

## ATTACHMENT 1

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**From:** Bryan Robinson, Esq.

**To:** Li, Veronica

**Subject:** Standards for Attorney Sanctions for Professional Misconduct

**Date:** Saturday, April 18, 2015 12:58:43 PM

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Dear Ms. Li,

I apologize for sending my comments to you after the deadline. However, I felt that the committee and the community of lawyers that they are appointed to serve would benefit from this comment. I noticed that the proposed amendments to the sanctions for misconduct would no longer permit admonition as a possible punishment for misconduct. Unless I am mistaken and this provision has been relocated to another portion of the proposed amendments, this omission would lead to harsh, punitive and disproportionate punishment for members of the Bar who commit minor offenses or offenses with substantial mitigation. Unfortunately, most human beings are going to make mistakes in life and the practice of law is not exempt from the failings of the human condition. For the State Bar, this committee, and the general public to expect perfection, when they (the State Bar, the general public and the members of this committee) are not able to deliver the same in any aspect of their life is an unreasonable standard to expect any one to meet. It is a standard that is designed for failure. A mistake that results in misconduct should not permanently mark your record and ruin your career, because the rules do not permit the State Bar Court, the ability to fashion a remedy commensurate to the facts that would warrant a penalty less than reproof. The omission of admonition as a form of punishment is the equivalent of mandatory minimums in the federal system, which often results in inequitable, disproportionate and uneven punishment that usually affects certain classes of people, for circumstances in which a more appropriate lesser punishment would be justified given the facts.

I am also of the opinion that admonition should be expanded to include education as a subsection to cover those cases that would fall between admonition and reproof. I think in most cases, violations of the rules are done because of ignorance, misunderstanding or misapplication of the rule to a specific factual situation rather than a willful or purposeful desire to harm clients or break the rules. The best example that I can give you of how this would apply in real life is an example of what happened to me recently. I recently was stopped because I made a right turn on a red light after making a complete stop. Although making a right turn on a red after making a complete stop is usually permitted, in this case they had recently posted new signs prohibiting a right turn on red. The police officer spoke with me and after realizing that I didn't know that the signs had been placed at this intersection let me go with a warning. However, since he corrected my error and pointed out that the rule that I applied was incorrect in this factual scenario, I was on notice that subsequent violations would result in a ticket. Ever since that encounter, I have been vigilant in making sure that I stop at that light and wait for the green turn indicator before I make in the right turn. Even if the officer had decided to give me a ticket, the option to go to traffic school would also give me a opportunity to expunge the ticket from my record. Instead of designing punishment with the assumption that most people are bad the committee and the State Bar may want to change their outlook to achieve the result in the community they seek to govern. If you treat people like they are bad, malevolent and evil people then their behavior will match your expectation. However, if you act and treat people like they are inherently good or seek to do the right things, when the option presents itself, you will find that their behavior will mirror that expectation as well. In this case the officer, treated me as if this were an innocent mistake, educated me on the tools to correct it and I have diligently observed the rule since it was brought to my attention and have brought it to the attention of others who were not aware of the signs at that intersection.

Think of in this way, most 16 year olds do not seek to get pregnant, they are ignorant of the true mechanics of how the process works and are usually operating on bad information. In most parts of the country, this mistake can be rectified without a permanently marking the life of a 16 year old with a mistake they made because they were ignorant of the facts. If a 16-year-old can get a morningafter pill without a prescription in the proper circumstances, why shouldn't an attorney be able to get an opportunity to correct their mistake before it became permanent. In both situations, the circumstances involved complex ethical and moral issues, harm to the lives of others, impact to society as well as significant long term financial, social and personal ramifications that weigh in favor of 2nd chances as opposed to strict adherence to rigid guidelines or artificial restrictions on the options available to deal with the problem. But it is

easier for a 16-year-old to get a morning-after pill or any other option to terminate a pregnancy than it is for an attorney to get the equivalent option to correct a professional mistake in this current discipline system.

I would also like to suggest that for violations of the rules that do not result in actual suspension, the members should be permitted to go to equivalent of traffic school which would give the member an opportunity to expunge the offense from their record. I think the legal community and society as a whole would be better served by allowing members who are guilty of misconduct the option to perform 100 , 200 or 300 hours of supervised community service at a legal clinic or in service to underserved communities. Under the current system, justice is reserved for those who can afford it. Unlawful detainer clinics are overwhelmed and cannot serve the number of people need their services. If you go to any State court and watch an unlawful detainer docket, 90% of the respondent's facing evictions are unrepresented and have little understanding of the process, while 99% of the landlords are represented. I've also seen clinics that are designed to help women escape domestic violence and abusive relationships are often oversubscribed and do not have enough attorneys to help these women or their children escape these abusive situations. I think society would be better served by requiring members of the bar who are guilty of misconduct to serve the less fortunate members of society who do not have the benefit of the specialized knowledge to navigate the Justice system. It would also improve the administration of and access to justice as attorneys who would never be available to these communities would be forced to serve these communities as a condition to removing a misconduct offense from their State Bar record. I think it's about time that the State Bar actually use its discipline to system bring to life the often cited justification for discipline of protection of the public and the protection of the administration of justice to actually protect the public and help in the administration of justice.

Streamlining the the standards for Attorney sanctions for professional misconduct to make them more punitive does not improve the practice of law or the community's they are supposed to serve. Rarely does a more punitive environment result in improved productivity or better service to the community the harsher rules are supposed to protect.

Sincerely,

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