

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.

**SUPPLEMENTAL BRIEF
BY STATE BAR OF CALIFORNIA**

*Ellin Davtyan (238608)
General Counsel
Kirsten R. Galler (227171)
Assistant General Counsel
**Office of the General Counsel
THE STATE BAR OF
CALIFORNIA**
845 South Figueroa Street
Los Angeles, CA 90017
Tel: (213) 765-1008
Email: ellin.davtyan@calbar.ca.gov

Michael von Loewenfeldt
(178665)
**Wagstaffe, von Loewenfeldt,
Busch & Radwick LLP**
100 Pine Street, Suite 2250
San Francisco, CA 94111
Tel: (415) 357-8900
Email: mvl@wvbrlaw.com

Robert G. Retana (148677)
Deputy General Counsel
**Office of the General Counsel
THE STATE BAR OF
CALIFORNIA**
180 Howard Street
San Francisco, CA 94105

Attorneys for Respondent
STATE BAR OF CALIFORNIA

Pursuant to California Rules of Court, rule 8.520(d), the State Bar of California respectfully submits this supplemental brief to advise the Court and all parties of matters occurring since the State Bar's Return was filed on October 1, 2021. These new developments should eliminate or substantially reduce the need for the Court to hear the pending Petition.

Since the Return was filed, this Court in June 2022 disbarred Mr. Girardi. In the wake of revelations regarding Mr. Girardi's conduct, the Legislature directed the State Auditor to audit the State Bar's attorney complaint and discipline process (SB-211). That audit, issued on April 14, 2022, raised significant concerns about closure of complaints against certain attorneys using nonpublic measures, "which did not deter some attorneys [the State Auditor] reviewed from continuing to engage in similar misconduct." (Rpt. 2022-030 available at <https://www.auditor.ca.gov/reports/2022-030/index.html>.) In addition, for the first time in over 10 years, the Senate confirmed a new Chief Trial Counsel, George S. Cardona.

The State Bar's leadership and Board of Trustees have re-examined the questions surrounding release of information about closed investigations generally, including the State Bar's interpretation of whether the Chair of the Board of Trustees or Chief Trial Counsel has discretionary authority pursuant to statute to waive confidentiality of closed investigations for the protection of the public. (See *Henning v. Industrial Welfare Com.* (1988) 46 Cal.3d 1262, 1269–1270 ["an administrative agency

may change its interpretation of a statute, rejecting an old construction and adopting a new”].)

Recognizing that Business and Professions Code section 6086.1, subdivision (b)(2) is subject to more than one reasonable interpretation, the State Bar has concluded that interpreting the discretionary authority to waive confidentiality granted by that statute to extend to closed investigations would be more consistent with its current understanding of its public protection mission and policy of transparency. Accordingly, the State Bar now agrees that the Chair’s or Chief Trial Counsel’s discretion to waive confidentiality under section 6086.1, subdivision (b)(2) extends to closed investigations.

Consistent with this new interpretation, the Chair and Chief Trial Counsel have reconsidered whether to waive confidentiality about disciplinary investigations involving Mr. Girardi. In doing so, they have considered the State Bar’s public protection mission and commitment to transparency, Mr. Girardi’s intervening disbarment, the concerns raised by the State Auditor, as noted above, and the growing publicly available information about Mr. Girardi’s conduct. Based on those considerations, the Chair and Chief Trial Counsel have now determined, in the exercise of their discretion, that release of the information permitted by section 6086.1, subdivision (b)(2) is warranted for the protection of the public.

The State Bar is therefore prepared to release information about past disciplinary investigations concerning Mr. Girardi

that is authorized pursuant to subdivision (b)(2)—namely, 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. Absent contrary direction from this Court, the State Bar anticipates releasing that information in 30 days.

In light of this new information, the issues before this Court have materially changed. This Court’s Order to Show Cause posed three questions for the parties:

1. Does the court have the authority to reverse a discretionary decision by the State Bar’s Interim Chief Trial Counsel not to waive the confidentiality of disciplinary investigations involving alleged professional misconduct by Thomas V. Girardi, and if so, was such a waiver of confidentiality in this matter “warranted for protection of the public” within the meaning of Business and Professions Code section 6086.1, subdivision (b)(2)?
2. Are the State Bar of California’s Chief Trial Counsel and Chair of the Board of Trustees authorized under Business and Professions Code section 6086.1, subdivision (b)(2) to disclose information and records regarding confidential disciplinary investigations that were closed without charges filed?
3. Is the scope of disclosures permitted under the confidentiality waiver in section 6086.1, subdivision (b)(2) limited to releases of information “confirming the fact of an investigation or proceeding, clarifying the procedural aspects and current status, and defending the right of the licensee to a fair hearing”?

The State Bar believes that the Chair’s and Chief Trial Counsel’s new discretionary decision, which aligns with the Petitioner’s request, alleviates the need for the Court to address the first two questions: whether the Court has the authority to reverse that discretionary decision, and whether section 6086.1, subdivision (b)(2) extends to closed investigations.

As to the Court’s third question—the scope of disclosure permitted by subdivision (b)(2)—the State Bar maintains its prior position regarding the limited scope of information the statute permits to be disclosed. However, the State Bar’s anticipated disclosures in this particular situation will make the question of what disclosures are permissible more concrete. Accordingly, the State Bar intends to meet and confer with Petitioner about the continued need for the Court to address this question after the State Bar’s anticipated disclosures. The State Bar suggests that the parties submit a joint statement advising the Court of their positions on this issue after that meet and confer.

Respectfully submitted,

Ellin Davtyan
Robert G. Retana
Kirsten R. Galler
Office of the General Counsel
THE STATE BAR OF CALIFORNIA

By /s/ Ellin Davtyan
Ellin Davtyan

**Wagstaffe, von Loewenfeldt,
Busch & Radwick LLP**

By /s/ Michael von Loewenfeldt
Michael von Loewenfeldt

Attorneys for Respondent
STATE BAR OF CALIFORNIA

CERTIFICATION OF COMPLIANCE WITH WORD LIMIT

Pursuant to California Rules of Court, rule 8.250(d)(2), I certify that this supplemental brief is proportionately spaced, has a typeface of 13-point, proportionally-spaced font, and contains 834 words according to the word count feature of Microsoft Word for Office 365.

Dated: October 7, 2022

Respectfully submitted,

Ellin Davtyan
Robert G. Retana
Kirsten R. Galler
Office of the General Counsel
THE STATE BAR OF CALIFORNIA

By /s/ Ellin Davtyan
Ellin Davtyan

Wagstaffe, von Loewenfeldt,
Busch & Radwick LLP

By /s/ Michael von Loewenfeldt
Michael von Loewenfeldt

Attorneys for Respondent
STATE BAR OF CALIFORNIA

PROOF OF SERVICE

I, Joan Randolph, hereby declare: that I am over the age of eighteen years and am not a party to the above-entitled action, that I am employed in the City and County of San Francisco, that my business address is The State Bar of California, 180 Howard Street, San Francisco, CA 94105.

I certify that I electronically filed and served the attached **SUPPLEMENTAL BRIEF BY STATE BAR OF CALIFORNIA** with the Clerk of the California Supreme Court via the Court's e-filing system (TrueFiling) on October 7, 2022. 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, rules 8.70 et seq.

SEE ATTACHED SERVICE LIST

I also served a copy of this document by U.S. mail to Petitioner's Counsel Jeff Glasser of Los Angeles Times Communications LLC and 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 in San Francisco, California this 7th day of October, 2022.

/s/ Joan Randolph
JOAN RANDOLPH

SERVICE LIST

Petitioner's Counsel

Method of Service

Kelli Sager
Daniel Laidman
Davis Wright Tremaine LLP
865 S Figueroa Stree, Suite 2400
Los Angeles CA 90017-2566
Email: kellisager@dwt.com
Email: danlaidman@dwt.com

Electronic service

Jeff Glasser
Los Angeles Times Communications
LLC
2300 E Imperial Highway
El Segundo CA 90245-2813

U.S. mail

Real Party in Interest

Thomas V. Girardi

Method of Service

Thomas V. Girardi
100 Los Altos Drive
Pasadena, CA 91105

U.S. mail

R.M. Anthony Cosio
Law Office of R.M. Anthony Cosio
520 Redondo Beach Avenue
Long Beach, CA 90814-157

**Probate counsel for Robert
Girardi, Conservator of the Person
and Estate of Thomas V. Girardi**

Method of Service

Nicholas Van Brunt
Sheppard Mullin
333 South Hope Street
Forty-Third Floor
Los Angeles, CA 90071
Email: nvanbrunt@sheppardmullin.com

Electronic service

**Attorney for Amicus,
Peyman Roshan**

Cyrus Sanai
SANAIS
533 N. Camden Drive
Beverly Hills CA 90212
Email: cyrus@sanaislaw.com

Method of Service

Electronic service