

***PROPOSED AMENDMENTS TO THE
CALIFORNIA RULES OF COURT
AND TO THE RULES OF PROCEDURE OF THE STATE BAR***

[Proposed additions in **Bold**; Proposed deletions in ~~Strikeout~~
(Approved by the Board of Governors March 7, 2008.)
(Subject to approval by the Supreme Court.)

CALIFORNIA RULES OF COURT

Rule 9.20. Duties of Disbarred, Resigned, or Suspended Attorneys

(a) [Disbarment, Suspension, and Resignation Orders]

The Supreme Court may include in an order disbarring or suspending a member of the State Bar, or accepting his or her resignation, a direction that the member must, within such time limits as the Supreme Court may prescribe:

- (1) Notify all clients being represented in pending matters and any co-counsel of his or her disbarment, suspension, or resignation and his or her consequent disqualification to act as an attorney after the effective date of the disbarment, suspension, or resignation, and, in the absence of co-counsel, also notify the clients to seek legal advice elsewhere, calling attention to any urgency in seeking the substitution of another attorney or attorneys;
- (2) Deliver to all clients being represented in pending matters any papers or other property to which the clients are entitled, or notify the clients and any co-counsel of a suitable time and place where the papers and other property may be obtained, calling attention to any urgency for obtaining the papers or other property;
- (3) Refund any part of fees paid that have not been earned; and
- (4) Notify opposing counsel in pending litigation or, in the absence of counsel, the adverse parties of the disbarment, suspension, or resignation and consequent disqualification to act as an attorney after the effective date of the disbarment, suspension, or resignation, and file a copy of the notice with the court, agency, or tribunal before which the litigation is pending for inclusion in the respective file or files.

(b) [Notices to Clients, Co-Counsel, Opposing Counsel, and Adverse Parties]

All notices required by an order of the Supreme Court or the State Bar Court under this rule must be given by registered or certified mail, return receipt requested, and must contain an address where communications may be directed to the disbarred, suspended, or resigned member.

(c) [Filing Proof of Compliance]

Within such time as the order may prescribe after the effective date of the member's disbarment, suspension, or resignation, the member must file with the Clerk of the State Bar Court an affidavit showing that he or she has fully complied with those provisions of the order entered

under this rule. The affidavit must also specify an address where communications may be directed to the disbarred, suspended, or resigned member.

(d) [Sanctions for Failure to Comply]

- (1) A disbarred ~~or resigned~~ member's willful failure to comply with the provisions of this rule is a ground for denying his or her application for reinstatement or readmission.
- (2) **A resigned member's willful failure to comply with the provisions of this rule is a ground for denying his or her application for reinstatement or readmission or for permanently prohibiting the member from applying for reinstatement.**
- (3) A suspended member's willful failure to comply with the provisions of this rule is a cause for disbarment or suspension and for revocation of any pending probation.
- (4) ~~Additionally, such~~ The failure **to comply with the provisions of this rule** may also be punished as a contempt or a crime.

Rule 9.21. Resignations of Members of the State Bar With Disciplinary Charges Pending

(a) [General Provisions]

A member of the State Bar against whom disciplinary charges are pending may tender a written resignation from membership in the State Bar and relinquishment of the right to practice law. The written resignation must be signed and dated by the member at the time it is tendered and must be tendered to the Office of the Clerk, State Bar Court, 1149 South Hill Street, Los Angeles, California 90015. The resignation **must be referred to as a disciplinary resignation and** must be substantially in the form specified in (b) of this rule. In submitting a resignation under this rule, a member of the State Bar agrees to be transferred to inactive membership in the State Bar effective on the filing of the resignation by the State Bar. Within 30 days after filing of the resignation, the member must perform the acts specified in rule 9.20(a)(1)–(4) and (b) and within 40 days after filing of the resignation, the member must file with the Office of the Clerk, State Bar Court, at the above address, the proof of compliance specified in rule 9.20(c). No resignation is effective unless and until it is accepted by the Supreme Court after consideration and recommendation by the **State Bar Court** ~~Board of Governors of the State Bar~~.

(b) [Form of Resignation]

The member's written resignation must be in substantially the following form:

"I, [name of member], against whom charges are pending, hereby resign as a member of the State Bar of California and relinquish all right to practice law in the State of California **and do not contest the facts contained in the State Bar Court decision or opinion filed in a pending proceeding, the facts contained in any notice of disciplinary charges in any pending proceeding in which a State Bar Court decision has not been filed or in any statement of**

undisputed facts filed by the Office of the Chief Trial Counsel with respect to any investigation or charges that were pending at the time my resignation is filed. I acknowledge that those facts will be deemed admitted for purposes of any subsequent petition for reinstatement or proceeding in any other jurisdiction in which I am licensed to practice law or to practice another profession. I agree that, in the event that this **disciplinary** resignation is accepted and I later file a petition for reinstatement, the State Bar will consider in connection therewith all disciplinary matters and proceedings against me at the time this **disciplinary** resignation is accepted, in addition to other appropriate matters. I further agree that, on the filing of this **disciplinary** resignation by the Office of the Clerk, State Bar Court, that I will be transferred to inactive membership of the State Bar. On such transfer, I acknowledge that I will be ineligible to practice law or to advertise or hold myself out as practicing or as entitled to practice law. I further agree that, within 30 days of the filing of the **disciplinary** resignation by the Office of the Clerk, State Bar Court, I will perform the acts specified in rule 9.20(a)–(b) of the California Rules of Court, and within 40 days of the date of filing of this resignation by the Office of the Clerk, State Bar Court, I will notify that office as specified in rule 9.20(c) of the California Rules of Court. **I understand that if I fail to comply with rule 9.20(a)–(b) and to provide proof of compliance as specified in rule 9.20(c), I may be permanently prohibited from applying for reinstatement.”**

- (c) [Consideration of Resignation by State Bar ~~Court Board of Governors~~ and Supreme Court]

When the Office of the Clerk of the State Bar Court receives a member’s resignation tendered in conformity with this rule, it must promptly file the resignation. The ~~Board of Governors of the State Bar Court~~ must thereafter consider the member’s resignation **and the facts upon which the resignation is based**, and **must** recommend to the Supreme Court whether the resignation should be accepted. **The State Bar Court’s recommendation must be made in light of the grounds set forth in subsection (d) of this rule and, if the State Bar Court recommends acceptance of the resignation notwithstanding the existence of one or more of the grounds set forth in subsection (d), the State Bar Court’s recommendation must include an explanation of the reasons for the recommendation that the resignation 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 ~~Board’s State Bar Court’s~~ recommendation together with the member’s resignation, when, by the terms of the ~~Board’s State Bar Court’s~~ recommendation, the resignation should be transmitted to the Supreme Court.

- (d) [Grounds for Rejection of Resignation by the Supreme Court]

The Supreme Court will make such orders concerning the member’s resignation as it deems appropriate. The Supreme Court may decline to accept the resignation based on a report by the ~~State Bar Court Board of Governors~~ 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);
- (4) ~~That the~~ **The** member has failed to provide proof of compliance as specified in rule 9.20(c);
- (5) The Supreme Court has filed an order of disbarment as to the member; ~~or~~
- (6) The State Bar Court has filed a decision or opinion recommending the member's disbarment;
- (7) The member has previously resigned or has been disbarred and reinstated to the practice of law; or
- (8) ~~On such other evidence as may show that acceptance~~ Acceptance of the resignation of the member will reasonably be inconsistent with the need to protect the public, the courts, or the legal profession.

***RULES OF PROCEDURE OF
THE STATE BAR OF CALIFORNIA***

**RULE 658. CONSIDERATION AND TRANSMITTAL OF RESIGNATIONS WITH
DISCIPLINARY CHARGES PENDING**

- (a) **The written resignation of a member against whom disciplinary charges are pending shall be submitted to the Clerk of the State Bar Court in Los Angeles. The Clerk shall file the resignation if it is dated, bears the original signature of the member and is in the form required by rule 9.21(b) of the California Rules of Court. Upon the filing of the resignation, the Clerk shall serve a copy of the resignation upon the Office of the Chief Trial Counsel.**
- (b) **Within sixty (60) days from the date upon which the member's resignation is filed, the Office of the Chief Trial Counsel shall file with the State Bar Court Review Department and serve upon the member pursuant to rule 61, a "Statement of Undisputed Facts" setting forth the factual allegations relating to any disciplinary investigation or charges pending, within the meaning of rule 650, at the time of the filing of the member's resignation and in which no notice of disciplinary charges has been filed. Within sixty (60) days of the date upon which the member's resignation is filed, the Office of the Chief Trial Counsel shall also file with the State Bar Court Review Department and serve upon the member pursuant to rule 61, a report setting forth the extent, if any, to which any of the factors enumerated in rule 9.21(d) of the California Rules of Court are present and whether, in light of the application of those factors, the member's resignation should be accepted.**

- (c) **Within thirty (30) days of service of the Office of the Chief Trial Counsel's Statement of Undisputed Facts and report regarding the acceptance of the member's resignation, the member may file with the State Bar Court Review Department a notice of the withdrawal of his or her resignation.**
- (d) **If the member does not timely file a notice of the withdrawal of his or her resignation, within thirty (30) days of the expiration of the withdrawal period, the Presiding Judge or the State Bar Court Review Department shall file an order or decision (1) finding that the facts contained in the State Bar Court decision or notice of disciplinary charges in any pending proceeding in which a decision has not been filed are deemed admitted; (2) finding that the facts set forth in the Statement of Undisputed Facts filed by the Office of the Chief Trial Counsel with respect to any pending investigation are deemed admitted; and (3) recommending either the acceptance or rejection of the member's resignation and the reasons for the Presiding Judge's or Review Department's recommendation. In the absence of proof that the member has performed the acts specified in rule 9.20(a) and (b), the Presiding Judge or Review Department may include in its decision or order a recommendation that the member be permanently prohibited from filing a petition for reinstatement to the practice of law.**
- (e) **Within fifteen (15) days of the filing of the Presiding Judge's or Review Department's order regarding the member's resignation, the Clerk of the State Bar Court shall transmit the member's resignation to the Clerk of the Supreme Court, together with the Presiding Judge's or Review Department's order recommending acceptance or rejection of the resignation.**