

Proposed Rule 9.33 of Proposed Chapter 5 (Expungements) of the Rules of Court

Rule 9.33. Expungement of records of discipline

(a) Definitions

As used in this chapter, unless context otherwise requires:

- (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.

(b) Effect of Expungement

- (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 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.

(c) Records to be maintained by State Bar

When information is expunged under subdivision (d), the State Bar will remove or delete the information from the public record of discipline. Notwithstanding any other provision of this rule, the State Bar must maintain such internal records as are necessary to apply the terms of subdivision (d) and subdivision (e) of this rule and to report to the Commission on Judicial Nominees Evaluation, or appropriate governmental entities involved in judicial elections, the licensee's eligibility for a judgeship under the California Constitution, article VI, section 15.

(d) One-time expungement of nondisbarment discipline from public record

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.