

Case No. _____

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

**REQUEST THAT THE SUPREME COURT OF
CALIFORNIA REVIEW AND APPROVE PROPOSED
CALIFORNIA RULES OF COURT, RULE 9.33**



PREPARED BY
THE STATE BAR OF CALIFORNIA

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I. INTRODUCTION

The Board of Trustees (Board) of the State Bar of California (State Bar) respectfully requests that the Supreme Court review and approve proposed California Rules of Court, rule 9.33 (rule 9.33), as set forth in Exhibit 1 to the Appendix of Exhibits (AE),¹ to be included in a new Chapter 5 (Expungements) within division 2 of title 9 of the California Rules of Court.

The proposed rule provides for automatic, one-time expungement of records of non-disbarment discipline for attorneys eight years after their first discipline, provided no further discipline is imposed and no disciplinary proceedings are pending at the time the attorney would be eligible for expungement. Expungement granted under the proposed rule would involve removing the record of the discipline from the State Bar's website (including the online docket of the State Bar Court), but records of expunged discipline would still be maintained by the State Bar and could be used for purposes of

¹ References to exhibits in the AE in this petition are in the following format: [Volume]AE[Pages]. For example, the citation 1AE94 refers to page 94 of the Appendix of Exhibits, located in Volume 1 of the Appendix of Exhibits.

future discipline (i.e., as an aggravating factor supporting higher discipline for repeat offenders).

The proposed rule was developed over the course of several years, beginning with the 2020 establishment of the Ad Hoc Commission on the Discipline System, which considered expungement and other issues, and ultimately recommended allowing expungement after as few as three years. After the commission completed its work, the Board and staff considered the issue over the course of several Board meetings. During both the commission's and Board's consideration of the issue, the State Bar sought and received several rounds of public comment, as well as other stakeholder input. The Board also considered the practices of other states' attorney regulators and other California licensing agencies. During this process, the Board initially considered having a shorter timeframe for removal of discipline information from the State Bar's public website and a longer timeframe for a broader expungement, but ultimately recommended a single timeframe for expungement that would include website removal.

The expungement timeframe recommended herein was informed by recidivism data indicating that, among licensees who

have been disciplined once, a large majority of those who are disciplined again are disciplined within eight years of their first discipline. This data suggests that any public protection benefit to keeping disciplinary history public diminishes after eight years, as attorneys will have either reoffended by that time or are not likely to reoffend. Thus, expunging the disciplinary history of attorneys who have gone eight years from their first discipline with no further discipline—as the proposed rule would do—would serve the public protection function of making relevant discipline information about individual attorneys known while mitigating the possibility of indefinite professional and reputational harm to attorneys who are not likely to reoffend.

Accordingly, this petition seeks this Court’s approval of proposed rule 9.33.

II. AUTHORITY REQUIRING SUPREME COURT REVIEW AND APPROVAL OF THE PROPOSED RULE

This Court has inherent authority over all matters of attorney regulation and discipline. (See generally *In re Att’y Discipline Sys.* (1998) 19 Cal. 4th 582, 593.) However, the Legislature also regulates the practice of law, and this Court permits it to do so where the Legislature’s enactments do not

conflict with this Court's primary role. (See *Merco Constr. Engineers, Inc. v. Mun. Ct.* (1978) 21 Cal.3d 724, 727.)

As relevant here, the Legislature has provided that records of disciplinary proceedings are generally public once a notice of disciplinary charge has been filed. (See Bus. & Prof. Code, § 6086.1, subd. (a) ["Subject to subdivision (b), and except as otherwise provided by law, hearings and records of original disciplinary proceedings in the State Bar Court shall be public, following the filing of a notice of disciplinary charges."]; Bus. & Prof. Code, § 6094.5, subd. (f) ["The State Bar, subject to its record retention policy, shall respond within a reasonable time to inquiries as to the status of pending disciplinary cases in which a notice to show cause has been filed, or as to public discipline that has been imposed upon an attorney in California"].) The Legislature has recognized that this Court has the power to expunge disciplinary records: "In addition to any other duties specified by law, the State Bar shall ... [e]xpunge records of the State Bar as directed by the California Supreme Court." (Bus. & Prof. Code, § 6092.5, subd. (e).)

Thus, both as a matter of this Court's inherent authority and consistent with legislative enactments, the authority to

authorize expungement lies with this Court. The Court has exercised this authority before, providing through California Rules of Court, rule 9.31(f) for one-time expungement of a record of inactive enrollment for failure to comply with the minimum continuing legal education program for licensees meeting certain criteria. Expungement of discipline records as requested here should similarly be accomplished through a rule adopted by this Court.²

III. BACKGROUND AND PROCEDURAL HISTORY

A. Ad Hoc Commission on the Discipline System Recommendations

On November 19, 2020, the Board established the Ad Hoc Commission on the Discipline System and tasked it with evaluating:

- Procedural justice and the experiences and perceptions of the system by complaining witnesses and respondents;
- Workload and operational efficiency of case processing;
- Case prioritization and differentiated case-flow management; and

² The California Rules of Court concerning attorney admissions and discipline are adopted by the Supreme Court. (See Cal. Rules of Court, rule 9.0(b).)

- The efficacy of the system for preventing future attorney misconduct.

(1AE13.) The commission comprised 26 members, including four Board members, two Office of Chief Trial Counsel (OCTC) attorneys, two State Bar Court judges, 15 members of the defense bar and other attorneys, and three public members. (1AE21.) The commission began its work in April 2021, adopted its various recommendations on June 1, 2022, and August 24, 2022, and issued its final revised report on January 9, 2023. (1AE9, 14.) The commission’s full report is set forth in Exhibit 2. (1AE9–189.)

The commission established a fairness subcommittee to consider initiatives to “promote procedural justice, reduce disparate impact, prevent future attorney misconduct, and improve the experiences and perceptions of complaining witnesses and respondents.” (1AE22.)³

The fairness subcommittee examined the topic of discipline record expungement, and considered recent developments in

³ This work was informed by the results of a 2019 State Bar-initiated study that found that Black male attorneys were disproportionately disciplined as compared to their white male counterparts. The study is available at <https://board.calbar.ca.gov/Agenda.aspx?id=15365&tid=0&show=100023297&s=true#10030877> (as of July 1, 2025).

California with respect to record clearance procedures for criminal records, as well as the expungement practices of 19 states with respect to attorney discipline and of the Medical Board of California and the California Board of Registered Nursing for their respective professions. The subcommittee found that, of the 19 states surveyed, none expunge attorney discipline records; nor do California's medical or nursing boards expunge discipline records for their professions. (1AE32.)⁴

The subcommittee also reviewed these states' and the nursing and medical boards' practices with respect to affirmatively posting disciplinary history on public websites. The State Bar's current practice is to post licensees' history of public discipline indefinitely at its public attorney search webpage.⁵ Such records are also currently available indefinitely online on

⁴ The 19 jurisdictions were those that responded to a State Bar survey on the issue: Alaska, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Louisiana, Massachusetts, Minnesota, Missouri, New Mexico, North Carolina, Pennsylvania, Vermont, Virginia, and Washington.

⁵ Some documents from earlier cases are also available on the online docket, which is available at <<https://apps.calbar.ca.gov/attorney/LicenseeSearch/QuickSearch>> (as of July 1, 2025).

the State Bar Court’s online docket for all cases filed on or after February 7, 2019.⁶ The subcommittee found that all states except two (Mississippi and South Dakota) make attorneys’ discipline history available online, with two states (Texas and Florida) limiting website display to ten years.⁷ (1AE32–34.) The subcommittee also noted that California’s medical board publishes doctors’ license revocations, suspensions, and probations online indefinitely, while limiting display of public reprovls to ten years. (1AE33–34.) The nursing board, by contrast, removes discipline from its public website more quickly and more broadly—with public reprovls removed after three

⁶ The docket is available at <https://www.statebarcourt.ca.gov/Public-Records-Information/Dockets> (as of July 1, 2025).

⁷ Subsequent investigation indicated that Texas discontinued this practice in 2017, and now posts disciplinary history indefinitely. Additionally, it was discovered that Idaho only posts disciplinary history for one to five years, depending on the level of discipline. (2AE233.) Finally, after the Board’s approval of proposed rule 9.33, new Governing Rules of the State Bar were approved in North Carolina, providing for expungement, for certain misconduct, of admonition (after five years), reprimands and censure (after 10 years), and sealing of stayed suspensions (after 10 years). (See Governing Rules of the State Bar [of North Carolina], rule .0136, available at <https://www.ncbar.gov/for-lawyers/governing-rules-of-the-state-bar/0136-expungement-or-sealing-of-discipline/> (as of July 2, 2025).)

years, probations and suspensions removed after ten years, and only license revocations displayed indefinitely. (*Ibid.*)

To further study expungement and develop recommendations, the fairness subcommittee established a working group to study the issue of expungement of discipline records; the working group met three times in 2021 and 2022. (1AE37.) This group recommended that past discipline be expunged and removed from the State Bar's website as follows: for private reprovls, one year after conditions are met; for public reprovls, three years thereafter; for probation with stayed suspension, three years after conclusion of probation; for probation with actual suspension, five years after reinstatement; and for disbarment, no expungement and indefinite public display on the website. (1AE43.) Expungement and website removal would be available to a licensee only if no new discipline had been imposed and there were no active disciplinary investigations concerning the licensee, and only if any restitution

owed was paid. (1AE40.)⁸ The commission adopted these recommendations at its June 1, 2022, meeting. (1AE43.)

Before finalization, the commission’s report and recommendations were circulated for public comment for 60 days ending November 28, 2022.⁹ Seventy-eight public comments were received during this period. Among these respondents, 88 percent agreed or agreed if modified with the recommendation regarding timelines for website removal and 89 percent agreed or agreed if

⁸ Proponents of these timelines argued that they would begin to redress historical racial disparities in discipline, align the approach with current criminal justice trends in California, and that it would balance the public’s right to know about attorney discipline with the “attorneys’ ability to move past already satisfied disciplinary conditions.” (1AE40–41.)

The working group also considered an alternative timeframe, with expungement and website removal occurring as follows: for private reproof, one year after conditions met; for public reproof, six years after conditions met; for probation with stayed or actual suspension, 10 years from the conclusion of probation; and for disbarment, no expungement or website removal. (1AE40.) Proponents of this alternative argued that these longer timelines better protect the public, and better align with the timeframe of California’s regulatory bodies for nurses and doctors and with the practices of other states. (1AE41.)

⁹ Public comment was encouraged through special English- and Spanish-language mini-websites on the issue, and regular placement of posts and paid ads in English and Spanish on Facebook, Instagram, LinkedIn, and Twitter; additionally, the State Bar contacted approximately 80 community-based organizations to encourage comment.

modified with the recommendation regarding timelines for expungement. (1AE129, 130.) The majority (54) of respondents were self-identified attorneys. Support for the commission's recommendations was higher amongst attorneys only, with 93 percent supporting or supporting with modifications both the website removal and expungement recommendation. (*Ibid.*)

Notably, the commission's recommendation utilized the same timelines for expungement and the removal of discipline from the website, as does the final recommendation of the Board to this Court. And, while the commission did not propose a detailed definition of expungement, the commission intended that OCTC would be able to continue to access expunged records for the purpose of applying progressive discipline in future cases. (1AE42.) This concept is embodied in paragraph (b)(1) of proposed rule 9.33. As discussed below, however, as informed by later-studied data on recidivism, the timelines recommended by the Board for adoption through proposed rule 9.33 are longer than those initially recommended by the commission.

B. Board Consideration of and Action Concerning Expungement

i. January 2023 Board Meeting

The Board received the commission’s final report at its January 19, 2023, meeting. The Board noted the commission did not clearly define expungement and that its recommended timeframes were considerably shorter than those of other jurisdictions and agencies identified in the commission’s report. (1AE191–192, 201–202.) Accordingly, the Board directed staff to take further steps to inform potential action by the Board, including:

- “Propose timelines for the removal of discipline from attorney profile pages on the State Bar website that are consistent with the practices of California regulatory agencies and other state attorney licensing agencies that currently have policies in place for both the display and removal of discipline histories from their respective websites.”; and
- “Propose a definition of expungement of attorney discipline and submit the proposal to the Board for approval.”

(1AE192.)

ii. September 2023 Board Meeting

These issues next came to the Board at its September 21, 2023, meeting. State Bar staff presented three options for timelines for website removal: a first, stricter option, that would match the Medical Board of California's timeline, with removal of public reprovals after 10 years, and no removal of other types of discipline; a second, more lenient option that would align with the Nursing Board of California's practices, with public reprovals removed from the website three years after the effective date, probations with or without actual suspension removed 10 years after the effective date, and only disbarments displayed indefinitely; and a third option involving the State Bar developing its own recommended timelines based on recidivism data. (1AE204–208.) With respect to this third option, staff presented preliminary data indicating that recidivism among California attorneys who are disciplined begins to decline significantly five years after imposition of discipline. (1AE207–208.) The Board also reviewed new stakeholder feedback, noting that the Association of Disciplinary Defense Counsel (ADDC), the California Association of Black Lawyers (CABL), and two Trustees who had served on the commission prior to joining the

Board—Trustees Ray Buenaventura and Sarah Good—all felt the timelines for removal based on the medical and nursing boards were too long, and preferred shorter timelines of varying lengths. (*Ibid.*) The Board directed staff to further develop the proposals in consideration of recidivism data. (2AE231.)

With respect to defining expungement, the Board discussed a broad potential definition that would not allow expunged discipline to be accessed or used for most purposes, including for progressive discipline. (2AE202–203.) The Board also considered two options for the mechanics of expungement, with one option maintaining the status quo under which there is no procedure for Supreme Court to expunge discipline records other than on a case-by-case basis,¹⁰ and another option under which discipline

¹⁰ In its report, the commission noted that case-by-case expungement by the Supreme Court has not been a meaningful tool for record clearance:

Despite the existence of Business and Professions Code section 6092.5(e), which states the State Bar shall “Expunge the records of the State Bar as directed by the California Supreme Court” the process for petitioning the Supreme Court for expungement does not appear to be readily accessible to the average respondent. Indeed, only two petitions

history meeting specified criteria would be automatically expunged. (1AE203.) The Board considered stakeholder feedback on these topics, with the ADDC and Trustees Good and Buenaventura supporting a process for automatic expungement without the need for individual licensees to file petitions, and OCTC supporting retained discretion by the Supreme Court to grant or deny expungement on a case-by-case basis. OCTC also believed that expunged records should remain available for consideration in future discipline proceedings.¹¹ (1AE203–204.)

iii. May 2024 Board Meeting

The Board next considered expungement and website removal at its May 2024 meeting. At this meeting, the Board

have been filed in recent years, neither successful.

(1AE15.)

¹¹ OCTC noted that its position regarding maintaining the ability to use expunged records for consideration in future disciplinary proceedings is consistent with the treatment of criminal records subject to the most common form of criminal expungement through Penal Code section 1203.4, subdivision (a)(1). This approach would also be consistent with other regulatory agencies that discipline professionals, none of which, to OCTC’s knowledge, broadly expunges prior discipline such that it cannot be considered in future proceedings. (1AE203–204.) Proposed rule 9.33 maintains the ability of the State Bar to consider expunged discipline for purposes of future disciplinary proceedings.

settled on the proposed timelines for automatic expungement—essentially, eight years after non-disbarment discipline—that are embodied in proposed rule 9.33. This decision was based on consideration of recidivism data, as well as updated data regarding the practices of other California regulatory agencies and the practices of other states with respect to attorney discipline.

With respect to recidivism, the Board considered data showing the frequency of repeat discipline by California attorneys who were disciplined for the first time between 2004 and 2013. This data, detailed in the table below, showed that, among this group, 75 percent of the licensees who were disciplined again received their second discipline within five years of their first discipline, and 90 percent of those who would be disciplined again were disciplined within eight years of their first discipline:

10 YEAR COHORT SUM				FIRST DISCIPLINE TYPE											
10-Year Total		Overall		Actual Suspension 90+ days			Actual Suspension <90 days			Stayed Suspension			Public Reprava		
Time between first N and subsequent discipline	N	%	Cum. %	N	%	Cum. %	N	%	Cum. %	N	%	Cum. %	N	%	Cum. %
1 Year and less	69	9.1	9	47	18.7	19	7	8.4	8	9	6.4	6	6	2.1	2
1-3 Years	353	46.7	56	116	46.2	65	44	53.0	61	56	40.0	46	137	48.6	51
3-5 Years	142	18.8	75	41	16.3	81	12	14.5	76	36	25.7	72	53	18.8	70
5-6 Years	56	7.4	82	15	6.0	87	6	7.2	83	14	10.0	82	21	7.4	77
6-7 Years	30	4.0	86	11	4.4	92	1	1.2	84	4	2.9	85	14	5.0	82
7-8 Years	29	3.8	90	6	2.4	94	3	3.6	88	6	4.3	89	14	5.0	87
8-9 Years	14	1.9	92	2	0.8	95	2	2.4	90	4	2.9	92	6	2.1	89
9-10 Years	16	2.1	94	3	1.2	96	1	1.2	92	2	1.4	94	10	3.5	93
More than 10 years	47	6.2	100	10	4.0	100	7	8.4	100	9	6.4	100	21	7.4	100
Total Cohort	756	100		251	100		83	100		140	100		282	100	

(2AE233–234.) This suggests that any public protection benefit of keeping discipline records public is greatly reduced by eight years after a licensee’s first discipline, as, by that time, a licensee is highly likely to either have already reoffended *or* not offend again.¹²

The Board also supplemented its review of the practices of other California professional discipline agencies with information about then-pending legislation allowing website removal of discipline information for real estate appraisers after ten years.¹³

¹² As discussed below in Part IV.B, the State Bar has since conducted additional analysis of recidivism data, which also supports the timelines in proposed rule 9.33.

¹³ The legislation has since passed, allowing removal of discipline after ten years upon a showing of rehabilitation, except for

Thus, the disciplinary history removal practices of other California agencies considered by the Board were as follows:

Intervention or Type of Discipline	Doctors (Medical Board of California)	Nurses (California Board of Registered Nursing)	Real Estate Appraisers (Bureau of Real Estate Appraisers)
Private Reprimand	Not applicable	Not applicable	Not Applicable
Public Reprimand	10 years from the effective date	3 years from effective date	Unknown
Discipline including probation or probation with a stayed suspension	Indefinitely	10 years from effective date	Currently: Indefinitely Under SB 1225: at least 10 years
Discipline including probation with an actual suspension	Indefinitely (if this suspension is part of an interim suspension order or similar type order, indefinitely but only posted on the website while in place)	10 years from effective date	Currently: Indefinitely Under SB 1225: at least 10 years
Disbarment or Revocation	Indefinitely	Indefinitely	Currently: Indefinitely Under SB 1225: at least 10 years

(2AE232.) The Board also reviewed information indicating that attorney regulators in all states but two make attorney disciplinary history available on a public website. Of these states, only two limit display by time: Florida, which posts discipline occurring within the past 10 years, and Idaho, which posts

revocation or surrender with discipline pending. (See Bus. & Prof. Code, § 11317.2, subd. (c).)

discipline information for one to five years, depending on the level of discipline. (2AE 233.)¹⁴

Additionally, the Board considered the effects of website removal of non-disbarment discipline after 10 years for all types of discipline or, alternatively, after eight years for public reprovls and 10 years for other types of non-disbarment discipline. Under either option considered, to be eligible for website removal, licensees would be required to have only one discipline, not to have had a previous website removal or expungement of discipline, and to not have any disciplinary matters pending in State Bar Court at the time the discipline would otherwise become eligible for expungement. (2AE234.) The data reviewed by the Board indicated that 1,571 active and inactive licensees, plus 71 attorneys who resigned without charges pending, would be entitled to website removal immediately with a 10-year threshold, with 46 additional active and inactive licensees, plus two attorneys who resigned without charges pending, entitled to website removal immediately with

¹⁴ As noted in footnote 7, *ante*, North Carolina now expunges records in limited circumstances.

an eight-year threshold for public reprovals. (2AE235.)¹⁵ The data also showed that Black attorneys appear to make up a slightly greater share of the attorneys who would be entitled to relief than they make up of the entire attorney population. (2AE236.)

Finally, the Board considered recommending different timelines for expungement and website removal, with expungement defined very broadly and available after 20 years. (2AE236–239.) However, the Board ultimately chose a narrower expungement concept—allowing OCTC and the State Bar Court to continue to view expunged discipline for purposes of future discipline—to be available after a shorter timeframe: eight years for all types of non-disbarment discipline. The Board directed staff to draft a new proposed Rule of Court accordingly. (2AE234.)

¹⁵ This analysis has since been updated to reflect proposed rule 9.33 as now presented to this Court. As of July 1, 2025, upon implementation of the eight-year expungement set forth in proposed California Rule of Court, rule 9.33, 2,368 licensees (1,778 active and 590 inactive), plus 1,073 attorneys who resigned after their first discipline with or without charges pending, would have discipline records expunged immediately. Thereafter, more licensees would receive relief over time as they became eligible. (2AE359.)

**iv. July 2024 Board Meeting and Subsequent
Public Comment Period**

At the Board's next meeting in July 2024, the Board approved for circulation for 60 days of public comment proposed rule 9.33 in substantially the same form as it is presented herein. (2AE251–252, 257.) During this public comment period, 445 comments that stated a position on proposed rule 9.33 were received.¹⁶ Those responses are summarized below:

Please indicate whether you are an attorney	Total Responses: 445	Agree	Disagree	Agree If Modified
Attorney	81 (18%)	38 (47%)	25 (31%)	18 (22%)
Nonattorney	311 (70%)	36 (12%)	262(84%)	13 (4%)
Decline to State	53 (12%)	7 (13%)	41 (77%)	5 (9%)

(2AE260.) As detailed above, while 69 percent of attorney respondents agreed with the proposal or agreed if modified, most public commenters were non-attorneys, the vast majority of whom opposed the proposal.

¹⁶ In addition to the standard circulation via the State Bar's website, all complaining witnesses who filed complaints against attorneys since the launch of the online electronic complaint form in October 2018, and for whom the State Bar had email addresses, were contacted about the opportunity to provide comment. (2AE260.)

Common themes that emerged from those who disagreed with the proposed rule included that the proposed rule was biased toward attorneys over the general public, negative implications for the integrity of the legal profession, and lack of transparency and trust.¹⁷ (2AE261.)

Among the majority of attorney respondents (and small portion of non-attorney respondents) who agreed with the proposal or agreed if modified, comments included:

- “I think this is a reasonable proposal. If an attorney has discipline or a complaint that is 8 years old and has had no other issues, it should not continue to hinder their ability to do their job well.”

¹⁷ These “common themes” were compiled with the assistance of the generative AI Advisor in ThoughtExchange, the engagement and feedback tool used by the State Bar to receive public comment. The Advisor was asked to filter participants by position on the proposal, identify common themes within each group, and then provide example comments for the themes. (For a full compilation of these comments, see 2AE277–306. The compilation uses the abbreviation “A” for agree, “D” for disagree, “AM” for agree if modified, and “NP” for no position.) This compilation includes 482 comments, whereas the statistics above are based on 445 comments; this reflects the fact that a small number of commenters did not indicate a position on proposed rule 9.33 in response to the question asking their position.

- “As an attorney disciplined for alcohol-related misdemeanors, and with the expectation that I will successfully complete the ADP program, and having recovered from alcohol use disorder, the removal of this stigma from my online bar record would be a godsend.”
- “This new rule should be modified to allow only individuals who meet a certain criteria, be allowed this action. It should be handled accordingly, and in my opinion should only be given if there was no victims in their case.”

(2AE261–262.)

Organizational stakeholders also provided their perspective. (2AE263–264.) Of note, OCTC advocated extending the timeframe for expungement of non-disbarment discipline other than reprovations from eight years to 10 years, which OCTC believed better aligned with the approach of other states as well as with California’s approach to doctors, nurses, and real estate appraisers. (2AE263.) CABL expressed support for some aspects of proposed rule 9.33, but was concerned that the rule’s allowance of consideration of expunged records for use as aggravating factors in future discipline proceedings could continue the effects

of historical disproportionate discipline of Black and Brown attorneys as compared to their White counterparts. (2AE264.)

**v. November 2024 Board Meeting and
Additional Public Comment From
Disciplined Attorneys**

At its November 2024 meeting, the Board considered the public comment described above, and voted to approve for submission to this Court proposed rule 9.33 as it had been circulated for public comment (with a nonsubstantive correction of a drafting error), calling for automatic expungement (including website removal) of non-disbarment discipline after eight years, while preserving the ability of OCTC and State Bar Court to access expunged records for the purposes of future discipline. (2AE274.)¹⁸

¹⁸ At the November 14, 2024, meeting, the Board noted that expunged records may still subject to production pursuant to the California Public Records Act (CPRA), which does not contain an exception for expunged records. Accordingly, the Board directed staff to develop a legislative priorities proposal that provides that expunged licensee and former licensee discipline records are exempt from disclosure under the CPRA. (2AE274.) However, at its May 22, 2025, meeting, the Board directed State Bar staff to limit its legislative efforts this year to advancing the fee bill and addressing significant admissions issues. (2AE353.) The State Bar anticipates pursuing an exception to the CPRA for expunged records in the event the Court adopts the proposed rule.

At this meeting, the Board noted that while complaining witnesses received direct outreach regarding the public comment opportunity, similar targeted outreach had not been made to attorneys whose discipline history could be expunged under the proposed rule, potentially tipping the scale in favor of public comments against providing expungement relief.

Accordingly, the Board directed staff to contact attorneys who might be affected and to provide them with an opportunity to submit public comment before submission of proposed rule 9.33 to this Court. State Bar staff thereafter conducted the outreach as directed by the Board, and received 217 comments from attorneys, of whom 214—or over 98 percent—either support proposed rule 9.33 (200 responses) or support it with modifications (14 responses). (2AE308–344.) Narrative comments from these attorneys included:

- “Having one mistake and wearing a scarlet letter for life is unreasonable and harsh as no one is perfect. Having a disciplinary public record already impacts a member’s reputation and thus loss of clients and business.

Punishment for life does not seem right or fair. Automatic

Expungement after a certain number of years is a right move.”

- “The proposed changes are well considered and well drafted. The policy purpose of permitting attorneys to achieve redemption through proven years of practice promotes the public interest.”
- “My discipline was over 25 years ago. I was a 2 year lawyer and a sole practitioner at the time and made a mistake. I have spent the last 28 years making amends for it and making an effort to prove to judges and my peers that the black mark on my record is not characteristic of my work. I feel that this is a fair compromise between punishing me (forever???) and the public’s right to know who they are dealing with. I think 8 years is fair, certainly 10 or 12 even more so.”

(Ibid.)

Thus, attorneys with prior discipline—those who would be affected directly by the proposed rule—overwhelmingly support it.

C. Complementary Record Clearance Undertaken by the State Bar Independently

As discussed above, the commission and then the Board considered expungement and website removal as independent topics with potentially different timelines, before the Board ultimately determined that website removal should mirror expungement, as provided in proposed rule 9.33.

While website display of disciplinary history is not required or governed by any statute or California Rule of Court, and therefore the State Bar could, as a policy decision, limit the website display of disciplinary history by time, the Board has chosen to await this Court's review of and direction on expungement as set forth in proposed rule 9.33, so that any policy change made by the State Bar can be consistent with the Court's guidance.¹⁹

However, in recognition of the fact that licensees may suffer professional and reputation harm from indefinite website

¹⁹ The State Bar notes that proposed rule 9.33 does not affect the display on attorneys' public profile pages of information reflecting that they resigned with charges pending. After this Court acts on and/or provides guidance with respect to this petition, the State Bar anticipates presenting to the Board policy options for removal or continued display of such information consistent with this Court's action or guidance.

display of *non-disciplinary* administrative suspensions (such as for non-payment of annual license fees or failing to comply with client trust accounting reporting requirements) without any public protection benefit that clearly justifies indefinite posting, the Board directed staff to implement a policy for removal of up to two administrative suspensions following the end of each suspension, and of any additional administrative suspensions four years after their end dates. (See 2AE270–272, 274.) This policy has since been implemented.²⁰

²⁰ Additionally, at its May 16, 2024 meeting, the Board directed State Bar staff to draft a proposed Rule of the State Bar to effectuate removal from attorney profile pages on the State Bar website of reference to criminal conviction transmittals within six months of the receipt of an order granting relief pursuant to sections 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.425 of the Penal Code. (2AE243.) A proposed rule on this topic has not yet been returned to the Board pending Court action on this petition, so that any policy rule change can be informed by and consistent with the Court’s in this area.

IV. PROPOSED RULE OF COURT 9.33

A. Structure and Effect of Proposed Rule of Court 9.33

Proposed rule 9.33 is set forth in full at Exhibit 1.²¹ and comprises four sections.

Paragraph (a) of the rule—“Definitions”—defines terms applicable to expungement as follows:

(1) “Discipline” means any of the following sanctions imposed upon a finding of misconduct:

- (A) Actual suspension;
- (B) Stayed suspension;
- (C) Public reproof;
- (D) Private reproof; or
- (E) Any interim remedies or other final discipline authorized by the Business and Professions Code.

(2) “Expungement” or “expunge” means the removal of information from a licensee’s public record of discipline maintained by the State Bar.

(3) “Former licensee” is a licensee who resigned their license to practice law in this state.

(4) “Voluntary inactive” is the license status for a licensee who has voluntarily changed their license status from active to inactive and whose license is not currently suspended.

²¹ The version of proposed rule 9.33 submitted to this Court for review corrects a typographical error from the version approved by the Board of Trustees.

(1AE6.)

Notably, in defining expungement, proposed rule 9.33 refers to removal of information “from a licensee’s public record of discipline maintained by the State Bar.” The State Bar interprets this term as covering not only the public record of discipline available on attorney profile pages on the State Bar website, but also public records of discipline available through the State Bar Court’s online docket, as that online docket is also a “public record of discipline maintained by the State Bar.” Accordingly, expungement under the proposed rule would result in the removal of online docket entries from the State Bar Court’s public docket though, as allowed by the proposed rule, the State Bar Court would continue to maintain such files non-publicly. If the Court wished to add further clarity on this issue, a nonsubstantive edit could be made by adding the phrase “including public records of the State Bar Court” after “maintained by the State Bar” in paragraph (a)(2).

Conversely, the proposed rule would not affect the public availability of published opinions of the State Bar Court Review Department or of this Court, even if those opinions concerned

discipline that was later expunged. Such published opinions are, by virtue of their publication, precedential opinions, and they exist in compilations of published opinions, not solely in individual licensee records. (See, e.g., California State Bar Court Reporter, available at <<https://www.statebarcourt.ca.gov/Case-Dispositions/State-Bar-Court-Reporter>> (as of July 1, 2025).) The are not “a licensee’s public record of discipline,” and are thus not subject to the rule.²²

Paragraph (b) of proposed rule 9.33—“Effect of expungement”—limits the scope of expungement. It provides:

(1) Expungement of information from the public record of discipline does not seal the record and expunged information can be used as an aggravating circumstance and as prior discipline under Standards 1.5 and 1.8 of the Standards for Attorney Sanctions for Professional Misconduct, respectively.

(2) Expungement of a licensee’s public record of discipline does not relieve the licensee or former licensee of their duty to disclose the suspension for purpose of determining the licensee’s eligibility for a judgeship under the California Constitution, article VI, section 15.

(3) Expungement of a licensee’s public record of discipline does not absolve a licensee from

²² In addition to not being a licensee’s record of discipline, published opinions of this Court are not records “maintained by the State Bar,” and not subject to expungement by the proposed rule for that additional reason.

prosecution by the State Bar for the unauthorized practice of law during the time period in which the licensee was not eligible to practice law. If expunged, the licensee's public record of discipline will remain available to the Office of Chief Trial Counsel for the purpose of prosecuting a licensee for the unauthorized practice of law.

(1AE7.)

This section makes clear that while expunged discipline will no longer be public—and thus that the potential professional and reputational damage that public discipline could cause to a licensee long after their discipline has been completed is mitigated—expunged discipline can still be utilized to serve several important public protection functions.

Paragraph (c) of the proposed rule—"Records to be maintained by State Bar"—provides that while the public record of expunged discipline shall be removed or deleted, the State Bar shall maintain internal records necessary to determine whether discipline has been previously expunged (for the purpose of determining eligibility for one-time expungement) and to report to the Commission on Judicial Nominees Evaluation on a licensee's eligibility for a judgeship. (*Ibid.*)

Finally, paragraph (d) of the proposed rule— “One-time expungement of nondisbarment discipline from public record”— sets forth the eligibility criteria for expungement:

The State Bar is directed to expunge a nondisbarment discipline record from the licensee’s or former licensee’s attorney profile page for a licensee or former licensee who meets all of the following criteria:

- (1) The licensee or former licensee has not on any previous occasion obtained an expungement of discipline;
- (2) The licensee or former licensee has only one discipline;
- (3) The individual’s license status is active, voluntary inactive, or the individual is a former licensee;
- (4) The licensee does not have any disciplinary matters pending in State Bar Court or before the Supreme Court at the time their prior discipline would otherwise be eligible for expungement under paragraph (5); and
- (5) At least eight years have passed from the:
 - (A) Effective date of a public or private reproof;
 - (B) Termination of a term of probation with a stayed suspension, when there is no actual suspension imposed;
 - (C) Termination of probation or reinstatement following termination of the actual suspension, whichever is later.

If a licensee has a disciplinary matter pending in State Bar Court or before the Supreme Court as described under paragraph (4), the requirement under paragraph (4) shall only be satisfied if the pending matter is dismissed or resolved without discipline.

(*Ibid.*)

These eligibility criteria for expungement provide meaningful relief to the professional and reputational harm potentially suffered by licensees whose disciplinary history would otherwise remain public indefinitely, while fulfilling the public protection function of the discipline. Providing for expungement as recommended herein is also consistent with California’s approach to record clearance in the criminal context, for which eligibility has been expanded and clearance in certain cases made automatic in recent years. (See Assem. Bill No. 1076 (2019–2020 Reg. Sess.) §§ 1–2, 7–9; Sen. Bill No. 731 (2021–2022 Reg. Sess.) §§ 1, 3–8.)

This Court has long and consistently held that the purpose of attorney discipline is not to punish attorneys, but to protect the public. (See, e.g., *Gadda v. State Bar* (1990) 50 Cal.3d 344, 354. [“The purpose of attorney discipline is not to punish the errant attorney, but to protect the public, the courts and the legal

system.”]; *Arden v. State Bar* (1987) 43 Cal.3d 713, 725 [“The purpose of disciplinary proceedings is not to punish the attorney but rather to protect the public and the profession from the wrongful conduct of persons unfit to practice law.”].) Thus, while keeping disciplinary history public past the completion of the discipline could serve public protection to the extent it provides the public with information allowing them to avoid an attorney who is likely to commit misconduct, discipline history should not continue to be public after it ceases to protect the public, as the only rationale for doing so would be to punish the licensee (who is likely to suffer professional and reputational effects from continued publication of their past discipline). As discussed above, recidivism data indicates that the lion’s share of attorneys who reoffend after their first discipline will have done so within eight years after their first discipline. Thus, there is little added public protection benefit to keeping disciplinary records public more than eight years after a first and only discipline. Further, by limiting expungement to one time and disallowing it if there are pending disciplinary matters, paragraph (d) further serves public protection by maintaining the public record of discipline of repeat offenders. While one of the two other states that do not

post attorney discipline history indefinitely and California’s regulators of nurses, doctors, and real estate appraisers remove disciplinary history on a longer timeframe.²³ this recidivism data supports the eight-year time frame as a considered and balanced compromise between the commission’s initially recommended timelines (which would have allowed expungement of non-disbarment public discipline after between three and five years) and longer timelines that appear more punitive to licensees.

B. The Timelines Set Forth in Proposed Rule of Court 9.33 Are Supported by Updated Recidivism Data

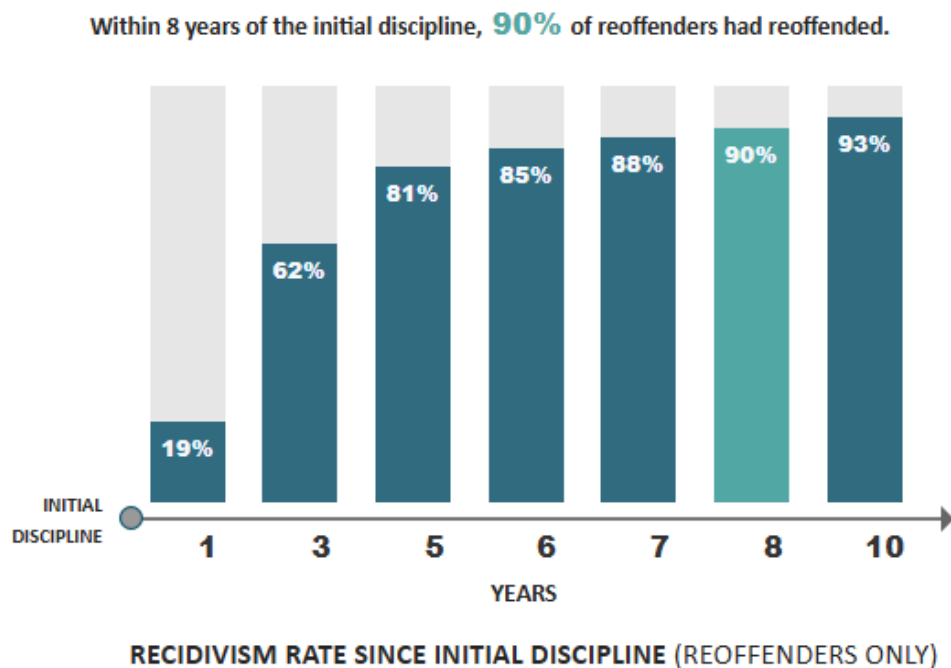
The State Bar’s initial analysis of recidivism data—which, as discussed above, indicated that 90 percent of licensees in the analysis (California attorneys who were disciplined for the first time between 2004 and 2013) who reoffended during the intervening time (through 2023) did so within eight years of their first discipline—was based on measuring the time from the

²³ As set forth in footnote 7, *ante*, recent rule changes in a third state, North Carolina, provide for expungement or sealing for admonitions five years after admonition and, after 10 years, for reprimand, censure, or stayed suspension, subject to certain conditions and only for certain types of misconduct.

imposition of a first discipline to the start of any subsequent discipline.

However, the eight-year period embodied by proposed rule 9.33 does not begin at the start of the first discipline, but rather upon the effective date of a public or private reproof, upon termination of a term of probation with a stayed suspension, when there is no actual suspension imposed, or, for an actual suspension, termination of probation or reinstatement following termination of an actual suspension, whichever is later. (1AE7.) In other words, the period begins running later—upon the completion of the first discipline, not the start date of the first discipline.

To ensure that the recidivism data best matches the proposed rule, after the Board approved proposed rule 9.33, State Bar staff reconducted the analysis of these attorneys and found, again, that within eight years of the initial discipline—with the eight years measured as set forth in proposed rule 9.33(d)(5)—90 percent of those studied who would reoffend had done so within eight years:



(2AE355–356.) This pattern held true whether the initial discipline was an actual or stayed suspension, or a reproof.

(2AE356.)

State Bar staff also realized that the recidivism up through 2023 of attorneys who were first disciplined between 2004 and 2013 could underestimate recidivism in later years after first discipline because some of the attorneys in the study would not have many years to recidivate (e.g., for attorneys first disciplined in 2013, this study could only look at their recidivism over approximately ten to 11 years). Accordingly, State Bar staff analyzed the records of attorneys who had their first discipline in

1990 or later, analyzing repeat discipline through December 31, 2024. The pattern observed with the 2004–2013 analysis held, with relatively little change. In this broader timeframe, 86 percent of attorneys who would reoffend in the study period did so within eight years after completion of their first discipline, with 90 percent reoffending within ten years of their first discipline. (See 2AE359–360.)

Thus, this updated data still suggests that, eight years after an initial discipline, as measured by the proposed rule, the great majority of licensees who are going to recidivate will have done so. Keeping their initial discipline public after this time thus would have diminishing public protection benefits, while continuing potential reputational harm to the licensee long after the completion of the initial discipline.

Additionally, while performing this updated recidivism analysis, State Bar staff updated the analysis of how many licensees would receive relief under the proposed rule 9.33. As of July 1, 2025, upon implementation of the eight-year expungement set forth in proposed rule 9.33, 2,368 licensees (1,778 active and 590 inactive), plus 1,073 attorneys who resigned at some point after their first discipline with or without charges

pending, would have discipline records expunged immediately. Thereafter, more licensees would receive relief over time as they became eligible. (2AE359.)

C. Proposed Rule 9.33 Does Not Itself Address Treatment of This Court's Files

Proposed rule 9.33, if adopted as currently proposed, affects only the State Bar's records of expunged discipline, including by removing such records from the State Bar's website and the State Bar Court's online docket. The proposed rule does not restrict the public's ability to access information about expunged discipline to the extent it is available through this Court's files (for example, though this Court's orders imposing suspensions recommended by the State Bar Court). To ensure that information about expunged discipline is shielded from the public and only used for the purposes contemplated by paragraph (b) of the proposed rule, this Court may wish to provide, either through revisions to this rule or otherwise, that the Court's records pertaining to discipline that has been expunged are confidential and shall not be disclosed (other than published opinions, which are needed for citation as precedent and are not found solely in individual licensees' case records).

V. CONCLUSION

For the reasons discussed above, the State Bar respectfully requests that the Supreme Court review and approve proposed California Rules of Court, rule 9.33, as set forth in Exhibit 1 to the Appendix of Exhibits, to be included in a new Chapter 5 (Expungements) within division 2 of title 9 of the California Rules of Court.

Dated: July 7, 2025

Respectfully submitted,

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Document received by the CA Supreme Court.