

STANDARDS FOR ATTORNEY SANCTIONS FOR PROFESSIONAL MISCONDUCT
Comparison of current version (1986) with proposed revisions (July 2013)

CURRENT VERSION (1986)

**TITLE IV. STANDARDS FOR ATTORNEY
SANCTIONS FOR PROFESSIONAL MISCONDUCT**

INTRODUCTION

Since 1928, the State Bar of California has conducted attorney disciplinary proceedings as an arm of the Supreme Court of California. During this time, the fixing of the disciplinary sanction, after an attorney has been found culpable of professional misconduct, has always been ad hoc. A comprehensive set of written standards for imposing an attorney disciplinary sanction has never before existed in the state. The only guidance available to the public, courts and legal profession on this subject has been an occasional opinion of the Supreme Court.

Some Supreme Court decisions have been helpful in defining the purposes of attorney discipline chiefly, protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession. Other decisions of the Court have held that in cases of certain serious professional misconduct by attorneys, disbarment was warranted absent clearly extenuating circumstances. However, other decisions note that there have not been standards of degree of discipline ascertainable from previous cases and that a wide variety of disciplinary sanctions have been imposed for a given offense. Although the State Bar Act permits certain sanctions to be recommended or imposed for specific professional misconduct, the State Bar Act does not provide standards for imposing a particular sanction for a particular offense.

Since 1928, the California lawyer population has increased from just a few thousand to over 175,000. Although well under one percent of California attorneys have been found to warrant disciplinary sanction each year, the Board of Trustees of the State Bar believes that the process of fixing discipline for the acts of lawyer misconduct which lead to lawyer discipline should now be guided by a written set of principles. The Board of Trustees hopes to achieve several important goals by issuing these standards:

- (a) to better discharge the purposes of attorney discipline as announced by the Supreme Court;
- (b) to achieve greater consistency in disciplinary sanction for similar offenses; and
- (c) to identify for the legal profession, the courts and the public the factors which may appropriately be considered for imposing discipline on an attorney and to set forth an appropriate means by which those factors may lead to the selection of a sanction in a particular case.

REVISED VERSION (proposed) (July 2013)

**TITLE IV. STANDARDS FOR ATTORNEY
SANCTIONS FOR PROFESSIONAL
MISCONDUCT**

No separate introduction is included in the revised version of the Standards For Attorney Sanctions For Professional Misconduct (“Standards”).

The revised version combines and revises current Standard 1.1 “Scope of Standards” and Standard 1.3 “Purposes of Sanctions for Professional Misconduct” in one standard. See revised Standard 1.1 “Purposes And Scope Of Standards,” below.

This comparison table omits footnote citations to statutory and other authority that appear in the revised version of the Standards.

CURRENT VERSION (1986)
PART A. GENERAL STANDARDS

1.1 SCOPE OF STANDARDS

These standards shall apply to the fixing of a final disciplinary sanction after a member of the State Bar has been found culpable of or has acknowledged culpability of professional misconduct in a proceeding conducted by the State Bar of California. These Standards shall exclude dispositions under rule 9.21, California Rules of Court re resignations of attorneys, transfer to or retransfer from inactive status pursuant to section 6007, Business and Professions Code and interim suspension following conviction of crime pursuant to sections 6101-6102, Business and Professions Code.
Eff. January 1, 1986. Revised: January 1, 2007.

1.3 PURPOSES OF SANCTIONS FOR PROFESSIONAL MISCONDUCT

The primary purposes of disciplinary proceedings conducted by the State Bar of California and of sanctions imposed upon a finding or acknowledgment of a member's professional misconduct are the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession. Rehabilitation of a member is a permissible object of a sanction imposed upon the member but only if the imposition of rehabilitative sanctions is consistent with the above-stated primary purposes of sanctions for professional misconduct.

REVISED VERSION (proposed) (July 2013)
PART A. STANDARDS IN GENERAL

1.1 PURPOSES AND SCOPE OF STANDARDS

The Standards For Attorney Sanctions For Professional Misconduct (the "Standards") are adopted by the Board of Trustees to set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances. The Standards help fulfill the primary purposes of discipline, which include:

- (a) protection of the public, the courts and the legal profession;
- (b) maintenance of the highest professional standards; and
- (c) preservation of public confidence in the legal profession.

The Standards are based on the State Bar Act 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.

CURRENT VERSION (1986)

1.2 DEFINITIONS

As used in these standards:

- (a) "Admonition" is a non-disciplinary sanction governed by rule 264, Rules of Procedure of the State Bar.
- (b) "Aggravating circumstance" is an event or factor established clearly and convincingly by the State Bar as having surrounded a member's professional misconduct and which demonstrates that a greater degree of sanction than set forth in these standards for the particular act of professional misconduct found or acknowledged is needed to adequately protect the public, courts and legal profession.

Circumstances which shall be considered aggravating are:

- (i) the existence of prior record of discipline and the nature and extent of that record (see also standard 1.7);
 - (ii) that the current misconduct found or acknowledged by the member evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct;
 - (iii) that the member's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct; or if trust funds or trust property were involved, refusal or inability to account to the client or person who is the object of the misconduct for improper conduct toward said funds or property;
 - (iv) that the member's misconduct harmed significantly a client, the public or the administration of justice;
 - (v) that the member demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct; or
 - (vi) that the member displayed a lack of candor and cooperation to any victims of the member's misconduct or to the State Bar during disciplinary investigation or proceedings.
- (c) "Disbarment" is an involuntary and permanent termination of a member's legal ability to practice law in the state accompanied by termination of membership in the State Bar and striking of the member's name from the roll of attorneys. Once effective, disbarment continues unless or until a member is reinstated by the Supreme Court following procedures set forth in rule 9.13(d), California Rules of Court and rules 660-669, Rules of Procedure of the State Bar. Disbarment is the most severe attorney disciplinary sanction which may be imposed.
- (d) "Member" is a member of the State Bar of California.
- (e) "Mitigating circumstance" is an event or factor established clearly and convincingly by the member subject to a disciplinary proceeding as having caused or underlain the member's professional misconduct and which demonstrates that the public, courts and legal profession would be adequately protected by a more lenient degree of sanction than set forth in these standards for the particular act of professional misconduct found or acknowledged.

Circumstances which shall be considered mitigating are:

- (i) absence of any prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious;
 - (ii) good faith of the member;
 - (iii) lack of harm to the client or person who is the object of the misconduct;
 - (iv) extreme emotional difficulties or physical disabilities suffered by the member at the time of the act of professional misconduct which expert testimony establishes was directly responsible for the misconduct; provided that such difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse; and further provided that the member has established through clear and convincing evidence that he or she no longer suffers from such difficulties or disabilities;
 - (v) spontaneous candor and cooperation displayed to the victims of the member's misconduct and to the State Bar during disciplinary investigation and proceedings;
 - (vi) an extraordinary demonstration of good character of the member attested to by a wide range of references in the legal and general communities and who are aware of the full extent of the member's misconduct;
 - (vii) objective steps promptly taken by the member spontaneously demonstrating remorse, recognition of the wrongdoing found or acknowledged which steps are designed to timely atone for any consequences of the member's misconduct;
 - (viii) the passage of considerable time since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation; or
 - (ix) excessive delay in conducting disciplinary proceedings, which delay is not attributable to the member and which delay prejudiced the member.
- (f) "Prior record of discipline" is a previous imposition or recommendation of discipline of the member as defined by rule 216, Rules of Procedure of the State Bar. It includes discipline imposed for a member's violation of probation or wilful violation of an order of the Supreme Court requiring compliance with rule 9.20, California Rules of Court.
- (g) "Reproval" is a censure or reprimand issued by the Supreme Court; or, pursuant to rule 270, Rules of Procedure of the State Bar, by the State Bar. The reproval may be imposed with duties or conditions pursuant to rule 9.19, California Rules of Court.
- (h) "Suspension" may be stayed on conditions of probation or may be an actual suspension or may be both. If "actual," a suspension is a member's legal disqualification from practicing law in the state or from holding out as entitled to practice law during the period of the actual suspension.

REVISED VERSION (proposed) (July 2013)

1.2 DEFINITIONS

- (a) "Member" is a member of the State Bar of California.
- (b) "Disbarment" is termination from the practice of law and from holding oneself out as entitled to practice law. Membership in the State Bar ceases and the member's name is stricken from the roll of attorneys.
- (c) "Suspension" can include a period of actual suspension, stayed suspension, or both:
 - (1) "Actual suspension" is a disqualification from the practice of law and from holding oneself out as entitled to practice law, subject to conditions. Actual suspension is generally for a period of thirty days, sixty days, ninety days, six months, one year, eighteen months, two years, or three years. Actual suspension for two years or more requires proof, satisfactory to the State Bar Court, of rehabilitation, fitness to practice, and present learning and ability in the general law before a member may be relieved of the actual suspension. The State Bar Court can require this showing in other appropriate cases as well.
 - (2) "Stayed suspension" is a stay of all or part of a suspension. Stayed suspension is generally for a period of at least one year. A suspension can be stayed only if it is consistent with the primary purposes of discipline.
- (d) "Reproval" is a disciplinary censure or reprimand. It can be either public or private, and it may include conditions.
- (e) "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) "Aggravating circumstances" are factors surrounding a member's misconduct that demonstrate that the primary purposes of discipline warrant a greater sanction than what is otherwise specified in a given Standard.
- (h) "Mitigating circumstances" are factors surrounding a member's misconduct that demonstrate that the primary purposes of discipline warrant a more lenient sanction than what is otherwise specified in a given Standard.
- (g) "Conditions" are terms that may attach to a reproval or probation. They relate to the member's misconduct and the facts and circumstances surrounding the misconduct and serve the primary purposes of discipline.

CURRENT VERSION (1986)

1.4 DEGREES OF SANCTION AVAILABLE

Subject to these standards and the rules and laws which govern attorney disciplinary proceedings conducted by the State Bar, the following sanctions are available upon a finding or acknowledgment by a member of professional misconduct:

- (a) Admonition.
- (b) Reprimand.
- (c) Suspension from the practice of law:
 - (i) stayed suspension: the execution of suspension may be stayed for a period of from one year to five years only if such stay and performance of specified rehabilitative or probationary duties by the member during the period of the stay or probation is deemed consistent with the purposes of sanctions imposed upon the member as set forth in standard 1.3;
 - (ii) actual suspension: suspension from the practice of law for a period of not less than thirty (30) days. Normally, actual suspensions imposed for a two (2) year or greater period shall require proof satisfactory to the State Bar Court of the member's rehabilitation, present fitness to practice and present learning and ability in the general law before the member shall be relieved of the actual suspension;
or
 - (iii) a stayed suspension which includes an actual suspension as a condition thereof.
- (d) Disbarment.
- (e) Any interim remedies or final discipline as authorized by section 6007(h), Business and Professions Code.

REVISED VERSION (proposed) (July 2013)

1.3 DEGREES OF SANCTIONS

Subject to these Standards and the laws and rules governing the conduct of disciplinary proceedings, the following sanctions are available upon a finding of misconduct:

- (a) disbarment;
- (b) actual suspension;
- (c) stayed suspension;
- (d) reprimand, public or private; or
- (e) any interim remedies or other final discipline authorized by Business and Professions Code section 6007(h).

CURRENT VERSION (1986)

1.5 ADDITION OF REASONABLE CONDITIONS OR DUTIES TO ORDERS OR RECOMMENDATIONS OF REPROVAL OR SUSPENSION

Reasonable duties or conditions fairly related to the acts of professional misconduct and surrounding circumstances found or acknowledged by the member may be added to a recommendation or suspension or; pursuant to rule 9.19, California Rules of Court, to a reproof. Said duties or conditions may include, but are not limited to, any of the following:

- (a) a requirement that specified restitution be made or satisfaction of judgment(s) filed;
- (b) a requirement that the member take and pass an examination in professional responsibility;
- (c) a requirement that the member undertake treatment at his or her own expense for medical, psychological or psychiatric conditions or for problems of alcohol or substance abuse;
- (d) a requirement that the member undertake educational or rehabilitative work at his or her own expense regarding one or more fields of substantive law or law office management;
- (e) a requirement that the member be supervised by a probation monitor referee pursuant to the Rules of Procedure of the State Bar and that the member report to the State Bar as prescribed: compliance with the State Bar Act and Rules of Professional Conduct, the manner in which client funds or trust funds are handled (certified to by an accountant, if required) and such other reports as may be reasonable and appropriate in assessing the member's compliance with any duties or conditions imposed;
- (f) any other duty or condition consistent with the purposes of imposing a sanction for professional misconduct as set forth in standard 1.3.

REVISED VERSION (proposed) (July 2013)

1.4 CONDITIONS ATTACHED TO SANCTIONS

Conditions attached to a reproof or a suspension may require a member to:

- (a) make specific restitution or file a satisfaction of judgment;
- (b) take and pass a professional responsibility examination;
- (c) undergo treatment, at the member's expense, for medical, psychological, or psychiatric conditions or for problems of alcohol or substance abuse;
- (d) complete, at the member's expense, educational or rehabilitative work regarding substantive law, ethics, or law office management;
- (e) complete probation, subject to reporting requirements and supervision by a probation monitor;
- (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.

CURRENT VERSION (1986)

1.2 DEFINITIONS

- (b) “Aggravating circumstance” is an event or factor established clearly and convincingly by the State Bar as having surrounded a member’s professional misconduct and which demonstrates that a greater degree of sanction than set forth in these standards for the particular act of professional misconduct found or acknowledged is needed to adequately protect the public, courts and legal profession.

Circumstances which shall be considered aggravating are:

- (i) the existence of prior record of discipline and the nature and extent of that record (see also standard 1.7);
- (ii) that the current misconduct found or acknowledged by the member evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct;
- (iii) that the member’s misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct; or if trust funds or trust property were involved, refusal or inability to account to the client or person who is the object of the misconduct for improper conduct toward said funds or property;
- (iv) that the member’s misconduct harmed significantly a client, the public or the administration of justice;
- (v) that the member demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct; or
- (vi) that the member displayed a lack of candor and cooperation to any victims of the member’s misconduct or to the State Bar during disciplinary investigation or proceedings.

REVISED VERSION (proposed) (July 2013)

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, dishonesty, concealment, overreaching, or other uncharged violations of the Business and Professions Code or the Rules of Professional Conduct;
- (e) refusal or inability to account for entrusted funds or property;
- (f) significant harm to the client, the public, or the administration of justice;
- (g) indifference toward rectification or atonement for the consequences of the misconduct;
- (h) lack of candor and cooperation to victims of the misconduct or the State Bar during disciplinary investigation or proceedings; or
- (i) failure to make restitution.

CURRENT VERSION (1986)

1.2 DEFINITIONS

- (e) “Mitigating circumstance” is an event or factor established clearly and convincingly by the member subject to a disciplinary proceeding as having caused or underlain the member’s professional misconduct and which demonstrates that the public, courts and legal profession would be adequately protected by a more lenient degree of sanction than set forth in these standards for the particular act of professional misconduct found or acknowledged.

Circumstances which shall be considered mitigating are:

- (i) absence of any prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious;
- (ii) good faith of the member;
- (iii) lack of harm to the client or person who is the object of the misconduct;
- (iv) extreme emotional difficulties or physical disabilities suffered by the member at the time of the act of professional misconduct which expert testimony establishes was directly responsible for the misconduct; provided that such difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse; and further provided that the member has established through clear and convincing evidence that he or she no longer suffers from such difficulties or disabilities;
- (v) spontaneous candor and cooperation displayed to the victims of the member's misconduct and to the State Bar during disciplinary investigation and proceedings;
- (vi) an extraordinary demonstration of good character of the member attested to by a wide range of references in the legal and general communities and who are aware of the full extent of the member's misconduct;
- (vii) objective steps promptly taken by the member spontaneously demonstrating remorse, recognition of the wrongdoing found or acknowledged which steps are designed to timely atone for any consequences of the member's misconduct;
- (viii) the passage of considerable time since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation; or
- (ix) excessive delay in conducting disciplinary proceedings, which delay is not attributable to the member and which delay prejudiced the member.

REVISED VERSION (proposed) (July 2013)

1.6 MITIGATING CIRCUMSTANCES

A member 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 deemed serious;
- (b) good faith belief that is honestly held and reasonable;
- (c) lack of harm to the client, the public, or the administration of justice;
- (d) extreme emotional difficulties or physical or mental disabilities suffered by the member at the time of the misconduct and established by expert testimony as directly responsible for the misconduct, provided that such difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and the member established by clear and convincing evidence that the difficulties or disabilities no longer pose a risk that the member will commit misconduct;
- (e) spontaneous candor and cooperation displayed to the victims of the misconduct or to the State Bar;
- (f) extraordinary good character attested to by a wide range of references in the legal and general communities, who are aware of the full extent of the misconduct;
- (g) prompt objective steps, demonstrating spontaneous remorse and recognition of the wrongdoing, and timely atonement;
- (h) remoteness in time of the misconduct and subsequent rehabilitation;
- (i) excessive delay by the State Bar in conducting disciplinary proceedings causing prejudice to the member; or
- (j) restitution was made without the threat or force of disciplinary, civil, or criminal proceedings.

CURRENT VERSION (1986)

1.7 EFFECT OF PRIOR DISCIPLINE

- (a) If a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of one prior imposition of discipline as defined by standard 1.2(f), the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding unless the prior discipline imposed was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust.
- (b) If a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of two prior impositions of discipline as defined by Standard 1.2(f), the degree of discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate.
- (c) None of these standards shall require a prior record of discipline as a prerequisite for imposing any appropriate sanction, including disbarment, authorized by these standards for an offense of professional misconduct.

REVISED VERSION (proposed) (July 2013)

1.8 EFFECT OF PRIOR DISCIPLINE

- (a) If a member has a single prior record of discipline, the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust.
- (b) If a member has two or more prior records of discipline, disbarment is appropriate in the following circumstances, unless the most compelling mitigating circumstances clearly predominate or the misconduct underlying the prior discipline occurred during the same time period as the current misconduct:
 - 1. Actual suspension was ordered in any one of the prior disciplinary matters;
 - 2. The prior disciplinary matters coupled with the current record demonstrate a pattern of misconduct; or
 - 3. The prior disciplinary matters coupled with the current record demonstrate the member's unwillingness or inability to conform to ethical responsibilities.
- (c) Sanctions may be imposed, including disbarment, even if a member has no prior record of discipline.

CURRENT VERSION (1986)

**PART B. STANDARDS PERTAINING TO
SANCTIONS FOR PROFESSIONAL MISCONDUCT
FOUND OR ACKNOWLEDGED IN ORIGINAL
DISCIPLINARY PROCEEDINGS**

2.1. SCOPE

This part shall pertain to the sanction to be imposed following offenses of professional misconduct of members found or acknowledged in original disciplinary proceedings. It shall exclude sanctions for misconduct following a member's conviction of crime pursuant to sections 6101-6102, Business and Professions Code.

**2.2 OFFENSES INVOLVING ENTRUSTED FUNDS
OR PROPERTY**

- (a) Culpability of a member of wilful misappropriation of entrusted funds or property shall result in disbarment. Only if the amount of funds or property misappropriated is insignificantly small or if the most compelling mitigating circumstances clearly predominate, shall disbarment not be imposed. In those latter cases, the discipline shall not be less than a one-year actual suspension, irrespective of mitigating circumstances.
- (b) Culpability of a member of commingling of entrusted funds or property with personal property or the commission of another violation of rule 4-100, Rules of Professional Conduct, none of which offenses result in the wilful misappropriation of entrusted funds or property shall result in at least a three month actual suspension from the practice of law, irrespective of mitigating circumstances.

REVISED VERSION (proposed) (July 2013)

**PART B. SANCTIONS FOR SPECIFIC
MISCONDUCT**

The revised version omits a "Scope" standard from Part B.

In the revised version, the language "irrespective of mitigation" has been deleted from all applicable standards in Part B.

The revised version uses the phrase "is appropriate" rather than "shall result in".

2.1 MISAPPROPRIATION

- (a) Disbarment is appropriate for intentional or dishonest misappropriation of entrusted funds or property, unless the amount misappropriated is insignificantly small or the most compelling mitigating circumstances clearly predominate, in which case actual suspension of one year is appropriate.
- (b) Disbarment or actual suspension is appropriate for misappropriation involving gross negligence.
- (c) Suspension or reproof is appropriate for misappropriation that does not involve intentional misconduct or gross negligence.

CURRENT VERSION (1986)

2.2 OFFENSES INVOLVING ENTRUSTED FUNDS OR PROPERTY

- (a) Culpability of a member of wilful misappropriation of entrusted funds or property shall result in disbarment. Only if the amount of funds or property misappropriated is insignificantly small or if the most compelling mitigating circumstances clearly predominate, shall disbarment not be imposed. In those latter cases, the discipline shall not be less than a one-year actual suspension, irrespective of mitigating circumstances.

- (b) Culpability of a member of commingling of entrusted funds or property with personal property or the commission of another violation of rule 4-100, Rules of Professional Conduct, none of which offenses result in the wilful misappropriation of entrusted funds or property shall result in at least a three month actual suspension from the practice of law, irrespective of mitigating circumstances.

2.3 OFFENSES INVOLVING MORAL TURPITUDE, FRAUD, DISHONESTY OR CONCEALMENT

Culpability of a member of an act of moral turpitude, fraud, or intentional dishonesty toward a court, client or another person or of concealment of a material fact to a court, client or another person shall result in actual suspension or disbarment depending upon the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the member's acts within the practice of law.

REVISED VERSION (proposed) (July 2013)

2.2 COMMINGLING AND OTHER TRUST ACCOUNT VIOLATIONS

- (a) Actual suspension of three months is appropriate for commingling or failure to promptly pay out entrusted funds.

- (b) Suspension or reproof is appropriate for any other violation of Rule 4-100.

2.7 MORAL TURPITUDE, DISHONESTY, FRAUD, CORRUPTION, OR CONCEALMENT

Disbarment or actual suspension is appropriate for an act of moral turpitude, dishonesty, fraud, corruption or concealment of a material fact. The degree of sanction depends on the magnitude of the misconduct and the extent to which the misconduct harmed or misled the victim and related to the member's practice of law.

CURRENT VERSION (1986)

2.4 OFFENSES INVOLVING WILFUL FAILURE TO COMMUNICATE WITH CLIENT OR TO PERFORM SERVICES IN THE MATER FOR WHICH THE MEMBER HAS BEEN RETAINED

- (a) Culpability of a member of a pattern of wilfully failing to perform services demonstrating the member's abandonment of the causes in which he or she was retained shall result in disbarment.
- (b) Culpability of a member of wilfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or culpability of a member of wilfully failing to communicate with a client shall result in reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client.

2.5 OFFENSES INVOLVING A VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 6131

Culpability of a member of violating the provisions of Business and Professions Code, section 6131 shall result in disbarment, irrespective of mitigating circumstances.

2.6 OFFENSES INVOLVING OTHER SPECIFIED SECTIONS OF THE BUSINESS AND PROFESSIONS CODE

Culpability of a member of a violation of any of the following provisions of the Business and Professions Code shall result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3:

...
...

(e) Sections 6128 through 6130; or

(f) Sections 6151 through 6153

REVISED VERSION (proposed) (July 2013)

2.5 FAILURE TO PERFORM OR COMMUNICATE

- (a) Disbarment is appropriate for failing to perform legal services with clients, demonstrating a pattern of misconduct.
- (b) Actual suspension is appropriate for failing to perform legal services or properly communicate in multiple client matters, not demonstrating a pattern of misconduct.
- (c) Reproval is appropriate for failing to perform legal services or properly communicate in a single client matter.

2.13 CRIMINAL CONVICTIONS FOR SPECIFIC MISDEMEANORS

- (a) Disbarment is appropriate for final conviction of a misdemeanor specified in Business & Professions Code section 6131, where a public prosecutor aids in the defense of a defendant.
- (b) Disbarment or actual suspension is appropriate for final conviction of a misdemeanor specified in Business & Professions Code sections 6128-6130 and 6153-6155.

CURRENT VERSION (1986)

2.6 OFFENSES INVOLVING OTHER SPECIFIED SECTIONS OF THE BUSINESS AND PROFESSIONS CODE

Culpability of a member of a violation of any of the following provisions of the Business and Professions Code shall result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3:

...

- (a) Sections 6067 and 6068;

2.6 OFFENSES INVOLVING OTHER SPECIFIED SECTIONS OF THE BUSINESS AND PROFESSIONS CODE

Culpability of a member of a violation of any of the following provisions of the Business and Professions Code shall result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3:

...

- (b) Sections 6103 through 6105;

REVISED VERSION (proposed) (July 2013)

2.8 VIOLATION OF OATH OR DUTIES OF AN ATTORNEY

- (a) Disbarment is appropriate for disobedience or violation of a court order related to the member's practice of law, the attorney's oath, or the duties required of an attorney under Business & Professions Code section 6068(a)-(h).
- (b) Repeal is appropriate for a violation of the duties required of an attorney under Business & Professions Code section 6068(i), (j), (l) or (o).
- (c) Violations of the duties required of an attorney under Business and Professions Code section 6068(m) or (n) are covered in Standard 2.5.

2.9 SEXUAL RELATIONS WITH CLIENTS

- (a) Disbarment is appropriate when a member requires or demands sexual relations with a client incident to or as a condition of professional representation or employs coercion, intimidation, or undue influence in entering into sexual relations with a client.
- (b) Suspension or reproof is appropriate for any other violation of Rule 3-120.

CURRENT VERSION (1986)

2.6 OFFENSES INVOLVING OTHER SPECIFIED SECTIONS OF THE BUSINESS AND PROFESSIONS CODE

Culpability of a member of a violation of any of the following provisions of the Business and Professions Code shall result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3:

...

(d) Sections 6125 and 6126;

2.6 OFFENSES INVOLVING OTHER SPECIFIED SECTIONS OF THE BUSINESS AND PROFESSIONS CODE

Culpability of a member of a violation of any of the following provisions of the Business and Professions Code shall result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3:

...

(b) Sections 6103 through 6105;

(c) Section 6106.1;

REVISED VERSION (proposed) (July 2013)

2.6 UNAUTHORIZED PRACTICE OF LAW

- (a) Disbarment or actual suspension is appropriate when a member engages in the practice of law or holds himself or herself out as entitled to practice law when he or she is on actual suspension for disciplinary reasons or involuntary inactive enrollment under Business & Professions Code section 6007(b)-(e)
- (b) Suspension or reproof is appropriate when a member engages in the practice of law or holds himself or herself out as entitled to practice law when he or she is on active status or actual suspension for non-disciplinary reasons, such as non-payment of fees or MCLE non-compliance. The degree of sanction depends on whether the member knowingly engaged in the unauthorized practice of law.

2.14 VIOLATION OF OTHER ARTICLE 6 STATUTES

Disbarment or actual suspension is appropriate for any violation of a provision of Article 6 of the Business & Professions Code sections 6128-6130 and 6153-6155.

CURRENT VERSION (1986)

2.7 OFFENSES INVOLVING AN AGREEMENT TO ENTER INTO CHARGE OR COLLECT AN UNCONSCIONABLE FEE FOR LEGAL SERVICES (rule 4-200, RULES OF PROFESSIONAL CONDUCT)

Culpability of a member of a wilful violation of that portion of rule 4-200, Rules of Professional Conduct re entering into an agreement for, charging or collecting an unconscionable fee for legal services shall result in at least a six-month actual suspension from the practice of law, irrespective of mitigating circumstances.

2.8 OFFENSES INVOLVING VIOLATION OF RULE 3-300, RULES OF PROFESSIONAL CONDUCT RE BUSINESS TRANSACTIONS WITH A CLIENT

Culpability of a member of a wilful violation of rule 3-300, Rules of Professional Conduct, shall result in suspension unless the extent of the member's misconduct and the harm to the client are minimal, in which case, the degree of discipline shall be reproof.

2.9 OFFENSES INVOLVING A WILFUL VIOLATION OF RULE 1-110, RULES OF PROFESSIONAL CONDUCT

Culpability of a member of a wilful violation of rule 1-110, Rules of Professional Conduct, shall result in suspension.

REVISED VERSION (proposed) (July 2013)

2.3 ILLEGAL OR UNCONSCIONABLE FEE

- (a) Actual suspension of at least six months is appropriate for entering into an agreement for, charging, or collecting an unconscionable fee for legal services.
- (b) Suspension or reproof is appropriate for entering into an agreement for, charging, or collecting an illegal fee for legal services.

2.4 BUSINESS TRANSACTIONS, PECUNIARY INTERESTS ADVERSE TO A CLIENT

Suspension is appropriate 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 then disbarment or actual suspension is appropriate.

2.10 VIOLATION OF CONDITIONS ATTACHED TO DISCIPLINE

Actual suspension is appropriate for failing to comply with a condition of discipline. The degree of sanction depends on the nature of the condition violated and the member's unwillingness or inability to comply with disciplinary orders.

CURRENT VERSION (1986)

2.10 OFFENSE INVOLVING A VIOLATION OF ANY PROVISION OF THE BUSINESS AND PROFESSIONS CODE NOT SPECIFIED IN ANY OTHER STANDARD OR A WILFUL VIOLATION OF A RULE OF PROFESSIONAL CONDUCT NOT SPECIFIED IN ANY OTHER STANDARD

Culpability of a member of a violation of any provision of the Business and Professions Code not specified in these standards or of a wilful violation of any Rule of Professional Conduct not specified in these standards shall result in reproof or suspension according to the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3.

PART C. STANDARDS PERTAINING TO SANCTIONS FOR PROFESSIONAL MISCONDUCT FOLLOWING CONVICTION OF THE MEMBER OF A CRIME

3.1 SCOPE

This part shall pertain to the sanction to be imposed following a member's conviction of crime, pursuant to sections 6101-6102, Business and Professions Code.

3.2 CONVICTION OF A CRIME INVOLVING MORAL TURPITUDE

Final conviction of a member of a crime which involves moral turpitude, either inherently or in the facts and circumstances surrounding the crime's commission shall result in disbarment. Only if the most compelling mitigating circumstances clearly predominate, shall disbarment not be imposed. In those latter cases, the discipline shall not be less than a two-year actual suspension, prospective to any interim suspension imposed, irrespective of mitigating circumstances.

3.3 CONVICTION OF CERTAIN FELONIES

Final conviction of a felony defined by section 6102(c) shall result in summary disbarment, irrespective of any mitigating circumstances.

REVISED VERSION (proposed) (July 2013)

2.15 VIOLATION OF RULES IN GENERAL

Suspension not to exceed three years or reproof is appropriate for a violation of a provision of the Business & Professions Code or the Rules of Professional Conduct not specified in these Standards.

There is no comparable Part C in the revised version.

2.11 CRIMINAL CONVICTIONS

- (a) Summary disbarment is appropriate for final conviction of a felony in which an element of the offense involves the specific intent to deceive, defraud, steal, or make or suborn a false statement, or involved moral turpitude.
- (b) Disbarment is appropriate for final conviction of a felony in which the facts and circumstances surrounding the offense involve moral turpitude, unless the most compelling mitigating circumstance clearly predominate, in which case actual suspension of at least two years is appropriate.
- (c) Disbarment or actual suspension is appropriate for final conviction of a misdemeanor involving moral turpitude.

CURRENT VERSION (1986)

3.4 CONVICTION OF A CRIME NOT INVOLVING MORAL TURPITUDE BUT INVOLVING OTHER MISCONDUCT WARRANTING DISCIPLINE

Final conviction of a member of a crime which does not involve moral turpitude inherently or in the facts and circumstances surrounding the crime's commission but which does involve other misconduct warranting discipline shall result in a sanction as prescribed under part B of these standards appropriate to the nature and extent of the misconduct found to have been committed by the member.

REVISED VERSION (proposed) (July 2013)

2.12 CRIMINAL CONVICTIONS NOT INVOLVING MORAL TURPITUDE

- (a) Actual suspension is appropriate for final conviction of a felony not involving moral turpitude, but involving other misconduct warranting discipline.
- (b) Suspension or reproof is appropriate for final conviction of a misdemeanor not involving moral turpitude, but involving other misconduct warranting discipline.