



The State Bar of California

CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

Date: August 31, 2021

To: California Paraprofessional Program Working Group

From: Sharon Bashan, Julianne Fellmeth, Amos Hartston, Kim Kirchmeyer, Fariba Soroosh, and Ira Spiro

Subject: Regulation and Discipline Subcommittees Recommendations Regarding Disciplinary Standards and Related Disciplinary Provisions

EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG) 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](#). 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, among other topics, the requirements for paraprofessional discipline. This memorandum reflects recommendations for CPPWG review and approval in regard to disciplinary standards for paraprofessionals, as well as related recommendations regarding disciplinary provisions for paraprofessionals.

BACKGROUND

Following the adoption of Recommended Rules of Professional Conduct for Licensed Paraprofessionals, State Bar staff developed and proposed draft disciplinary standards that would address violations of the rules of conduct and identified several related issues for the subcommittees' consideration. This process resulted in the proposed resolutions set forth in this memorandum.

DISCUSSION

Disciplinary Standards

Imposition of attorney discipline is guided by the Standards for Attorney Sanctions for Professional Misconduct, which set forth presumed sanctions for various types of misconduct as well as aggravating and mitigating circumstances that may be considered in determining the appropriate level of discipline in a particular case.

For paraprofessional discipline, staff developed the proposed Standards for Licensed Paraprofessional Sanctions for Professional Misconduct, which are set forth in Attachment A (showing changes from the attorney standards in redline). These standards are based on assumed enactment of Rules of Professional Conduct for Licensed Paraprofessionals. These standards closely track the standards for attorneys and cover all types of substantive misconduct. Like the attorney standards, they are designed to enhance the primary purposes of discipline, which include: protection of the public, the courts, and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. Certain standards for attorneys based on specific statutory prohibitions that may or may not be enacted for paraprofessionals (in particular, the specific standards for attorney oath violations) were not included. A new provision was added to address practice of law by paraprofessionals outside of the scope permitted by the paraprofessional license (an issue not present for attorneys); for this violation, the presumed sanction is license revocation or actual suspension.

The Regulation and Discipline Subcommittees recommend that the Working Group recommend adoption of standards for discipline parallel to that for attorneys, as set forth in Attachment A.

Monetary Sanctions for Misconduct

For attorneys, pursuant to Business & Professions 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.

As a deterrent to misconduct and to protect the public, the Regulation and Discipline Subcommittees recommend that the Working Group recommend adoption of a monetary sanctions provision parallel to that for attorneys, in particular, that monetary sanctions not to exceed \$5,000 for each violation, subject to a total limit of \$50,000, be permitted against paraprofessionals who have been suspended, subject to license revocation, or who have resigned with charges pending.

Costs Assessments & Awards

For attorneys, pursuant to Business & Professions Code section 6086.10, disciplinary orders imposing public reproof or a greater level of discipline 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.

As a deterrent to misconduct and to protect the public, the Regulation and Discipline Subcommittees recommend that the Working Group similarly recommend that costs be assessed against paraprofessionals who are subject to discipline. However, to avoid chilling the right of paraprofessionals to seek a hearing on disciplinary charges against them and to avoid potential due process issues, the Regulation and Discipline Subcommittees recommend that cost recovery be permitted for pre-hearing costs only. This approach is followed by many licensing boards. *See* Cal. Bus. & Prof. Code § 125.3(c) (“The costs shall include the amount of investigative and enforcement costs up to the date of the hearing”); *see also Zuckerman v. State Board of Chiropractic Examiners*, 29 Cal. 4th 32, 38-41 (2002) (upholding provision imposing prehearing costs on licensee). However, the Subcommittees were not unanimous on whether cost awards against paraprofessionals should be limited to all costs incurred prior to the date of a disciplinary hearing (which would include costs incurred by the State Bar in preparing for a hearing) or whether the costs should be more strictly limited to costs of investigation. Accordingly, the Subcommittees have presented two alternative proposed resolutions for consideration.

Conviction Proceedings

Pursuant to Business & Professions Code sections 6101 and 6102, and California Rule of Court 9.10(a), the State Bar has developed special proceedings for attorneys 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 the Office of Chief Trial Counsel (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 (c) 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.

As a deterrent to misconduct, to protect the public, and for administrative efficiency, the Regulation and Discipline Subcommittees recommend that the Working Group recommend that procedures be adopted providing for the immediate suspension of paraprofessionals who are convicted of felonies or misdemeanors involving moral turpitude and summary license revocation upon final conviction of same, with such procedures mirroring those applicable to attorneys.

Subsequent Arrest Notification

Pursuant to Business & Professions 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.

The Regulation and Discipline Subcommittees recommend that the Working Group recommend that the State Bar should receive subsequent arrest notifications for paraprofessionals and that paraprofessional applicants be required to submit fingerprints, pursuant to a procedure mirroring that for attorneys.

Involuntary Inactive Enrollment

Pursuant to Business & Professions Code section 6007, attorneys are subject to involuntary inactive enrollment under certain circumstances, including when they undergo involuntary treatment pursuant to specified provisions of the Welfare and Institutions Code, where the attorney asserts a claim of insanity or mental incompetence in any pending action or proceeding, where a court makes an order assuming jurisdiction over the attorney's law practice pursuant to statute, 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 the public, or where the attorney has caused or is causing substantial harm to clients or the public and there is a reasonable probability that the State Bar will prevail on the merits of an underlying disciplinary matter and the attorney will be disbarred.

To protect the public from the consequences of a paraprofessional continuing to practice under these enumerated circumstances, the Regulation and Discipline Subcommittees recommend that the Working Group recommend that procedures be adopted providing for the involuntary inactive enrollment of paraprofessionals mirroring the procedures applicable to attorneys.

Misconduct in Another Jurisdiction

For attorneys, pursuant to Business & Professions Code section 6049.1(b), with certain exceptions, a final order of discipline in another U.S. jurisdiction is conclusive evidence that an 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.

To protect the public, the Regulation and Discipline Subcommittees recommend that the Working Group recommend paraprofessionals be subject to discipline based on discipline imposed in other U.S. jurisdictions under terms mirroring those applicable to attorneys.

Rule of Limitations

Pursuant to State Bar Rules of Procedure, rule 5.21, when 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, including the pendency of the attorney's representation of the client and periods of active concealment by the attorney. This limitations provision helps avoid issues that arise from disciplinary charges based on complaints of misconduct that allegedly occurred many years ago (e.g., memory issues, witness availability, destruction/loss of records).

To encourage timely complaints and avoid issues inherent in pursuing discipline based on complaints based on years-old misconduct, the Regulation and Discipline Subcommittees recommend that the Working Group recommend that disciplinary proceedings against paraprofessionals based on public complaints be subject to a limitations period mirroring that for attorneys. However, to protect the public and avoid the risk that consumers lose the right to pursue misconduct they did not know occurred, the Regulation and Discipline Subcommittees recommend that the Working Group recommend that any such limitations period be tolled during any period the complainant did not know of the misconduct with such tolling to end at the time when the client becomes aware or should have become aware of the misconduct (a discovery rule).

"Second Look" at Closed Complaints

Pursuant to State Bar Rule of Procedure 2603(b), when the OCTC closes a complaint against an attorney without pursuing discipline, the complainant may request that the Office of General Counsel review the complaint closure. After review, the Office of General Counsel will either recommend that the OCTC reopen the complaint for further investigation or to pursue

discipline, or it may determine that the matter should remain closed. In the event the matter remains closed, the complainant is informed of their right to seek further review by the California Supreme Court.

To protect the public and afford those who make complaints against paraprofessionals the right to a substantive review of decisions by OCTC to close complaints without pursuing discipline, the Regulation and Discipline Subcommittees recommend that the Working Group recommend that decisions by OCTC to close complaints against paraprofessionals be subject to review by the Office of General Counsel under terms mirroring those applicable to complaints against attorneys.

RECOMMENDATION AND PROPOSED RESOLUTIONS

The Regulation and Discipline Subcommittees recommend that the Working Group adopt the following resolutions:

RESOLVED, that the California Paraprofessional Program Working Group recommends adoption of Standards for Licensed Paraprofessional Sanctions for Professional Misconduct as set forth in Attachment A.

FURTHER RESOLVED, that the California Paraprofessional Program Working Group recommends that monetary sanctions not to exceed \$5,000 for each violation, subject to a total limit of \$50,000, be permitted against paraprofessionals who have been suspended, subject to license revocation, or who have resigned with charges pending.

FURTHER RESOLVED, that the California Paraprofessional Program Working Group recommends that paraprofessionals against whom discipline is imposed be subject to an assessment of costs to be limited to costs incurred before the date of the disciplinary hearing. [Alternative: **FURTHER RESOLVED**, that the California Paraprofessional Program Working Group recommends that paraprofessionals against whom discipline is imposed be subject to an assessment of costs to be limited to costs incurred before the disciplinary hearing, with costs further limited to costs of investigation and excluding costs of hearing preparation.]

FURTHER RESOLVED, that the California Paraprofessional Program Working Group recommends that suspension and summary license revocation procedures be adopted for paraprofessionals convicted of crimes involving moral turpitude, with such procedures to mirror those applicable to attorneys.

FURTHER RESOLVED, that the California Paraprofessional Program Working Group recommends that the State Bar should receive subsequent arrest notifications for paraprofessionals and that paraprofessional applicants be required to submit fingerprints for the purpose of subsequent arrest notification, pursuant to a procedure mirroring that for attorneys.

FURTHER RESOLVED, that the California Paraprofessional Program Working Group recommends that procedures be adopted providing for the involuntary inactive enrollment of paraprofessionals mirroring the procedures applicable to attorneys.

FURTHER RESOLVED, that the California Paraprofessional Program Working Group recommends that paraprofessionals be subject to discipline based on discipline imposed in other U.S. jurisdictions under terms mirroring those applicable to attorneys.

FURTHER RESOLVED, that the California Paraprofessional Program Working Group recommends that disciplinary proceedings against paraprofessionals based solely on a complainant's allegations of misconduct be subject to a tolling period mirroring that for disciplinary proceedings for attorneys, except that any such limitations period also be tolled during any period the complainant did not know of the misconduct, with such tolling to end at the time when the client becomes aware or should have become aware of the misconduct (a discovery rule).

FURTHER RESOLVED, that the California Paraprofessional Program Working Group recommends that decisions by the Office of Chief Trial Counsel to close complaints against paraprofessionals be subject to review by the Office of General Counsel under terms mirroring those applicable to complaints against attorneys.

ATTACHMENTS

- A. Draft Disciplinary Standards
- B. Parallel Provisions For Attorneys

~~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~~admonitions ~~and fines;~~ 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] and includes any agent of the licensed paraprofessional.

~~(a)(b)~~ “(Dis)barment License Revocation” 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.

~~(b)(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.

~~(c)(d)~~ “Public Reproval” is a public censure or reprimand. A public reproval may include conditions.

~~(b)~~ “Private Repraisal” 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.

~~(d)(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.

~~(e)(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.

~~(f)~~(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.

~~(g)~~(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.

~~(h)~~(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)~~(j) “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.

~~(j)~~(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~~license revocation;

(b) actual suspension;

(c) stayed suspension;

(d) public reproof; or

~~(a) — private reproof; or~~

~~(b) — 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 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~~ 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 lawyerlicensed 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 lawyerlicensed 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 lawyerlicensed 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 lawyerlicensed 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 lawyerlicensed 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~~license revocation 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~~license revocation, 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~~License revocation 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 lawyerlicensed 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~~ license revocation 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 lawyerlicensed 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.

~~(a) — 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) Reproof 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 reproof 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) License revocation 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.

~~(a)~~ 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 licensees of subordinate attorneys the State Bar or those whose licenses have been revoked; 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 SHARING WITH NONLAWYERS AND NON-LAWYERS LICENSEES PERSONS WHO ARE NOT LAWYERS OR LICENSED PARAPROFESSIONALS

Actual suspension is the presumed sanction when a lawyer licensed paraprofessional enters into a partnership or other organization that practices law with a person who is not a lawyer or licensed paraprofessional nonlawyer or non-lawyer licensee, allows a person who is not a lawyer or licensed paraprofessional nonlawyer or non-lawyer licensee to own, direct, or control a professional corporation or other organization that practices law, shares legal fees with a person who is not a lawyer or licensed paraprofessional 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. License revocation Disbarment is appropriate if the misconduct demonstrates a pattern.

- (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) License revocation or actual suspension is the presumed sanction when a licensed paraprofessional engages in the practice of law beyond the scope permitted by the licensed paraprofessional's license, and the paraprofessional knew or should have known that he or she was practicing beyond the scope permitted by his or her license.

- ~~(a)~~(b) License revocation 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.] The degree of sanction depends on whether the lawyer-licensed paraprofessional knew he or she was not entitled to practice law.

- (c) 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, DISHONESTY, FRAUD, CORRUPTION, OR CONCEALMENT

License revocation 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~~LICENSED PARAPROFESSIONAL

- ~~(a) Disbarment 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 a 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 a licensed paraprofessional under Business and Professions Code section 6068, subdivisions (i),(j),(l) or (o).~~
- ~~(c) Violations of the duties required of an attorney a 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 a 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-Licenses revocation 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 reprobation 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.

~~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's licensed paraprofessional'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 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) License revocation ~~Disbarment~~ or actual suspension is the presumed sanction for final conviction of a felony or 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

- (a) Disbarment 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 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 OTHER ARTICLE 6 STATUTES

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

~~Eff. 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.~~
- (b) License revocation~~Disbarment~~ 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

License revocation~~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) 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.~~

Parallel Provisions for Attorneys

Cal. Bus. & Prof. Code § 6086.13. Disciplinary order of Supreme Court; monetary sanctions

- (a) Any order of the Supreme Court imposing suspension or disbarment of a licensee of the State Bar, or accepting a resignation with a disciplinary matter pending may include an order that the licensee pay a monetary sanction not to exceed five thousand dollars (\$5,000) for each violation, subject to a total limit of fifty thousand dollars (\$50,000).
- (b) Monetary sanctions collected under subdivision (a) shall be deposited into the Client Security Fund.
- (c) The State Bar shall, with the approval of the Supreme Court, adopt rules setting forth guidelines for the imposition and collection of monetary sanctions under this section.
- (d) The authority granted under this section is in addition to the provisions of Section 6086.10 and any other authority to impose costs or monetary sanctions.
- (e) Monetary sanctions imposed under this section shall not be collected to the extent that the collection would impair the collection of criminal penalties or civil judgments arising out of transactions connected with the discipline of the attorney. In the event monetary sanctions are collected under this section and criminal penalties or civil judgments arising out of transactions connected with the discipline of the attorney are otherwise uncollectible, those penalties or judgments may be reimbursed from the Client Security Fund to the extent of the monetary sanctions collected under this section.

Cal. Bus. & Prof. Code § 6086.10. Order imposing public reproof or discipline on licensee of State Bar or accepting resignation with disciplinary matter pending; costs to be directed toward licensee; relief from order or extension of time; reimbursement; nature of costs

- (a) Any order imposing a public reproof on a licensee of the State Bar shall include a direction that the licensee shall pay costs. In any order imposing discipline, or accepting a resignation with a disciplinary matter pending, the Supreme Court shall include a direction that the licensee shall pay costs. An order imposing costs pursuant to this subdivision is enforceable both as provided in Section 6140.7 and as a money judgment. The State Bar may collect these costs through any means provided by law.
- (b) The costs required to be imposed pursuant to this section include all of the following:
 - (1) The actual expense incurred by the State Bar for the original and copies of any reporter's transcript of the State Bar proceedings, and any fee paid for the services of the reporter.
 - (2) All expenses paid by the State Bar which would qualify as taxable costs recoverable in civil proceedings.

(3) The charges determined by the State Bar to be “reasonable costs” of investigation, hearing, and review. These amounts shall serve to defray the costs, other than fees for the services of attorneys or experts, of the State Bar in the preparation or hearing of disciplinary proceedings, and costs incurred in the administrative processing of the disciplinary proceeding and in the administration of the Client Security Fund.

(c) A licensee may be granted relief, in whole or in part, from an order assessing costs under this section, or may be granted an extension of time to pay these costs, in the discretion of the State Bar, upon grounds of hardship, special circumstances, or other good cause.

(d) If an attorney is exonerated of all charges following a formal hearing, the attorney is entitled to reimbursement from the State Bar in an amount determined by the State Bar to be the reasonable expenses, other than fees for attorneys or experts, of preparation for the hearing.

(e) In addition to other monetary sanctions as may be ordered by the Supreme Court pursuant to Section 6086.13, costs imposed pursuant to this section are penalties, payable to and for the benefit of the State Bar of California, a public corporation created pursuant to Article VI of the California Constitution, to promote rehabilitation and to protect the public. This subdivision is declaratory of existing law.

§ 6101. Conviction of crime; notice of pendency of action; record of conviction; proceedings

(a) Conviction of a felony or misdemeanor, involving moral turpitude, constitutes a cause for disbarment or suspension.

In any proceeding, whether under this article or otherwise, to disbar or suspend an attorney on account of that conviction, the record of conviction shall be conclusive evidence of guilt of the crime of which they have been convicted.

(b) The district attorney, city attorney, or other prosecuting agency shall notify the State Bar of California's Office of Chief Trial Counsel of the pendency of an action against an attorney charging a felony or misdemeanor immediately upon obtaining information that the defendant is an attorney. The notice shall identify the attorney and describe the crimes charged and the alleged facts. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is an attorney, and the clerk shall record prominently in the file that the defendant is an attorney.

(c) The clerk of the court in which an attorney is convicted of a crime shall, within 48 hours after the conviction, transmit a certified copy of the record of conviction to the Office of Chief Trial Counsel. Within 30 days of receipt, the Office of the Chief Trial Counsel shall transmit the record of any conviction which involves or may involve moral turpitude to the Supreme Court with such other records and information as may be appropriate to establish the Supreme Court's jurisdiction. The Office of Chief Trial Counsel may procure and transmit the record of

conviction to the Supreme Court when the clerk has not done so or when the conviction was had in a court other than a court of this state.

(d) The proceedings to disbar or suspend an attorney on account of such a conviction shall be undertaken by the Supreme Court pursuant to the procedure provided in this section and Section 6102, upon the receipt of the certified copy of the record of conviction.

(e) A plea or verdict of guilty, an acceptance of a nolo contendere plea, or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of those sections.

Cal. Bus. & Prof. Code § 6102. Immediate suspension and subsequent disbarment upon conviction of crime; crimes involving moral turpitude or felonies; procedure

(a) Upon the receipt of the certified copy of the record of conviction, if it appears therefrom that the crime of which the attorney was convicted involved, or that there is probable cause to believe that it involved, moral turpitude or is a felony under the laws of California, the United States, or any state or territory thereof, the Supreme Court shall suspend the attorney until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal, or has otherwise become final, and until the further order of the court. Upon its own motion or upon good cause shown, the court may decline to impose, or may set aside, the suspension when it appears to be in the interest of justice to do so, with due regard being given to maintaining the integrity of, and confidence in, the profession.

(b) For the purposes of this section, a crime is a felony under the law of California if it is declared to be so specifically or by subdivision (a) of Section 17 of the Penal Code, unless it is charged as a misdemeanor pursuant to paragraph (4) or (5) of subdivision (b) of Section 17 of the Penal Code, irrespective of whether in a particular case the crime may be considered a misdemeanor as a result of postconviction proceedings, including proceedings resulting in punishment or probation set forth in paragraph (1) or (3) of subdivision (b) of Section 17 of the Penal Code.

(c) After the judgment of conviction of an offense specified in subdivision (a) has become final or, irrespective of any subsequent order under Section 1203.4 of the Penal Code or similar statutory provision, an order granting probation has been made suspending the imposition of sentence, the Supreme Court shall summarily disbar the attorney if the offense is 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.

(d) For purposes of this section, a conviction under the laws of another state or territory of the United States shall be deemed a felony if:

- (1) The judgment or conviction was entered as a felony irrespective of any subsequent order suspending sentence or granting probation and irrespective of whether the crime may be considered a misdemeanor as a result of postconviction proceedings.
- (2) The elements of the offense for which the licensee was convicted would constitute a felony under the laws of the State of California at the time the offense was committed.
- (e) Except as provided in subdivision (c), if after adequate notice and opportunity to be heard (which hearing shall not be had until the judgment of conviction has become final or, irrespective of any subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence), the court finds that the crime of which the attorney was convicted, or the circumstances of its commission, involved moral turpitude, it shall enter an order disbarring the attorney or suspending him or her from practice for a limited time, according to the gravity of the crime and the circumstances of the case; otherwise it shall dismiss the proceedings. In determining the extent of the discipline to be imposed in a proceeding pursuant to this article, any prior discipline imposed upon the attorney may be considered.
- (f) The court may refer the proceedings or any part thereof or issue therein, including the nature or extent of discipline, to the State Bar for hearing, report, and recommendation.
- (g) The record of the proceedings resulting in the conviction, including a transcript of the testimony therein, may be received in evidence.
- (h) The Supreme Court shall prescribe rules for the practice and procedure in proceedings conducted pursuant to this section and Section 6101.
- (i) The other provisions of this article providing a procedure for the disbarment or suspension of an attorney do not apply to proceedings pursuant to this section and Section 6101, unless expressly made applicable.

Cal. R. Ct., Rule 9.10. Authority of the State Bar Court

(a) Conviction proceedings

The State Bar Court exercises statutory powers under Business and Professions Code sections 6101 and 6102 with respect to the discipline of attorneys convicted of crimes. (See Bus. & Prof. Code §6087.) For purposes of this rule, a judgment of conviction is deemed final when the availability of appeal has been exhausted and the time for filing a petition for certiorari in the United States Supreme Court on direct review of the judgment of conviction has elapsed and no petition has been filed, or if filed the petition has been denied or the judgment of conviction has been affirmed. The State Bar Court must impose or recommend discipline in conviction matters as in other disciplinary proceedings. The power conferred upon the State Bar Court by this rule includes the power to place attorneys on interim suspension under subdivisions (a) and

(b) of section 6102, and the power to vacate, delay the effective date of, and temporarily stay the effect of such orders.

....

Cal. Bus. & Prof. Code § 6054. Summary criminal history information; submission of fingerprints; subsequent arrest notification service

(a) State and local law enforcement and licensing bodies and departments, officers and employees thereof, and officials and attachés of the courts of this state shall cooperate with and give reasonable assistance and information, including the providing of state summary criminal history information and local summary criminal history information, to the State Bar of California or any authorized representative thereof, in connection with any investigation or proceeding within the jurisdiction of the State Bar of California, regarding the admission to the practice of law or discipline of attorneys or their reinstatement to the practice of law.

(b) The State Bar of California shall require that an applicant for admission or reinstatement to the practice of law in California, or may require a licensee to submit or resubmit fingerprints to the Department of Justice in order to establish the identity of the applicant and in order to determine whether the applicant or licensee has a record of criminal conviction in this state or in other states. The information obtained as a result of the fingerprinting of an applicant or licensee shall be limited to the official use of the State Bar in establishing the identity of the applicant and in determining the character and fitness of the applicant for admission or reinstatement, and in discovering prior and subsequent criminal arrests of an applicant, licensee, or applicant for reinstatement. The State Bar shall notify the Department of Justice about individuals who are no longer licensees and applicants who are denied admission to the State Bar within 30 days of any change in status of a licensee or denial of admission. All fingerprint records of applicants admitted or licensees reinstated, or provided by a licensee, shall be retained thereafter by the Department of Justice for the limited purpose of criminal arrest notification to the State Bar.

(c) The State Bar shall request from the Department of Justice subsequent arrest notification service, as provided pursuant to Section 11105.2 of the Penal Code, for applicants to, and licensees of, the State Bar.

(d) If required to be fingerprinted pursuant to this section, a licensee of the State Bar who fails to be fingerprinted may be enrolled as an inactive licensee pursuant to rules adopted by the board of trustees.

(e) The State Bar shall report to the Supreme Court and the Legislature by March 15, 2018, regarding its compliance with the requirements of this section.

Cal. Bus. & Prof. Code § 6007. Involuntary treatment or confinement; involuntary inactive enrollment; restoration to capacity; effect on disciplinary investigations or proceedings; license fees not to accrue; interim remedies

(a) When a licensee requires involuntary treatment pursuant to Article 6 (commencing with Section 5300) of Chapter 2 of Division 5 of, or Part 2 (commencing with Section 6250) of Division 6 of the Welfare and Institutions Code, or when under an order pursuant to Section 3051, 3106.5, or 3152 of the Welfare and Institutions Code he or she has been placed in or returned to inpatient status at the California Rehabilitation Center or its branches, or when he or she has been determined insane or mentally incompetent and is confined for treatment or placed on outpatient status pursuant to the Penal Code, or on account of his or her mental condition a guardian or conservator, for his or her estate or person or both, has been appointed, the Board of Trustees or an officer of the State Bar shall enroll the licensee as an inactive licensee.

The clerk of any court making an order containing any of the determinations or adjudications referred to in the immediately preceding paragraph shall send a certified copy of that order to the State Bar at the same time that the order is entered.

The clerk of any court with which is filed a notice of certification for intensive treatment pursuant to Article 4 (commencing with Section 5250) of Chapter 2 of Division 5 of the Welfare and Institutions Code, upon receipt of the notice, shall transmit a certified copy of it to the State Bar.

The State Bar may procure a certified copy of any determination, order, adjudication, appointment, or notice when the clerk concerned has failed to transmit one or when the proceeding was had in a court other than a court of this state.

In the case of an enrollment pursuant to this subdivision, the State Bar shall terminate the enrollment when the licensee has had the fact of his or her restoration to capacity judicially determined, upon the licensee's release from inpatient status at the California Rehabilitation Center or its branches pursuant to Section 3053, 3109, or 3151 of the Welfare and Institutions Code, or upon the licensee's unconditional release from the medical facility pursuant to Section 5304 or 5305 of the Welfare and Institutions Code; and on payment of all fees required.

When a licensee is placed in, returned to, or released from inpatient status at the California Rehabilitation Center or its branches, or discharged from the narcotics treatment program, the Director of Corrections or his or her designee shall transmit to the State Bar a certified notice attesting to that fact.

(b) The State Bar Court shall also enroll a licensee of the State Bar as an inactive licensee in each of the following cases:

(1) A licensee asserts a claim of insanity or mental incompetence in any pending action or proceeding, alleging his or her inability to understand the nature of the action or proceeding or inability to assist counsel in representation of the licensee.

(2) The court makes an order assuming jurisdiction over the licensee's law practice, pursuant to Section 6180.5 or 6190.3.

(3) After notice and opportunity to be heard before the State Bar Court, the State Bar Court finds that the licensee, because of mental infirmity or illness, or because of the habitual use of intoxicants or drugs, is (i) unable or habitually fails to perform his or her duties or undertakings competently, or (ii) unable to practice law without substantial threat of harm to the interests of his or her clients or the public. No proceeding pursuant to this paragraph shall be instituted unless the State Bar Court finds, after preliminary investigation, or during the course of a disciplinary proceeding, that probable cause exists therefor. The determination of probable cause is administrative in character and no notice or hearing is required.

In the case of an enrollment pursuant to this subdivision, the State Bar Court shall terminate the enrollment upon proof that the facts found as to the licensee's disability no longer exist and on payment of all fees required.

(c)(1) The State Bar Court may order the involuntary inactive enrollment of an attorney upon a finding based on all the available evidence, including affidavits, that the attorney has not complied with Section 6002.1 and cannot be located after reasonable investigation.

(2) The State Bar Court may order the involuntary inactive enrollment of an attorney if it finds, based on all the available evidence, including affidavits:

(A) The attorney has caused or is causing substantial harm to the attorney's clients or the public.

(B) There is a reasonable probability that the chief trial counsel will prevail on the merits of the underlying disciplinary matter, and that the attorney will be disbarred.

(3) In the case of an enrollment under paragraph (2), the underlying matter shall proceed on an expedited basis.

(4) The State Bar Court shall order the involuntary inactive enrollment of an attorney upon the filing of a recommendation of disbarment after hearing or default. For purposes of this section, that attorney shall be placed on involuntary inactive enrollment regardless of the license status of the attorney at the time.

(5) The State Bar Court shall order the involuntary inactive enrollment of an attorney who is sentenced to incarceration for 90 days or more as a result of a criminal conviction for at least the period of time in which the attorney is incarcerated.

(6) The State Bar Court shall order attorneys who are placed on inactive enrollment pursuant to this subdivision to comply with Rule 9.20 of the California Rules of Court.

(7) The board shall formulate and adopt rules of procedure to implement this subdivision.

In the case of an enrollment pursuant to this subdivision, the State Bar Court shall terminate the involuntary inactive enrollment upon proof that the attorney's conduct no longer poses a substantial threat of harm to the interests of the attorney's clients or the public or where an attorney who could not be located proves compliance with Section 6002.1.

(d)(1) The State Bar Court may order the involuntary inactive enrollment of an attorney for violation of probation upon the occurrence of all of the following:

(A) The attorney is under a suspension order any portion of which has been stayed during a period of probation.

(B) The State Bar Court finds that probation has been violated.

(C) The State Bar Court recommends to the Supreme Court that the attorney receive an actual suspension on account of the probation violation or other disciplinary matter.

(2) The State Bar Court shall terminate an enrollment under this subdivision upon expiration of a period equal to the period of stayed suspension in the probation matter, or until the State Bar Court makes an order regarding the recommended actual suspension in the probation matter, whichever occurs first.

(3) If the Supreme Court orders a period of actual suspension in the probation matter, any period of involuntary inactive enrollment pursuant to this subdivision shall be credited against the period of actual suspension ordered.

(e)(1) The State Bar Court shall order the involuntary, inactive enrollment of a licensee whose default has been entered pursuant to the State Bar Rules of Procedure if both of the following conditions are met:

(A) The notice was duly served pursuant to subdivision (c) of Section 6002.1.

(B) The notice contained the following language at or near the beginning of the notice, in capital letters:

IF YOU FAIL TO FILE AN ANSWER TO THIS NOTICE WITHIN THE TIME ALLOWED BY STATE BAR RULES, INCLUDING EXTENSIONS, OR IF YOU FAIL TO APPEAR AT THE STATE BAR COURT TRIAL, (1) YOUR DEFAULT SHALL BE ENTERED, (2) YOU SHALL BE ENROLLED AS AN INVOLUNTARY INACTIVE LICENSEE OF THE STATE BAR AND WILL NOT BE PERMITTED TO PRACTICE LAW UNLESS THE DEFAULT IS SET ASIDE ON MOTION TIMELY MADE UNDER THE RULES OF PROCEDURE OF THE STATE BAR, (3) YOU SHALL NOT BE PERMITTED TO PARTICIPATE FURTHER

IN THESE PROCEEDINGS UNLESS YOUR DEFAULT IS SET ASIDE, AND (4) YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.

(2) The State Bar Court shall terminate the involuntary inactive enrollment of a licensee under this subdivision when the licensee's default is set aside on motion timely made under the State Bar Rules of Procedure or the disciplinary proceedings are completed.

(3) The enrollment under this subdivision is administrative in character and no hearing is required.

(4) Upon the involuntary inactive enrollment of a licensee under this subdivision, the notice required by subdivision (b) of Section 6092.5 shall be promptly given.

(f) The pendency or determination of a proceeding or investigation provided for by this section shall not abate or terminate a disciplinary investigation or proceeding except as required by the facts and law in a particular case.

(g) No license fees shall accrue against the licensee during the period he or she is enrolled as an inactive licensee pursuant to this section.

(h) The State Bar Court may order a full range of interim remedies or final discipline short of involuntary inactive enrollment, including, but not limited to, conditions of probation following final discipline, or directly ordered interim remedies, to restrict or supervise an attorney's practice of law, as well as proceedings under subdivision (a), (b), (c), or (d), or under Section 6102 or 6190. They may include restrictions as to scope of practice, monetary accounting procedures, review of performance by probation or other monitors appointed by the board, or such other measures as may be determined, after hearing, to protect present and future clients from likely substantial harm. These restrictions may be imposed upon a showing as provided in subdivision (c).

6049.1. Certified copy of final order determining professional misconduct; evidence; expedited disciplinary proceeding; issues; discovery; proceedings in other jurisdictions

(a) In any disciplinary proceeding under this chapter, a certified copy of a final order made by any court of record or any body authorized by law or by rule of court to conduct disciplinary proceedings against attorneys, of the United States or of any state or territory of the United States or of the District of Columbia, determining that a licensee of the State Bar committed professional misconduct in such other jurisdiction shall be conclusive evidence that the licensee is culpable of professional misconduct in this state, subject only to the exceptions set forth in subdivision (b).

(b) The board may provide by rule for procedures for the conduct of an expedited disciplinary proceeding against a licensee of the State Bar upon receipt by the State Bar of a certified copy of a final order determining that the licensee has been found culpable of professional

misconduct in a proceeding in another jurisdiction conducted as specified in subdivision (a). The issues in the expedited proceeding shall be limited to the following:

(1) The degree of discipline to impose.

(2) Whether, as a matter of law, the licensee's culpability determined in the proceeding in the other jurisdiction would not warrant the imposition of discipline in the State of California under the laws or rules binding upon licensees of the State Bar at the time the licensee committed misconduct in such other jurisdiction, as determined by the proceedings specified in subdivision (a).

(3) Whether the proceedings of the other jurisdiction lacked fundamental constitutional protection.

The licensee of the State Bar subject to the proceeding under this section shall bear the burden of establishing that the issues in paragraphs (2) and (3) do not warrant the imposition of discipline in this state.

(c) In proceedings conducted under subdivision (b), the parties need not be afforded an opportunity for discovery unless the State Bar Court department or panel having jurisdiction so orders upon a showing of good cause.

(d) In any proceedings conducted under this chapter, a duly certified copy of any portion of the record of disciplinary proceedings of another jurisdiction conducted as specified in subdivision (a) may be received in evidence.

(e) This section shall not prohibit the institution of proceedings under Section 6044, 6101, or 6102, as may be appropriate, concerning any licensee of the State Bar based upon the licensee's conduct in another jurisdiction, whether or not licensed as an attorney in the other jurisdiction.

State Bar Rules of Procedure, Rule 5.21 - Limitations Period

(A) Time Limit for Complaint. If a disciplinary proceeding is based solely on a complainant's allegations of a violation of the State Bar Act or Rules of Professional Conduct, the proceeding must begin within five years from the date of the violation.

(B) When Violation Occurs. The State Bar Act or a Rule of Professional Conduct is violated when every element of a violation has occurred. But if the violation is a continuing offense, the violation occurs when the offensive conduct ends.

(C) Tolling. The five-year limit is tolled:

(1) while the attorney represents the complainant, the complainant's family member, or the complainant's business or employer;

- (2) while the complainant is a minor, insane, or physically or mentally incapacitated;
 - (3) while civil, criminal, or administrative investigations or proceedings based on the same acts or circumstances as the violation are pending with any governmental agency, court, or tribunal;
 - (4) from the time the attorney conceals facts about the violation until the State Bar or the victim discovers the true facts;
 - (5) from the time the attorney fails to cooperate with an investigation of the violation until the attorney provides substantial cooperation;
 - (6) from the time the attorney makes false or misleading statements to the State Bar concerning the violation until the State Bar discovers the true facts;
 - (7) while the disciplinary investigation or proceeding is abated under rule 5.50;
 - (8) while the attorney is participating in an Alternative Dispute Resolution Mediation Discipline program, Agreement in Lieu of Discipline Prosecution program, or other authorized diversion program;
 - (9) while the investigation is ended by admonition; or
 - (10) while the complaint or investigation is pending before the Office of General Counsel Complaint Review Unit; or
 - (11) while the attorney is on inactive status pursuant to Business and Professions Code section 6007, subdivision (a) or (b).
- (D) Authorized Diversion Program. If the attorney successfully completes an Alternative Dispute Resolution Mediation Discipline program, Agreement in Lieu of Discipline Prosecution program, or other authorized diversion program, the underlying allegations are barred.
- (E) Office of General Counsel Complaint Review Unit. The State Bar must begin disciplinary proceedings within two years after proceedings before the Complaint Review Unit concludes.
- (F) Death of Complainant. If a prospective complainant dies before the time to begin a disciplinary procedure expires, a surviving family member or the estate's executor or administrator may file a complaint with the State Bar within two years after the complainant's death.
- (G) Independent Source. The five-year limit does not apply to disciplinary proceedings that were investigated and initiated by the State Bar based on information received from an independent source other than a complainant.
- (H) Waiver. The attorney and State Bar may agree in writing to waive or extend the limitations in this rule.
- (I) Reinstatement Proceedings. This rule does not apply to reinstatement proceedings.

State Bar Rules of Procedure, Rule 2603(b) – “Second Look” Review

(b) Notwithstanding the Office of Chief Trial Counsel’s exclusive jurisdiction over disciplinary matters as expressed in Rule 2101, the Board of Trustees of the State Bar delegates to the Office of General Counsel the authority to review closures of inquiries, investigations and complaints upon request by complainants. Upon recommendation by the Office of General Counsel following review of a request by a complainant to review closure of an inquiry, investigation or complaint, the Office of Chief Trial Counsel may reopen the case for investigation.