



*The State Bar of California*

# Proposed Amendments to Standard 1.8 of the Standards for Attorney Sanctions, Relating to Progressive Discipline

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# Progressive Discipline: Overview

- **Policy:** When someone is found culpable of misconduct and has a prior disciplinary record, the discipline imposed in the current proceeding should be more severe than what was previously imposed.
- **Purpose:** When previous sanctions have not prevented continued misconduct, more severe sanctions are needed to affect future behavior.
- **Problem:** Where disparities exist in the discipline system, inflexible application of progressive discipline perpetuates and exacerbates those disparities.
- **Proposal:** The Ad Hoc Commission recommended modification of the Standards to allow greater judicial discretion regarding the imposition of progressive discipline.



## Standard 1.8 (a): Current Language and Proposed Changes

“If a lawyer has a single prior record of discipline, the sanction **must** be greater than the previously imposed sanction unless the prior discipline was so remote in time **and** the **previous misconduct** was not serious enough that imposing greater discipline would be manifestly unjust.”

Proposed changes:

- “Must” to “should”
- “And” to “or”
- Allows consideration of severity of current misconduct and other factors
- Court must state its reasons when progressive discipline is not imposed



## Proposed New Language

### Standard 1.8 (a):

If a lawyer has a single prior record of discipline, the sanction **should** be greater than the previously imposed sanction unless the prior discipline was remote in time, the **previous or current misconduct** was not sufficiently serious to warrant greater discipline, **or** there are **other circumstances** that would make imposing greater discipline unjust. In matters in which a lawyer has a single prior record of discipline and the court is not recommending or imposing a sanction greater than the previously imposed sanction, **the court must set forth its reason(s)** for not imposing a greater sanction.

