



*The California State Bar - Administrative Arm of the Supreme Court:
Disconcerting Revelations Raise Questions About its Ability to Protect
the Public*

**An Oversight Hearing of the Assembly and Senate Committees on
Judiciary**

Background Paper

By the Staff of the Assembly and Senate Committees on Judiciary

I. Introduction

The State Bar is embroiled in scandal over its handling, or lack thereof, of once prominent trial attorney Thomas Girardi (*hereafter* Girardi). In 2021, Girardi was accused of stealing millions of dollars from his injured clients over many years. A federal court found that he had misappropriated \$2 million that was awarded to victims' families of the Lion Air Flight 610 plane crash of 2018, and referred the matter to federal prosecutors for further investigation.¹ This incident triggered numerous further accusations against Girardi for stealing client funds and the true scope of his malfeasance finally began to materialize. Eventually, Girardi and his law firm, Girardi Keese, were forced into bankruptcy. This year, Girardi was indicted by federal grand juries in Los Angeles and Chicago on charges that he embezzled more than \$18 million from his clients.

The State Bar initially refused to release any information about complaints, closed cases, or investigations it had conducted on Girardi citing to confidentiality provisions in Section 6086.1 of the Business and Professions Code. The L.A. Times sued the State Bar and the State Bar eventually agreed to release roughly 40 years of disciplinary records. The released records showed Girardi had over 200 complaints filed against him since

¹ Halpern May Ybarra Gelberg LLP, Independent Investigation for the State bar of California: Report of Investigation (February 4, 2023), p. 14.

1983, many of which alleged misappropriation of client funds.² In the aftermath of the Girardi revelations, the State Bar initiated two investigations. The first was an audit of all closed disciplinary cases pertaining to complaints filed with the State Bar against Girardi (*hereafter* Lazar Report). The second was an independent investigation into whether the State Bar's handling of past discipline and complaints against Girardi was

affected by his connections and influence at the State Bar (*hereafter* May Report). The revelations disclosed in these reports were astounding and raise very troubling questions about the ability of the State Bar to perform its core mission of protection of the public through disciplining attorneys licensed in this state.

II. Background: California State Bar

A. *The State Bar of California functions as the administrative arm of the California Supreme Court for the purpose of assisting in attorney admissions and discipline*

As a constitutional matter, the judicial power of California is vested in the Supreme Court, Courts of Appeal, and superior courts. (Cal. Const., art. VI, Sec. 1.) (*In re Attorney Discipline System* (1998) 19 Cal.4th 582, 592; *Obrien v. Jones* (2000) 23 Cal.4th 40, 48.) In addressing this inherent authority to regulate the practice of law, the Supreme Court has explained: "The important difference between regulation of the legal profession and regulation of other professions is this: Admission to the bar is a *judicial function*, and members of the bar are *officers of the court*, subject to discipline by the court. Hence, under the constitutional doctrine of separation of powers, the court has inherent and *primary regulatory power*." (*In re Attorney Discipline System, supra*, 19 Cal.4th at 593.) The State Bar functions as the administrative arm of the Supreme Court for the purpose of assisting in attorney admissions and discipline, with the court retaining its inherent judicial authority to disbar or suspend attorneys. (*In re Attorney Discipline System, supra*, 19 Cal.4th at 599-600; *see Keller v. State Bar of California* (1990) 496 U.S. 1, 11.)

Attorneys who wish to practice law in California generally must be admitted and licensed in this state and must be licensed by the State Bar. (Cal. Const., art. VI, Sec. 9.) The State Bar of California is the only state licensing and regulatory entity that is also a public corporation.³ There are other entities established as public benefit corporations under state law, such as the State Compensation Insurance Fund, Cal ISO, and the California Earthquake Authority, but none of these entities are regulatory agencies. Although originally a creature of statute, the State Bar is now "a constitutional entity within the judicial article of the California Constitution." (*Obrien, supra*, 23 Cal.4th at 48; *see* Cal. Const., art. VI, § 9; Bus. & Prof. Code, Sec. 6001.) The State Bar's regulatory assistance is an integral part of the judicial function. (*Obrien, supra*, 23 Cal.4th at 48.)

² State Bar of Cal., *State Bar Disclosure of Girardi Closed Cases* (Nov. 3, 2023), available at <https://www.calbar.ca.gov/About-Us/News/FAQ-Girardi-Closed-Cases-Disclosure>.

³ Cal. Const. art. VI, Sec. 9; Business & Professions Code Section 6001.

Emphasizing the *sui generis* nature of the State Bar as its administrative arm, the Supreme Court has made clear that “express legislative recognition of reserved judicial power over admission and discipline is critical to the constitutionality of the State Bar Act.” (*In re Attorney Discipline System, supra*, 19 Cal.4th at 600, citing Bus. & Prof. Code Sec. 6087.)

At the same time, the Legislature’s exercise, under the police power, of a reasonable degree of regulation and control over the profession and practice of law in California, is well established. (*O'Brien, supra*, 23 Cal.4th at 48.) The Legislature exercises regulatory authority pursuant to the State Bar Act and has authority to set the amount of license fees necessary to fund the disciplinary system. Over the years, the Legislature has enacted statutes making protection of the public the highest priority of the State Bar (Bus. & Prof. Code § 6001.1) and subjecting the Chief Trial Counsel of the State Bar to Senate confirmation (Bus. & Prof. Code § 6079.5).

B. The State Bar has a troubled history prioritizing protection of the public and making imprudent financial decisions

The State Bar of California is the largest state bar in the country. As of April 22, 2023, the total State Bar membership is 288,238, which includes 195,155 active licensees, 2,221 judge members, 16,976 licensees who are “Not Eligible to Practice Law,” and approximately 73,886 inactive members.⁴ The State Bar’s programs are financed mostly by annual license fees paid by attorneys. The State Bar is governed by a Board of Trustees (Board). Prior to 2017, the State Bar was a unified bar meaning it was both the regulatory arm of the state as well as an attorney trade association. The Legislature found that the State Bar had historically focused undue attention on its trade association functions to the detriment of its fundamental and critically important regulatory functions and protection of the public. As a result, the Legislature deunified the State Bar by separating its trade association functions from its regulatory functions.⁵ The trade association functions were transferred to the California Lawyers Association, a private, nonprofit corporation.⁶ Additionally, the number of members on the Board was reduced from 19 to 13 by eliminating all elected attorney member positions on the board. The Board is now comprised of five attorney members appointed by the Supreme Court; two attorney members appointed by the Legislature; and six non-attorney public members.⁷

In 2012, the State Bar purchased a building in Los Angeles. However, according to the State Auditor, the State Bar did not perform a cost-benefit analysis to determine if the purchase was appropriate and warranted before receiving approval from its Board to

⁴ State Bar of Cal, *Attorney Status*, (current as of April 22, 2023), available at <https://members.calbar.ca.gov/search/demographics.aspx>.

⁵ SB 36 (Jackson, Chap. 422, Stats. 2017).

⁶ Business & Professions Code Section 6056-6056.3.

⁷ Business & Professions Code Section 6013.1.

purchase the building, did not fully inform the Legislature of its plans, and potentially risked public safety by doing so and not prioritizing other areas, such as attorney discipline. The Auditor found that the decision to purchase the Los Angeles building jeopardized the State Bar's core function to protect public safety: "Rather than using its financial resources to improve its attorney discipline system, the State Bar dedicated a significant portion of its funds to purchase and renovate a building in Los Angeles in 2012."⁸ Even more troubling, the State Bar chose to secure the additional funding for the Los Angeles building, in part, through a loan that required the State Bar to use \$4.6 million of its Public Protection Fund as collateral for the loan. The sole purpose of the Public Protection Fund is to protect the public in the event of a financial emergency. However, without any notification to its members or the Legislature, the State Bar decided, unilaterally, to tie up over 70 percent of its Public Protection Fund – \$4.6 million of the \$6.5 million fund – for the 15-year life of the loan. The State Auditor noted that the use of money in the Public Protection Fund was part of a larger pattern in which the State Bar had been transferring money between its various funds and using the money on unrelated items. The Auditor found that the State Bar made 50 transfers between funds involving a total of \$64.2 million from 2009 through 2012.⁹

Several years later, in 2016, the State Bar took out a \$10 million loan to make upgrades and tenant improvements on its San Francisco building at 180 Howard Street. The State Bar did this without any input or approval from the Legislature. In order to use some of the loan as security for repayment, the State Bar chose to secure the loan through a security interest in future member dues, again without consulting the Legislature. The loan was secured on future license fees and was entered on March 1, 2016 for a term of ten years. Before receiving approval from the Board to take out the loan, the State Bar requested an opinion from its staff on the legality of the revenue pledge. Though staff found the loan to be legally permitted, legal staff suitably warned that the pledge has the:

[P]otential to impact the Bar's regulatory functions, could additionally be deemed inconsistent with the later adoption of Business & Professions Code, section 6001.1, which provides that the Bar must place public protection as its highest priority and additionally states, "[w]henever the protection of the public is inconsistent with other interest sought to be promoted, the protection of the public shall be paramount." ... [S]uch a pledge could subject the Bar to criticism on the basis that it could place funds that govern its core regulatory activities at what may be deemed to be unnecessary risk.¹⁰

When the proposal was presented to the Board for approval, these risks were not included in the materials presented to the Board. Furthermore, this decision was taken

⁸ Cal. State Auditor, *State Bar of California: It Has Not Consistently Protected the Public Through its Attorney Discipline Process and Lacks Accountability* (June 2015) at 43.

⁹ *Id* at 13.

¹⁰ Asm. Com. on Judiciary Analysis of S.B. 36 (2017-18 reg. session) as amended Apr. 6, 2017 at p. 8.

just one year after the Auditor questioned the State Bar's decision to purchase its Los Angeles building on the basis that the State Bar had not considered whether the resources to repay the loan might be better spent on improving the discipline system and had noted that not doing so posed a potential risk to public protection.

The State Bar also had a pattern of disconcerting spending on various expenses as identified in the 2017 audit by the State Auditor.¹¹ For example, the State Bar spent \$156,900 on alcohol between January 2015 and September 2016, and paid \$768,000 for lobbying activities between 2014 and 2016. Further reports showed that the State Bar paid for various trips to El Salvador, Mexico, Guatemala, Nicaragua, Peru, and Mongolia according to documents compiled by The Recorder.¹² In response to these reports and deunification, the State Bar reduced its expenses in many of these areas and prohibited the purchase of alcohol for its events and meetings. Just this year, the State Bar decided to not renew its long-time contract with a lobbyist and move this function in-house.¹³

III. State Bar Discipline System – Public Protection is its Highest Priority

The State Bar Act provides that protection of the public is the highest priority of the State Bar and that whenever the protection of the public is inconsistent with other interests sought to be promoted, protection of the public is to be paramount.¹⁴ The Office of Chief Trial Counsel (OCTC) is charged with receiving complaints against attorneys, conducting investigations, determining whether to file formal charges, and prosecuting cases in the State Bar Court. OCTC is headed by a Chief Trial Counsel (CTC), who is to be appointed by the Board and subject to confirmation by the Senate. The CTC is appointed for a four year term and may be reappointed for additional terms. The State Bar Court is an independent professional court that hears cases regarding attorney discipline and makes recommendations to the Supreme Court regarding suspension or disbarment of an attorney for violations constituting professional misconduct or conviction of serious crimes. The Supreme Court makes the ultimate decision regarding suspension or disbarment of a licensed attorney. California is the only state that has an independent court dedicated to ruling on attorney discipline cases.

A. Phases of the discipline process – intake, investigation, charging, and hearing

The discipline process consists of four phases. The first is the intake phase where the OCTC receives a complaint that an attorney has violated a rule of professional conduct

¹¹ Cal. State Auditor, *The State Bar of California: It Needs Additional Revisions to its Expense Policies to Ensure That It Uses Funds Prudently* (June 2017).

¹² Cheryl Miller, *Joe Dunn, Bar Officials Spent Freely on Foreign Travel*, The Recorder (Jan. 25, 2016).

¹³ Cheryl Miller, *State Bar Nixes Contract With Its Capitol Lobbyist*, The Recorder (Jan. 6, 2023).

¹⁴ Business & Professions Code Sec. 6001.1.

or ethical requirement. Additionally, the OCTC may initiate an investigation on its own based on information it has received. OCTC conducts an initial review and gathers some information on the complaint. It then will either close the complaint or refer it for further investigation. The State Bar has reported that 63 percent of complaints are closed at the intake phase and that, on average it takes 42 days to close a complaint at this stage.¹⁵ The second phase is where OCTC investigators, under the supervision of OCTC attorneys, conduct an investigation into the complaint by conducting interviews, issuing subpoenas, reviewing documents, and taking other actions to determine whether there is clear and convincing evidence of attorney misconduct, or if a case should be closed. The State has reported that 33 percent of complaints are closed at the investigation phase and on average take 230 days to close cases at this stage.¹⁶ The closing of a case at this phase can be due to lack of evidence or because the State Bar has reached an agreement with the attorney in lieu of discipline for violations that are considered low-level.¹⁷

At the charging phase, OCTC evaluates the evidence collected and begins documenting potential charges and discipline to seek. If it is determined that there is sufficient evidence to file charges against an accused attorney, OCTC notifies the attorney in writing of its intent to file formal charges with the State Bar Court. The accused attorney is entitled to request a confidential meeting, referred to as an Early Neutral Evaluation Conference (ENEC), before formal charges are filed. An ENEC is where the attorney and OCTC appear before a State Bar Court hearing judge to evaluate the evidence and charges and to attempt to resolve the case by negotiating a settlement. If requested by an accused attorney, an ENEC is mandatory; however, informal negotiations may still occur between the accused attorney and OCTC even if the attorney has not requested an ENEC. Additionally, OCTC can close a case or come to a settlement with an accused attorney during this phase. The State Bar has reported that about 4 percent of complaints handled by OCTC were closed at the charging phase, reached negotiated settlement, or resulted in the filing of charges, and that on average these actions took 449 days.¹⁸ The final stage of the discipline process is the hearing phase when OCTC files disciplinary charges with the State Bar Court and prosecutes the case. The case is adjudicated by a State Bar Court hearing judge who imposes discipline based on the misconduct committed, ranging from dismissal, public or private reprimands, probation, suspension, or disbarment. The State Bar Court also reviews settlement terms reached at the end of the charging phase. If the proposed discipline involves the suspension or disbarment of the attorney, the California Supreme Court reviews the findings and recommended disciplinary action and issues a final order.

¹⁵ Legis. Analyst, *The California State Bar: Assessment of Proposed Disciplinary Case Processing Standards* (Jan. 2023), p. 6.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ *Ibid.*

B. Rule 2201 – Outside investigations based on conflicts of interest

Under the Rules of Procedure of the State Bar, the CTC is required to recuse the OCTC from investigating or prosecuting complaints against attorneys if a conflict of interest, or the appearance of a conflict of interest, could raise concerns about OCTC's impartiality. Rule 2201 provides a procedure for referring such complaints or inquiries to a special deputy trial counsel administrator (administrator). Generally, The State Bar's intake unit identifies and refers conflict cases or inquiries to the administrator. The administrator is an independent contractor that has the same powers of the CTC, though the Rule 2201 program is overseen by the Board's Regulation and Discipline Committee. There are roughly 20 special deputy trial counsels supporting the administrator in the 2201 program, all of whom are external investigators and not employees of the State Bar.

In the most recent audit of the State Bar by the State Auditor, the Auditor notes that the State Bar determined in 2021 that the hourly rate for 2201 investigators was "significantly below market rate" and that to "ensure that its compensation was more commensurate with the market rate and to improve recruitment and retention of qualified practitioners, the State Bar increased the external investigators' hourly rate to \$250."¹⁹ The State Bar approved a contract for a full time administrator in 2022 that authorizes billing of "up to 120 hours per month for external investigator duties at a \$114 hourly rate" and "up to 45 hours per month for administrator duties at a \$125 hourly rate."²⁰ The Auditor noted that "the State Bar allocated about \$456,000 to the Rule 2201 program [in 2022] but subsequently exceeded this budget by \$431,000."²¹ Upon review of the 2201 program, the Auditor concluded that the State Bar does not ensure that the 2201 program consistently concludes its external disciplinary cases within the time frame established by the State Bar and does not have any formalized "permanent process to ensure that its current and future administrators are identifying external investigators' potential conflicts of interest."²²

C. The State Bar did not have a Senate confirmed Chief Trial Counsel for over five years

The CTC is the top prosecutor in the State Bar's discipline system and requires Senate confirmation. However, the State Bar left this critical position vacant for over five years instead managing its discipline system with an acting CTC in the position. In order to ensure that the State Bar actually followed through with the Senate confirmation process as required by statute, SB 211 (Umberg, (2021), as amended May, 5, 2021), conditioned the ability of the State Bar to collect its license fee on the State Bar

¹⁹ Cal. State Auditor, *The State Bar of California: It Will Need a Mandatory Licensing Fee Increases in 2024 to Support its Operations* (April 2023) at 4.

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Id* at 20.

appointing and the Senate confirming a CTC. In August of 2022, the State Bar finally appointed a CTC. In light of that development, SB 211 was amended to authorize the State Bar to collect a licensing fee for 2022 in the same amount as 2021. (Ch. 723, Stats. 2021.) The State Bar appointed George Cardona, a former Assistant United States Attorney, as its CTC, and Mr. Cardona was confirmed by the Senate in July 2022.

D. The State Bar discipline process suffers from a backlog of cases

The State Bar discipline process has suffered from a backlog of cases (cases that are not processed within six months of receipt) for a very long time. In the 2021 audit, the Auditor found that changes made to improve the State Bar's discipline system actually significantly reduced its efficiency noting that "the State Bar's backlog grew by 87 percent from the end of December 2015, to the end of June 2020."²³ As pointed out by the Auditor, this "growing backlog allows attorneys who are under investigation more time to continue practicing law while their cases are pending, increasing the risk for potential harm to the public."²⁴ The Auditor's "analysis indicates that both higher- and lower-priority cases are taking significantly longer to resolve."²⁵ Additionally, as the Auditor highlights, the "State Bar is also disciplining attorneys at a drastically lower rate for reasons it cannot adequately explain. From 2015 through 2019, the total number of cases that resulted in discipline – including reprovations, suspensions, and disbarments – declined by 54 percent."²⁶

SB 211 required the State Bar to propose case processing standards to address its existing backlog, and required the Legislative Analyst Office (LAO) to provide a report to the Legislature on the proposed case processing standards. The LAO report found that the workload of OCTC steadily increased from 2017-18 through 2019-20 and that the total number of cases opened peaked in 2019-20 with 20,979 cases.²⁷ The State Bar reported opening 14,989 cases and closing 14,409 cases in 2021-22. "Of the cases closed, 13,979 cases (or 97 percent) were closed without charges being filed and 430 case (or 3 percent) resulted in charges being filed in the SBC [State Bar Court]. Less than 4 percent of OCTC cases closed annually resulted in charges filed in SBC between 2017-18 and 2021-22."²⁸ In regards to the State Bar Court, the LAO reports that 89 percent of cases closed in the State Bar Court were done so with the imposition of discipline and that the number of cases closed has been exceeding the number of cases pending at the end of the year.²⁹ "Specifically, SBC [State Bar Court] had 637 cases pending at the end of 2021-

²³ Cal. State Auditor, *The State Bar of California: It Is Not Effectively Managing Its System for Investigating and Disciplining Attorneys Who Abuse the Public Trust* (April 2021) at 11.

²⁴ *Ibid.*.

²⁵ *Id.* at 16.

²⁶ *Ibid.*

²⁷ Legis. Analyst, *The California State Bar: Assessment of Proposed Disciplinary Case Processing Standards*, *supra*, at p. 7.

²⁸ *Ibid.*

²⁹ *Ibid.*

22 – a decrease of nearly 22 percent from 2017-18.”³⁰ However, the LAO notes that the “average amount of time needed to file cases in the SBC [State Bar Court] increased by 41 percent between 2017-18 (466 days) and 2021-22 (658 days), and the median amount of time increased by 47 percent between 2017-18.”³¹

E. 2022 Audit of the State Bar discipline system

In light of the Girardi revelations, SB 211 (Umberg, Ch. 723, Stats. 2021) required an independent audit of the State Bar’s attorney complaint and discipline process by the Legislative Analyst to determine if it adequately protects the public from attorney misconduct. That audit found that “weak policies limits [the State Bar’s] ability to protect the public from attorney misconduct.”³² The audit discovered that many cases (64.5 percent) are closed during the State Bar’s intake process, with another 22.2 percent closed during the investigation process, leaving only 5.3 percent of cases receiving formal discipline, which can include formal or private discipline.³³ Additionally, the audit indicated that too many cases appeared to be closed by private discipline and without further investigation. This private discipline may not deter some attorneys from further misconduct and can potentially allow some to commit misconduct. The audit stated:

A State Bar study from July 2021 showed that a significant number of attorneys were investigated for misconduct within two years after being disciplined. It also showed that nearly 26 percent of attorneys whose cases were closed with a warning letter in 2019 had a new complaint about their professional conduct investigated by the State Bar within two years of the original case being closed. [...]

Notwithstanding these steps, patterns of attorney misconduct suggest that the State Bar is overusing nonpublic measures. [...] Our review of a selection of cases associated with five [...] attorneys [whose cases were closed through nonpublic measures] determined that *State Bar staff closed cases through nonpublic measures despite indications in its case files that further investigation or actual discipline may have been warranted.* Of the five attorneys, four had at least one previous complaint for similar misconduct that was closed through nonpublic measures.³⁴ (emphasis added)

The Audit provided a specific example of a case that used private discipline that highlighted the issues with the practices of the State Bar:

An attorney exhibited a pattern of failing to provide settlement payments or to provide files to clients until the client complained. The State Bar closed cases against

³⁰ *Id.* at p. 8.

³¹ *Id.* at p. 18.

³² Cal. State Auditor, *The State Bar of California’s Attorney Discipline Process: Weak Policies Limit Its Ability to Protect the Public From Attorney Misconduct*, Report 2022-030 (April 14, 2022).

³³ *Id.* at 11.

³⁴ *Id.* at 14.

this attorney 28 times over 16 years using nonpublic measures and all of the other closed cases were closed outright. However, complaints against the attorney continued to increase. *From 2014 to 2021, the attorney was the subject of 165 complaints. Despite the high number of complaints, many for similar matters, the State Bar has imposed no discipline, and the attorney still maintains an active license.* In one early case, the State Bar issued a warning letter to the attorney for failing to release a client's case file for nearly a year. However, the attorney has continued to generate complaints from other clients for this same issue. In the 11 years since the State Bar issued that warning letter, complaints have led the State Bar to issue 11 directional letters requiring the attorney to return client files.³⁵ (emphasis added)

The audit also found that the State Bar places too great an emphasis on closing cases quickly. The audit concluded that “the State Bar’s actions have failed to prevent additional misconduct of a similar nature, leading to an increase in the volume of subsequent complaints about a specific attorney for the same misconduct. In turn, this has increased the State Bar’s workload, which makes it more difficult for it to address its backlog and fulfill its primary mission of protecting the public.”³⁶ The audit also found that the practices and policies of the State Bar limited its ability to identify patterns of complaints, which if identified could prevent future misconduct.³⁷ A quarter of all attorney complaints involve client trust accounts, yet the State Bar closed many cases because the amounts involved were de minimis [under \$50]. Sometimes these complaints were closed without even notifying the attorneys involved, even if those closures were not in the best interest of the public.³⁸ The audit provided several recommendations to address the issues identified.³⁹ The State Bar generally agreed with the recommendations by the Auditor and began implementing some of the recommendations.

IV. Girardi Scandal

A. Tom Girardi: Legal titan or pinnacle of corruption?

After graduating from Loyola Law School in 1964, Thomas Vincent Girardi quickly became one of the most renowned plaintiffs’ attorneys in California, and throughout the nation. With his firm, Girardi Keese, he litigated cases against some of the largest corporations in the country, including the Pacific Gas and Electric Company (PG&E). In one such case, Girardi and his team obtained a settlement agreement of \$333 million for the impacted residents of Hinkley, California, who had been exposed to chemicals from a nearby PG&E gas pumping station that had leaked into their water source.⁴⁰ This case

³⁵ *Id.* at 17.

³⁶ *Id.* at 18-19.

³⁷ *Id.* at 25.

³⁸ *Id.* at 2.

³⁹ *Id.* at 5-7.

⁴⁰ Aaron, *Barely Legal: The Surreal Saga of Tom Girardi and Erika Jayne*, L.A. Magazine (Nov. 29, 2021) available at: <https://www.lamag.com/culturefiles/the-surreal-saga-of-tom-girardi-and-erika-jayne/>.

ultimately became the inspiration for the film *Erin Brokovich*, and further catapulted Girardi into the upper echelons of California's legal and political society.

Over the subsequent decades, Girardi amassed significant amounts of wealth and influence. Girardi and his law firm regularly hosted lavish fundraisers and made extensive personal donations to numerous campaigns. His political donations alone totaled at least \$7.5 million, while his third wife, Erika Jayne, made an additional \$1.3 million in donations throughout their 20-year marriage.⁴¹ In 2019, Girardi was appointed to the regional Judicial Selection Advisory Committee for Los Angeles, which is tasked with providing preliminary feedback on potential candidates for the bench.⁴²

After Erika Jayne was cast on the reality show *The Real Housewives of Beverly Hills*, to the extent that it was not already evident, the couple's personal wealth raised eyebrows. The image of Girardi as a type of Robin Hood-figure – someone who fought on behalf of the poor to recover money from the rich – stood in stark contrast with the image on Bravo showing multiple mansions, private planes, and millions of dollars' worth of clothing and accessories. Just under that shiny veneer, however, was extensive wrongdoing.

B. Girardi's lengthy history of embezzlement and fraud

The history of Girardi's misconduct spans decades.

- In 2010, a massive leak in a PG&E gas main line in San Bruno, California led to a massive explosion and fire which decimated a neighborhood, injured 58 people, and killed eight. Joe Ruigomez, who suffered burns over 80% of his body, was one of the area residents who was severely injured. Girardi represented Ruigomez in litigation against PG&E and, despite obtaining a \$53 million settlement on his behalf, lied to Ruigomez and his family that the settlement amount was just over \$7 million.⁴³ After concluding that Girardi had misappropriated millions of dollars of their settlement, and fearing that his funds might not be recoverable in the future, Ruigomez signed an agreement with the lawyer to receive just \$12 million. Ruigomez received \$1 million of the agreed-settlement, and then the payments by Girardi stopped. Ruigomez will need a

⁴¹ Hamilton and Ryan, *Tom Girardi gave millions to Democratic politicians. Was the money stolen from clients?* Los Angeles Times (September 22, 2022) available at <https://www.latimes.com/california/story/2022-09-22/tom-girardi-gave-millions-to-politicians-was-the-money-stolen-from-clients>.

⁴² Dinzeo, *Newsom Shines Light on Process of Picking California Judges*, Courthouse News Service (June 26, 2019) available at: <https://www.courthousenews.com/newsom-shines-light-on-process-of-picking-california-judges/>.

⁴³ Hamilton and Ryan, *Tom Girardi, disgraced L.A. lawyer and 'Real Housewives' spouse, indicted on fraud charges*, Los Angeles Times (February 1, 2023) available at: <https://www.latimes.com/california/story/2023-02-01/tom-girardi-indictment-la-lawyer>.

lifetime of extensive costly medical treatments that the settlement was intended to pay for.

- In 2011, Girardi settled a case on behalf of 138 women who claimed to have developed breast cancer as a result of taking a hormone-replacement therapy. However, the amount the women received did not match the expectations communicated to them by Girardi. By 2014, 28 of those women had filed suit claiming Girardi and his firm had failed to appropriately detail the terms of the settlement or provide accurate accounting records.⁴⁴
- In 2015, Girardi represented Josie Hernández in a suit against the manufacturer of a surgical instrument which made her sick. Despite winning a \$135,000 settlement on her behalf, as of 2019 Ms. Hernandez had yet to see a single cent of the settlement amount. Instead, Girardi appears to have lied to Ms. Hernández claiming that the firm had not received any of the settlement while he was in fact using the funds to pay for personal costs.⁴⁵
- Beginning at least as early as 2015, Girardi began borrowing large sums of money from a variety of banks and lenders to pay settlements reached with complaining clients, pointing to his substantial amounts of real property and wealth to make himself appear to be a safe investment. Well aware of his reputation as a lawyer who obtained impressive settlement amounts, these creditors expected repayment promptly following Girardi's legal victories. However, Girardi failed to pay his creditors the amounts he owed them.

Where the funds went has been a constant topic of speculation. Reports have eyed Erika Jayne's own business endeavors, which were known to have been paid for by Girardi. Long before her debut on reality television, Jayne was known for her extravagant attempts at a pop music career, including recording songs with titles such as "XXpen\$ive" and boasting an entourage of hair and makeup professionals who, in partnership with a wardrobe filled with luxury clothing and jewelry, cost upwards of \$40,000 per month. One lender with access to Girardi Keese's financial records, Law Finance Group, noted large sums identified as "loans" were being transferred from the firm's accounts to E.J. Global LLC, Jayne's company. The loan amounts totaled upwards of \$20 million. Law Finance Group filed suit in 2019, alleging that part of the money had been used to fund the couple's "lavish lifestyle." In response to the litigation, Girardi

⁴⁴ Bronstad, *Plaintiffs Lawyer Tom Girardi's Finances Pried Open in Misappropriation Suit*, The National Law Journal (May 11, 2016) available at: <https://www.law.com/nationallawjournal/almID/1202757360760/>.

⁴⁵ Hamilton and Ryan, *Tom Girardi, disgraced L.A. lawyer and 'Real Housewives' spouse, indicted on fraud charges, supra*.

wrote: “Four judges called me after they saw the lying materials. ... Every one of them stated [LFG] better not come in his courtroom.”⁴⁶

Girardi built his entire career and reputation on fighting for those who could not fight for themselves. What seems more accurate, however, is that after developing a reputation as the “Erin Brokovitch” attorney, Girardi targeted potential clients in crisis who had little knowledge of the legal process but potentially immense settlement amounts and leaned on his staggering influence developed over the decades to avoid accountability for rampant fraud and embezzlement. As stated by the LA Times:

“Those clients were mainly of modest means and already suffering from health problems because of toxic contamination, recalled pharmaceuticals, motor vehicle crashes or other misfortunes. Many are still trying to collect their full settlements, according to bankruptcy claims they have filed seeking compensation.”⁴⁷

C. The Lion Air settlement and legal fall out

In 2018, a Lion Air flight carrying 189 people crashed off the coast of Indonesia shortly after take-off, killing everyone on board. Girardi and his firm represented some of the victims’ surviving family members in a lawsuit against Boeing, regarding its poorly designed 737-MAX jetliner, and partnered with Chicago-based law firm Edelson PC to litigate the case. While the team ultimately won a settlement of over \$12 million, more than \$2 million of that amount never made it to the victims’ families. After months of delays, in December 2020, a federal judge in Illinois ordered Girardi to appear in court to explain where the missing \$2 million had gone. Asked directly by the judge why he would not simply provide the funds to his clients once he received the money, neither Girardi nor his defense attorneys responded, leaving the proceedings in complete silence. The judge then referred the matter and Girardi to the U.S. Attorney’s Office for criminal investigation and froze Girardi’s personal assets as well as those of his firm, though by that point the firm’s accounts held only \$15,000.⁴⁸

Jay Edelson of Edelson PC sued Girardi Keese in December 2019 to recoup their share of attorney’s fees and track down the missing settlement funds. In the process of litigation, details of Girardi’s misconduct came to light. Also named in the litigation was David Lira, a former partner at Girardi Keese, as well as EJ Global LLC, Erika Jayne’s personal company. By December 2020, Girardi Keese filed for bankruptcy, and the proceedings

⁴⁶ Hamilton and Ryan, *The legal titan and the ‘Real Housewife’: The rise and fall of Tom Girardi and Erika Jayne*, Los Angeles Times (December 17, 2020) available at: <https://www.latimes.com/california/story/2020-12-17/tom-girardi-erika-jayne-rhobh-divorce>

⁴⁷ Hamilton and Ryan, *Tom Girardi gave millions to Democratic politicians. Was the money stolen from clients?*, *supra*.

⁴⁸ Hamilton and Ryan, *The legal titan and the ‘Real Housewife’: The rise and fall of Tom Girardi and Erika Jayne*, *supra*.

exposed both a staggering number of claims against the firm from creditors and lenders, as well as the intensity of Girardi's economic collapse.⁴⁹

D. The State Bar received and failed to appropriately respond to over 150 complaints against Girardi before 2021

Amongst all of the newsworthy bombshells relating to Girardi, the question as to how Girardi had maintained his law license remained. It was evident that Girardi and his firm had defrauded partners, investors, and clients for decades and despite many complaints about his unprofessional conduct, had been continuously permitted to do so. Girardi's law license was ordered inactive on March 9, 2021. Girardi was ultimately disbarred by the California Supreme Court in July of the same year. It appears that this discipline occurred only after a federal judge found that Girardi had embezzled at least \$2 million of client funds and referred the matter to the U.S. Attorney's office for further criminal investigation.⁵⁰

In order to answer the question of how Girardi had been able to get away with such extensive fraud, the LA Times requested records from the State Bar regarding information the agency had about the matters, including any complaints made against Girardi.

Pursuant to Business and Professions Code Section 6086.1, complaints regarding licensed attorneys to the State Bar are typically confidential, although the agency is permitted to make exceptions in order to release records when "warranted for the protection of the public."⁵¹ According to reporting, despite the publicity surrounding Girardi and requests from the LA Times to release details regarding the complaints about him, the agency refused to release information about such complaints, citing Business and Professions Code Section 6086.1. In June 2021, the LA Times sought a court order for release of the documents. The LA Times argued that the scandal surrounding Girardi and his subsequent downfall placed the matter squarely into the exception provided for under statute as a measure "warranted for the protection of the public." The State Bar argued that the statute only permitted the agency to waive confidentiality and make such records public if the documents were part of active investigations, and each of the complaints made against Girardi had been closed.⁵²

It was only after this lawsuit, and in a seemingly sudden change of heart, that the State Bar opted to release the complaints, claiming that doing so was "more consistent with

⁴⁹ Cutler, *Edelson Sues Girardi Firm Alleging \$100 Million Fraud Plot*, Bloomberg Law (July 7, 2022) available at: <https://news.bloomberglaw.com/us-law-week/edelson-sues-girardi-law-firm-alleging-100-million-fraud-plot>.

⁵⁰ Halpern May Ybarra Gelberg LLP, *Independent Investigation for the State bar of California: Report of Investigation*, *supra*, at p. 14.

⁵¹ Business and Professions Code Section 6086.1, *see specifically* 6086.1(b)(2).

⁵² Hamilton and Ryan, *State Bar reverses course and plans to release records of complaints against Tom Girardi*, Los Angeles Times (October 7, 2022) available at: <https://www.latimes.com/california/story/2022-10-07/state-bar-reverses-course-and-plans-to-release-records-of-complaints-against-tom-girardi>.

its current understanding of its public protection mission and policy of transparency.”⁵³ The records released to the LA Times revealed that 205 complaints were made against Girardi throughout his career, dating all the way back to 1982; 155 (over 75%) of them were received by the State Bar before any disciplinary action was taken in March 2021. All told, the amount of money reportedly stolen by Girardi from his clients according to complaints filed with the State Bar totaled \$14 million. The complaints included allegations of misrepresentations to the court, failure to provide clients with accountings, and various other unspecified crimes and violations of the State Bar’s Rules of Professional Conduct. Nearly 60 percent of the complaints dealt with Girardi’s mishandling of money in client trust funds. Of the nearly 200 complaints the Bar received prior to Girardi’s suspension and disbarment, none resulted in any public discipline. According to the records reviewed by the LA Times, only 13 of those complaints resulted in any action against the attorney, and each of those actions ultimately amounted to a “non-public measure,” which left his reputation, and ability to deceive his clients and the public, intact.⁵⁴ It is unquestionable that the State Bar’s failure to respond in any meaningful way to the complaints formally submitted against Girardi resulted in his decades-long pattern of theft, abuse, and manipulation of his clients and the legal system.

Finally, earlier this year, the State Bar released a redacted version of the May report detailing some of the ways in which complaints regarding the Girardi Keese scandal were buried or improperly dismissed. The report details significant potential corruption within the State Bar and demonstrates how it facilitated Girardi’s embezzlement scheme.⁵⁵ The results of the May report highlight the continued importance of increased transparency and oversight of the State Bar’s disciplinary system.

E. Girardi’s legal woes and fallout from the State Bar’s failure to discipline him and failure to be fully transparent about its shortcomings continue today

In the fall of 2020, Erika Jayne filed for divorce from Girardi, citing irreconcilable differences, apparently indicating the legal trouble that lay ahead for Girardi himself. Their divorce proceedings are still pending. In February, Girardi was indicted by federal grand juries in Chicago and Los Angeles on fraud charges, including embezzling over \$18 million from clients. The Chicago indictment included eight counts of wire fraud and four counts of contempt of court. The Los Angeles matter also included charges of wire fraud and detailed embezzlement of over \$15 million from clients between 2010 and 2020. Amid his legal struggles, in 2019, Girardi was diagnosed with Alzheimer’s and is currently subject to a court-ordered

⁵³ *Ibid.*

⁵⁴ Hamilton and Ryan, *Tom Girardi faced more than 150 complaints before State Bar took action, records show*, Los Angeles Times (November 3, 2022) available at: <https://www.latimes.com/california/story/2022-11-03/california-state-bar-40-years-complaints-tom-girardi>.

⁵⁵ Halpern May Ybarra Gelberg, *Independent Investigation for the State Bar of California: Report of Investigation, supra.*

conservatorship.⁵⁶ Meanwhile, the State Bar settled the lawsuit filed by the Los Angeles Times regarding release of the Girardi complaints.

V. The Lazar and May Reports

It is unclear when the State Bar began its comprehensive investigation of Girardi (and its own role in allowing hundreds of complaints against him to go uninvestigated and his egregious ethical violations to be unpunished). But the scandal came to public attention in March of 2021, when the Los Angeles Times published a series of articles detailing how “the powerful lawyer cultivated close relationships with investigators and bar executives and showered them with gifts, including private plane rides, boozy lunches at Morton’s, free legal representation and Vegas shindigs.”⁵⁷ In June of 2021, the State Bar made what was described as a “stunning public admission” that an audit of Girardi’s disciplinary file “revealed mistakes made in some investigations over the many decades of Mr. Girardi’s career going back some 40 years and spanning the tenure of many Chief Trial Counsels.”⁵⁸

According to the State Bar, it began investigating its own misconduct related to Girardi on an unspecified date “in 2021.” In an Open Letter from the State Bar in November of 2022, the State Bar described its efforts to get to the bottom of what the State Bar did and did not do vis-à-vis Girardi and how it handled repeated complaints from the public about his misconduct as follows:

The State Bar began the process of righting the wrongs brought to light by the Girardi matters in 2021, when we conducted an audit of all closed disciplinary matters concerning Girardi. That was followed by the launch of a comprehensive investigation (still ongoing), into prior actions taken by any staff or other State Bar affiliated persons, to determine whether the State Bar’s handling of matters involving Girardi was affected by his connections to, or relationships or influence with these individuals.⁵⁹

A. Lazar Report

In order to obtain an outside investigation about the matter, the State Bar commissioned a report by attorney Alyse Lazar to examine State Bar files regarding Girardi in early

⁵⁶ Hamilton and Ryan, *Tom Girardi, disgraced L.A. lawyer and ‘Real Housewives’ spouse, indicted on fraud charges*, supra.

⁵⁷ Hamilton and Ryan, *Another legacy for Tom Girardi: Tighter regulation of California lawyers*,” (Dec. 28, 2022), available at <https://www.latimes.com/california/story/2022-12-28/another-legacy-for-tom-girardi-tighter-regulation-of-california-lawyers>.

⁵⁸ Ryan and Hamilton, *State Bar admits ‘mistakes’ in handling complaints against ‘Real Housewives’ Tom Girardi* (June 10, 2021), available at: <https://www.latimes.com/california/story/2021-06-10/tom-girardi-california-state-bar-admits-mistakes>.

⁵⁹ Open Letter Regarding the State Bar’s Thomas V. Girardi Disclosure (Nov. 3, 2022), Page 2, available at: <https://www.calbar.ca.gov/Portals/0/documents/Open-Letter-Girardi-Disclosure-11-03-22.pdf>.

2021. The Lazar investigation was conducted between March and May 2021.⁶⁰ Lazar reviewed 115 files of past closed complaints against Girardi.⁶¹ “The purpose was to determine whether anything in the files indicated that case-handling decisions were influenced by personal or financial relationships with or benefit to any of the individuals who were involved, including State Bar employees and outside counsel assigned to handle cases when staff have conflicts of interest.”⁶²

Not surprisingly, the Bar’s investigative files did not include documentation of misconduct by State Bar staff or leadership within the files. Therefore, also not surprisingly, the Lazar investigation also “found no evidence of influence by Girardi in the files themselves.”⁶³ In the report prepared after the investigation (known as the Lazar Report), however, Lazar noted “errors in how cases were handled over the four decades of Girardi’s career” and “significant issues regarding the investigation and evaluation of high-dollar, high-volume trust accounts.”⁶⁴ In response, the State Bar’s Board of Trustees hired the Los Angeles law firm Halpern May Ybarra Gelberg LLP to conduct an in-depth investigation of the State Bar’s handling of the Girardi matters.⁶⁵

B. May Report

Firm partner Aaron May interviewed 74 witnesses; reviewed over 950,000 documents; issued 23 subpoenas; gathered evidence about activities of Girardi (who by the time was disbarred and bankrupt) and the conduct of Bar staff and officials in relation to Girardi; and wrote a report about the investigation and his findings. The report (known as the May Report) found that Girardi’s efforts to buy relationships and exercise influence at the State Bar and that “the State Bar’s handling of past discipline complaints against Girardi was more likely than not affected by Girardi’s connections to and influence at the State Bar, and that there were multiple State Bar insiders who did not properly disclose their connections to Girardi, including employees who handled Girardi discipline cases.”⁶⁶

More than 18 months after the first Los Angeles Times stories about Girardi were first published, the State Bar’s investigation of the Girardi scandal apparently was still ongoing. As of late December 2022, legislators expressed frustration that the investigation had not yet been completed and the Bar had not shared any of their

⁶⁰ State Bar of Cal., *Frequently Asked Questions: May and Lazar Reports on Past Handling of Girardi Complaints*, Q. 12, available at: <https://www.calbar.ca.gov/About-Us/News/FAQ-May-and-Lazar-Reports-on-Handling-of-Girardi-Complaints>.

⁶¹ *Id.* at Q. 5.

⁶² *Ibid.*

⁶³ *Id.* at Q. 6.

⁶⁴ *Ibid.*

⁶⁵ While it is unclear when the State Bar retained Halpern May Ybarra Gelberg LLP, the State Bar announced in January of 2022 that it had hired the firm to conduct the investigation. (See FAQs: May and Lazar Reports on Past Handling of Girardi Complaints, Q1.)

⁶⁶ Halpern May Ybarra Gelberg LLP, *Independent Investigation for the State bar of California: Report of Investigation, supra.*

preliminary findings with the Legislature. Former Assembly Judiciary Committee Chair Mark Stone said in an interview with the Los Angeles Times published on December 28, 2022, that he was disappointed that the agency had not updated legislators on the investigation's progress. "Those are the kinds of things that need to happen to build back trust," Stone said. "They have erred on the side of everything being confidential as a way of hiding malfeasance or bad actions for such a long time. Maybe they need to err on the side of openness."⁶⁷ On March 9, 2023, Senate Judiciary Committee Chair Thomas Umberg said in an interview that he would not include a fee in the annual State Bar licensing bill he is carrying this year, "until the state bar demonstrates they've taken adequate steps to address transparency and conflicts of interest."⁶⁸ On March 10, 2023, the State Bar finally released heavily redacted versions of the May and Lazar reports detailing the Bar's past handling of complaints against Girardi.

1. *Executive Director of the State Bar Joe Dunn*

After serving in the California State Senate from 1998 to 2006, Joe Dunn was hired to be the Executive Director of the State Bar. He served in that role from November 2010 to November 2014, when he was unceremoniously terminated by the Board of Trustees for misleading the Board and inappropriately using State Bar funds to pay for a trip to Mongolia.⁶⁹ Dunn subsequently sued the State Bar for wrongful termination and claimed that he was terminated, "because he had uncovered deep corruption within the organization."⁷⁰ Indeed, to the extent that Joe Dunn was aware of the deep-rooted corruption at the State Bar, as the May report highlights, it is likely because of the role he potentially played in it, especially as it related to Girardi.

Dunn maintained a relationship with Girardi before, during, and after his tenure at the State Bar. Dunn received campaign donations from Girardi when he ran for the State Senate.⁷¹ He also worked with Girardi in private practice after leaving the State Bar.⁷² While serving as Executive Director, Dunn frequently joined Girardi at his infamous lunches at Morton's steakhouse and attended regularly attended Girardi Keese firm parties, most notably the firm's Christmas and Super Bowl gatherings.⁷³ Additionally,

⁶⁷ Matt Hamilton, Harriet Ryan, *Another legacy for Tom Girardi: Tighter regulation of California lawyers*, *supra*.

⁶⁸ Cheryl Miller, "Key Lawmaker Threatens to Eliminate State Bar Licensing Fees for 2024," (March 10, 2023), available at: <https://www.law.com/therecorder/2023/03/10/key-lawmaker-threatens-to-eliminate-state-bar-licensing-fees-for-2024/>.

⁶⁹ Maria Dinzeo, *Ex-California State Bar director Joe Dunn facing disciplinary action*, Courthouse News Service (Jul. 8, 2022), available at: <https://www.courthousenews.com/ex-california-state-bar-director-joe-dunn-facing-disciplinary-action/>.

⁷⁰ Michele McPhee, *Scandal-Scarred L.A. Lawyer Wins a Bruising Battle With the California Bar*, Los Angeles Magazine (Feb. 2023), available at: <https://www.lamag.com/article/a-65-year-old-la-lawyer-survives-a-decade-long-battle-with-the-bar/>.

⁷¹ Halpern May Ybarra Gelberg LLP, *Independent Investigation for the State bar of California: Report of Investigation*, *supra*, at p. 26.

⁷² *Ibid.*

⁷³ *Ibid.*

Dunn made use of Girardi's private jet with records indicating that Dunn flew, at no expense, on Girardi's aircraft five times while serving as Executive Director of the State Bar.⁷⁴ Dunn also enjoyed a free trip to Las Vegas, including show tickets and hotel costs, at Girardi's expense, while overseeing the State Bar.⁷⁵ Even more troubling than Dunn's failure to report any of these gifts, is the potential impact that his relationship with Girardi played in handling cases involving the disgraced attorney.

In 2013, Dunn was alerted to a potentially unlawful relationship between Girardi and Thomas Layton, an investigator within the Office of Chief Trial Counsel. Rather than referring the complaint to investigators within the State Bar or law enforcement, Dunn refused to take any action and actually moved Layton into a position in the Executive Director's Office to protect him from scrutiny from the then CTC.⁷⁶ This was Dunn's first foray into the workings of OCTC, an office technically independent from the Executive Director. In 2011, Girardi was facing a potential investigation regarding his behavior in a matter before the Ninth Circuit. Although an outside law firm investigated the matter and suggested that charges were not necessary, several attorneys within OCTC were actively advocating to have the State Bar reopen the matter. It was reported that Dunn indicated to the then CTC that he wanted one of those whistleblower attorneys "gone."⁷⁷ Nonetheless, the CTC refused to act, believing the attorneys were doing a "great job."⁷⁸ However, within five days of the CTC's unrelated, departure from the agency, Dunn approved the termination of four attorneys within the OCTC, including two who were actively advocating for investigating Girardi.⁷⁹ Although Dunn told investigators that he merely "rubber stamped" personnel decisions, press reporting at the time noted that, "the termination decisions were 'vested in Executive Director Joseph Dunn' and were part of an effort to 'improve the State Bar's operations.'"⁸⁰ The May Report noted that such conduct was a significant break from traditional staffing protocols within the State Bar and that Dunn was, "more likely than not...the driving force behind the terminations," of the OCTC attorneys who were seeking to investigate Girardi.⁸¹

2. OCTC investigator and Office of Executive Director staff member Thomas Layton

Of all of Girardi's connections to personnel associated with the State Bar, none is more troubling than his relationship with Thomas Layton. Layton began his career with the State Bar in 1999 as an investigator within the OCTC. It appears that Layton's relationship with Girardi began in the early to mid-2000s and grew to a level that one

⁷⁴ *Id.* at p. 27.

⁷⁵ *Ibid.*

⁷⁶ *Id.* at p. 78.

⁷⁷ *Id.* at p. 81.

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

⁸¹ *Id.* at p. 82.

witness described them as a “father-son” type of relationship.⁸² Like many involved with Girardi, Layton benefitted from the attorney’s largess. In fact, Girardi appears to have provided more financial compensation to Layton than to any other person associated with the State Bar. Indeed, Layton (or his family) reportedly received the following from Girardi over a nearly twenty-year period:

- \$153,000 from 2005-2011 from Girardi Keese to Layton with no explanation as to the purpose.
- \$7,300 from Girardi Keese to Layton’s wife, a professor of clinical accounting, apparently for “professional services.”
- \$461,000 from 2006 to 2014 from Girardi Keese to a firm called “Layton and Layton,” for “consulting services” of Layton’s wife.
- \$315,114 in credit card charges on a Girardi Keese firm-issued American Express card between December 18, 2013 and December 18, 2020.
- Lease payments on a BMW X5, a BMW 5 Series, and a Cadillac Escalade while Layton was employed at the State Bar.
- A \$150,000 loan, with some payments appearing to have been made by Girardi Keese and not Layton.
- Numerous meals.
- Several trips for Layton and his family on Girardi’s private jet.
- Travel expenses for family.
- Charitable contributions, including a \$1,500 contribution for a charity golf tournament.
- Potentially uncompensated legal representation.⁸³

The total cash payments amounted to more than one million dollars. In addition to the direct payments to Layton, Girardi-Keese employed two of Layton’s children while he was working at the State Bar. Although there was no evidence in Layton’s direct involvement with any specific Girardi-related matter at the Office of Chief Trial Counsel, Girardi’s close relationship to an employee of the State Bar appeared to greatly benefit Girardi. Layton would frequently introduce State Bar employees to Girardi and take them to lunch with Girardi at Morton’s steakhouse. Additionally, several State Bar employees noted that Layton would offer them career help, using Girardi’s connections. One Chief Trial Counsel noted that, “Layton came into her office and stated that Girardi was asking about her and wanted to know what her career aspirations were, implying that he could help her.”⁸⁴

Furthermore, although he was not assigned to any of Girardi’s cases, State Bar employees note that Layton would involve himself in Girardi-related matters. On several occasions, Girardi would send responses to the State Bar to Layton, even though

⁸² *Id.* at p. 44.

⁸³ *Id.* at pp. 49-51.

⁸⁴ *Id.* at p. 53.

there was no “legitimate reason” for Layton’s involvement with the matter.⁸⁵ It appears that Layton and Girardi also utilized Layton’s employment to stop complaints before they were filed with the State Bar. One attorney noted to investigators that he threatened to file a complaint about Girardi with the State Bar but before he could do so, he was invited to lunch at Morton’s steakhouse, where Layton appeared unannounced and mentioned that all complaints to the State Bar “went through him.”⁸⁶ Girardi would also deploy Layton to assist other attorneys who were facing potential discipline at the State Bar in order to curry favor within the legal community.⁸⁷ Layton also appears to have been deeply involved with the actions of both Joe Dunn and Robert Hawley.

3. *Deputy and Acting Executive Director Robert Hawley*

Robert Hawley presents arguably one of the most egregious examples of wrongdoing within the State Bar’s leadership structure. According to his firm’s website, in addition to serving as Deputy Executive Director of the State Bar until 2015, where he oversaw the Professional Competence Unit, including the Committee on Professional Responsibility and Conduct (COPRAC), Hawley also taught Professional Responsibility at various Bay Area law schools.⁸⁸

The May Report details misconduct by Hawley dating back to 2014, when Hawley was serving as Deputy Executive Director. According to the report, on July 31, 2014, the CTC made a formal whistleblower report regarding then Executive Director Dunn to Hawley, including her concerns regarding the propriety of a trip to Mongolia taken by both Layton and Dunn. The complaint triggered an investigation by outside counsel Munger, Tolles & Olson LLP (MTO), which, in turn, resulted in a report that “the closeness of the relationship between some senior managers and [Girardi Keese] does raise potentially troubling perceptions.”⁸⁹

In October 2014, the State Bar received a complaint against Girardi for which OCTC appropriately recused itself due to a conflict of interest, including the fact that the OCTC had elevated concerns regarding Girardi’s relationships with Layton and Dunn. After the OCTC’s recusal, Hawley hand-selected a Special Deputy Trial Counsel (SDTC) whom he knew from his own past experience in private practice, assuring the SDTC that the “assignment should only take a few hours and should be limited to file review,” and that he would be available to “assist [with] authorities and guidance.” Despite the SDTC’s efforts to inform Hawley that they lacked the experience necessary with professional responsibility or State Bar disciplinary cases, Hawley proceeded to

⁸⁵ *Id.* at p. 55.

⁸⁶ *Id.* at p. 56.

⁸⁷ *Id.* at p. 57.

⁸⁸ Robert A. Hawley, Consulting for the Legal Profession available at: <http://www.rahawley.com/>.

⁸⁹ Halpern May Ybarra Gelberg LLP, Independent Investigation for the State bar of California: Report of Investigation, *supra*, at p. 13.

recommend to the Board that the SDTC be appointed for the case. Additionally, Hawley misrepresented to the Board the reason for the OCTC's recusal, completely omitting the CTC's mention of their concerns regarding Layton and Dunn and their previous complaint against them.⁹⁰

As should be expected, a Board member raised concerns about the SDTC's noticeable lack of experience regarding issues of professional responsibility and State Bar disciplinary matters. In response, Hawley assured the Board member that the matter was "rudimentary" and it would otherwise be difficult to find an attorney in the Los Angeles-area who would be willing to handle a case involving Girardi *pro bono*.⁹¹ Ultimately, the Board member's concern regarding the SDTC's lack of experience in the relevant issue areas should not have been their primary concern, as it turned out that Hawley ghostwrote the SDTC's memorandum on the matter. The May Report details that the SDTC, "made a sarcastic remark about the fact that Hawley was doing the actual work on the case in [their] name."⁹² Hawley proceeded to send the SDTC's memo to the Board and recommended closure of the case, as suggested in the memo. At no point did Hawley disclose to the Board his involvement in the matter. It was only after reviewing Hawley's emails that the investigators assigned to the May Report discovered Hawley's practices. There was no information detailing his involvement in the matter's official case file. When interviewed, Hawley "provided confusing and inconsistent information about his involvement in the Girardi case." When asked specifically about his role in SDTC matters, "he referred to himself as a 'resource' of the SDTCs and said that he would provide his thoughts to SDTCs only if asked."⁹³ Finally, when confronted with his own emails, Hawley admitted to writing reports for every SDTC case in which he was involved, including, but not limited to, matters concerning Girardi. The May Report concluded that, despite seemingly taking every imaginable action to protect Girardi, Hawley did not appear to have any personal relationship with him. When asked directly about his relationship with Girardi, Hawley responded that he had never met Girardi. Nevertheless, whether due to Girardi's reputation or pressures internal to the State Bar's leadership structure, Hawley clearly felt the need to violate both formal and informal rules regarding the management of conflicts within the State Bar. As expressed by the May report:

The fact that someone inside the State Bar handled this case alone is troubling; that it was the Acting Executive Director of the State Bar is frankly shocking. The Executive Director is not supposed to make recommendations in discipline cases ... The effect of Hawley's intervention in the case – especially when considered in conjunction with the decision to close without investigating the CTC's requests for an internal investigation into overlapping issues – had the effect of protecting Girardi[.]⁹⁴

⁹⁰ *Id.* at p. 74.

⁹¹ *Id.* at p. 75

⁹² *Id.* at p. 76

⁹³ *Id.* at pp. 76 – 77.

⁹⁴ *Id.* at p. 76

Beyond Hawley's egregious mishandling of conflict issues, the May report details various incidents in which Hawley simply failed to investigate concerns raised regarding Girardi in any meaningful way.

- In December 2013, an attorney wrote directly to Dunn, regarding concerns about Layton's relationship with Girardi. After Dunn failed to act, the attorney forwarded the letter to Hawley, who also appears to have taken no action in response to the information.⁹⁵
- In 2014, the OCTC received a voicemail from an attorney, requesting to speak to someone about Dunn and Girardi. The OCTC forwarded the voicemail to Hawley, who informed the May investigators that he does not remember receiving the message, nor acting on the information provided by the voicemail.⁹⁶
- In the same year, the OCTC who recused herself in the matter ultimately ghostwritten by Hawley also reported her own concerns regarding Girardi to Hawley. Hawley forwarded the report to the Bar's Office of General Counsel, where it was assigned to and reviewed by a general counsel who concluded that there were insufficient facts to warrant an internal investigation, but that additional facts linking Girardi and Layton may justify further inquiry. Just months later, the OCTC sent yet another report to Hawley regarding the relationship between Layton and Girardi. Hawley forwarded her report to the same general counsel who, despite their previous determination that additional information regarding potential impropriety may trigger deeper investigation, did not conduct any investigation into the allegations or take any steps to determine the veracity of the information provided. As stated by the May Report "the ... general counsel determined that because the allegations were only allegations, no internal investigation should be conducted to determine whether the allegations were true."⁹⁷

The report also found that Hawley apparently lacked sufficient understanding of potential conflict issues faced by government attorneys. When asked to analyze conflict concerns for public attorneys, such as OCTC employees, Hawley only analyzed the impact of the California Rules of Professional Conduct and failed to mention any additional conflict rules applicable to public attorneys.⁹⁸

⁹⁵ *Id.* at p. 78

⁹⁶ *Ibid.*

⁹⁷ *Id.* at p. 79

⁹⁸ *Id.* at p. 16

4. Board of Trustees Chair Sean SeLegue

Sean SeLegue was first elected to the Board in 2016. After a brief term as the Board's Vice Chair, he served as Chair beginning in September of 2020. He served in that role until December 2022, when he came under investigation for failing to disclose that he had served as an outside legal ethics expert to the State Bar regarding the Girardi scandal.

SeLegue's involvement with Girardi dates back to 2010, when the Ninth Circuit Court of Appeal publicly disciplined Girardi for serious misconduct involving a multiyear effort to enforce a foreign judgment against Dow Chemical Company, Dole Food Company, and Shell Chemical Company.⁹⁹ The court's determination triggered a disciplinary investigation by the State Bar. Due to internal conflicts, the agency referred the matter to the firm of Howard Rice Nemerovsky Canady Falk & Rabkin PC, managed by Jerome Falk. Due to his lack of experience in disciplinary matters before the State Bar, Falk relied on other attorneys at the firm, including SeLegue, who was an attorney ethics and liability partner with the firm.¹⁰⁰ Falk and his team ultimately determined that the Ninth Circuit's disciplinary action was sufficient punishment for Girardi and declined to recommend any further action, a recommendation which the State Bar accepted in full. According to reporting by Law360, the State Bar was billed \$4,635 for the work completed by SeLegue.¹⁰¹

SeLegue did not disclose his previous participation in an investigation regarding Girardi when he was elected to the Board in 2016. When the depths of Girardi's misconduct came to light in 2020, SeLegue once again failed to disclose the conflict. Despite his involvement in Falk's investigation, which resulted in Girardi's ability to continue his improper practice of law, SeLegue was not questioned during the Lazar investigation. The Lazar Report ultimately concluded that the firm's determination to not pursue any further disciplinary actions against Girardi (and Bar's subsequent adoption of their recommendation) was an error.¹⁰² In a response to the Girardi scandal in June of 2021, SeLegue stated:

Since I joined the Board in 2016, it has been committed to reexamining and changing the State Bar's practices and procedures when necessary to protect the public[.] ... This is such an occasion. We must use lessons learned to strengthen the State Bar's rules, policies, and procedures to avoid replicating problems of the past. The Board, its leadership, executive management, and the Office of Chief Trial Counsel are committed to implementing important and significant reforms to improve the State

⁹⁹ *Franco v. Dow Chem. Co. (In re Girardi)*, 611 F.3d 1027 (2010).

¹⁰⁰ Lowrey, *Calif. Bar Investigates Ex-Chair For Undisclosed Girardi Tie*, Law360 (March 31, 2023).

¹⁰¹ *Ibid.*

¹⁰² Lazar, Report and Analysis of Audited Girardi Files, at p. 17 available at:

<https://www.calbar.ca.gov/Portals/0/documents/reports/Lazar-Report-and-Attachment-Redacted.pdf>

Bar's oversight of attorney-client trust accounts and the discipline system as a whole.¹⁰³

Despite his public statement of concern and promise of reform, SeLegue once again failed to inform the Board of his own involvement with Girardi and the ultimate recommendation not to discipline Girardi at any time during his tenure on the Board. SeLegue's term as Chair of the Board ended in 2021, at which point he opted to remain on the Board. However, a few months after the transition, SeLegue began appearing less frequently at Board meetings. On December 20, 2022, as the May firm began wrapping up its investigation, SeLegue resigned.

The May Report, initiated soon after Ruben Duran assumed the role of Board Chair, included an analysis of the agency's failure to issue further discipline against Girardi following the Ninth Circuit determination. The report found that Howard Rice Nemerovsky Canady Falk & Rabkin PC mishandled the matter, and also indicated that the firm had previously represented Girardi Keese in litigation.¹⁰⁴ The May Report notes that while neither Falk nor SeLegue seem to have been directly involved in the prior litigation, the previous relationship "would *at best* make it a bad choice to be the firm appointed to investigate whether Girardi committed misconduct, given the obvious appearance of impropriety issues in having a client's former counsel investigate the client; at worst, it was a serious conflict-of-interest that should have been disclosed to the State Bar before the firm was engaged."¹⁰⁵

While the May Report does not directly name Sean SeLegue in its discussion, the State Bar opted to confirm his identity in an FAQ regarding the report posted on their website.¹⁰⁶ In March of this year, the State Bar initiated an investigation into SeLegue. Ultimately, while potentially less egregious than the evident outrageous actions exhibited by Layton, Dunn, and Hawley, SeLegue's failure to disclose his previous role in the disciplinary investigation headed by Falk was improper. The result is that someone who was paid for an ultimately erroneous and damaging recommendation assumed a position ripe for exploitation by the same individual who benefitted from the improper investigation.

¹⁰³ State Bar of Cal. *Board of Trustees Announces Actions Following Special Disciplinary Audit* (June 10, 2021) available at: <https://www.calbar.ca.gov/About-Us/News/News-Releases/board-of-trustees-announces-actions-following-special-disciplinary-audit>.

¹⁰⁴ Halpern May Ybarra Gelberg LLP, *Independent Investigation for the State bar of California: Report of Investigation*, *supra*, at p. 70.

¹⁰⁵ *Ibid.*

¹⁰⁶ State Bar of Cal., *Frequently Asked Questions: May and Lazar Reports on Past Handling of Girardi Complaints*, *supra*.

VI. Potential Reforms to the State Bar of California to Boost Public Confidence in the Agency

While the deunification of the State Bar and the California Lawyers Association was an important first step to establishing the State Bar as a credible regulatory agency, as the May Report makes clear, additional reforms are necessary to ensure that the State Bar can adequately perform its duty to protect the public. To that end, several recommendations for reform have been suggested in recent years by the Legislative Analyst's Office, the State Auditor, the Senate and Assembly Judiciary Committees, and members of the public. The following is a brief summary of some of the reforms that the Legislature may wish to consider as it seeks to improve the State Bar's ability to protect the public.

A. Require the State Bar's funding to be a part of the annual state budget process

Every year, the dozens of agencies that comprise California's government must seek funding through the annual state budget process. All branches of government, including the courts, are required to submit funding requests to the Department of Finance, which evaluates the funding requests. The Department of Finance's budgetary review process includes a review of the agency's staffing needs and a determination as to whether or not an agency is prudently spending its existing resources. Once the Department of Finance determines an agency's appropriate funding levels, that information is submitted to the Legislature as a part of the Governor's January budget proposal and reviewed by the Office of the Legislative Analyst (LAO). Once the Governor's proposed budget is submitted, state agencies then appear before the Legislature's budget committees to justify their need for their proposed appropriation. Presently, the State Bar of California does not submit itself to the annual budget process, despite being a division of the judicial branch. Instead of submitting to the budgetary oversight of the Department of Finance and the Legislature, the State Bar's Board of Trustees sets its own budget and then seeks authorization to collect an annual licensing fee from attorneys in the state from the Legislature. The annual fee bill is reviewed by the Judiciary Committees of the Senate and the Assembly while the annual budget is not subjected to scrutiny from the state's financial experts. As a result, the State Bar has never been required to fully account for expenditures and justify its use of resources. Historically, it has also led to fees for licensees and funding levels for the State Bar that are inappropriate or inadequate: initially set far too high; unadjusted by the Legislature for decades because of distrust; and only adjusted when the State Bar faces insolvency. For example, when the Legislature authorized an increase in the annual licensing fee for active attorneys in 2019 from \$430 to \$544 pursuant to SB 176 (Jackson, Ch. 698, Stats. 2019), it was the first increase in the fee in 20 years. Clearly, given inflation, the \$430 fee in 1999 was excessive. (According to the U. S. Bureau of Labor Statistics, in 1999, it was the equivalent of \$668.81 compared to 2019.) At the same time, small adjustments in the

fee arguably may have been appropriate prior to 2019. The Legislature did not agree to increased fees until the LAO determined they were necessary and justified.¹⁰⁷

In January of this year, the LAO noted that a misallocation of staff resources may be one of the critical drivers of the inefficiency of the State Bar's disciplinary system. The LAO noted that the State Bar's Office of Chief Trial Counsel currently employs 1.4 attorneys for every one investigator, despite the fact that it appears that much of the day-to-day background work of the disciplinary system is conducted by the investigators.¹⁰⁸ Given the current process for reviewing the State Bar's budget, there is no independent expert reviewing whether such staffing ratios are appropriate, and if new resources are provided to the State Bar, if such resources would be spent appropriately.

Accordingly, the LAO indicated that one measure for improving the disciplinary system and adding more accountability to the State Bar would be for the agency to be subject to the annual state budget process. This process would ensure that experts in governmental finance are reviewing the agency's budget and ensuring that resources are being utilized in the most efficient manner possible. Additionally, the budget process would require the State Bar to better justify its expenditures. As a benefit to the State Bar, participating in the annual budget process would enable the State Bar to better explain its requests for increases in the annual fees that attorneys pay to finance the agency's operations and potentially face less pushback from the Legislature. The budget process may also enable the State Bar to seek General Fund proceeds for certain expenditures like operating the Commission on Judicial Nominees Evaluation, which is ostensibly a service provided by the State Bar to the Governor that is unrelated to regulating attorneys, and maintaining the State Bar's office spaces, which arguably should be provided and managed by either the Department of General Services or by the judicial branch. Although it may take several years to fully transition the State Bar into the annual budget process, the additional oversight of the agency arguably makes this proposal a worthwhile prospect for the Legislature to consider.

B. Transition the responsibility for attorney discipline from the State Bar to the Supreme Court

As noted, the State Bar is part of the judicial branch of government, an arm of the California State Supreme Court. Indeed, an attorney facing discipline from the State Bar may appeal the decision to the State Supreme Court given that the Court is the ultimate arbiter of who may practice law in the state.¹⁰⁹ As a result of the widespread potential corruption within the State Bar revealed by the May Report, several members of the public have questioned whether the State Bar can continue to properly discipline

¹⁰⁷ It is also noteworthy that while the Legislature approved a fee of \$544 (26.5% higher than the \$430 fee set in 2019), the Bar requested a 100% increase in the annual fee, which would have doubled the fee from \$430 to \$860.

¹⁰⁸ Legis. Analyst, *The California State Bar: Assessment of Proposed Disciplinary Case Processing Standards*, *supra*, at p. 10.

¹⁰⁹ California Rules of Court, Rule 9.13.

attorneys. Several published editorials have gone so far as to call for the Supreme Court to establish a separate entity within the courts to take over attorney discipline from the State Bar's Office of the Chief Trial Counsel.

Moving the discipline system out of the State Bar may have several positive impacts. First, as a result of the existing structure of the State Bar, this may provide additional accountability for the leaders of the disciplinary system. Second, moving the discipline system out of the State Bar may open up new resources for funding the discipline system and hiring additional staff. Finally, moving the disciplinary system out of the State Bar should increase the Supreme Court's oversight of attorney discipline and encourage the Court to take a more active role in regulating the profession.

C. Appointing an Inspector General to oversee complaints regarding the State Bar's conduct

Of the many damning findings set forth in the May Report, one of the most troubling was the fact that several employees of the State Bar sought to blow the whistle on Girardi and those doing his bidding, but were stopped or had their complaints go uninvestigated by the State Bar.¹¹⁰ Without having any outside group to complain to, these concerns went unaddressed and Girardi's misconduct continued unabated for decades.

Seeking to provide employees of the State Bar with the ability to make complaints about misconduct within the State Bar and ensure that such complaints do not go unaddressed, the Legislature may wish to consider creating an independent Inspector General to oversee the State Bar. This position would need to be vested under the Supreme Court to avoid potential separation of powers issues. However, an inspector general position is not unheard of in state government. For example, the Department of Corrections and Rehabilitation is overseen by an inspector general tasked with providing, "oversight and transparency concerning the policies and practices" of the Department.¹¹¹ Creating a similar position to oversee the State Bar would signal to the public that the Office of Chief Trial Counsel is accountable to an independent oversight body, thus boosting public confidence in the work of the agency. However, it should be noted that the creation and appointment of an inspector general alone may be insufficient to solve all of the issues that presently plague the attorney discipline system.

D. Reconstituting the State Bar's Board of Trustees

While the day-to-day operations of the State Bar are overseen by the Executive Director, a 13-member Board of Trustees oversees the longer-term policies and priorities of the agency. The Board is required to consist of five attorneys appointed by the Supreme

¹¹⁰ Halper, May, Ybarra, Gelberg, Independent Investigation for the State Bar of California: Report of Investigation, *supra*, at pp. 78-80.

¹¹¹ <https://www.oig.ca.gov/>.

Court; two attorneys appointed by the Legislature; and six non-attorney public members.¹¹² The current Board composition thus ensures that lawyers maintain a majority on the Board. Several critics of the State Bar note that the lawyer-majority dissuades the State Bar from taking actions that the profession may not approve of, even if such actions would be in the public interest. Furthermore, many of the attorneys appointed to the Board tend to come from large, prominent law firms.

Several measures can be taken to ensure that the Board is diversified. First, the Legislature could act to ensure that attorneys no longer constitute the majority of the Board. This could be done by either expanding the Board's size by adding public members to the board, or by eliminating two or more attorney positions. A majority non-attorney Board would eliminate the perception that the Board simply functions to protect the profession. Second, even if the Board remains a majority of attorneys, the Legislature could act to diversify the representation of the legal professions on the Board. Existing law does not specify the background of the attorneys who are appointed. The Legislature could require that the attorney members represent a broad-array of the profession (for example mandating the appointment of solo-practitioners, government attorneys, or those working in legal aid), thus ensuring that the attorneys on the Board bring an array of career experience to the decisions of the Board. Finally, even if the existing Board's composition remains in place, the Legislature may wish to designate that one of the non-public members must always serve as Chair.

E. Revising the Office of Chief Trial Counsel's practices and procedures.

Should the Legislature opt to keep attorney discipline within the State Bar, the Legislature must ensure that the Office of Chief Trial Counsel modifies its practices to become a more efficient, effective, and even-handed regulator. The LAO has noted that the State Bar's current practice of treating all potential disciplinary cases similarly does not effectively weigh the seriousness of potential offenses in a manner that protects the public.¹¹³ Although the State Bar does dispose of some relatively minor offenses with private reprisal letters, this process is opaque and appears to be inconsistent.

In order to ensure that the disciplinary process is more transparent and fair, the Legislature may wish to revise the Office of Chief Trial Counsel's practices in several ways. First, the Legislature may wish to eliminate private reprisals. Second, the Legislature may wish to create a diversionary program where low-level violations can be diverted into a training and mentoring program to correct attorney's behavior without a full-fledged disciplinary proceeding. This program could function in a manner similar to the Traffic School program for traffic violations or diversion of low-level criminal offenders pursuant to Penal Code Section 1000, whereby offenders are retrained and, so long as no additional offenses are committed within a specific time

¹¹² Business & Professions Code Section 6013.1.

¹¹³ Legis. Analyst, *The California State Bar: Assessment of Proposed Disciplinary Case Processing Standards*, *supra*, at pp. 11-12.

period, the offense is dismissed and the offender's record remains private. Additionally, the Legislature could direct the Office of Chief Trial Counsel to develop issue-specific expertise within its staff. For example, staff attorneys who specialize in family law may be more able to efficiently investigate complaints stemming from a family law case than attorneys without issue-specific expertise. All of these reforms arguably would make the discipline process more efficient and fair for all parties involved.

F. Eliminate the State Bar's Constitutional designation as a public corporation

As mentioned above, the California Constitution describes the State Bar as a public corporation. This essentially means that the State Bar is a corporation that should be advantageous to the general public, as opposed to a corporation whose mission is to benefit its shareholders. This designation appears to be a vestige of the State Bar's prior role as both the regulator of and advocate for the legal profession. Now that the advocacy role has been removed from the State Bar and vested in the California Lawyers Association, it may be time to review the State Bar's legal classification. As noted above, there are other quasi-governmental organizations in state government. However, none of the organizations directly regulate licensed professionals.

Nonetheless, changing the State Bar's legal status cannot be completed with legislation alone. Indeed, the State Bar's public corporation status is established in the California Constitution.¹¹⁴ Therefore, in order to clarify that the State Bar is a regulatory agency, a constitutional amendment proposing to eliminate the State Bar's corporate status may provide the public with a measure of confidence that the State Bar will function as a government-run regulatory agency. The Legislature therefore may wish to consider placing such an amendment on the 2024 General Election Ballot.

G. Require mandatory reporting of attorney misconduct

The American Bar Association (ABA), a national professional association, has promulgated Model Rules of Professional Conduct for the legal profession. California is the only state in the nation that has not enacted some version of ABA Model Rule 8.3, which requires attorneys to report the conduct of another attorney who they know violated the rules of professional conduct. The comments to the ABA Model Rule 8.3 state that "self-regulation of the legal profession requires that members of the profession initiate [a] disciplinary investigation when they know of a violation of the Rules of Professional Conduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense."¹¹⁵ In recognition that a rule that would require any violation of the rules of professional

¹¹⁴ Cal. Const. art. VI, Sec. 9.

¹¹⁵ *Comment* to Rule 8.3 Reporting Professional Misconduct, ABA available at https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_8_3_reporting_professional_misconduct/comment_on_rule_8_3/.

conduct to be reported would be unworkable, the ABA model rule limits the conduct to the type of which a “self-regulating profession must vigorously endeavor to prevent.” For this reason the conduct that must be reported is conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects. A bill currently pending in the Legislature, SB 42 (Umberg) seeks to do just this and would require a licensee of the State Bar who knows that another licensee has engaged in professional misconduct that raises a substantial question as to that licensee’s honesty, trustworthiness, or fitness as an attorney in other respects, to inform the State Bar, except as provided. This bill is currently pending in the Assembly.

The State Bar also has proposals pending regarding enacting a mandatory reporting rule. At the November 17, 2022 Board meeting, Ruben Duran, Chair of the Board asked the State Bar Standing Committee on Professional Responsibility and Conduct (COPRAC) to prepare a proposal for a new rule of professional conduct on a lawyer’s duty to report the misconduct of another lawyer, pointing to the fact that California was the only state in the nation without such a rule. This will be the third time the State Bar has considered some form of a mandatory reporting rule for attorneys. It did so in both 2010 and 2016 as part of the work of the Rules Revision Commission. In 2010, the then Board of the State Bar rejected the proposal to adopt a mandatory reporting rule that would have required a lawyer to report another lawyer who committed a felonious criminal act that raised a substantial question as to that lawyer’s honesty, trustworthiness, or fitness. In 2016 the Rules Revision Commission voted 10 to 4 against recommending the adoption of a version of rule 8.3 and a proposed rule was never brought to the Board for a vote.

COPRAC submitted its proposal to the Board at their March 16, 2023 meeting. The proposal included two options and recommended the Board put forth both options for a 45-day public comment period that is to end on May 4, 2023. The first provided that a lawyer must, without undue delay, inform the State Bar when the lawyer knows of credible evidence that another lawyer has committed a criminal act, engaged in fraud, or misappropriated funds or property in violation of rule 1.15 of the Rules of Professional Conduct when that conduct raises a substantial question as to that lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects. Rule 1.15 of the Rules of Professional Conduct specifically governs how an attorney is to safeguard client funds and property in the possession of the attorney.

The second proposed rule provides that a lawyer must, without undue delay, inform the State Bar when the lawyer has: (1) committed a criminal act that reflects adversely on that lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects; or (2) engaged in conduct involving dishonesty, fraud, deceit, or reckless or intentional misrepresentation or misappropriation of funds or property. Both proposed rules provide more expansive exceptions than the bill does, such as mediation confidentiality and other applicable privileges. And both proposed rules also specifically authorize, but do not require, a lawyer to report violations of the rules of professional conduct or other

rules of the State Bar. The Board voted on May 18, 2023 to send both proposed rules to the Supreme Court for consideration and adoption.

Maintaining the integrity of the legal profession is not a weight that should fall solely on the public. It is difficult to imagine that other attorneys, especially ones in Girardi's firm, did not know about Girardi's unethical violations. Under current rules of professional conduct there is no duty on attorneys to report such unethical conduct to the State Bar. By enacting such a requirement, California can follow every other state and ensure that attorneys are required to report the egregious misconduct of other attorneys.

H. Amend the current statutes relating to the release of confidential information regarding disciplinary investigations

Section 6086.1 of the Business and Professions Code provides that all disciplinary investigations are confidential until the time that formal charges are filed and all investigations are confidential until a formal proceeding is instituted. The statute provides that the CTC or the Chair of the Board may waive confidentiality, but only when warranted for protection of the public. As noted above, the LA Times sought the release of documents related to any complaints and discipline of Girardi from the State Bar, and had to sue the State Bar because it refused to release the records claiming the statute only applied to active investigations, not closed investigations. Eventually the State Bar did release records related to Girardi, but it was more than 20 months after the initial request. The Chair of the Board at the time the LA Times initiated this request was Sean SeLegue, who the May report discovered did not disclose his previous participation in an investigation regarding Girardi from 2010. His involvement in a Girardi investigation provided a conflict of interest in his ability to make a determination regarding whether or not to release the requested records to the LA Times.

The Legislature may wish to reconsider whether it makes sense to vest the decision regarding whether or not to release confidential information when warranted for the protection of the public solely in the hands of just two individuals at the State Bar. The Legislature may want to amend the statute to make it clear what appeal rights, if any, a person or entity requesting information has and also what rights and protections a licensee whose information is being requested has to intervene or participate in the decision process. Additionally, the Legislature may want to consider authorizing the State Bar to release confidential information to the Legislature upon request, with protections in place ensuring that the information would remain confidential, in order for the Legislature to more appropriately serve its oversight role of the discipline system.

I. *Require the Executive Director of the State Bar to be confirmed by the State Senate and serve at the pleasure of the Board of Trustees*

The attorney leadership of the State Bar generally consists of the Executive Director, the General Counsel, and the CTC. All three parties independently report to the Board.¹¹⁶ Although the Executive Director is ostensibly the public-facing leader of the organization, only the CTC is subject to the appointment and confirmation process of the State Senate. Instead of being confirmed by the State Senate, the Executive Director is simply appointed by the Board for a period of time specified in a contract with the Board. This contract also makes the Executive Director of the State Bar different from nearly every other appointee to every position in state service who serves at the pleasure of the appointing entity and can be terminated at any time without cause. Thus, the existing framework for appointing and managing the State Bar's Executive Director has three primary deficiencies. First, by bypassing the Senate's confirmation process, unlike the Chief Trial Counsel, the Executive Director is not required to share their vision and goals for the agency with the elected representatives, and thus should those goals not be achieved, has no accountability to that appointing authority. Secondly, because the Executive Director is provided with a right to employment protected by contract, short of corruption or outright insubordination, it is difficult to remove an ineffective Executive Director. As noted above, the State Bar encountered this very issue when it sought to terminate then-Executive Director Joe Dunn for misusing State Bar resources. Finally, due to the nature of the contractual hiring processes, the salary for the Executive Director is woefully out-of-line with other high ranking government officials. According to the Los Angeles Times, thanks to a recent (contractually guaranteed) raise, the Executive Director of the State Bar now makes \$344,000 annually.¹¹⁷ This amount is more than \$100,000 more than Governor Gavin Newsom earns each year (\$218,556), the Executive Director's salary is nearly \$50,000 per year more than the Chief Justice of the State Supreme Court (\$293,286) earns, even though the Chief Justice and the State Supreme Court technically oversee the State Bar.

Thus, to boost public confidence in the Legislature's oversight of the State Bar and ensure that State Bar resources are being allocated in a responsible manner, several reforms may be merited. First, the Legislature may wish to make the Executive Director subject to State Senate confirmation. Secondly, the Legislature may wish to prohibit set-term employment contracts for the Executive Director and instead make the position similar to other appointees who serve at the pleasure of the appointing entity. Finally,

¹¹⁶ State Bar of Cal. Organizational Chart, available at: <https://www.calbar.ca.gov/About-Us/Who-We-Are/Organizational-Chart>.

¹¹⁷ Harriet Ryan, *California State Bar, under scrutiny for Tom Girardi scandal, gives director \$43,000 raise*, LA Times (Aug 24, 2022) available at: [https://www.latimes.com/california/story/2022-08-24/troubled-state-bar-gives-top-official-43-000-raise#:~:text=The%20pay%20hike%20brought%20Leah,named%20chief%20justice%20\(%24293%2C286\)](https://www.latimes.com/california/story/2022-08-24/troubled-state-bar-gives-top-official-43-000-raise#:~:text=The%20pay%20hike%20brought%20Leah,named%20chief%20justice%20(%24293%2C286)).

the Legislature may wish to clarify in statute the Executive Director's salary scale, require the judicial branch to do so, or directly link the Executive Director's salary to that of other high-level state government leaders like the Attorney General or the Director of the Department of Consumer Affairs, who oversees most other licensed professionals in the state (and far more licensed professionals than the number of attorneys licensed and regulated by the State Bar).

J. Remove the Commission on Judicial Nominees Evaluation from the State Bar to ensure the State Bar can focus on its primary mission of protecting the public

For much of its history, the State Bar provided informal input to the Governor regarding appointments to the bench. However, when then-Lieutenant Governor Mike Curb opted to appoint a judge to the bench when Governor Jerry Brown was out of the state, the Commission on Judicial Nominees Evaluation (hereafter Commission) was created in 1979 to ensure such an instance could not happen again.¹¹⁸ The Commission was codified, and the statute essentially mandated the State Bar do what it had been informally doing for decades. However, in the nearly 45 years that have passed since it was created, the burden on the State Bar by the Commission has grown significantly in conjunction with the growth of California's judiciary. As a result, the State Bar is now financially burdened by the Commission. To the extent that these financial burdens divert resources away from attorney discipline, the Commission's continued presence under the auspices of the State Bar is undermining the agency's core mission. Given that the Commission generally assists the Governor, and not the judicial branch or the individual attorney licensees who pay for the Commission out of the annual licensing fee, the Legislature may wish to remove the Commission from the State Bar and into the executive branch.

¹¹⁸ <https://www.calbar.ca.gov/About-Us/Who-We-Are/Committees/Judicial-Nominees-Evaluation>