule 8.70.

SEE ATTACHED SERVICE LIST

I also served a copy of this document by U.S. mail to the last known address for Real Parties in Interest for Thomas V. Girardi, as provided in the attached service list.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed on October 11, 2022, at Los Angeles, California.

/s/ Vicky Isensee
Vicky Isensee

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