



The State Bar *of California*

CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

Date: August 20, 2021

To: Discipline and Regulation Subcommittees

From: California Paraprofessional Program Working Group Staff

Subject: Proposed Disciplinary Standards

The California Paraprofessional Program Working Group (CPPWG or Working Group) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services \(ATILS\)](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include proposed disciplinary standards for paraprofessional licensees.

At a joint meeting on August 20, 2021, the Discipline and Regulation Subcommittees will consider draft Standards for Licensed Paraprofessional Sanctions for Professional Misconduct, developed by staff in the Office of General Counsel (OGC), which are provided as Attachment A. OGC staff has identified a number of general issues for consideration regarding the proposed standards, which are provided as Attachment B. The subcommittees' recommendation will be considered by the full Working Group at its meeting on August 31.

~~f~~**TITLE IV. STANDARDS FOR ATTORNEY LICENSED PARAPROFESSIONAL SANCTIONS FOR PROFESSIONAL MISCONDUCT**

PART A. STANDARDS IN GENERAL

1.1 PURPOSES AND SCOPE OF STANDARDS

The Standards For Attorney Licensed paraprofessional 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, modeled from the Standards for Attorney Sanctions for Professional Misconduct and based on attorney disciplinary decisional law including~~ 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.~~

- (a) ~~“Licensed paraprofessional” means a person licensed to engage in the limited practice of law pursuant to [rule or statute]^{AC1} and includes any agent of the licensed paraprofessional.~~

- (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~~licensed paraprofessionals.
- (c) “Suspension” can include a period of actual suspension, stayed suspension, or both:
 - (1) “Actual suspension” is a disqualification from the limited practice of law and from holding oneself out as ~~entitled to practice law~~a licensed paraprofessional, 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~~Licensing Board, of rehabilitation, fitness to practice, and present learning and ability in the general law before a lawyer licensed paraprofessional may be relieved of the actual suspension. The ~~State Bar Court~~Licensing Board 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 Reprimand” is a public censure or reprimand. A public reprimand may include conditions.
- ~~(e) “Private Reprimand” is a censure or reprimand that is not a matter of public record unless imposed after the initiation of formal disciplinary proceedings. A private reprimand may include conditions.~~
- ~~(f)~~(e) “Interim Remedies” are temporary restrictions imposed by the ~~State Bar Court~~Hearing Panel or Licensing Board on a ~~lawyer’s~~licensed paraprofessional’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)~~(f) “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^[AC2].
- ~~(h)~~(g) “Aggravating circumstances” are factors surrounding a ~~lawyer’s~~licensed paraprofessional’s misconduct that demonstrate that the primary purposes of discipline warrant a greater sanction than what is otherwise specified in a given Standard.

~~(i)(h)~~ “Mitigating circumstances” are factors surrounding a ~~lawyer’s~~licensed paraprofessional’s misconduct that demonstrate that the primary purposes of discipline warrant a more lenient sanction than what is otherwise specified in a given Standard.

~~(i)(i)~~ “Probation” is a period of time under which a ~~lawyer~~licensed paraprofessional is subject to State Bar supervision. Probation may include conditions that further the primary purposes of discipline.

~~(i)(i)~~ “Conditions” are terms with which a ~~lawyer~~licensed paraprofessional must comply as part of a disciplinary sanction. They relate to a ~~lawyer’s~~licensed paraprofessional’s misconduct and the facts and circumstances surrounding the misconduct and serve the primary purposes of discipline.

~~(i)(k)~~ “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.

~~(l)~~ Eff. January 1, 1986. Revised: January 1, 2007; January 1, 2014; July 1, 2015; January 25, 2019. “Rules of Professional Conduct” refers to the California Rules of Professional Conduct for Licensed Paraprofessionals.

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; or

~~(e) private reproof; or~~

~~(f) any interim remedies or other final discipline authorized by the Business and Professions Code.~~

~~(e)~~ Eff. January 1, 1986. Revised: January 1, 2014; July 1, 2015 statute.

1.4 CONDITIONS ATTACHED TO SANCTIONS

Conditions attached to a reproof or probation may require a ~~lawyer~~ licensed paraprofessional 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~~licensed paraprofessional's expense, for medical, psychological, or psychiatric conditions or for problems related to alcohol or substance abuse;
- (d) complete, at the ~~lawyer's~~licensed paraprofessional'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; January 25, 2019.~~

1.5 AGGRAVATINGCIRCUMSTANCES

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~~California Rules of Professional Conduct for Licensed Paraprofessionals;
- (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~~A licensed paraprofessional 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~~licensed paraprofessional 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~~licensed paraprofessional, such as illegal drug or substance abuse, and the ~~lawyer~~licensed paraprofessional established by clear and convincing evidence that the difficulties or disabilities no longer pose a risk that the ~~lawyer~~licensed paraprofessional 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~~licensed paraprofessional; 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; January 25, 2019.~~

1.7 DETERMINATION OF APPROPRIATE SANCTIONS

- (a) If a lawyer-licensed paraprofessional 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-licensed paraprofessional 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-licensed paraprofessional is willing and has the ability to conform to ethical responsibilities in the future.

~~Eff. January 1, 1986. Revised: January 1, 2014; January 25, 2019.~~

1.8 EFFECT OF PRIOR DISCIPLINE

- (a) If a lawyer-licensed paraprofessional 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-licensed paraprofessional 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-licensed paraprofessional's unwillingness or

inability to conform to ethical responsibilities.

- (c) Sanctions may be imposed, including **disbarment**, even if a lawyer licensed paraprofessional has no prior record of discipline.

~~Eff. January 1, 2014; Revised: January 25, 2019.~~

PART B. SANCTIONS FOR SPECIFIC MISCONDUCT ¹

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**^[AC3] 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 (1) commingling, (2) failure to deposit funds received for a client or other person to whom the lawyer licensed paraprofessional owes a contractual, statutory, or other legal duty, including advances for fees, costs and expenses, in a ~~client~~ trust account when that conduct does not involve misappropriation, or (3) failure to promptly pay out entrusted funds.
- (b) Suspension or reproof is the presumed sanction for any other violation of rule 1.15 of the Rules of Professional Conduct including, but not limited to violations of 1.15(~~dc~~).

~~Eff. January 1, 1986. Revised: January 1, 2001; January 1, 2014; July 1, 2015; May 17, 2019.~~

2.3 ILLEGAL OR UNCONSCIONABLE FEE

¹The term "reproof" includes public or private reproof.

- (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 (c) – (e) of the Rules of Professional Conduct.

~~Eff. January 1, 1986. Revised: January 1, 2014; July 1, 2015; January 25, 2019.~~

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~~licensed paraprofessional violates rule 1.7, subparagraphs (a), (b), and (d) of the Rules of Professional Conduct, or other law prohibiting ~~an attorney~~a licensed paraprofessional from simultaneously representing conflicting interests and causes significant harm to any of the clients.
- (b) Actual suspension is the presumed sanction when a ~~lawyer~~licensed paraprofessional either violates rule 1.9(a) or 1.9(b) of the Rules of Professional Conduct and causes significant harm to the former client.
- (c) Suspension or reproof is the presumed sanction for all other conflicts of interest violations or breaches of the duty of loyalty not covered by other subparagraphs of this Standard, depending on the magnitude of the violation and the harm to the client or clients. This includes, but is not limited to rules 1.7(c), 1.8.2, 1.8.6, 1.10, 1.11, 1.12, and 1.18(c) and (d) of the Rules of Professional Conduct. Actual suspension is the presumed sanction if there is harm.
- ~~(d) Actual suspension is the presumed sanction for a violation of the former rules addressing conflicts, including, but not limited to rules 3-310, 3-320, and 3-600 of the former Rules of Professional Conduct, where the lawyer causes significant harm to the client or former client.~~

~~Eff. July 1, 2015. Revised: May 17, 2019.~~

2.6 BREACH OF CONFIDENTIALITY OR MISUSE OF CONFIDENTIAL INFORMATION

- (a) Suspension is the presumed sanction when a lawyer-licensed paraprofessional intentionally reveals information protected by rule 1.6 of the Rules of Professional Conduct ~~confidences or secrets~~, or uses a current, former, or prospective client's information to the disadvantage of the client, depending on the harm to the current, former, or prospective client or clients.
- (b) Reproval is the presumed sanction when a lawyer-licensed paraprofessional recklessly or through gross negligence reveals information relating to the representation of a client ~~confidences secrets~~, or uses a current, former, or prospective client's information to the disadvantage of the client, depending on the harm to the current, former, or prospective client or clients
- (c) Suspension or reproval is the presumed sanction when a lawyer-licensed paraprofessional violates rule 4.4 of the Rules of Professional Conduct regarding a lawyer's licensed paraprofessional's duties concerning inadvertently transmitted writings depending on the harm to the party whose information is inadvertently disclosed.

~~Eff. July 1, 2015. Revised: January 25, 2019; May 17, 2019.~~

2.7 PERFORMANCE, COMMUNICATION OR WITHDRAWAL VIOLATIONS

- (a) Disbarment^[AC4] 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 includes, but is not limited to, any of the following: the duties of diligence; competence; supervision; duties regarding disbarred, suspended, resigned or involuntary inactive attorneys; duties licensee of subordinate attorneys the State Bar; and duties ~~to an organization of subordinate licensed paraprofessionals~~. This includes, but is not limited to rules 1.1, 1.3, ~~1.13~~, 5.1, 5.2, 5.3, and
- (d) 5.3.1 of the Rules of Professional Conduct. Communication in this Standard includes, but is not limited to of any of the following: communications with clients, communications of settlement offers, disclosure of professional liability insurance, communications with prospective clients, communications with unrepresented persons, and communications with represented persons. This includes, but is not limited to, ~~Business and Professions Code section 6068, subdivision (m), and~~ rules 1.2, 1.4, 1.4.1, 1.4.2, 1.4.3, 2.1, 4.2, and 4.3 of the Rules of Professional Conduct.

~~Eff. January 1, 1986. Revised: January 1, 2014; July 1, 2015; January 25, 2019.~~

2.8 PARTNERSHIP OR FEE-SPLITTING WITH NONLAWYERS AND NON-LAWYER LICENSEES

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

~~Eff. July 1, 2015. Revised and retitled: January 25, 2019.~~

2.9 FRIVOLOUS LITIGATION

- (a) Actual suspension is the presumed sanction when a lawyer licensed paraprofessional counsels or maintains assists with bringing or continuing 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.^[AC5]
- (b) Suspension or reproof is the presumed sanction when a lawyer licensed paraprofessional counsels or maintains assists with bringing or continuing 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 harm to an individual or the administration of justice.

~~Eff. July 1, 2015. Revised: January 25, 2019.~~

2.10 UNAUTHORIZED PRACTICE OF LAW

- (a) Disbarment^[AC6] or actual suspension is the presumed sanction when a lawyer licensed paraprofessional 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 licensed paraprofessional 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.]^[AC7] The degree of sanction depends on whether the lawyer licensed paraprofessional knew he or she was not entitled to practice law.
- (b) Suspension or reproof is the presumed sanction when a lawyer licensed paraprofessional 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 (including, but not limited to non-payment of fees or non-compliance with legal education requirements) in the jurisdiction where the lawyer licensed paraprofessional practices or

holds himself or herself out as entitled to practice law. The degree of sanction depends on whether the ~~lawyer~~ licensed paraprofessional knew he or she was not entitled to practice law.

~~Eff. January 1, 1986. Revised: January 1, 2014; Renumbered & Revised July 1, 2015.
Revised: January 25, 2019.~~

2.11 ~~MORAL TURPITUDE~~^[AC8], DISHONESTY, FRAUD, CORRUPTION, OR CONCEALMENT

Disbarment^[AC9] 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; January 25, 2019.~~

2.12 ~~VIOLATION OF OATH OR DUTIES OF AN ATTORNEY~~^[AC10] ~~LICENSED PARAPROFESSIONAL~~^[AC10]

- ~~(a) Disbarment^[AC11] or actual suspension is the presumed sanction for disobedience or violation of a court or tribunal order related to the lawyer's licensed paraprofessional's practice of law, the attorney's licensed paraprofessional's oath, or the duties required of an attorney licensed paraprofessional under Business and Professions Code section 6068, subdivisions (a)(b)(d)(e)(f), or (h), and rule 3.4(f) of the Rules of Professional Conduct.~~
- (b) Reproval is the presumed sanction for a violation of the duties required of an attorney licensed paraprofessional under Business and Professions Code section 6068, subdivisions (i),(j),(l) or (o).
- (c) Violations of the duties required of an attorney licensed paraprofessional under Business and Professions Code section 6068, subdivisions (m) or (n), are covered in Standard 2.7.
- (d) Violations of the duties required of an attorney licensed paraprofessional under Business and Professions Code section 6068, subdivisions (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; January 25, 2019.~~

2.13 SEXUAL RELATIONS WITH CLIENTS

- (a) Disbarment^[AC12] is the presumed sanction when a lawyer licensed paraprofessional expressly or impliedly conditions the performance of legal services for a current or prospective client upon the client's willingness to engage in sexual relations with the attorney licensed paraprofessional or employs coercion, intimidation, or undue influence in entering into sexual relations with a client.
- (b) Suspension or reproval is the presumed sanction for any other violation of rule 1.8.10 of the Rules of Professional Conduct, or Business and Professions Code section

~~6106.9~~ [AC13].

~~Eff. January 1, 1986. Revised: January 1, 2001; January 1, 2014; Renumbered & Revised: July 1, 2015. Revised: May 17, 2019.~~

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 lawyer'slicensedparaprofessional's unwillingness or inability to comply with disciplinary orders.

~~Eff. January 1, 1986. Revised: January 1, 2014; July 1, 2015; January 25, 2019.~~

2.15 CRIMINAL CONVICTIONS INVOLVING MORAL TURPITUDE

- (a) ~~Summary disbarment [AC14] is the sanction for final conviction of a felony under the laws of California, the United States, or any state or territory thereof, and either: (1) an element of the offense is the specific intent to deceive, defraud, steal, or make or suborn a false statement, or involved moral turpitude, or (2) the facts and circumstances of the offense involved moral turpitude.~~
- (b) ~~Disbarment [AC15] or actual suspension is the presumed sanction for final conviction of a [felony or] [AC16] misdemeanor involving moral turpitude.~~

~~Eff. January 1, 2014. Renumbered & Revised July 1, 2015. Revised: May 17, 2019.~~

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 [AC17]~~

- ~~(a) Disbarment [AC18] is the presumed sanction for final conviction of a misdemeanor specified in Business and Professions Code section 6131, where a public prosecutor aids in the defense of a defendant.~~
- ~~(b) Disbarment [AC19] 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 ~~VIOLETION OF OTHER ARTICLE 6 STATUTES~~ ^[AC20]

~~Disbarment~~^[AC21] 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. 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 LICENSED PARAPROFESSIONAL'S~~ HONESTY OR FITNESS AS A ~~LAWYER LICENSED PARAPROFESSIONAL~~ IN OTHER RESPECTS

- (a) ~~Disbarment is the presumed sanction for violation of Business and Professions Code section 6131 even if the violation does not result in a conviction.~~ ^[AC22]
- (b) Disbarment ^[AC23] or actual suspension is the presumed sanction for a criminal act that reflects on the ~~lawyer's licensed paraprofessional'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 licensed paraprofessional's~~ honesty, but reflects on the ~~lawyer's licensed paraprofessional's~~ fitness as a ~~lawyer licensed paraprofessional~~, if Standards 2.15, 2.16, or 2.17 do not apply.

~~Eff. January 25, 2019.~~

2.21 CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE

Disbarment ^[AC24] or actual suspension is the presumed sanction for conduct that is prejudicial to the administration of justice in violation of rule 8.4(d) of the Rules of Professional Conduct. 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 licensed paraprofessional's~~ practice of law.

~~Eff. May 17, 2019.~~

Draft Disciplinary Standards: General Issues for Consideration

1. Monetary Sanctions for misconduct:
 - a. Pursuant to Bus. & Prof. Code section 6086.13, where there is a Supreme Court order of discipline against an attorney imposing suspension or disbarment, or accepting a resignation with charges pending, the order may include an order for a monetary sanction not to exceed \$5,000 for each violation, subject to a total limit of \$50,000. Any sanctions collected are deposited into the Client Security Fund.
 - b. As a deterrent to misconduct, should paraprofessionals be subject to the imposition of monetary sanctions following discipline?
 - c. RESOLVED, that the California Paraprofessional Program Working Group recommends that Paraprofessionals who have been suspended or disbarred, or who have resigned with charges pending, [be / not be] subject to the imposition of monetary sanctions.
2. Cost Assessments & Awards
 - a. Pursuant to Bus. & Prof. Code section 6086.10, orders imposing public reproof or greater shall include a direction that the attorney shall pay costs. These costs include the actual expenses incurred by the State Bar for transcripts and reporter services, expenses that would qualify as taxable costs recoverable in civil proceedings, and charges determined by the State Bar to be reasonable costs of investigation, hearing, and review. Additionally, an attorney exonerated of all charges following hearing is entitled to reimbursement for reasonable expenses.
 - b. As a means to defray costs in the preparation and administration of disciplinary proceedings, and as a deterrent to misconduct, should paraprofessionals be subject to an assessment of costs?
 - c. RESOLVED, that the California Paraprofessional Program Working Group recommends that Paraprofessionals who have been disciplined [be / not be] subject to an assessment of costs.
3. Conviction Proceedings:
 - a. Pursuant to Bus. & Prof. Code sections 6101 and 6102, and Rule of Court 9.10(a), the State Bar has developed special proceedings in State Bar Court for matters resulting from an attorney's criminal conviction or sentence of incarceration for 90 days or more. Section 6101 provides that an attorney's conviction of a felony or misdemeanor, involving moral turpitude, constitutes cause for disbarment or suspension. In such matters, the record of conviction is conclusive evidence of guilt of the crime of which the attorney has been convicted. The statute requires the prosecutor to notify OCTC of the pendency of any criminal action against an attorney, and requires the clerk of the court to transmit the record of conviction. Section 6102 provides that an attorney shall be suspended upon conviction of such crime until the time for appeal has elapsed, but allows the court to decline to impose or set aside any such suspension in the interest of justice. Subdivision (b) provides for summary disbarment of the attorney following certain felony convictions. Conviction proceedings are initiated in the Review Department when OCTC files a certified copy of the record of conviction or sentence of incarceration for 90 days or more. See State Bar Rules of Procedure, Title 5, Division 6, Chapter 2.

- b. Should sections 6101 and 6102 be expanded to make paraprofessionals subject to criminal conviction proceedings based on conviction of a felony or misdemeanor involving moral turpitude?
 - c. RESOLVED, that the California Paraprofessional Program Working Group recommends that sections 6101 and 6102 of the Business and Professions Code [be / not be] expanded to make Paraprofessionals who have been convicted of a felony or misdemeanor involving moral turpitude subject to special conviction proceedings.
- 4. Subsequent Arrest Notification:
 - a. Pursuant to Bus. & Prof. Code section 6054, attorney applicants are required to submit fingerprints for the purpose of determining whether the applicant has a criminal record, and such fingerprints are retained and used to provide the State Bar with subsequent arrest notifications for all licensed attorneys.
 - b. To facilitate criminal conviction proceedings or disciplinary proceedings based on criminal convictions, should the State Bar receive subsequent arrest notifications for paraprofessionals, and should paraprofessional applicants be required to submit fingerprints for the purpose of subsequent arrest notification?
 - c. RESOLVED, that the California Paraprofessional Program Working Group recommends that sections 6054 of the Business and Professions Code [be / not be] expanded to include Paraprofessionals in subsequent arrest notifications to the State Bar.
- 5. Involuntary Inactive Enrollment:
 - a. Attorneys are subject to involuntary inactive enrollment in circumstances provided by statute. Where an attorney is required to undergo involuntary treatment pursuant to specified provisions of the Welfare and Institutions Code, the State Bar is required to place the attorney on involuntary inactive status. (BPC 6007(a).) In other circumstances, the State Bar Court is required to enroll the attorney as inactive. (BPC 6007(b)-(c).) The State Bar has developed special proceedings in State Bar Court for hearing these matters. See State Bar Rules of Procedure, Title 5, Division 4.¹ These bases for involuntary inactive enrollment arise from an attorney's mental or physical inability to practice competently, or where their misconduct presents a serious threat of harm to the public. An attorney is subject to such proceedings in the following circumstances:
 - i. Insanity or Mental Incompetence: where the attorney asserts a claim of insanity or mental incompetence in any pending action or proceeding (BPC 6007(b)(1))
 - ii. Assumption of Practice: where the court makes an order assuming jurisdiction over the attorney's law practice pursuant to statute (BPC 6007(b)(2))
 - iii. Mental Infirmary/Illness or Habitual use of intoxicants: where the attorney, due to mental infirmity/illness/use of intoxicants is unable or habitually fails to perform duties competently, or is unable to practice law without threat of harm to the interests of clients or public (BPC 6007(b)(3))
 - iv. Threat of Harm: where the attorney has caused or is causing substantial harm to clients or public and there is a reasonable probability that OCTC will prevail on

¹ Bus. & Prof. Code section 6007 also provides other mandatory and permissive grounds for involuntary inactive enrollment, including upon a recommendation of disbarment, the entering of a default, the attorney's incarceration for 90 days or more, and certain probation violations. While these instances present less of a policy question for the working group, it may nonetheless wish to consider these grounds as well.

merits of underlying disciplinary matter and the attorney will be disbarred. This is an expedited proceeding. (BPC 6007(c)(2)-(3).)

- b. For public protection purposes, should paraprofessionals be subject to involuntary inactive enrollment proceedings pursuant to Bus. & Prof. Code section 6007?
 - c. RESOLVED, that the California Paraprofessional Program Working Group recommends that section 6007 of the Business and Professions Code [be / not be] expanded to include Paraprofessionals in the provisions requiring involuntary inactive enrollment.
- 6. Misconduct in Another Jurisdiction
 - a. Bus. & Prof. Code section 6049.1(b) provides that, with certain exceptions, a final order of discipline in another U.S. jurisdiction is conclusive evidence that the attorney is culpable of misconduct in California. The State Bar has developed special expedited proceedings in State Bar Court to determine the degree of discipline to impose, whether the conduct does not warrant discipline in California, and whether the proceedings in the other jurisdiction lack required protections. See State Bar Rules of Procedure, Title 5, Division 6, Chapter 3.
 - b. The Paraprofessional model is not common among other jurisdictions. Should section 6049 be expanded to make paraprofessionals subject to discipline in California based on discipline imposed in another jurisdiction?
 - c. RESOLVED, that the California Paraprofessional Program Working Group recommends that sections 6049 of the Business and Professions Code [be / not be] expanded to make Paraprofessionals subject to discipline based on discipline imposed in another U.S. jurisdiction.
- 7. Rule of Limitations
 - a. Where attorney disciplinary proceedings are based solely on a complainant's allegation of misconduct, the proceedings must begin within five years from the date of the alleged violation, subject to enumerated tolling provisions. See State Bar Rules of Procedure, rule 5.21. This provision urges disciplinary complaints to be brought timely and helps avoid issues that arise when pursuing disciplinary charges based on conduct from too long ago (e.g. testimony deteriorated over time; witness location; records destroyed).
 - b. Should the rules of procedure for the paraprofessional disciplinary model include a rule of limitations on bringing disciplinary charges based on complaints of misconduct? If so, for what period? If so, which, if any, tolling provisions should apply?
 - c. RESOLVED, that the California Paraprofessional Program Working Group recommends that disciplinary charges based solely on a complainants allegations be commenced within [##] years from the date of the alleged misconduct, subject to tolling provisions enumerated in [rule 5.21].
- 8. Appeal for Closed Complaints
 - a. Where a complaint of attorney misconduct is closed without disciplinary charges, the complainant is provided the opportunity to seek a second-look (akin to an appeal). Such requests are reviewed by the Complaint Review Unit with the Office of General Counsel and may result in a determination that the matter should remain closed or a recommendation to OCTC that it be reopened for further investigation. See State Bar

Rules of Procedure, rule 2603. Where complaints remain closed, the complainant is informed of the ability to seek further review with the California Supreme Court.

- b. Should the paraprofessional disciplinary model include the ability for complainants to seek review or appeal a decision to close a complaint without discipline? If so, by whom?
- c. RESOLVED, that the California Paraprofessional Program Working Group recommends that complainants whose complaints of paraprofessional misconduct were closed without discipline [receive the opportunity for review or appeal of that determination to be conducted by [office] / be informed of the ability to seek further review with the California Supreme Court].