



Memorandum in Opposition

NYSBA #6

March 27, 2023

S.578

By: Senator Hoylman-Sigal
Senate Committee: Judiciary
Effective Date: 30 Days

AN ACT to amend the Judiciary law, in relation to eliminating the requirement that certain papers, records and documents relating to the misconduct or discipline of attorneys be sealed.

THE NEW YORK STATE BAR ASSOCIATION **OPPOSES THIS LEGISLATION**

This bill (S.578) will amend the Judiciary law to remove all confidentiality provisions from the attorney grievance process. The law, in place for over 76 years, already provides for disclosure in the event discipline is imposed or otherwise upon good cause being shown.

NYSBA is the largest voluntary state bar association in the United States and the leading voice for the legal profession in New York State. NYSBA has long-standing policy in support of confidentiality of attorney grievance proceedings.

If approved, the bill would permit public disclosure of every complaint filed against an attorney without regard to whether it is true or false, meritorious or slanderous, beneficent or malicious.

The consequences of opening the grievance system have not been properly studied and there is no empirical data to support the proposition that removal of confidentiality in the process will benefit the public or the legal profession. Current law already provides multiple mechanisms to ensure transparency in the grievance process. If there are “serious” violations of the Rules of Professional Conduct, and a continuing danger to the public, an application for an interim suspension can be made and if granted will result in notice to the public. In addition, public disclosure can be provided whenever there is good cause shown. The presumption of innocence, and evidentiary/procedural/due process rules that exist in other contexts are not present in the grievance process, particularly not in a manner sufficient to outweigh potential irreparable reputational damage or to guard against unfairly slanting the process either way.

Additionally, there is a concern that complainants might be deterred from lodging complaints against attorneys if they knew the matter would expose them to the media or otherwise make their private legal concerns public. Confidentiality of attorney-client communications is a fundamental principle of the legal profession designed to protect members of the public seeking legal assistance. Confidentiality should remain until a finding on conduct is ultimately made by a court. The public’s need to know is served by publication of findings after misconduct is determined to have occurred, and initial confidentiality protects the innocent.

Another purpose of the disciplinary system is to educate lawyers and guide them toward compliance with the Rules of Professional Conduct. There is no basis to believe that removal of all confidentiality in the process would be more effective in meeting that goal than the current system. The Appellate Division Departments currently have the power to “open the proceedings” if there is need for public awareness of an individual proceeding. Furthermore, change to the current system may subject the grievance committees to the Executive Law regarding compliance with the open meetings and Freedom of Information laws, unnecessarily placing an additional burden on the Courts.

Based on the foregoing, the State Bar Association **OPPOSES** the enactment of this legislation.