

## **OPEN SESSION AGENDA ITEM**

### **REGULATION AND DISCIPLINE COMMITTEE ITEM III.A**

**DATE:** September 13, 2018

**TO:** **Members, Regulation and Discipline Committee**

**FROM:** Melanie J. Lawrence, Interim Chief Trial Counsel

**SUBJECT:** Request to Circulate for Public Comment Proposed Amendments to the Standards for Attorney Sanctions for Professional Misconduct

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#### **EXECUTIVE SUMMARY**

The Office of Chief Trial Counsel (OCTC) proposes several amendments to the Standards for Attorney Sanctions for Professional Misconduct as a result of the adoption of new Rules of Professional Conduct by the Supreme Court. The new rules were approved by the Supreme Court on May 10, 2018. The new Rules of Professional Conduct go into effect on November 1, 2018.

This item is being submitted for public comment in an effort to expedite the implementation of new Standards for Attorney Sanctions for Professional Misconduct so that new Standards are in place when conduct in violation of the new rules comes before the State Bar Court. Simultaneously with, and in addition to, the public comment period, OCTC looks forward to engaging with discipline system partners, including both the State Bar Court and the Association of Discipline Defense Counsel, to attempt to reach consensus on the final version of the Standards to be submitted to the Board.

This item requests that the Regulation and Discipline Committee circulate, for a 60-day public comment period, proposed changes to the Standards for Attorney Sanctions for Professional Misconduct.

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#### **BACKGROUND**

In 1985, the State Bar, through a collaborative effort between the State Bar Court and OCTC, developed proposed disciplinary standards which were adopted by the Board in November of 1985.

On October 12, 2013, the Board approved the first significant revisions to the Discipline Standards in over 27 years. These revisions included updates and stylistic changes, including rewriting the Discipline Standards in plain English, reorganizing them for better flow and comprehension, and substantively modifying them to better reflect current case law, rule, and statutory authority.

When the 2013 “clean-up” revisions to the Standards for Attorney Sanctions for Professional Misconduct were adopted, the Board also authorized the creation of a task force to study and recommend major structural changes to the Standards that were considered to be “major

policy and philosophical shifts.” The 2014 Disciplinary Standards Task Force revision was a lengthy process. After selection of the members, the Task Force began its work in May 2014 and substantially concluded its work in October 2014. After two rounds of public comment, the recommendations of the Task Force were adopted by the Board in May 2015 and became effective in July 2015. The time from the creation of the Task Force to the effective date of the revised standards was 17 months.

The 2014 Disciplinary Standards Task Force recommended significant changes to the standards, including separation of public and private reprovals into separate levels of discipline, separation of several specific standards that were previously captured in the catch-all provisions, specification of additional aggravating factors, and removal of footnotes and citations throughout the standards.

Despite the relatively recent overhaul of the Standards for Attorney Sanctions for Professional Misconduct, the new Rules of Professional Conduct adopted by the Supreme Court require changes to the Standards. Some changes are not substantive, for example, changing citations to rule numbers or changing the term “member” to “lawyer.” Other changes require the addition of language from the new rules to existing standards or the creation of new standards. In some Standards, we have included language that would apply to violations of either the new or old rules. The changes proposed do not rise to the level of a major policy change or philosophical shift such that a new Disciplinary Standards Task Force should be required.

As a result of the limited nature of the proposed changes and the likelihood that creation of a new Disciplinary Standards Task Force would delay amendments to the Standards necessary to account for changes to the Rules of Professional Conduct, which go into effect on November 1, 2018, OCTC is requesting to circulate for public comment the attached proposed changes to the Standards for Attorney Sanctions for Professional Misconduct.

While this item is being submitted for public comment in an effort to expedite the implementation of new Standards for Attorney Sanctions for Professional Misconduct so that new Standards are in place when conduct in violation of the new rules comes before the State Bar Court, OCTC looks forward to engaging simultaneously with discipline system partners, including both the State Bar Court and the Association of Discipline Defense Counsel, to attempt to reach consensus on the final version of the Standards to be submitted to the Board.

## **DISCUSSION**

This item proposes numerous amendments to the Standards for Attorney Sanctions for Professional Misconduct as a result of the adoption of new Rules of Professional Conduct by the Supreme Court and to eliminate the use of the term “member” consistent with the purely regulatory nature of the State Bar.

This item proposes changes to eliminate the use of the term “member” and adopt the term “lawyer” or “licensee” in Standards 1.2, 1.4, 1.6, 1.7, 1.8, 2.5, 2.6, 2.8, 2.9, 2.10, 2.13, and 2.14.

Where the Standards set out discipline for violation of a specific rule we have substituted the new rule number, but the Standard should also apply to violations under the old rules. Where the Standards set out discipline for specific conduct we have used the language from both the new and old rules so that it too will apply to violations of the new and old rules.

In addition, the following changes are proposed:

1. Standard 1.2

The proposal would remove the definition of “Member” and insert a definition of “Lawyer.” The

definition of “Lawyer” is adapted from Business and Professions Code section 6157(b).

The proposal would add the term “Tribunal” because the term is used in the proposed modified Standard 2.12. The definition is the same definition used by the new terminology rule (rule 1.0.1(m)).

## 2. Standard 2.2

There are two changes proposed to this Standard. One, a non-substantive change is only to reflect the new rule numbering system.

The second is more substantive. Unlike the prior rules, the new Rules of Professional Conduct require that attorneys place advanced fees in the client trust account. While case law for failure to deposit client funds or fiduciary funds into a client trust account has gone as low as a public reproof (See *Dudugjian v. State Bar* (1991) 52 Cal.3d 1092), the failure to deposit funds received for a client, including advanced fees, in the trust account, is essentially commingling, i.e. mixing client or other entrusted funds with personal funds. Further, if the attorney removed the funds from the trust account the court would consider it a misappropriation. Therefore, we believe that the failure to deposit funds into a client trust account deserves a discipline commensurate with, at least, commingling.

The new rule (rule 1.15 [Safekeeping Funds and Property of Clients and Other Persons]) has various other requirements the old rule did not have (e.g., the accounting must be in writing, etc.), but these appear to be adequately covered under the existing Standard 2.2(b).

## 3. Standard 2.3

In addition to unconscionable and illegal fees, new rule 1.5 [Fees for Legal Services] adds specific prohibitions on contingency fees in family law matters and when representing a criminal defendant. It also discusses when a true retainer is permitted and requires that the client consent in writing after disclosure that the client will not be entitled to a refund of all or part of the fee. OCTC believes that violations of this type belong in paragraph (b) of this Standard (i.e., suspension or reproof).

## 4. Standard 2.5

The terminology and methodology of the new conflicts rules suggests that we need new language in the Standards. The proposal would align Standard 2.5(a) with violations of rule 1.7(a) [represent a client directly adverse to a concurrent client in the same or separate matter]; rule 1.7(b) [represent a client when there is a significant risk the lawyer's representation of the client will be materially limited by the lawyer's representation or responsibilities to another client or a former client, a third person, or the lawyer's own interest] and 1.7(d). Rule 1.7(d) prohibits certain conflicts even if there are waivers, for example, when a lawyer does not believe the lawyer is able to provide competent and diligent representation to each client; the representation is prohibited by law; or the representation involves the assertion of a claim by one client against another in the same litigation or other proceeding before a tribunal. (See also rule 1.10 [applying rule 1.7 to lawyers in firm with conflicted attorney].)

Proposed Standard 2.5(a) is also consistent with the Supreme Court's discussion of the most serious types of conflicts. (See *People ex rel. Dept. of Corporations v. Speedee Oil Change Systems, Inc.* (1999) 20 Cal.4th 1135, 1147 [“The most egregious conflict of interest is representation of clients whose interests are directly adverse in the same litigation.”].) The proposed change to this paragraph also eliminates the requirement of “significant” harm as a result of conduct. This change is proposed because the first sentence of paragraph (a) of

Standard 2.5 is meant to apply to egregious conflicts of interest, including:

- 1) The representation of clients with directly adverse interests,
- 2) The representation of a client, without informed written consent, where there is a significant risk that the representation will be limited by the lawyer's responsibilities to or relationships with another client, a former client, or a third person, or by the lawyer's own interests, and
- 3) the lawyer continues the representation despite the fact that:
  - a. the lawyer does not reasonably believe the lawyer can provide competent and diligent representation to each client;
  - b. the representation is prohibited by law; or
  - c. the representation involves the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.

Proposed paragraph (b) of Standard 2.5 covers rule 1.9(a), 1.9(b) and other conflicts that are materially adverse to former clients and others, especially those where confidential information may be used. (See also rules 1.10 [Imputation of Conflicts of Interest: General Rule] and 1.11 applying rule 1.9 to lawyers in firm with conflicted attorney or with government conflicts.) Similar to paragraph (a), above, the proposal eliminates the requirement of "significant" harm as a result of the violation. Again, this change is proposed because the first sentence of this paragraph is intended to apply to the most glaring conflicts with former clients:

- 1) New rule 1.9(a) - Representation of clients with interests that are materially adverse to the interests of former clients in the same or substantially related matters;
- 2) New rule 1.9(b) - Knowing representation of a client in the same or substantially related matters in which a firm with which the lawyer was formerly associated previously represented a client; or
- 3) The conflicts rules in effect prior to November 1, 2018: The lawyer accepts or continues employment that is actually adverse to a client or former client and the lawyer:
  - a. Fails to obtain informed written consent;
  - b. Breaches the duty of confidentiality.

While OCTC believes that not every violation of the conflict of interest rules should be a basis of discipline, in light of the flagrant violations described in Standards 2.5(a) and (b), the appropriate criteria should be harm, not "significant" harm. In addition to the seriousness of the violations described, OCTC proposes the elimination of "significant" from Standard 2.5 for several other reasons: 1) harm is a more objective standard than "significant" harm, 2) the purpose of discipline is to protect the public from specified conduct and the degree of harm that results from the conduct can be fortuitous, 3) "significant harm" is an aggravating factor pursuant to Standard 1.5(j), thus, including a requirement of "significant" harm in the standard itself would be duplicative of the aggravating factor.

If the proposal to eliminate "significant" is rejected, the second sentence should be altered to read, "If there is not significant harm, suspension or reproof is the presumed sanction depending on the magnitude of the violation."

Proposed new paragraph (c) of Standard 2.5 addresses all other conflicts and the breach of the common law duty of loyalty, e.g. aggregate settlements (rule 1.8.7), compensation from other than the client (rule 1.8.6); government conflicts not covered by rule 1.9(c), conflicts by former judges (1.8.12), conflicts involving prospective clients (1.18), and the common law duty of loyalty. (See *Santa Clara County Counsel Attys Assn. v. Woodside* (1994) 7 Cal.4th 525, 548.)

## 5. Standard 2.6

Substantive changes include altering paragraphs (a) and (b) to cover rules 1.8.2 [Use of Current

Client's Information] and 1.18(b) [Duties to Prospective Client]. Proposed new paragraph (c) would address new rule 4.4, which addresses an attorney's duties regarding inadvertently transmitted writings.

#### 6. Standard 2.7

The proposed addition of paragraph (d) defines performance and communication, so that this Standard matches many new rules dealing with these issues.

#### 7. Standard 2.8

The proposed standard incorporates language addressing improper partnerships and operating organizations involved in the practice of law with non-lawyers. The new rule (rule 5.4 [Financial and Similar Arrangements with Nonlawyers]) combines old rules 1-310 [forming or engaging in a partnership with non-lawyer] and 1-320 [financial arrangements with non-lawyers] into one rule. However, the prohibition on compensation for referrals is covered by rule 7.2 [Advertising] not by new rule 5.4.

The proposed Standard adds an actual suspension of at least six months as the presumed discipline because case law states sharing fees with a non-lawyer is by itself serious misconduct that generally results in actual suspensions of six months to two years. (See, *In the Matter of Nelson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178 [six months actual suspension for forming a law partnership]; *Gassman v. State Bar* (1976) 18 Cal.3d 125 [one year suspension for fee splitting]; *In the Matter of Jones* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411 [two years actual suspension for permitting non-attorney to operate a personal injury law firm].) Improper partnerships deserve discipline commensurate improper fee sharing.

#### 8. Standard 2.9

The proposed modification to both paragraphs adds the delay of litigation language from the new rule 3.2.

Additionally, OCTC proposes modifying paragraph (b) of this Standard such that the presumed sanction for counseling or maintaining a frivolous action, an action for an improper purpose, or seeking to delay or prolong a proceeding is actual suspension. This change is not required by the new rules, but OCTC's position is that deliberate wrongdoing warrants actual suspension regardless of the degree of harm.

#### 9. Standard 2.10

Currently, a literal reading of Standard 2.10 makes it applicable only to unauthorized practice of law (UPL) in California. The proposed modification makes the Standard applicable to UPL in another jurisdiction as well as in California. This is consistent with rule 5.5 and *In the Matter of Wittenberg* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 418,424 [finding standard 2.10(a) most apt for engaging in UPL in another jurisdiction].

The proposal adds paragraph (c) to address assisting in UPL and loaning of an attorney's name to be used as an attorney by a non-attorney as described in Business and Professions Code section 6105.

#### 10. Standard 2.12

The proposed modification of this rule adds rule 3.4(f) [knowingly disobey an obligation under the rules of a tribunal] to Standard 1.12(a). This violation was inserted in this standard because the

conduct is analogous to, or includes, violating a court order.

#### 11. Standard 2.13

Paragraph (a) parallels parts of Business and Professions Code sections 6106.9(a)(1), 6106.9(a)(2), and old rule 3-120 and involve outrageous and overreaching conduct. The addition of “relative or close friend of a client” is meant to address a similar, but distinct scenario where the recipient of the demand is someone other than the client. In the experience of OCTC, the situation arises most frequently when a person hires a lawyer to represent an incarcerated spouse, significant other, or close friend, and the lawyer demands sexual favors from that person. Potential violations for such conduct include, but is not limited to, Business and Professions Code sections 6068(a), 6106, rule 1.5 [fees], rule 1.7 [conflict of interest], rule 8.4(b) [criminal act reflecting on honesty and fitness], and rule 8.4(d) [conduct prejudicial to the administration of justice]. See e.g., *In re Inglimo* (WI 2007) 740 N.W.2d 125 [court found lawyer’s sex with client’s wife constituted a conflict of interest under rule 1.7(b) [significant risk the representation will be materially limited by the lawyer’s responsibilities or relationship to... third person, or by the lawyer’s own interests]. The conduct in paragraph (a) is particularly egregious and probably involves moral turpitude.

The new rule, rule 1.8.10 [Sexual Relations with Current Client], prohibits all sex with clients except for spouses and people already in a relationship prior to the representation. Violations of Business and Professions Code section 6106.9 that do not fall within paragraph (a) are not as egregious. As a result, Paragraph (b) should be for violations of rule 1.8.10 and Business and Professions Code section 6106.9 not covered by paragraph (a).

#### 12. Standard 2.14

The new rule 8.1.1 [Compliance with Conditions of Discipline and Agreements in Lieu of Discipline] is broader than the old rule 1-110 and incorporates what was in the old rule and section 6068(k) of the State Bar Act. Thus, the proposed modified Standard is broader than the current Standard and incorporates section 6068(k) and agreements in lieu of discipline.

Additionally, there is no current Standard addressing a violation of rule 9.20 of the Rules of Court. The Supreme Court, however, has held that the presumed and usual sanction is disbarment. (See *Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131 [disbarment is generally the appropriate sanction for a willful violation of former rule 9.55 [current rule 9.20].]; *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322, 332.)

#### 13. Standard 2.18

Article Six of the State Bar Act (generally governing attorney discipline) contains numerous provisions authorizing attorney discipline for specified acts. In addition, other parts of the State Bar Act contain miscellaneous provisions by which attorneys may be disciplined. (See e.g. Business and Professions Code sections 6090.5 [Article 5.5 of the Business and Professions Code]; sections 6125, 6126, 6128, 6129, 6130, although done through 6068(a) and new rule 8.4(b); sections 6131 and 6133 [all Article 7]; sections 6146 through 6068(b) and rule 1.5 [MICRA, article 8.5] among others.). Other statutes also explicitly authorize discipline for violations. (See e.g., 55.32 of the Civil code.) The purpose of the proposed changes to this Standard is to provide guidance on sanctions for violations of the State Bar Act and other statutes related to the practice of law that specifically authorize discipline of attorneys for violations and those violations are not covered by any other Standard.

#### 14. NEW Standard 2.20

Paragraph (a) of the proposed new Standard 2.20 is to address Business and Professions Code section 6131. A conviction is not required to discipline an attorney for a violation of Business and Professions Code section 6131. (*Price v. State Bar* (1982) 30 Cal.3d 537 [two-year actual suspension although no conviction].) Further, Business and Professions Code section 6131 states a violation is punishable by disbarment.

Proposed new paragraphs (b) and (c) are for violations of Rule 8.4(b) for acts that are criminal acts that are not being prosecuted as a conviction referral or in which there is no conviction.

#### 15. NEW Standard 2.21

This proposed new Standard is to address violations of rule 8.4(d). As this rule is similar to Business and Professions Code section 6106, the proposed new Standard is similar. Nonetheless, the purpose of having a separate Standard was to allow the case law to develop separately and to minimize confusion.

### **FISCAL/PERSONNEL IMPACT**

None

### **RULE AMENDMENTS**

None

### **BOARD BOOK AMENDMENTS**

None

### **STRATEGIC PLAN GOALS & OBJECTIVES**

Goal: 2. Ensure a timely, fair, and appropriately resourced admissions, discipline, and regulatory system for the more than 250,000 lawyers licensed in California.

### **RECOMMENDATION**

**It is recommended that the Regulation and Discipline Committee approve the following resolution:**

**RESOLVED**, that staff is authorized to make available, for public comment for a period of 60-days, proposed amendments to:  
the Standards for Attorney Sanctions for Professional Misconduct, as set forth in Attachment A; and it is

**FURTHER RESOLVED**, that this authorization for release for public comment is not, and shall not be construed as, a statement or recommendation of approval of the proposed amended Standards for Attorney Sanctions for Professional Misconduct.

**ATTACHMENT(S) LIST**

- A.** Proposed Amended Standards for Attorney Sanctions for Professional Misconduct (Clean Version)
- B.** Proposed Amended Standards for Attorney Sanctions for Professional Misconduct (Redline Version)



## **ATTACHMENT A – Proposed Amended Standards for Attorney Sanctions for Professional Misconduct (Clean Version)**

### **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; July 1, 2015.

## 1.2 DEFINITIONS

- (a) “Lawyer” means a licensee of the California Supreme Court, the State Bar of California, or a person who is admitted in good standing and eligible to practice before the bar of any United States court or the highest court of the District of Columbia or any state, territory, or insular possession of the United States, or is licensed to practice law in, or is admitted in good standing and eligible to practice before the bar of the highest court of, a foreign country or any political subdivision thereof and includes any agent of the lawyer, law firm, or law corporation doing business in the state.
- (b) “Disbarment” is termination from the practice of law and from holding oneself out as entitled to practice law. The license issued by the Supreme Court or State Bar ceases and the licensee’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 lawyer 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 lawyer’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 lawyer’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 lawyer’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 lawyer is subject to State Bar supervision. Probation may include conditions that further the primary purposes of discipline.
- (k) “Conditions” are terms with which a lawyer must comply as part of a disciplinary sanction. They relate to a lawyer’s misconduct and the facts and circumstances surrounding the misconduct and serve the primary purposes of discipline.
- (l) “Tribunal” means: (i) a court, an arbitrator, an administrative law judge, or an administrative body acting in an adjudicative capacity and authorized to make a decision that can be binding on the parties involved; or (ii) a special master or other person to whom a court refers one or more issues and whose decision or recommendation can be binding on the parties if approved by the court.

Eff. January 1, 1986. Revised: January 1, 2007; January 1, 2014; July 1, 2015.

### **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; July 1, 2015.

## **1.4 CONDITIONS ATTACHED TO SANCTIONS**

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

- (a) make specific restitution or file a satisfaction of judgment;
- (b) take and pass a professional responsibility examination;
- (c) undergo treatment, at the lawyer's expense, for medical, psychological, or psychiatric conditions or for problems related to alcohol or substance abuse;
- (d) complete, at the lawyer'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; July 1, 2015.

## **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; July 1, 2015.

## **1.6 MITIGATING CIRCUMSTANCES**

A lawyer 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 lawyer 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 lawyer, such as illegal drug or substance abuse, and the lawyer established by clear and convincing evidence that the difficulties or disabilities no longer pose a risk that the lawyer 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 lawyer; 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; July 1, 2015.

## **1.7 DETERMINATION OF APPROPRIATE SANCTIONS**

- (a) If a lawyer 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 lawyer 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 lawyer 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 lawyer 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 lawyer 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 lawyer's unwillingness or inability to conform to ethical responsibilities.

- (c) Sanctions may be imposed, including disbarment, even if a lawyer 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.

Eff. July 1, 2015.

### **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 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; July 1, 2015.

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

- (a) Actual suspension of three months is the presumed sanction for commingling, failure to deposit funds received for a client or other person to whom the lawyer owes a contractual, statutory, or other legal duty, including advances for fees, costs and expenses, in a client trust account, or failure to promptly pay out entrusted funds.
- (b) Suspension or reproof is the presumed sanction for any other violation of rule 1.15.

Eff. January 1, 1986. Revised: January 1, 2001; January 1, 2014; July 1, 2015.

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<sup>1</sup> The term “reproof” includes public or private reproof.

## **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, or other violations of rule 1.5.

Eff. January 1, 1986. Revised: January 1, 2014; July 1, 2015.

## **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; July 1, 2015.

## **2.5 REPRESENTATION OF ADVERSE INTERESTS AND CONFLICTS OF INTEREST**

- (a) Actual suspension is the presumed sanction when a lawyer violates rule 1.7, subparagraphs (a), (b), and (d), or other law prohibiting an attorney from simultaneously representing conflicting interests and causes harm to any of the clients. If there is no harm, suspension or reproof is the presumed sanction depending on the magnitude of the violation.
- (b) Actual suspension is the presumed sanction when a lawyer either violates rule 1.9(a) or 1.9(b) or accepts or continues employment that is actually adverse to a client or former client and where the lawyer: (1) fails to obtain informed written consent, (2) breaches the duty to maintain confidential information material to the employment, and (3) causes harm to the client or former client. If there is no harm, suspension or reproof is the presumed sanction depending on the magnitude of the violation.
- (c) Suspension or reproof is the presumed sanction for all other conflicts of interest violations or breaches of the common law duty of loyalty not covered by subparagraphs (a) and (b) of this Standard, depending on the magnitude of the violation and the harm to the client or clients. (e.g., rules 1.7(c), 1.8.2, 1.8.6, 1.9(c), 1.10, 1.11, 1.12, 1.18(c) and (d).) Actual suspension is the presumed sanction if there is harm.

Eff. July 1, 2015.



## **2.6 BREACH OF CONFIDENTIALITY OR MISUSE OF CONFIDENTIAL INFORMATION**

- (a) Disbarment or suspension is the presumed sanction when a lawyer intentionally reveals client confidences or secrets, or uses a current, former, or prospective client's information to the disadvantage of the client, depending on the magnitude of the harm to the current, former, or prospective client or clients, unless the current, former prospective client gives informed consent.
- (b) Suspension or reproof is the presumed sanction when a lawyer recklessly or through gross negligence reveals client confidences or secrets, or uses a current, former, or prospective client's information to the disadvantage of the client, depending on the magnitude of the harm to the current, former, or prospective client or clients, unless the current, former, or prospective client gives informed consent.
- (c) Suspension or reproof is the presumed sanction when a lawyer violates rule 4.4 regarding a lawyer's duties concerning inadvertently transmitted writings depending on the harm to the party whose information is inadvertently disclosed.

Eff. July 1, 2015.

## **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 reproof 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.
- (d) Performance in this Standard means violations, including but not limited to, of any of the following: the duties of diligence; competence; supervision; duties regarding disbarred, suspended, or involuntary inactive attorneys; duties of subordinate attorneys; and duties to an organization. (See e.g., rules 1.1; 1.3; 1.13; 5.1; 5.2; 5.3; 5.3.1.) Communication in this Standard means violations including but not limited to of any of the following: communications with clients, communications of settlement offers, disclosure of professional liability, communications with prospective clients, communications with unrepresented persons, and communications with represented persons. (See e.g., Business and Professions Code 6068(m), rules 1.2, 1.4, 1.4.1, 2.1, 4.2.)

Eff. January 1, 1986. Revised: January 1, 2014; Renumbered & Revised July 1, 2015.

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

Actual suspension of at least six months is the presumed sanction when a lawyer enters into a partnership or other organization that practices law with a non-lawyer, allows a non-lawyer to own, direct, or control a professional corporation or other organization that practices law, shares legal fees with a non-lawyer, or any other violation of rule 5.4. The degree of sanction depends upon the extent to which the misconduct interfered with an attorney-client relationship and the extent to which the lawyer failed to perform legal services for which he or she was employed.

Eff. July 1, 2015.

## **2.9 FRIVOLOUS LITIGATION**

- (a) Actual suspension is the presumed sanction when a lawyer counsels or maintains a frivolous claim or action for an improper purpose or uses means that have no substantial purpose other than to delay or prolong the proceeding or cause needless expense, resulting in significant harm to an individual or the administration of justice. Disbarment is appropriate if the misconduct demonstrates a pattern.
- (b) Actual suspension is the presumed sanction when a lawyer counsels or maintains a frivolous claim or action for an improper purpose or uses means that have no substantial purpose other than to delay or prolong the proceeding or cause needless expense.

Eff. July 1, 2015.

## **2.10 UNAUTHORIZED PRACTICE OF LAW**

- (a) Disbarment or actual suspension is the presumed sanction when a lawyer engages in the unauthorized practice of law or unlawfully holds himself or herself out as entitled to practice law while he or she is on actual suspension for disciplinary reasons in the jurisdiction where the lawyer practices or holds himself or herself out as entitled to practice law or is on involuntary inactive enrollment under Business and Professions Code section 6007 or other law in the relevant jurisdiction. The degree of sanction depends on whether the lawyer knew he or she was not entitled to practice law.
- (b) Suspension or reproof is the presumed sanction when a lawyer engages in the unauthorized practice of law or unlawfully holds himself or herself out as entitled to practice law while he or she is not licensed to practice law in that jurisdiction, is on voluntary inactive status, or on suspension for non-disciplinary reasons (e.g., non-payment of fees or non-compliance with legal education requirements) in the jurisdiction where the lawyer practices or holds himself or herself out as entitled to practice law. The degree of sanction depends on whether the lawyer knew he or she was not entitled to practice law.

- (c) Disbarment or actual suspension is the presumed sanction when a lawyer assists another person to practice law in California or another jurisdiction when that person is not authorized to practice law in the relevant jurisdiction, or lends his or her name to be used as attorney by a non-lawyer.

Eff. January 1, 1986. Revised: January 1, 2014; Renumbered & Revised July 1, 2015.

## **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 practice of law.

Eff. January 1, 1986. Revised: January 1, 2001; January 1, 2014; Renumbered & Revised July 1, 2015.

## **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 or tribunal order related to the lawyer'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) and rule 3.4(f).
- (b) Reproval 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; Renumbered & Revised July 1, 2015.

## **2.13 SEXUAL RELATIONS WITH CLIENTS**

- (a) Disbarment is the presumed sanction when a lawyer requires, demands, or requests sexual relations with a client, or a relative or close friend of 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, or a relative or close friend of a client,
- (b) Suspension or reproval is the presumed sanction for any other violation of rule

1.8.10 or section 6106.9.

Eff. January 1, 1986. Revised: January 1, 2001; January 1, 2014; Renumbered & Revised July 1, 2015.

**2.14 VIOLATION OF CONDITIONS ATTACHED TO AGREEMENTS IN LIEU OF DISCIPLINE OR CONDITIONS ATTACHED TO DISCIPLINE OR VIOLATIONS OF RULE 9.20 OF THE CALIFORNIA RULES OF COURT**

- (a) Actual suspension is the presumed sanction for failing to comply with the conditions of any agreement in lieu of discipline, any private or public reproof, or any other discipline. The degree of sanction depends on the nature of the condition violated and the lawyer's unwillingness or inability to comply with disciplinary orders.
- (b) Disbarment is the presumed sanction for a violation of Rule 9.20 or of the California Rules of Court.

Eff. January 1, 1986. Revised: January 1, 2014; Renumbered & Revised July 1, 2015.

**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. Renumbered & Revised July 1, 2015.

**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. July 1, 2014. Renumbered & Revised July 1, 2015.

## **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. July 1, 2014. Renumbered & Revised July 1, 2015.

## **2.18 VIOLATION OF THE STATE BAR ACT OR OTHER STATUTES**

Disbarment or actual suspension is the presumed sanction for any violation of the Business and Professions Code or other statute authorizing discipline not otherwise specified in these Standards.

Eff. July 1, 2014. Renumbered & Revised July 1, 2015.

## **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. July 1, 2014. Renumbered & Revised July 1, 2015.

## **2.20 VIOLATION OF A CRIMINAL ACT THAT REFLECTS ADVERSELY ON THE LAWYER'S HONESTY OR FITNESS AS A LAWYER IN OTHER RESPECTS**

- (a) Disbarment is the presumed sanction for violation of Business & Professions Code section 6131 even if the violation does not result in a conviction.
- (b) Disbarment or actual suspension is the presumed sanction for a criminal act that reflects on the lawyer's honesty if Standards 2.15, 2.16, or 2.17 do not apply.
- (c) Suspension or reproof is the presumed sanction for a criminal act that does not reflect on the lawyer's honesty, but reflects on the lawyer's fitness as a lawyer, if Standards 2.15, 2.16, or 2.17 do not apply.

## **2.21 CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE**

Disbarment or actual suspension is the presumed sanction for conduct that is prejudicial to the administration of justice in violation of rule 8.4(d). The degree of sanction depends on the magnitude of the misconduct, the extent to which the misconduct harmed the victim or the administration of justice, and the extent to which the misconduct related to the lawyer's practice of law.

## **ATTACHMENT B - Proposed Amended Standards for Attorney Sanctions for Professional Misconduct (Redline Version)**

### **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; July 1, 2015.

## 1.2 DEFINITIONS

- (a) ~~“Member” is a member of the State Bar of California.~~ “Lawyer” means a licensee of the California Supreme Court, the State Bar of California, or a person who is admitted in good standing and eligible to practice before the bar of any United States court or the highest court of the District of Columbia or any state, territory, or insular possession of the United States, or is licensed to practice law in, or is admitted in good standing and eligible to practice before the bar of the highest court of, a foreign country or any political subdivision thereof and includes any agent of the lawyer, law firm, or law corporation doing business in the state.
- (b) “Disbarment” is termination from the practice of law and from holding oneself out as entitled to practice law. ~~Membership in~~ The license issued by the Supreme Court or State Bar ceases and the ~~member’s~~ licensee’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~~ lawyer 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~~ lawyer’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~~ lawyer’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~~ lawyer’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~~ lawyer is subject to State Bar supervision. Probation may include conditions that further the primary purposes of discipline.
- (k) “Conditions” are terms ~~that~~ with which a ~~member~~ lawyer must comply ~~with~~ as part of a disciplinary sanction. They relate to a ~~member’s~~ lawyer’s misconduct and the facts and circumstances surrounding the misconduct and serve the primary purposes of discipline.
- (l) “Tribunal” means: (i) a court, an arbitrator, an administrative law judge, or an administrative body acting in an adjudicative capacity and authorized to make a decision that can be binding on the parties involved; or (ii) a special master or other person to whom a court refers one or more issues and whose decision or recommendation can be binding on the parties if approved by the court.

Eff. January 1, 1986. Revised: January 1, 2007; January 1, 2014; July 1, 2015.

### **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; July 1, 2015.



## 1.4 CONDITIONS ATTACHED TO SANCTIONS

Conditions attached to a reproof or probation may require a ~~member~~ lawyer 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~~ lawyer's expense, for medical, psychological, or psychiatric conditions or for problems related to alcohol or substance abuse;
- (d) complete, at the ~~member's~~ lawyer'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; July 1, 2015.

## 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; July 1, 2015.

## 1.6 MITIGATING CIRCUMSTANCES

A ~~member~~ lawyer 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~~ lawyer 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~~ lawyer, such as illegal drug or substance abuse, and the ~~member~~ lawyer established by clear and convincing evidence that the difficulties or disabilities no longer pose a risk that the ~~member~~ lawyer 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~~ lawyer; 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; July 1, 2015.

## **1.7 DETERMINATION OF APPROPRIATE SANCTIONS**

- (a) If a ~~member~~ lawyer 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~~ lawyer 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~~ lawyer 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~~ lawyer 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~~ lawyer 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~~ lawyer's unwillingness or inability to conform to ethical responsibilities.

- (c) Sanctions may be imposed, including disbarment, even if a ~~member~~ [lawyer](#) 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.

Eff. July 1, 2015.

### **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 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; July 1, 2015.

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

- (a) Actual suspension of three months is the presumed sanction for commingling, failure to deposit funds received for a client or other person to whom the lawyer owes a contractual, statutory, or other legal duty, including advances for fees, costs and expenses, in a client trust account, or failure to promptly pay out entrusted funds.
- (b) Suspension or reproof is the presumed sanction for any other violation of ~~Rule 4-~~ [rule 1.15](#).

Eff. January 1, 1986. Revised: January 1, 2001; January 1, 2014; July 1, 2015.

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<sup>1</sup> The term “reproof” includes public or private reproof.

## 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~~services, or other violations of rule 1.5.

Eff. January 1, 1986. Revised: January 1, 2014; July 1, 2015.

## 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; July 1, 2015.

## 2.5 REPRESENTATION OF ADVERSE INTERESTS AND CONFLICTS OF INTEREST

- (a) Actual suspension is the presumed sanction when a ~~member lawyer accepts or continues simultaneous representation of clients with actual adverse interests, where the member lawyer: (1) fails to obtain informed written consent of each client, and (2) causes significant harm to any of the clients.~~violates rule 1.7, subparagraphs (a), (b), and (d), or other law prohibiting an attorney from simultaneously representing conflicting interests and causes harm to any of the clients. If there is no harm, suspension or reproof is the presumed sanction depending on the magnitude of the violation.
- (b) Actual suspension is the presumed sanction when a ~~member lawyer either violates rule 1.9(a) or 1.9(b) or~~ accepts or continues employment that is actually adverse to a client or former ~~client, client and~~ where the ~~member lawyer:~~ (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. If there is no harm, suspension or reproof is the presumed sanction depending on the magnitude of the violation.
- (c) Suspension or reproof is the presumed sanction for all other conflicts of interest violations or breaches of the common law duty of loyalty not covered by subparagraphs (a) and (b) of this Standard, depending on the magnitude of the violation and the harm to the client or clients. (e.g., rules 1.7(c), 1.8.2, 1.8.6, 1.9(c), 1.10, 1.11, 1.12, 1.18(c) and (d).) Actual suspension is the presumed sanction if there is harm.

Eff. July 1, 2015.

## **2.6 BREACH OF CONFIDENTIALITY OR MISUSE OF CONFIDENTIAL INFORMATION**

- (a) ~~Suspension~~Disbarment or suspension is the presumed sanction when a ~~member lawyer~~ intentionally reveals client confidences or ~~secrets~~secrets, or uses a current, former, or prospective client's information to the disadvantage of the client, depending on the magnitude of the harm to the current, former, or prospective client or clients, unless the current, former prospective client gives informed consent.
- (b) ~~Reproval~~Suspension or reproval is the presumed sanction when a ~~member lawyer~~ recklessly or through gross negligence reveals client confidences or ~~secrets~~secrets, or uses a current, former, or prospective client's information to the disadvantage of the client, depending on the magnitude of the harm to the current, former, or prospective client or clients, unless the current, former, or prospective client gives informed consent.
- (c) Suspension or reproval is the presumed sanction when a lawyer violates rule 4.4 regarding a lawyer's duties concerning inadvertently transmitted writings depending on the harm to the party whose information is inadvertently disclosed.

Eff. July 1, 2015.

## **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 reproval 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.
- (d) Performance in this Standard means violations, including but not limited to, of any of the following: the duties of diligence; competence; supervision; duties regarding disbarred, suspended, or involuntary inactive attorneys; duties of subordinate attorneys; and duties to an organization. (See e.g., rules 1.1; 1.3; 1.13; 5.1; 5.2; 5.3; 5.3.1.) Communication in this Standard means violations including but not limited to of any of the following: communications with clients, communications of settlement offers, disclosure of professional liability, communications with prospective clients, communications with unrepresented persons, and communications with represented persons. (See e.g., Business

Eff. January 1, 1986. Revised: January 1, 2014; Renumbered & Revised July 1, 2015.

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

Actual suspension of at least six months is the presumed sanction when a ~~member~~ lawyer enters into a partnership or other organization that practices law with a non-lawyer, allows a non-lawyer to own, direct, or control a professional corporation or other organization that practices law, shares legal fees with a ~~non-lawyer~~ non-lawyer, or any other violation of rule 5.4. 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~~ lawyer failed to perform legal services for which he or she was employed.

Eff. July 1, 2015.

## **2.9 FRIVOLOUS LITIGATION**

- (a) Actual suspension is the presumed sanction when a ~~member~~ lawyer counsels or maintains a frivolous claim or action for an improper ~~purpose,~~ purpose or uses means that have no substantial purpose other than to delay or prolong the proceeding or cause needless expense, 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~~ Actual suspension is the presumed sanction when a ~~member~~ lawyer counsels or maintains a frivolous claim or action for an improper ~~purpose,~~ purpose or uses means that have no substantial purpose other than to delay or prolong the proceeding or cause needless expense, ~~resulting in harm to an individual or the administration of justice.~~

Eff. July 1, 2015.

## **2.10 UNAUTHORIZED PRACTICE OF LAW**

- (a) Disbarment or actual suspension is the presumed sanction when a ~~member~~ lawyer engages in the unauthorized practice of law or unlawfully holds himself or herself out as entitled to practice law while he or she is on actual suspension for disciplinary reasons in the jurisdiction where the lawyer practices or holds himself or herself out as entitled to practice law or is on involuntary inactive enrollment under Business and Professions Code section ~~6007(b)-(e).~~ 6007 or other law in the relevant jurisdiction. The degree of sanction depends on whether the ~~member~~ lawyer ~~knowingly engaged in the unauthorized~~ knew he or she was not entitled to practice ~~of~~ law.
- (b) Suspension or reproof is the presumed sanction when a ~~member~~ lawyer engages in the unauthorized practice of law or unlawfully holds himself or herself out as entitled to practice law while he or she is not licensed to practice law in



that jurisdiction, is on voluntary inactive status, or actual on suspension for non-disciplinary reasons (e.g., such as non-payment of fees or MCLE non-compliance with legal education requirements) in the jurisdiction where the lawyer practices or holds himself or herself out as entitled to practice law. The degree of sanction depends on whether the member lawyer knowingly engaged in the unauthorized knew he or she was not entitled to practice of law.

- (c) Disbarment or actual suspension is the presumed sanction when a lawyer assists another person to practice law in California or another jurisdiction when that person is not authorized to practice law in the relevant jurisdiction, or lends his or her name to be used as attorney by a non-lawyer.

Eff. January 1, 1986. Revised: January 1, 2014; Renumbered & Revised July 1, 2015.

## **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; Renumbered & Revised July 1, 2015.

## **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 or tribunal order related to the member's lawyer'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)~~ (h) and rule 3.4(f).
- (b) Reproval 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; Renumbered & Revised July 1, 2015.



## 2.13 SEXUAL RELATIONS WITH CLIENTS

- (a) Disbarment is the presumed sanction when a ~~member~~ lawyer requires or demands requires, demands, or requests sexual relations with a ~~client~~ client, or a relative or close friend of 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.~~ client, or a relative or close friend of a client,
- (b) Suspension or reproof is the presumed sanction for any other violation of ~~Rule 3-120.~~ rule 1.8.10 or section 6106.9.

Eff. January 1, 1986. Revised: January 1, 2001; January 1, 2014; Renumbered & Revised July 1, 2015.

## 2.14 VIOLATION OF CONDITIONS ATTACHED TO AGREEMENTS IN LIEU OF DISCIPLINE OR CONDITIONS ATTACHED TO DISCIPLINE OR VIOLATIONS OF RULE 9.20 OF THE CALIFORNIA RULES OF COURT

- (a) Actual suspension is the presumed sanction for failing to comply with ~~a condition~~ the conditions of any agreement in lieu of discipline, any private or public reproof, or any other discipline. The degree of sanction depends on the nature of the condition violated and the ~~member's~~ lawyer's unwillingness or inability to comply with disciplinary orders.
- (b) Disbarment is the presumed sanction for a violation of Rule 9.20 or of the California Rules of Court.

Eff. January 1, 1986. Revised: January 1, 2014; Renumbered & Revised July 1, 2015.

## 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. Renumbered & Revised July 1, 2015.

## 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. July 1, 2014. Renumbered & Revised July 1, 2015.

## **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. July 1, 2014. Renumbered & Revised July 1, 2015.

## **2.18 VIOLATION OF THE STATE BAR ACT OR 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,~~ Code or other statute authorizing discipline not otherwise specified in these Standards.

Eff. July 1, 2014. Renumbered & Revised July 1, 2015.

## **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. July 1, 2014. Renumbered & Revised July 1, 2015.

## **2.20 VIOLATION OF A CRIMINAL ACT THAT REFLECTS ADVERSELY ON THE LAWYER'S HONESTY OR FITNESS AS A LAWYER IN OTHER RESPECTS**

- (a) Disbarment is the presumed sanction for violation of Business & Professions Code section 6131 even if the violation does not result in a conviction.
- (b) Disbarment or actual suspension is the presumed sanction for a criminal act that reflects on the lawyer's honesty if Standards 2.15, 2.16, or 2.17 do not apply.
- (c) Suspension or reproof is the presumed sanction for a criminal act that does not reflect on the lawyer's honesty, but reflects on the lawyer's fitness as a lawyer, if Standards 2.15, 2.16, or 2.17 do not apply.

## **2.21 CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE**

Disbarment or actual suspension is the presumed sanction for conduct that is prejudicial to the administration of justice in violation of rule 8.4(d). The degree of sanction depends on the magnitude of the misconduct, the extent to which the misconduct harmed the victim or the administration of justice, and the extent to which the misconduct related to the lawyer's practice of law.