

## ATTACHMENT 3

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### Standards for Attorney Sanctions for Professional Misconduct

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#### PART A. STANDARDS IN GENERAL

##### 1.1 PURPOSES AND SCOPE OF STANDARDS

The Standards For Attorney Sanctions For Professional Misconduct (the “Standards”) are adopted by the Board of Trustees to set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances. The Standards help fulfill the primary purposes of discipline, which include:

- (a) protection of the public, the courts and the legal profession;
- (b) maintenance of the highest professional standards; and
- (c) preservation of public confidence in the legal profession.

Rehabilitation can also be an objective in determining the appropriate sanction in a particular case, so long as it is consistent with the primary purposes of discipline.

The Standards are based on the State Bar Act, the published opinions of the Review Department of the State Bar Court, and the longstanding decisions of the California Supreme Court, which maintains inherent and plenary authority over the practice of law in California. Although not binding, the Standards are afforded great weight by the Supreme Court and should be followed whenever possible. The Supreme Court will accept a disciplinary recommendation that is consistent with the Standards unless it has grave doubts about the propriety of the recommended sanction. If a recommendation is at the high end or low end of a Standard, an explanation must be given as to how the recommendation was reached. Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure.

The Standards do not apply to: non-disciplinary dispositions such as admonitions and agreements in lieu of discipline; resignations; involuntary inactive enrollments; interim suspensions after conviction of a crime; or suspensions for nonpayment of State Bar fees, failure to comply with child support orders, or tax delinquencies.

Eff. January 1, 1986. Revised: January 1, 2007; January 1, 2014.

## 1.2 DEFINITIONS

- (a) “Member” is a member of the State Bar of California.
- (b) “Disbarment” is termination from the practice of law and from holding oneself out as entitled to practice law. Membership in the State Bar ceases and the member’s name is stricken from the roll of attorneys.
- (c) “Suspension” can include a period of actual suspension, stayed suspension, or both:
  - (1) “Actual suspension” is a disqualification from the practice of law and from holding oneself out as entitled to practice law, subject to probation and attached conditions. Actual suspension is generally for a period of thirty days, sixty days, ninety days, six months, one year, eighteen months, two years, three years, or until specific conditions are met. Actual suspension for two years or more requires proof, satisfactory to the State Bar Court, of rehabilitation, fitness to practice, and present learning and ability in the general law before a member may be relieved of the actual suspension. The State Bar Court can require this showing in other appropriate cases as well.
  - (2) “Stayed suspension” is a stay of all or part of a suspension. Stayed suspension is generally for a period of at least one year. A suspension can be stayed only if it is consistent with the primary purposes of discipline.
- (d) “Public Reproval” is a public censure or reprimand. A public reproval may include conditions.
- (e) “Private Reproval” is a censure or reprimand that is not a matter of public record unless imposed after the initiation of formal disciplinary proceedings. A private reproval may include conditions.
- (f) “Interim Remedies” are temporary restrictions imposed by the State Bar Court on a member’s ability to practice law. They are imposed in order to protect the public, the courts, and the legal profession until such time as the issues can be resolved through formal proceedings.
- (g) “Prior record of discipline” is a previous imposition or recommendation of discipline. It includes all charges, stipulations, findings and decisions (final or not) reflecting or recommending discipline, including from another jurisdiction. It can be discipline imposed for a violation of a term of probation or a violation of a Supreme Court order requiring compliance with rule 9.20 of the California Rules of Court.

- (h) “Aggravating circumstances” are factors surrounding a member’s misconduct that demonstrate that the primary purposes of discipline warrant a greater sanction than what is otherwise specified in a given Standard.
- (i) “Mitigating circumstances” are factors surrounding a member’s misconduct that demonstrate that the primary purposes of discipline warrant a more lenient sanction than what is otherwise specified in a given Standard.
- (j) “Probation” is a period of time under which a member is subject to State Bar supervision. Probation may include conditions that further the primary purposes of discipline.
- (k) “Conditions” are terms that a member must comply with as part of a disciplinary sanction. They relate to a member’s misconduct and the facts and circumstances surrounding the misconduct and serve the primary purposes of discipline.

Eff. January 1, 1986. Revised: January 1, 2007; January 1, 2014.

### **1.3 DEGREES OF SANCTIONS**

Subject to these Standards and the laws and rules governing the conduct of disciplinary proceedings, the following sanctions may be imposed upon a finding of misconduct:

- (a) disbarment;
- (b) actual suspension;
- (c) stayed suspension;
- (d) public reproof;
- (e) private reproof; or
- (f) any interim remedies or other final discipline authorized by the Business and Professions Code.

Eff. January 1, 1986. Revised: January 1, 2014.

#### **1.4 CONDITIONS ATTACHED TO SANCTIONS**

Conditions attached to a reproof or probation may require a member to:

- (a) make specific restitution or file a satisfaction of judgment;
- (b) take and pass a professional responsibility examination;
- (c) undergo treatment, at the member's expense, for medical, psychological, or psychiatric conditions or for problems related to alcohol or substance abuse;
- (d) complete, at the member's expense, educational or rehabilitative work regarding substantive law, ethics, or law office management;
- (e) complete probation, subject to reporting requirements;
- (f) give notice to affected parties, including clients, co-counsel, opposing counsel, courts or other tribunals; or
- (g) comply with any other conditions consistent with the primary purposes of discipline.

Eff. January 1, 1986. Revised: January 1, 2014.

#### **1.5 AGGRAVATING CIRCUMSTANCES**

The State Bar must establish aggravating circumstances by clear and convincing evidence. Aggravating circumstances may include:

- (a) a prior record of discipline;
- (b) multiple acts of wrongdoing;
- (c) a pattern of misconduct;
- (d) intentional misconduct, bad faith or dishonesty;
- (e) misrepresentation;
- (f) concealment;
- (g) overreaching;

- (h) uncharged violations of the Business and Professions Code or the Rules of Professional Conduct;
- (i) refusal or inability to account for entrusted funds or property;
- (j) significant harm to the client, the public, or the administration of justice;
- (k) indifference toward rectification or atonement for the consequences of the misconduct;
- (l) lack of candor and cooperation to the victims of the misconduct or to the State Bar during disciplinary investigations or proceedings;
- (m) failure to make restitution; or
- (n) high level of vulnerability of the victim.

Eff. January 1, 1986. Revised: January 1, 2007; January 1, 2014.

## **1.6 MITIGATING CIRCUMSTANCES**

A member must establish mitigating circumstances by clear and convincing evidence. Mitigating circumstances may include:

- (a) absence of any prior record of discipline over many years of practice coupled with present misconduct, which is not likely to recur;
- (b) good faith belief that is honestly held and objectively reasonable;
- (c) lack of harm to the client, the public, or the administration of justice;
- (d) extreme emotional difficulties or physical or mental disabilities suffered by the member at the time of the misconduct and established by expert testimony as directly responsible for the misconduct, provided that such difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and the member established by clear and convincing evidence that the difficulties or disabilities no longer pose a risk that the member will commit misconduct;
- (e) spontaneous candor and cooperation displayed to the victims of the misconduct or to the State Bar;
- (f) extraordinary good character attested to by a wide range of references in the legal and general communities, who are aware of the full extent of the misconduct;

- (g) prompt objective steps, demonstrating spontaneous remorse and recognition of the wrongdoing and timely atonement;
- (h) remoteness in time of the misconduct and subsequent rehabilitation;
- (i) excessive delay by the State Bar in conducting disciplinary proceedings causing prejudice to the member; or
- (j) restitution was made without the threat or force of administrative, disciplinary, civil or criminal proceedings.

Eff. January 1, 1986. Revised: January 1, 2014.

### **1.7 DETERMINATION OF APPROPRIATE SANCTIONS**

- (a) If a member commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed.
- (b) If aggravating circumstances are found, they should be considered alone and in balance with any mitigating circumstances, and if the net effect demonstrates that a greater sanction is needed to fulfill the primary purposes of discipline, it is appropriate to impose or recommend a greater sanction than what is otherwise specified in a given Standard. On balance, a greater sanction is appropriate in cases where there is serious harm to the client, the public, the legal system, or the profession and where the record demonstrates that the member is unwilling or unable to conform to ethical responsibilities.
- (c) If mitigating circumstances are found, they should be considered alone and in balance with any aggravating circumstances, and if the net effect demonstrates that a lesser sanction is needed to fulfill the primary purposes of discipline, it is appropriate to impose or recommend a lesser sanction than what is otherwise specified in a given Standard. On balance, a lesser sanction is appropriate in cases of minor misconduct, where there is little or no injury to a client, the public, the legal system, or the profession and where the record demonstrates that the member is willing and has the ability to conform to ethical responsibilities in the future.

Eff. January 1, 1986. Revised: January 1, 2014.

## **1.8 EFFECT OF PRIOR DISCIPLINE**

- (a) If a member has a single prior record of discipline, the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust.
- (b) If a member has two or more prior records of discipline, disbarment is appropriate in the following circumstances, unless the most compelling mitigating circumstances clearly predominate or the misconduct underlying the prior discipline occurred during the same time period as the current misconduct:
  - 1. Actual suspension was ordered in any one of the prior disciplinary matters;
  - 2. The prior disciplinary matters coupled with the current record demonstrate a pattern of misconduct; or
  - 3. The prior disciplinary matters coupled with the current record demonstrate the member's unwillingness or inability to conform to ethical responsibilities.
- (c) Sanctions may be imposed, including disbarment, even if a member has no prior record of discipline.

Eff. January 1, 2014.

## **PART B. SANCTIONS FOR SPECIFIC MISCONDUCT<sup>1</sup>**

The presumed sanction for any specific act of misconduct is a starting point for the imposition of discipline, but can be adjusted up or down depending on the application of mitigating and aggravating circumstances set forth in Standards 1.5 and 1.6, and the balancing of these circumstances as described in Standard 1.7(b) and (c). For any specific act of misconduct not listed in Part B, please refer to Standards 2.18 and 2.19.

### **2.1. MISAPPROPRIATION**

- (a) Disbarment is the presumed sanction for intentional or dishonest misappropriation of entrusted funds or property, unless the amount misappropriated is insignificantly small or sufficiently compelling mitigating

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<sup>1</sup> The term "reproval" includes public or private reproval.

circumstances clearly predominate, in which case actual suspension is appropriate.

- (b) Actual suspension is the presumed sanction for misappropriation involving gross negligence.
- (c) Suspension or reproof is the presumed sanction for misappropriation that does not involve intentional misconduct or gross negligence.

Eff. January 1, 1986. Revised: January 1, 2014.

## **2.2 COMMINGLING AND OTHER TRUST ACCOUNT VIOLATIONS**

- (a) Actual suspension of three months is the presumed sanction for commingling or failure to promptly pay out entrusted funds.
- (b) Suspension or reproof is the presumed sanction for any other violation of Rule 4-100.

Eff. January 1, 1986. Revised: January 1, 2001; January 1, 2014.

## **2.3 ILLEGAL OR UNCONSCIONABLE FEE**

- (a) Actual suspension of at least six months is the presumed sanction for entering into an agreement for, charging, or collecting an unconscionable fee for legal services.
- (b) Suspension or reproof is the presumed sanction for entering into an agreement for, charging, or collecting an illegal fee for legal services.

Eff. January 1, 1986. Revised: January 1, 2014.

## **2.4 BUSINESS TRANSACTIONS, PECUNIARY INTERESTS ADVERSE TO A CLIENT**

Suspension is the presumed sanction for improperly entering into a business transaction with a client or knowingly acquiring a pecuniary interest adverse to a client, unless the extent of the misconduct and any harm it caused to the client are minimal, in which case reproof is appropriate. If the transaction or acquisition and its terms are unfair or unreasonable to the client, then disbarment or actual suspension is appropriate.

Eff. January 1, 1986. Revised: January 1, 2014.

## **2.5 REPRESENTATION OF ADVERSE INTERESTS**

- (a) Actual suspension is the presumed sanction when a member accepts or continues simultaneous representation of clients with actual adverse interests, where the member: (1) fails to obtain informed written consent of each client, and (2) causes significant harm to any of the clients.
- (b) Actual suspension is the presumed sanction when a member accepts employment that is actually adverse to a client or former client, where the member: (1) fails to obtain informed written consent, (2) breaches the duty to maintain confidential information material to the employment, and (3) causes significant harm to the client or former client.

## **2.6 BREACH OF CONFIDENTIALITY**

- (a) Suspension is the presumed sanction when a member intentionally reveals client confidences or secrets.
- (b) Reprimand is the presumed sanction when a member recklessly or through gross negligence reveals client confidences or secrets.

## **2.7 PERFORMANCE, COMMUNICATION OR WITHDRAWAL VIOLATIONS**

- (a) Disbarment is the presumed sanction for performance, communication, or withdrawal violations demonstrating habitual disregard of client interests.
- (b) Actual suspension is the presumed sanction for performance, communication, or withdrawal violations in multiple client matters, not demonstrating habitual disregard of client interests.
- (c) Suspension or reprimand is the presumed sanction for performance, communication, or withdrawal violations, which are limited in scope or time. The degree of sanction depends on the extent of the misconduct and the degree of harm to the client or clients.

Eff. January 1, 1986. Revised: January 1, 2014.

## **2.8 FEE-SPLITTING WITH NON-LAWYERS**

Actual suspension is the presumed sanction when a member shares legal fees with a non-lawyer. The degree of sanction depends upon the extent

to which the misconduct interfered with an attorney-client relationship and the extent to which the member failed to perform legal services for which he or she was employed.

## **2.9 FRIVOLOUS LITIGATION**

- (a) Actual suspension is the presumed sanction when a member counsels or maintains a frivolous claim or action for an improper purpose, resulting in significant harm to an individual or the administration of justice. Disbarment is appropriate if the misconduct demonstrates a pattern.
- (b) Suspension or reproof is the presumed sanction when a member counsels or maintains a frivolous claim or action for an improper purpose, resulting in harm to an individual or the administration of justice.

## **2.10 UNAUTHORIZED PRACTICE OF LAW**

- (a) Disbarment or actual suspension is the presumed sanction when a member engages in the practice of law or holds himself or herself out as entitled to practice law when he or she is on actual suspension for disciplinary reasons or involuntary inactive enrollment under Business and Professions Code section 6007(b)-(e). The degree of sanction depends on whether the member knowingly engaged in the unauthorized practice of law.
- (b) Suspension or reproof is the presumed sanction when a member engages in the practice of law or holds himself or herself out as entitled to practice law when he or she is on inactive status or actual suspension for non-disciplinary reasons, such as non-payment of fees or MCLE non-compliance. The degree of sanction depends on whether the member knowingly engaged in the unauthorized practice of law.

Eff. January 1, 1986. Revised: January 1, 2014.

## **2.11 MORAL TURPITUDE, DISHONESTY, FRAUD, CORRUPTION, OR CONCEALMENT**

Disbarment or actual suspension is the presumed sanction for an act of moral turpitude, dishonesty, fraud, corruption, intentional or grossly negligent misrepresentation, or concealment of a material fact. The degree of sanction depends on the magnitude of the misconduct; the extent to which the misconduct harmed or misled the victim, which may include the adjudicator; the impact on

the administration of justice, if any; and the extent to which the misconduct related to the member's practice of law.

Eff. January 1, 1986. Revised: January 1, 2001; January 1, 2014.

## **2.12 VIOLATION OF OATH OR DUTIES OF AN ATTORNEY**

- (a) Disbarment or actual suspension is the presumed sanction for disobedience or violation of a court order related to the member's practice of law, the attorney's oath, or the duties required of an attorney under Business and Professions Code section 6068(a)(b)(d)(e)(f) or (h).
- (b) Reprimand is the presumed sanction for a violation of the duties required of an attorney under Business and Professions Code section 6068(i),(j),(l) or (o).
- (c) Violations of the duties required of an attorney under Business and Professions Code section 6068(m) or (n) are covered in Standard 2.7.
- (d) Violations of the duties required of an attorney under Business and Professions Code section 6068(c) or (g) are covered in Standard 2.9.

Eff. January 1, 1986. Revised: January 1, 2001; January 1, 2014.

## **2.13 SEXUAL RELATIONS WITH CLIENTS**

- (a) Disbarment is the presumed sanction when a member requires or demands sexual relations with a client incident to or as a condition of professional representation or employs coercion, intimidation, or undue influence in entering into sexual relations with a client.
- (b) Suspension or reprimand is the presumed sanction for any other violation of Rule 3-120.

Eff. January 1, 1986. Revised: January 1, 2001; January 1, 2014.

## **2.14 VIOLATION OF CONDITIONS ATTACHED TO DISCIPLINE**

Actual suspension is the presumed sanction for failing to comply with a condition of discipline. The degree of sanction depends on the nature of the condition violated and the member's unwillingness or inability to comply with disciplinary orders.

Eff. January 1, 1986. Revised: January 1, 2014.

## **2.15 CRIMINAL CONVICTIONS INVOLVING MORAL TURPITUDE**

- (a) Summary disbarment is the presumed sanction for final conviction of a felony in which an element of the offense involves the specific intent to deceive, defraud, steal, or make or suborn a false statement, or involves moral turpitude.
- (b) Disbarment is the presumed sanction for final conviction of a felony in which the facts and circumstances surrounding the offense involve moral turpitude, unless the most compelling mitigating circumstance clearly predominate, in which case actual suspension of at least two years is appropriate.
- (c) Disbarment or actual suspension is the presumed sanction for final conviction of a misdemeanor involving moral turpitude.

Eff. January 1, 2014.

## **2.16 CRIMINAL CONVICTIONS NOT INVOLVING MORAL TURPITUDE**

- (a) Actual suspension is the presumed sanction for final conviction of a felony not involving moral turpitude, but involving other misconduct warranting discipline.
- (b) Suspension or reproof is the presumed sanction for final conviction of a misdemeanor not involving moral turpitude but involving other misconduct warranting discipline.

Eff. January 1, 2014.

## **2.17 CRIMINAL CONVICTION FOR SPECIFIC MISDEMEANORS**

- (a) Disbarment is the presumed sanction for final conviction of a misdemeanor specified in Business & Professions Code section 6131, where a public prosecutor aids in the defense of a defendant.
- (b) Disbarment or actual suspension is the presumed sanction for final conviction of a misdemeanor specified in Business and Professions Code sections 6128-6129 and 6153.

Eff. January 1, 2014.

## **2.18 VIOLATION OF OTHER ARTICLE 6 STATUTES**

Disbarment or actual suspension is the presumed sanction for any violation of a provision of Article 6 of the Business and Professions Code, not otherwise specified in these Standards.

Eff. January 1, 2014.

## **2.19 VIOLATION OF RULES IN GENERAL**

Suspension not to exceed three years or reproof is the presumed sanction for a violation of a provision of the Rules of Professional Conduct not specified in these Standards.

Eff. January 1, 2014.