

ADDC to State Bar re Expungement of Private Reprovals
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Enclosed please find a proposed Rule of Court regarding expungement of private reprovals. This proposal is sponsored by ADDC.

We have previously spoken to Supreme Court staff about the mechanics of making such a proposal. We were told that we should submit our proposal to the State Bar for its views before forwarding the proposal to the Supreme Court. We ask that the Board circulate our proposal for public comment before doing so.

The reasons for this proposal are as follows.

A private reproof is the least form of discipline. It is reserved for minor offenses. There should actually be a difference between a private reproof and a public reproof. This issue did not arise until a few years ago, when the State Bar began publishing on its website, private reprovals that were imposed after disciplinary cases were filed. This practice defeats the very concept of "private." This practice also rewards the prosecutors who pursue a minor case and are able to post the "private" reproof.

Bus & Prof 6078 permits the State Bar to impose public or private reprovals. Public reprovals are available to everyone. Private reprovals were only available when good cause was shown in discovery, in a proper case. *Chronicle Publishing Co v Superior Court* (1960) 54 Cal 2nd 548, 574-575. The State Bar now posts on its website, private reprovals that are administered after filing of disciplinary charges. The court of appeal has upheld the practice. *Mack v State Bar* (2001) 92 Cal.App.4th 957.

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In the context of a public reproof of a judge, this court stated that there is an "...the expectation that the judge will respond to the censure by ceasing to engage in the conduct that resulted in the disciplinary action." *Haworth v. Superior Court* (2010) 50 Cal 4th 372, 390-91. It is equally reasonable to conclude that an attorney will respond to a private reproof by ceasing to engage in the conduct. We propose a two step process. First, upon completion of the conditions of reproof, the reproof itself is removed from the member's listing on the State Bar's website. Second, if indeed the attorney responded appropriately, that is, ceased the conduct, then five years later, the record is expunged.

There is no known policy reason why a "private" reproof should be on the public record forever. An attorney who maintains a clean record should be able to expunge a private reproof. Under current practice, all disciplinary actions are on the attorney's web page listing forever.

Expunging records involves a trade-off between competing interests. The State Bar would like to know if a member has a prior record. Prospective clients and employers might also like to know. On the other hand, one who has committed only a minor transgression should not have the stigma in public records forever. Even prospective clients and employers may not be interested in ancient history. Expungement of a minor disciplinary record allows an attorney to practice law without carrying the stigma of an old mistake. Expungement provides a clean slate to somebody who has committed one, isolated, minor act.

Criminal records can be expunged. Judicial discipline is not expunged, but as noted in *Haworth*, there comes a time when past discipline is no longer the subject of mandatory disclosure. After passage of time and a

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clean record, the defendant is permitted to have a clean slate. A lawyer should be able to do so also, when the discipline is as minor as a private reproof. There is no known policy reason why a "private" reproof should be on the public record forever.