



*The State Bar of California*

# **California Rules of Professional Conduct The State Bar Act**

Including Selected California Rules of Court  
Selected Statutes Regarding Duties of Attorneys and Discipline  
Lawyer Referral Service Rules  
Minimum Continuing Legal Education Rules  
Pro Bono Resolution Adopted by the State Bar Board  
Mortgage Assistance Relief Service Rule  
Construction-Related Disability Access Claims Information

## **Volume 1**

# **California Rules of Professional Conduct and Other Related Rules and Codes**

## **Volume 1**

Rules of Professional Conduct  
State Bar Act (Bus. & Prof. Code, §§ 6000 et seq.)  
“1992” Rules of Professional Conduct  
“1989” Rules of Professional Conduct  
“1975” Rules of Professional Conduct  
Rules Cross-Reference Tables

Published by the State Bar of California  
Office of Professional Competence

Pub. No. 250  
2023

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# CONSTITUTION OF CALIFORNIA

## Selected Provisions

### Article VI

#### Section 6. Judicial Council

(a) The Judicial Council consists of the Chief Justice and one other judge of the Supreme Court, three judges of courts of appeal, 10 judges of superior courts, two nonvoting court administrators, and any other nonvoting members as determined by the voting membership of the council, each appointed by the Chief Justice for a three-year term pursuant to procedures established by the council; four members of the State Bar appointed by its governing body for three-year terms; and one member of each house of the Legislature appointed as provided by the house.

(b) Council membership terminates if a member ceases to hold the position that qualified the member for appointment. A vacancy shall be filled by the appointing power for the remainder of the term.

(c) The council may appoint an Administrative Director of the Courts, who serves at its pleasure and performs functions delegated by the council or the Chief Justice, other than adopting rules of court administration, practice and procedure.

(d) To improve the administration of justice the council shall survey judicial business and make recommendations to the courts, make recommendations annually to the Governor and Legislature, adopt rules for court administration, practice and procedure, and perform other functions prescribed by statute. The rules adopted shall not be inconsistent with statute.

(e) The Chief Justice shall seek to expedite judicial business and to equalize the work of judges. The Chief Justice may provide for the assignment of any judge to another court but only with the judge's consent if the court is of lower jurisdiction. A retired judge who consents may be assigned to any court.

(f) Judges shall report to the Judicial Council as the Chief Justice directs concerning the condition of judicial business in their courts. They shall cooperate with the council and hold court as assigned.

(Adopted November 8, 1966. Amended November 5, 1974; Stats. 1994, Res. ch. 113 (S.C.A. 7) (Prop. 191 approved November 8, 1994, operative January 1, 1995); Stats. 1996, Res. ch. 36 (S.C.A.4) (Prop. 220, approved June 2, 1998, operative June 3, 1998); Stats. 2002, Res. ch. 88 (A.C.A.15) §3 (Prop. 48, approved November 5, 2002, operative November 6, 2002).)

#### Section 8. Commission on Judicial Performance

(a) The Commission on Judicial Performance consists of one judge of a court of appeal and two judges of superior courts, each appointed by the Supreme Court; two members of the State Bar of California who have practiced law in this State for 10 years, each appointed by the Governor, and six citizens who are not judges, retired judges, or members of the State Bar of California, two of whom shall be appointed by the Governor, two by the Senate Committee on Rules, and two by the Speaker of the Assembly. Except as provided in subdivisions (b) and (c), all terms are for four years. No member shall serve more than two four-year terms, or for more than a total of 10 years if appointed to fill a vacancy.

(b) Commission membership terminates if a member ceases to hold the position that qualified the member for appointment. A vacancy shall be filled by the appointing power for the remainder of the term. A member whose term has expired may continue to serve until the vacancy has been filled by the appointing power. Appointing powers may appoint members who are already serving on the commission prior to March 1, 1995, to a single two-year term, but may not appoint them to an additional term thereafter.

(c) To create staggered terms among the members of the Commission on Judicial Performance, the following members shall be appointed, as follows:

(1) Two members appointed by the Supreme Court to a term commencing March 1, 1995, shall each serve a term of two years and may be reappointed to one full term.

(2) One attorney appointed by the Governor to a term commencing March 1, 1995, shall serve a term of two years and may be reappointed to one full term.

(3) One citizen member appointed by the Governor to a term commencing March 1, 1995, shall serve a term of two years and may be reappointed to one full term.

(4) One member appointed by the Senate Committee on Rules to a term commencing March 1, 1995, shall serve a term of two years and may be reappointed to one full term.

(5) One member appointed by the Speaker of the Assembly to a term commencing March 1, 1995, shall serve a term of two years and may be reappointed to one full term.

(6) All other members shall be appointed to full four-year terms commencing March 1, 1995.

(Adopted November 8, 1966. Amended November 5, 1974; November 2, 1976; November 8, 1988; Stats. 1994, Res. Ch. 111 (A.C.A. 46), Proposition 190 approved November 8, 1994, operative March 1, 1995); Stats. 1996, Res. ch. 36 (S.C.A.4) (Prop. 220, approved June 2, 1998, operative June 3, 1998); Stats. 2002, Res. ch. 88 (A.C.A.15) §3 (Prop. 48, approved November 5, 2002, operative November 6, 2002).)

#### **Section 9. State Bar; Public Corporation; Membership**

The State Bar of California is a public corporation. Every person admitted and licensed to practice law in this State is and shall be a member of the State Bar except while holding office as a judge of a court of record. (Adopted November 8, 1966.)



# RULES OF PROFESSIONAL CONDUCT CROSS-REFERENCE CHART

<b>Current Rules of Professional Conduct</b> <i>Effective on November 1, 2018</i> (Rule Number and Title)	<b>"1992" Rules of Professional Conduct</b> <i>Effective until October 31, 2018</i> (Rule Number and Title)
<b>1.0</b> Purpose and Function of the Rules of Professional Conduct	<b>1-100</b> Rules of Professional Conduct, in General
<b>1.0.1</b> Terminology	<b>1-100(B)</b>
<b>1.1</b> Competence <sup>1</sup>	<b>3-110</b> Failing to Act Competently
<b>1.2</b> Scope of Representation and Allocation of Authority	<b>No Former California Rule Counterpart</b>
<b>1.2.1</b> Advising or Assisting the Violation of Law	<b>3-210</b> Advising the Violation of Law
<b>1.3</b> Diligence	<b>3-110(B)</b> <sup>2</sup>
<b>1.4</b> Communication with Clients <sup>3</sup>	<b>3-500</b> Communication
<b>1.4.1</b> Communication of Settlement Offers	<b>3-510</b> Communication of Settlement Offer
<b>1.4.2</b> Disclosure of Professional Liability Insurance	<b>3-410</b> Disclosure of Professional Liability Insurance
<b>1.5</b> Fees for Legal Services	<b>4-200</b> Fees for Legal Services
<b>1.5.1</b> Fee Divisions Among Lawyers	<b>2-200</b> Financial Arrangements Among Lawyers
<b>1.6</b> Confidential Information of a Client	<b>3-100</b> Confidential Information of a Client
<b>1.7</b> Conflict of Interest: Current Clients	<b>3-310(B),(C)</b> [Avoiding the Representation of Adverse Interests] <b>3-320</b> Relationship With Other Party's Lawyer
<b>1.8.1</b> Business Transactions with a Client and Pecuniary Interests Adverse to the Client	<b>3-300</b> Avoiding Interests Adverse to a Client
<b>1.8.2</b> Use of Current Client's Information	<b>No Former California Rule Counterpart</b> <sup>4</sup>
<b>1.8.3</b> Gifts from Client	<b>4-400</b> Gifts From Client
<b>1.8.5</b> Payment of Personal or Business Expenses Incurred by or for a Client	<b>4-210</b> Payment of Personal or Business Expenses Incurred by or for a Client
<b>1.8.6</b> Compensation from One Other than Client	<b>3-310(F)</b>
<b>1.8.7</b> Aggregate Settlements	<b>3-310(D)</b>
<b>1.8.8</b> Limiting Liability to Client	<b>3-400</b> Limiting Liability to Client
<b>1.8.9</b> Purchasing Property at a Foreclosure or a Sale Subject to Judicial Review	<b>4-300</b> Purchasing Property at a Foreclosure or a Sale Subject to Judicial Review
<b>1.8.10</b> Sexual Relations with Current Client	<b>3-120</b> Sexual Relations With Client

<sup>1</sup> Rule 1.1, Comment [1] was added by order of the Supreme Court, effective March 22, 2021.

<sup>2</sup> Rule 3-110(B) provides:

(B) For purposes of this rule, "competence" in any legal service shall mean to apply the 1) *diligence*, 2) learning and skill, and 3) mental, emotional, and physical ability reasonably necessary for the performance of such service. (Emphasis added.)

<sup>3</sup> Rule 1.4, Comment [1] was amended by order of the Supreme Court, effective January 1, 2023.

<sup>4</sup> But see Cal. Bus. & Prof. Code § 6068(e)(1).

## RULES OF PROFESSIONAL CONDUCT CROSS-REFERENCE CHART

Current Rules of Professional Conduct <i>Effective on November 1, 2018</i> (Rule Number and Title)	“1992” Rules of Professional Conduct <i>Effective until October 31, 2018</i> (Rule Number and Title)
<b>1.8.11</b> Imputation of Prohibitions Under Rules 1.8.1 to 1.8.9	<b>No Former California Rule Counterpart</b>
<b>1.9</b> Duties To Former Clients	<b>3-310(E)</b>
<b>1.10</b> Imputation of Conflicts of Interest: General Rule	<b>No Former California Rule Counterpart</b>
<b>1.11</b> Special Conflicts of Interest for Former and Current Government Officials and Employees	<b>No Former California Rule Counterpart</b>
<b>1.12</b> Former Judge, Arbitrator, Mediator or Other Third-Party Neutral	<b>No Former California Rule Counterpart</b>
<b>1.13</b> Organization as Client	<b>3-600</b> Organization as Client
<b>1.14</b> [Reserved] <sup>5</sup>	
<b>1.15</b> Safekeeping Funds and Property of Clients and Other Persons <sup>6</sup>	<b>4-100</b> Preserving Identity of Funds and Property of a Client
<b>1.16</b> Declining or Terminating Representation <sup>7</sup>	<b>3-700</b> Termination of Employment
<b>1.17</b> Sale of a Law Practice	<b>2-300</b> Sale or Purchase of a Law Practice of a Member, Living or Deceased
<b>1.18</b> Duties to Prospective Client	<b>No Former California Rule Counterpart</b>
<b>2.1</b> Advisor	<b>No Former California Rule Counterpart</b>
<b>2.2</b> [Reserved] <sup>8</sup>	
<b>2.3</b> [Reserved] <sup>9</sup>	
<b>2.4</b> Lawyer as Third-Party Neutral	<b>No Former California Rule Counterpart</b>
<b>2.4.1</b> Lawyer as Temporary Judge, Referee, or Court-Appointed Arbitrator	<b>1-710</b> Member as Temporary Judge, Referee, or Court-Appointed Arbitrator
<b>3.1</b> Meritorious Claims and Contentions	<b>3-200</b> Prohibited Objectives of Employment
<b>3.2</b> Delay of Litigation	<b>No Former California Rule Counterpart</b>
<b>3.3</b> Candor Toward the Tribunal	<b>5-200(A)-(D)</b> Trial Conduct
<b>3.4</b> Fairness to Opposing Party and Counsel	<b>5-200(E)</b> [Trial Conduct] <b>5-220</b> Suppression of Evidence ( <u>Note</u> : Rule 5-220 was revised effective May 1, 2017.) <b>5-310</b> Prohibited Contact With Witnesses ( <u>Note</u> : See also Rule 5-110 was revised effective November 2, 2017.)
<b>3.5</b> Contact with Judges, Officials, Employees, and Jurors	<b>5-300</b> Contact With Officials <b>5-320</b> Contact With Jurors

<sup>5</sup> ABA Model Rule 1.14 (“Client With Diminished Capacity”) has not been adopted in California.

<sup>6</sup> Rule 1.15 was amended by order of the Supreme Court, effective January 1, 2023.

<sup>7</sup> Rule 1.16, Comment [5] was amended by order of the Supreme Court, effective June 1, 2020.

<sup>8</sup> ABA Model Rule 2.2 was deleted and has not been adopted in California.

<sup>9</sup> ABA Model Rule 2.3 (“Evaluation For Use By Third Persons”) has not been adopted in California.

# RULES OF PROFESSIONAL CONDUCT CROSS-REFERENCE CHART

<b>Current Rules of Professional Conduct</b> <i>Effective on November 1, 2018</i> (Rule Number and Title)	<b>“1992” Rules of Professional Conduct</b> <i>Effective until October 31, 2018</i> (Rule Number and Title)
<b>3.6</b> Trial Publicity	<b>5-120</b> Trial Publicity
<b>3.7</b> Lawyer as Witness	<b>5-210</b> Member as Witness
<b>3.8</b> Special Responsibilities of a Prosecutor <sup>10</sup>	<b>5-110</b> Special Responsibilities of a Prosecutor <i>(operative on May 1, 2017.)</i> <b>5-110</b> Performing the Duty of Member in Government Service <i>(operative until April 30, 2017.)</i>
<b>3.9</b> Advocate in Non-adjudicative Proceedings	<b>No Former California Rule Counterpart</b>
<b>3.10</b> Threatening Criminal, Administrative, or Disciplinary Charges	<b>5-100</b> Threatening Criminal, Administrative, or Disciplinary Charges
<b>4.1</b> Truthfulness in Statements to Others	<b>No Former California Rule Counterpart</b>
<b>4.2</b> Communication with a Represented Person	<b>2-100</b> Communication With a Represented Party
<b>4.3</b> Communicating with an Unrepresented Person	<b>No Former California Rule Counterpart</b>
<b>4.4</b> Duties Concerning Inadvertently Transmitted Writings	<b>No Former California Rule Counterpart</b>
<b>5.1</b> Responsibilities of Managerial and Supervisory Lawyers	<b>No Former California Rule Counterpart</b> <sup>11</sup>
<b>5.2</b> Responsibilities of a Subordinate Lawyer	<b>No Former California Rule Counterpart</b>
<b>5.3</b> Responsibilities Regarding Nonlawyer Assistants	<b>No Former California Rule Counterpart</b> <sup>12</sup>
<b>5.3.1</b> Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Lawyer	<b>1-311</b> Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Members
<b>5.4</b> Financial and Similar Arrangements with Nonlawyers <sup>13</sup>	<b>1-310</b> Forming a Partnership With a Non-Lawyer <b>1-320</b> Financial Arrangements With Non-Lawyer <b>1-600</b> Legal Service Programs
<b>5.5</b> Unauthorized Practice of Law; Multijurisdictional Practice of Law	<b>1-300</b> Unauthorized Practice of Law
<b>5.6</b> Restrictions on a Lawyer’s Right to Practice	<b>1-500</b> Agreements Restricting a Member’s Practice
<b>6.3</b> Membership in Legal Services Organizations	<b>No Former California Rule Counterpart</b>
<b>6.5</b> Limited Legal Services Programs	<b>1-650</b> Limited Legal Service Programs
<b>7.1</b> Communications Concerning a Lawyer’s Services	<b>1-400</b> Advertising and Solicitation
<b>7.2</b> Advertising	<b>1-320(B)-(C) &amp; (A)(4)</b> [Financial Arrangements With Non-Lawyer] <b>1-400</b> Advertising and Solicitation <b>2-200</b> Financial Arrangements Among Lawyers
<b>7.3</b> Solicitation of Clients	<b>1-400</b> Advertising and Solicitation

<sup>10</sup> Rule 3.8, Comment [7] was amended by order of the Supreme Court, effective June 1, 2020.

<sup>11</sup> But see rule 3-110, Discussion ¶. 1.

<sup>12</sup> But see rule 3-110, Discussion ¶. 1.

<sup>13</sup> Rule 5.4 was amended by order of the Supreme Court, effective March 22, 2021.

## RULES OF PROFESSIONAL CONDUCT CROSS-REFERENCE CHART

<b>Current Rules of Professional Conduct</b> <i>Effective on November 1, 2018</i> (Rule Number and Title)	<b>“1992” Rules of Professional Conduct</b> <i>Effective until October 31, 2018</i> (Rule Number and Title)
<b>7.4</b> Communication of Fields of Practice and Specialization	<b>1-400</b> Advertising and Solicitation
<b>7.5</b> Firm Names and Trade Names	<b>1-400</b> Advertising and Solicitation
<b>7.6</b> [Reserved] <sup>14</sup>	
<b>8.1</b> False Statement Regarding Application for Admission to Practice Law	<b>1-200</b> False Statement Regarding Admission to the State Bar
<b>8.1.1</b> Compliance with Conditions of Discipline and Agreements in Lieu of Discipline	<b>1-110</b> Disciplinary Authority of the State Bar
<b>8.2</b> Judicial Officials	<b>1-700</b> Member as Candidate for Judicial Office
<b>8.3</b> Reporting Professional Misconduct <sup>15</sup>	
<b>8.4</b> Misconduct	<b>1-120</b> Assisting, Soliciting, or Inducing Violations
<b>8.4.1</b> Prohibited Discrimination, Harassment and Retaliation	<b>2-400</b> Prohibited Discriminatory Conduct in a Law Practice
<b>8.5</b> Disciplinary Authority; Choice of Law	<b>1-100(D)</b> Rules of Professional Conduct, in General

<sup>14</sup> ABA Model Rule 7.6 (“Political Contributions To Obtain Legal Engagements Or Appointments By Judges”) has not been adopted in California.

<sup>15</sup> Rule 8.3 was adopted by order of the Supreme Court, effective August 1, 2023.

<b>“1992” Rules of Professional Conduct</b> <i>Effective until October 31, 2018</i> (Rule Number and Title)	<b>Current Rules of Professional Conduct</b> <i>Effective on November 1, 2018</i> (Rule Number and Title)
<b>1-100(A)</b> [Rules of Professional Conduct, in General]	<b>1.0</b> Purpose and Function of the Rules of Professional Conduct
<b>1-100(B)</b>	<b>1.0.1</b> Terminology
<b>1-100(D)</b>	<b>8.5</b> Disciplinary Authority; Choice of Law
<b>1-110</b> Disciplinary Authority of the State Bar	<b>8.1.1</b> Compliance with Conditions of Discipline and Agreements in Lieu of Discipline
<b>1-120</b> Assisting, Soliciting, or Inducing Violations	<b>8.4</b> Misconduct
<b>1-200</b> False Statement Regarding Admission to the State Bar	<b>8.1</b> False Statement Regarding Application for Admission to Practice Law
<b>1-300</b> Unauthorized Practice of Law	<b>5.5</b> Unauthorized Practice of Law; Multijurisdictional Practice of Law
<b>1-310</b> Forming a Partnership With a Non-Lawyer	<b>5.4</b> Financial and Similar Arrangements with Nonlawyers <sup>16</sup>
<b>1-311</b> Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Members	<b>5.3.1</b> Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Lawyer
<b>1-320(A)</b>	<b>5.4</b> Financial and Similar Arrangements with Nonlawyers <sup>17</sup>
<b>1-320(A)(4) &amp; (B)-(C)</b> [Financial Arrangements With Non-Lawyer]	<b>7.2(b)</b> Advertising
<b>1-400</b> Advertising and Solicitation	<b>7.1</b> Communications Concerning a Lawyer’s Services <b>7.2</b> Advertising <b>7.3</b> Solicitation of Clients <b>7.4</b> Communication of Fields of Practice and Specialization <b>7.5</b> Firm Names and Trade Names
<b>1-500</b> Agreements Restricting a Member's Practice	<b>5.6</b> Restrictions on a Lawyer’s Right to Practice
<b>1-600</b> Legal Service Programs	<b>5.4</b> Financial and Similar Arrangements with Nonlawyers <sup>18</sup>
<b>1-650</b> Limited Legal Service Programs	<b>6.5</b> Limited Legal Services Programs
<b>1-700</b> Member as Candidate for Judicial Office	<b>8.2</b> Judicial Officials
<b>1-710</b> Member as Temporary Judge, Referee, or Court-Appointed Arbitrator	<b>2.4.1</b> Lawyer as Temporary Judge, Referee, or Court-Appointed Arbitrator
<b>2-100</b> Communication With a Represented Party	<b>4.2</b> Communication with a Represented Person
<b>2-200(A)</b> Financial Arrangements Among Lawyers	<b>1.5.1</b> Fee Divisions Among Lawyers
<b>2-200(B)</b>	<b>7.2(b)</b> Advertising
<b>2-300</b> Sale or Purchase of a Law Practice of a Member, Living or Deceased	<b>1.17</b> Sale of a Law Practice
<b>2-400</b> Prohibited Discriminatory Conduct in a Law Practice	<b>8.4.1</b> Prohibited Discrimination, Harassment and Retaliation
<b>3-100</b> Confidential Information of a Client	<b>1.6</b> Confidential Information of a Client

<sup>16</sup> Rule 5.4 was amended by order of the Supreme Court, effective March 22, 2021.

<sup>17</sup> Rule 5.4 was amended by order of the Supreme Court, effective March 22, 2021.

<sup>18</sup> Rule 5.4 was amended by order of the Supreme Court, effective March 22, 2021.

## RULES OF PROFESSIONAL CONDUCT CROSS-REFERENCE CHART

<b>"1992" Rules of Professional Conduct</b> <i>Effective until October 31, 2018</i> (Rule Number and Title)	<b>Current Rules of Professional Conduct</b> <i>Effective on November 1, 2018</i> (Rule Number and Title)
<b>3-110</b> Failing to Act Competently	<b>1.1</b> Competence <sup>19</sup>
<b>3-110(B)</b>	<b>1.3</b> Diligence
<b>3-110, Discussion ¶1.1</b>	<b>Rule 5.1</b> Responsibilities of Managerial and Supervisory Lawyers <b>Rule 5.2</b> Responsibilities of a Subordinate Lawyer <b>Rule 5.3</b> Responsibilities Regarding Nonlawyer Assistants
<b>3-120</b> Sexual Relations With Client	<b>1.8.10</b> Sexual Relations with Current Client
<b>3-200</b> Prohibited Objectives of Employment	<b>3.1</b> Meritorious Claims and Contentions
<b>3-210</b> Advising the Violation of Law	<b>1.2.1</b> Advising or Assisting the Violation of Law
<b>3-300</b> Avoiding Interests Adverse to a Client	<b>1.8.1</b> Business Transactions with a Client and Pecuniary Interests Adverse to the Client
<b>3-310(B), (C)</b> Avoiding the Representation of Adverse Interests	<b>1.7</b> Conflict of Interest: Current Clients
<b>3-310(D)</b>	<b>1.8.7</b> Aggregate Settlements
<b>3-310(E)</b>	<b>1.9</b> Duties To Former Clients
<b>3-310(F)</b>	<b>1.8.6</b> Compensation from One Other than Client
<b>3-320</b> Relationship With Other Party's Lawyer	<b>1.7(c)(2)</b> Conflict of Interest: Current Clients
<b>3-400</b> Limiting Liability to Client	<b>1.8.8</b> Limiting Liability to Client
<b>3-410</b> Disclosure of Professional Liability Insurance	<b>1.4.2</b> Disclosure of Professional Liability Insurance
<b>3-500</b> Communication	<b>1.4</b> Communication with Clients <sup>20</sup>
<b>3-510</b> Communication of Settlement Offer	<b>1.4.1</b> Communication of Settlement Offers
<b>3-600</b> Organization as Client	<b>1.13</b> Organization as Client
<b>3-700</b> Termination of Employment	<b>1.16</b> Declining or Terminating Representation <sup>21</sup>
<b>4-100</b> Preserving Identity of Funds and Property of a Client	<b>1.15</b> Safekeeping Funds and Property of Clients and Other Persons <sup>22</sup>
<b>4-200</b> Fees for Legal Services	<b>1.5</b> Fees for Legal Services
<b>4-210</b> Payment of Personal or Business Expenses Incurred by or for a Client	<b>1.8.5</b> Payment of Personal or Business Expenses Incurred by or for a Client
<b>4-300</b> Purchasing Property at a Foreclosure or a Sale Subject to Judicial Review	<b>1.8.9</b> Purchasing Property at a Foreclosure or a Sale Subject to Judicial Review
<b>4-400</b> Gifts From Client	<b>1.8.3</b> Gifts from Client
<b>5-100</b> Threatening Criminal, Administrative, or Disciplinary Charges	<b>3.10</b> Threatening Criminal, Administrative, or Disciplinary Charges

<sup>19</sup> Rule 1.1, Comment [1] was added by order of the Supreme Court, effective March 22, 2021.

<sup>20</sup> Rule 1.4, Comment [1] was amended by order of the Supreme Court, effective January 1, 2023.

<sup>21</sup> Rule 1.16, Comment [5] was amended by order of the Supreme Court, effective June 1, 2020.

<sup>22</sup> Rule 1.15 was amended by order of the Supreme Court, effective January 1, 2023.

# RULES OF PROFESSIONAL CONDUCT CROSS-REFERENCE CHART

<b>"1992" Rules of Professional Conduct</b> <i>Effective until October 31, 2018</i> (Rule Number and Title)	<b>Current Rules of Professional Conduct</b> <i>Effective on November 1, 2018</i> (Rule Number and Title)
<b>5-110</b> Special Responsibilities of a Prosecutor (operative on May 1, 2017.)  <b>5-110</b> Performing the Duty of Member in Government Service (operative until April 30, 2017.)	<b>3.8</b> Special Responsibilities of a Prosecutor <sup>23</sup>
<b>5-120</b> Trial Publicity	<b>3.6</b> Trial Publicity
<b>5-200(A)-(D)</b> Trial Conduct	<b>3.3</b> Candor Toward the Tribunal
<b>5-200(E)</b> Trial Conduct	<b>3.4</b> Fairness to Opposing Party and Counsel
<b>5-210</b> Member as Witness	<b>3.7</b> Lawyer as Witness
<b>5-220</b> Suppression of Evidence ( <b>Note:</b> Rule 5-220 was revised effective May 1, 2017.)	<b>3.4</b> Fairness to Opposing Party and Counsel ( <b>Note:</b> See also Rule 3.8(d) regarding the duties of a prosecutor.)
<b>5-300</b> Contact With Officials	<b>3.5</b> Contact with Judges, Officials, Employees, and Jurors
<b>5-310</b> Prohibited Contact With Witnesses	<b>3.4</b> Fairness to Opposing Party and Counsel
<b>5-320</b> Contact With Jurors	<b>3.5</b> Contact with Judges, Officials, Employees, and Jurors

## **Current Rules With No Former California Rule Counterpart**

Rule 1.2 Scope of Representation and Allocation of Authority

Rule 1.8.2 Use of Current Client's Information<sup>24</sup>

Rule 1.8.11 Imputation of Prohibitions Under Rules 1.8.1 to 1.8.9

Rule 1.10 Imputation of Conflicts of Interest: General Rule

Rule 1.11 Special Conflicts of Interest for Former and Current Government Officials and Employees

Rule 1.12 Former Judge, Arbitrator, Mediator or Other Third-Party Neutral

Rule 1.18 Duties to Prospective Client

Rule 2.1 Advisor

Rule 2.4 Lawyer as Third-Party Neutral

Rule 3.2 Delay of Litigation

Rule 3.9 Advocate in Non-adjudicative Proceedings

Rule 4.1 Truthfulness in Statements to Others

Rule 4.3 Communicating with an Unrepresented Person<sup>25</sup>

Rule 4.4 Duties Concerning Inadvertently Transmitted Writings

Rule 5.3 Responsibilities Regarding Nonlawyer Assistants

Rule 6.3 Membership in Legal Services Organizations

Rule 8.3 Reporting Professional Misconduct

<sup>23</sup> Rule 3.8, Comment [7] was amended by order of the Supreme Court, effective June 1, 2020.

<sup>24</sup> But see Bus. & Prof. Code § 6068(e).

<sup>25</sup> But see current rule 3-600(D) regarding similar duties in an organizational context.





# RULES OF PROFESSIONAL CONDUCT

*(On May 10, 2018, the California Supreme Court issued an order approving new Rules of Professional Conduct, which are effective on November 1, 2018. On September 26, 2018, the Court issued an order approving non-substantive clean-up revisions to the rules. These revisions are effective on the same date.)*

## Rule 1.0 Purpose and Function of the Rules of Professional Conduct

### (a) Purpose.

The following rules are intended to regulate professional conduct of lawyers through discipline. They have been adopted by the Board of Trustees of the State Bar of California and approved by the Supreme Court of California pursuant to Business and Professions Code sections 6076 and 6077 to protect the public, the courts, and the legal profession; protect the integrity of the legal system; and promote the administration of justice and confidence in the legal profession. These rules together with any standards adopted by the Board of Trustees pursuant to these rules shall be binding upon all lawyers.

### (b) Function.

(1) A willful violation of any of these rules is a basis for discipline.

(2) The prohibition of certain conduct in these rules is not exclusive. Lawyers are also bound by applicable law including the State Bar Act (Bus. & Prof. Code, § 6000 et seq.) and opinions of California courts.

(3) A violation of a rule does not itself give rise to a cause of action for damages caused by failure to comply with the rule. Nothing in these rules or the Comments to the rules is intended to enlarge or to restrict the law regarding the liability of lawyers to others.

### (c) Purpose of Comments.

The comments are not a basis for imposing discipline but are intended only to provide guidance for interpreting and practicing in compliance with the rules.

(d) These rules may be cited and referred to as the "California Rules of Professional Conduct."

## Comment

[1] The Rules of Professional Conduct are intended to establish the standards for lawyers for purposes of discipline. (See *Ames v. State Bar* (1973) 8 Cal.3d 910, 917 [106 Cal.Rptr. 489].) Therefore, failure to comply with an obligation or prohibition imposed by a rule is a basis for invoking the disciplinary process. Because the rules are not designed to be a basis for civil liability, a violation of a rule does not itself give rise to a cause of action for enforcement of a rule or for damages caused by failure to comply with the rule. (*Stanley v. Richmond* (1995) 35 Cal.App.4th 1070, 1097 [41 Cal.Rptr.2d 768].) Nevertheless, a lawyer's violation of a rule may be evidence of breach of a lawyer's fiduciary or other substantive legal duty in a non-disciplinary context. (*Ibid.*; see also *Mirabito v. Liccardo* (1992) 4 Cal.App.4th 41, 44 [5 Cal.Rptr.2d 571].) A violation of a rule may have other non-disciplinary consequences. (See, e.g., *Fletcher v. Davis* (2004) 33 Cal.4th 61, 71-72 [14 Cal.Rptr.3d 58] [enforcement of attorney's lien]; *Chambers v. Kay* (2002) 29 Cal.4th 142, 161 [126 Cal.Rptr.2d 536] [enforcement of fee sharing agreement].)

[2] While the rules are intended to regulate professional conduct of lawyers, a violation of a rule can occur when a lawyer is not practicing law or acting in a professional capacity.

[3] A willful violation of a rule does not require that the lawyer intend to violate the rule. (*Phillips v. State Bar* (1989) 49 Cal.3d 944, 952 [264 Cal.Rptr. 346]; and see Bus. & Prof. Code, § 6077.)

[4] In addition to the authorities identified in paragraph (b)(2), opinions of ethics committees in California, although not binding, should be consulted for guidance on proper professional conduct. Ethics opinions and rules and standards promulgated by other jurisdictions and bar associations may also be considered.

[5] The disciplinary standards created by these rules are not intended to address all aspects of a lawyer's professional obligations. A lawyer, as a member of the legal profession, is a representative and advisor of clients, an officer of the legal system and a public citizen having special responsibilities for the quality of justice. A lawyer should be aware of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons\* who are not poor cannot afford adequate legal assistance. Therefore,

## RULES OF PROFESSIONAL CONDUCT

all lawyers are encouraged to devote professional time and resources and use civic influence to ensure equal access to the system of justice for those who because of economic or social barriers cannot afford or secure adequate legal counsel. In meeting this responsibility of the profession, every lawyer should aspire to render at least fifty hours of pro bono publico legal services per year. The lawyer should aim to provide a substantial\* majority of such hours to indigent individuals or to nonprofit organizations with a primary purpose of providing services to the poor or on behalf of the poor or disadvantaged. Lawyers may also provide financial support to organizations providing free legal services. (See Bus. & Prof. Code, § 6073.)

### Rule 1.0.1 Terminology

(a) “Belief” or “believes” means that the person\* involved actually supposes the fact in question to be true. A person’s\* belief may be inferred from circumstances.

(b) [Reserved]

(c) “Firm” or “law firm” means a law partnership; a professional law corporation; a lawyer acting as a sole proprietorship; an association authorized to practice law; or lawyers employed in a legal services organization or in the legal department, division or office of a corporation, of a government organization, or of another organization.

(d) “Fraud” or “fraudulent” means conduct that is fraudulent under the law of the applicable jurisdiction and has a purpose to deceive.

(e) “Informed consent” means a person’s\* agreement to a proposed course of conduct after the lawyer has communicated and explained (i) the relevant circumstances and (ii) the material risks, including any actual and reasonably\* foreseeable adverse consequences of the proposed course of conduct.

(e-1) “Informed written consent” means that the disclosures and the consent required by paragraph (e) must be in writing.\*

(f) “Knowingly,” “known,” or “knows” means actual knowledge of the fact in question. A person’s\* knowledge may be inferred from circumstances.

(g) “Partner” means a member of a partnership, a shareholder in a law firm\* organized as a professional corporation, or a member of an association authorized to practice law.

(g-1) “Person” has the meaning stated in Evidence Code section 175.

(h) “Reasonable” or “reasonably” when used in relation to conduct by a lawyer means the conduct of a reasonably prudent and competent lawyer.

(i) “Reasonable belief” or “reasonably believes” when used in reference to a lawyer means that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

(j) “Reasonably should know” when used in reference to a lawyer means that a lawyer of reasonable prudence and competence would ascertain the matter in question.

(k) “Screened” means the isolation of a lawyer from any participation in a matter, including the timely imposition of procedures within a law firm\* that are adequate under the circumstances (i) to protect information that the isolated lawyer is obligated to protect under these rules or other law; and (ii) to protect against other law firm\* lawyers and nonlawyer personnel communicating with the lawyer with respect to the matter.

(l) “Substantial” when used in reference to degree or extent means a material matter of clear and weighty importance.

(m) “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.

(n) “Writing” or “written” has the meaning stated in Evidence Code section 250. A “signed” writing includes an electronic sound, symbol, or process attached to or logically associated with a writing and executed, inserted, or adopted by or at the direction of a person\* with the intent to sign the writing.

## RULES OF PROFESSIONAL CONDUCT

### Comment

#### *Firm\* or Law Firm\**

[1] Practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a law firm.\* However, if they present themselves to the public in a way that suggests that they are a law firm\* or conduct themselves as a law firm,\* they may be regarded as a law firm\* for purposes of these rules. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm,\* as is the fact that they have mutual access to information concerning the clients they serve.

[2] The term “of counsel” implies that the lawyer so designated has a relationship with the law firm,\* other than as a partner\* or associate, or officer or shareholder, that is close, personal, continuous, and regular. Whether a lawyer who is denominated as “of counsel” or by a similar term should be deemed a member of a law firm\* for purposes of these rules will also depend on the specific facts. (Compare *People ex rel. Department of Corporations v. Speedee Oil Change Systems, Inc.* (1999) 20 Cal.4th 1135 [86 Cal.Rptr.2d 816] with *Chambers v. Kay* (2002) 29 Cal.4th 142 [126 Cal.Rptr.2d 536].)

#### *Fraud\**

[3] When the terms “fraud”\* or “fraudulent”\* are used in these rules, it is not necessary that anyone has suffered damages or relied on the misrepresentation or failure to inform because requiring the proof of those elements of fraud\* would impede the purpose of certain rules to prevent fraud\* or avoid a lawyer assisting in the perpetration of a fraud,\* or otherwise frustrate the imposition of discipline on lawyers who engage in fraudulent\* conduct. The term “fraud”\* or “fraudulent”\* when used in these rules does not include merely negligent misrepresentation or negligent failure to apprise another of relevant information.

#### *Informed Consent\* and Informed Written Consent\**

[4] The communication necessary to obtain informed consent\* or informed written consent\* will vary according to the rule involved and the circumstances giving rise to the need to obtain consent.

### *Screened\**

[5] The purpose of screening\* is to assure the affected client, former client, or prospective client that confidential information known\* by the personally prohibited lawyer is neither disclosed to other law firm\* lawyers or nonlawyer personnel nor used to the detriment of the person\* to whom the duty of confidentiality is owed. The personally prohibited lawyer shall acknowledge the obligation not to communicate with any of the other lawyers and nonlawyer personnel in the law firm\* with respect to the matter. Similarly, other lawyers and nonlawyer personnel in the law firm\* who are working on the matter promptly shall be informed that the screening\* is in place and that they may not communicate with the personally prohibited lawyer with respect to the matter. Additional screening\* measures that are appropriate for the particular matter will depend on the circumstances. To implement, reinforce and remind all affected law firm\* personnel of the presence of the screening,\* it may be appropriate for the law firm\* to undertake such procedures as a written\* undertaking by the personally prohibited lawyer to avoid any communication with other law firm\* personnel and any contact with any law firm\* files or other materials relating to the matter, written\* notice and instructions to all other law firm\* personnel forbidding any communication with the personally prohibited lawyer relating to the matter, denial of access by that lawyer to law firm\* files or other materials relating to the matter, and periodic reminders of the screen\* to the personally prohibited lawyer and all other law firm\* personnel.

[6] In order to be effective, screening\* measures must be implemented as soon as practical after a lawyer or law firm\* knows\* or reasonably should know\* that there is a need for screening.\*

## CHAPTER 1.

### LAWYER-CLIENT RELATIONSHIP

#### Rule 1.1 Competence

(a) A lawyer shall not intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence.

## RULES OF PROFESSIONAL CONDUCT

(b) For purposes of this rule, “competence” in any legal service shall mean to apply the (i) learning and skill, and (ii) mental, emotional, and physical ability reasonably\* necessary for the performance of such service.

(c) If a lawyer does not have sufficient learning and skill when the legal services are undertaken, the lawyer nonetheless may provide competent representation by (i) associating with or, where appropriate, professionally consulting another lawyer whom the lawyer reasonably believes\* to be competent, (ii) acquiring sufficient learning and skill before performance is required, or (iii) referring the matter to another lawyer whom the lawyer reasonably believes\* to be competent.

(d) In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required if referral to, or association or consultation with, another lawyer would be impractical. Assistance in an emergency must be limited to that reasonably\* necessary in the circumstances.

### Comment

[1] The duties set forth in this rule include the duty to keep abreast of the changes in the law and its practice, including the benefits and risks associated with relevant technology.

[2] This rule addresses only a lawyer’s responsibility for his or her own professional competence. See rules 5.1 and 5.3 with respect to a lawyer’s disciplinary responsibility for supervising subordinate lawyers and nonlawyers.

[3] See rule 1.3 with respect to a lawyer’s duty to act with reasonable\* diligence.

**[Publisher’s Note:** Comment [1] was added by order of the Supreme Court, effective March 22, 2021.]

### Rule 1.2 Scope of Representation and Allocation of Authority

(a) Subject to rule 1.2.1, a lawyer shall abide by a client’s decisions concerning the objectives of representation and, as required by rule 1.4, shall reasonably\* consult with the client as to the means by which they are to be pursued. Subject to Business and Professions Code section 6068, subdivision (e)(1)

and rule 1.6, a lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client’s decision whether to settle a matter. Except as otherwise provided by law in a criminal case, the lawyer shall abide by the client’s decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer may limit the scope of the representation if the limitation is reasonable\* under the circumstances, is not otherwise prohibited by law, and the client gives informed consent.\*

### Comment

#### *Allocation of Authority between Client and Lawyer*

[1] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer’s professional obligations. (See, e.g., Cal. Const., art. I, § 16; Pen. Code, § 1018.) A lawyer retained to represent a client is authorized to act on behalf of the client, such as in procedural matters and in making certain tactical decisions. A lawyer is not authorized merely by virtue of the lawyer’s retention to impair the client’s substantive rights or the client’s claim itself. (*Blanton v. Womancare, Inc.* (1985) 38 Cal.3d 396, 404 [212 Cal.Rptr. 151, 156].)

[2] At the outset of, or during a representation, the client may authorize the lawyer to take specific action on the client’s behalf without further consultation. Absent a material change in circumstances and subject to rule 1.4, a lawyer may rely on such an advance authorization. The client may revoke such authority at any time.

#### *Independence from Client’s Views or Activities*

[3] A lawyer’s representation of a client, including representation by appointment, does not constitute an endorsement of the client’s political, economic, social or moral views or activities.

#### *Agreements Limiting Scope of Representation*

[4] All agreements concerning a lawyer’s representation of a client must accord with the Rules of Professional Conduct and other law. (See, e.g., rules 1.1, 1.8.1, 5.6; see also Cal. Rules of Court, rules 3.35-3.37 [limited scope rules applicable in civil

## RULES OF PROFESSIONAL CONDUCT

matters generally], 5.425 [limited scope rule applicable in family law matters].)

### Rule 1.2.1 Advising or Assisting the Violation of Law

(a) A lawyer shall not counsel a client to engage, or assist a client in conduct that the lawyer knows\* is criminal, fraudulent,\* or a violation of any law, rule, or ruling of a tribunal.\*

(b) Notwithstanding paragraph (a), a lawyer may:

(1) discuss the legal consequences of any proposed course of conduct with a client; and

(2) counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of a law, rule, or ruling of a tribunal.\*

#### Comment

[1] There is a critical distinction under this rule between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud\* might be committed with impunity. The fact that a client uses a lawyer's advice in a course of action that is criminal or fraudulent\* does not of itself make a lawyer a party to the course of action.

[2] Paragraphs (a) and (b) apply whether or not the client's conduct has already begun and is continuing. In complying with this rule, a lawyer shall not violate the lawyer's duty under Business and Professions Code section 6068, subdivision (a) to uphold the Constitution and laws of the United States and California or the duty of confidentiality as provided in Business and Professions Code section 6068, subdivision (e)(1) and rule 1.6. In some cases, the lawyer's response is limited to the lawyer's right and, where appropriate, duty to resign or withdraw in accordance with rules 1.13 and 1.16.

[3] Paragraph (b) authorizes a lawyer to advise a client in good faith regarding the validity, scope, meaning or application of a law, rule, or ruling of a tribunal\* or of the meaning placed upon it by governmental authorities, and of potential consequences to disobedience of the law, rule, or ruling of a tribunal\* that the lawyer concludes in good faith to be invalid, as well as legal procedures that

may be invoked to obtain a determination of invalidity.

[4] Paragraph (b) also authorizes a lawyer to advise a client on the consequences of violating a law, rule, or ruling of a tribunal\* that the client does not contend is unenforceable or unjust in itself, as a means of protesting a law or policy the client finds objectionable. For example, a lawyer may properly advise a client about the consequences of blocking the entrance to a public building as a means of protesting a law or policy the client believes\* to be unjust or invalid.

[5] If a lawyer comes to know\* or reasonably should know\* that a client expects assistance not permitted by these rules or other law or if the lawyer intends to act contrary to the client's instructions, the lawyer must advise the client regarding the limitations on the lawyer's conduct. (See rule 1.4(a)(4).)

[6] Paragraph (b) permits a lawyer to advise a client regarding the validity, scope, and meaning of California laws that might conflict with federal or tribal law. In the event of such a conflict, the lawyer may assist a client in drafting or administering, or interpreting or complying with, California laws, including statutes, regulations, orders, and other state or local provisions, even if the client's actions might violate the conflicting federal or tribal law. If California law conflicts with federal or tribal law, the lawyer must inform the client about related federal or tribal law and policy and under certain circumstances may also be required to provide legal advice to the client regarding the conflict (see rules 1.1 and 1.4).

### Rule 1.3 Diligence

(a) A lawyer shall not intentionally, repeatedly, recklessly or with gross negligence fail to act with reasonable diligence in representing a client.

(b) For purposes of this rule, "reasonable diligence" shall mean that a lawyer acts with commitment and dedication to the interests of the client and does not neglect or disregard, or unduly delay a legal matter entrusted to the lawyer.

#### Comment

[1] This rule addresses only a lawyer's responsibility for his or her own professional diligence. See rules 5.1 and 5.3 with respect to a lawyer's disciplinary

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responsibility for supervising subordinate lawyers and nonlawyers.

[2] See rule 1.1 with respect to a lawyer's duty to perform legal services with competence.

### Rule 1.4 Communication with Clients

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which disclosure or the client's informed consent\* is required by these rules or the State Bar Act;

(2) reasonably\* consult with the client about the means by which to accomplish the client's objectives in the representation;

(3) keep the client reasonably\* informed about significant developments relating to the representation, including promptly complying with reasonable\* requests for information and copies of significant documents when necessary to keep the client so informed; and

(4) advise the client about any relevant limitation on the lawyer's conduct when the lawyer knows\* that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably\* necessary to permit the client to make informed decisions regarding the representation.

(c) A lawyer may delay transmission of information to a client if the lawyer reasonably believes\* that the client would be likely to react in a way that may cause imminent harm to the client or others.

(d) A lawyer's obligation under this rule to provide information and documents is subject to any applicable protective order, non-disclosure agreement, or limitation under statutory or decisional law.

#### Comment

[1] A lawyer will not be subject to discipline under paragraph (a)(3) of this rule for failing to communicate insignificant or irrelevant information. (See Bus. & Prof. Code, § 6068, subd. (m).) Whether a

particular development is significant will generally depend on the surrounding facts and circumstances. For example, a lawyer's receipt of funds on behalf of a client requires communication with the client pursuant to rule 1.15, paragraphs (d)(1) and (d)(4) and ordinarily is also a significant development requiring communication with the client pursuant to this rule.

[2] A lawyer may comply with paragraph (a)(3) by providing to the client copies of significant documents by electronic or other means. This rule does not prohibit a lawyer from seeking recovery of the lawyer's expense in any subsequent legal proceeding.

[3] Paragraph (c) applies during a representation and does not alter the obligations applicable at termination of a representation. (See rule 1.16(e)(1).)

[4] This rule is not intended to create, augment, diminish, or eliminate any application of the work product rule. The obligation of the lawyer to provide work product to the client shall be governed by relevant statutory and decisional law.

*[Publisher's Note: Comment [1] was amended by order of the Supreme Court, effective January 1, 2023.]*

### Rule 1.4.1 Communication of Settlement Offers

(a) A lawyer shall promptly communicate to the lawyer's client:

(1) all terms and conditions of a proposed plea bargain or other dispositive offer made to the client in a criminal matter; and

(2) all amounts, terms, and conditions of any written\* offer of settlement made to the client in all other matters.

(b) As used in this rule, "client" includes a person\* who possesses the authority to accept an offer of settlement or plea, or, in a class action, all the named representatives of the class.

#### Comment

An oral offer of settlement made to the client in a civil matter must also be communicated if it is a "significant development" under rule 1.4.

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### Rule 1.4.2 Disclosure of Professional Liability Insurance

(a) A lawyer who knows\* or reasonably should know\* that the lawyer does not have professional liability insurance shall inform a client in writing,\* at the time of the client's engagement of the lawyer, that the lawyer does not have professional liability insurance.

(b) If notice under paragraph (a) has not been provided at the time of a client's engagement of the lawyer, the lawyer shall inform the client in writing\* within thirty days of the date the lawyer knows\* or reasonably should know\* that the lawyer no longer has professional liability insurance during the representation of the client.

(c) This rule does not apply to:

(1) a lawyer who knows\* or reasonably should know\* at the time of the client's engagement of the lawyer that the lawyer's legal representation of the client in the matter will not exceed four hours; provided that if the representation subsequently exceeds four hours, the lawyer must comply with paragraphs (a) and (b);

(2) a lawyer who is employed as a government lawyer or in-house counsel when that lawyer is representing or providing legal advice to a client in that capacity;

(3) a lawyer who is rendering legal services in an emergency to avoid foreseeable prejudice to the rights or interests of the client;

(4) a lawyer who has previously advised the client in writing\* under paragraph (a) or (b) that the lawyer does not have professional liability insurance.

#### Comment

[1] The disclosure obligation imposed by paragraph (a) applies with respect to new clients and new engagements with returning clients.

[2] A lawyer may use the following language in making the disclosure required by paragraph (a), and may include that language in a written\* fee agreement with the client or in a separate writing:

*"Pursuant to rule 1.4.2 of the California Rules of Professional Conduct, I am informing you in writing that I do not have professional liability insurance."*

[3] A lawyer may use the following language in making the disclosure required by paragraph (b):

*"Pursuant to rule 1.4.2 of the California Rules of Professional Conduct, I am informing you in writing that I no longer have professional liability insurance."*

[4] The exception in paragraph (c)(2) for government lawyers and in-house counsels is limited to situations involving direct employment and representation, and does not, for example, apply to outside counsel for a private or governmental entity, or to counsel retained by an insurer to represent an insured. If a lawyer is employed by and provides legal services directly for a private entity or a federal, state or local governmental entity, that entity is presumed to know\* whether the lawyer is or is not covered by professional liability insurance.

### Rule 1.5 Fees for Legal Services

(a) A lawyer shall not make an agreement for, charge, or collect an unconscionable or illegal fee.

(b) Unconscionability of a fee shall be determined on the basis of all the facts and circumstances existing at the time the agreement is entered into except where the parties contemplate that the fee will be affected by later events. The factors to be considered in determining the unconscionability of a fee include without limitation the following:

(1) whether the lawyer engaged in fraud\* or overreaching in negotiating or setting the fee;

(2) whether the lawyer has failed to disclose material facts;

(3) the amount of the fee in proportion to the value of the services performed;

(4) the relative sophistication of the lawyer and the client;

(5) the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(6) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

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(7) the amount involved and the results obtained;

(8) the time limitations imposed by the client or by the circumstances;

(9) the nature and length of the professional relationship with the client;

(10) the experience, reputation, and ability of the lawyer or lawyers performing the services;

(11) whether the fee is fixed or contingent;

(12) the time and labor required; and

(13) whether the client gave informed consent\* to the fee.

(c) A lawyer shall not make an agreement for, charge, or collect:

(1) any fee in a family law matter, the payment or amount of which is contingent upon the securing of a dissolution or declaration of nullity of a marriage or upon the amount of spousal or child support, or property settlement in lieu thereof; or

(2) a contingent fee for representing a defendant in a criminal case.

(d) A lawyer may make an agreement for, charge, or collect a fee that is denominated as “earned on receipt” or “non-refundable,” or in similar terms, only if the fee is a true retainer and the client agrees in writing\* after disclosure that the client will not be entitled to a refund of all or part of the fee charged. A true retainer is a fee that a client pays to a lawyer to ensure the lawyer’s availability to the client during a specified period or on a specified matter, but not to any extent as compensation for legal services performed or to be performed.

(e) A lawyer may make an agreement for, charge, or collect a flat fee for specified legal services. A flat fee is a fixed amount that constitutes complete payment for the performance of described services regardless of the amount of work ultimately involved, and which may be paid in whole or in part in advance of the lawyer providing those services.

### Comment

#### *Prohibited Contingent Fees*

[1] Paragraph (c)(1) does not preclude a contract for a contingent fee for legal representation in connection with the recovery of post-judgment balances due under child or spousal support or other financial orders.

#### *Payment of Fees in Advance of Services*

[2] Rule 1.15(a) and (b) govern whether a lawyer must deposit in a trust account a fee paid in advance.

[3] When a lawyer-client relationship terminates, the lawyer must refund the unearned portion of a fee. (See rule 1.16(e)(2).)

#### *Division of Fee*

[4] A division of fees among lawyers is governed by rule 1.5.1.

#### *Written\* Fee Agreements*

[5] Some fee agreements must be in writing\* to be enforceable. (See, e.g., Bus. & Prof. Code, §§ 6147 and 6148.)

### **Rule 1.5.1 Fee Divisions Among Lawyers**

(a) Lawyers who are not in the same law firm\* shall not divide a fee for legal services unless:

(1) the lawyers enter into a written\* agreement to divide the fee;

(2) the client has consented in writing,\* either at the time the lawyers enter into the agreement to divide the fee or as soon thereafter as reasonably\* practicable, after a full written\* disclosure to the client of: (i) the fact that a division of fees will be made; (ii) the identity of the lawyers or law firms\* that are parties to the division; and (iii) the terms of the division; and

(3) the total fee charged by all lawyers is not increased solely by reason of the agreement to divide fees.

(b) This rule does not apply to a division of fees pursuant to court order.



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### Comment

The writing\* requirements of paragraphs (a)(1) and (a)(2) may be satisfied by one or more writings.\*

### Rule 1.6 Confidential Information of a Client

(a) A lawyer shall not reveal information protected from disclosure by Business and Professions Code section 6068, subdivision (e)(1) unless the client gives informed consent,\* or the disclosure is permitted by paragraph (b) of this rule.

(b) A lawyer may, but is not required to, reveal information protected by Business and Professions Code section 6068, subdivision (e)(1) to the extent that the lawyer reasonably believes\* the disclosure is necessary to prevent a criminal act that the lawyer reasonably believes\* is likely to result in death of, or substantial\* bodily harm to, an individual, as provided in paragraph (c).

(c) Before revealing information protected by Business and Professions Code section 6068, subdivision (e)(1) to prevent a criminal act as provided in paragraph (b), a lawyer shall, if reasonable\* under the circumstances:

(1) make a good faith effort to persuade the client: (i) not to commit or to continue the criminal act; or (ii) to pursue a course of conduct that will prevent the threatened death or substantial\* bodily harm; or do both (i) and (ii); and

(2) inform the client, at an appropriate time, of the lawyer's ability or decision to reveal information protected by Business and Professions Code section 6068, subdivision (e)(1) as provided in paragraph (b).

(d) In revealing information protected by Business and Professions Code section 6068, subdivision (e)(1) as provided in paragraph (b), the lawyer's disclosure must be no more than is necessary to prevent the criminal act, given the information known\* to the lawyer at the time of the disclosure.

(e) A lawyer who does not reveal information permitted by paragraph (b) does not violate this rule.

### Comment

#### *Duty of confidentiality*

[1] Paragraph (a) relates to a lawyer's obligations under Business and Professions Code section 6068, subdivision (e)(1), which provides it is a duty of a lawyer: "To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client." A lawyer's duty to preserve the confidentiality of client information involves public policies of paramount importance. (*In Re Jordan* (1974) 12 Cal.3d 575, 580 [116 Cal.Rptr. 371].) Preserving the confidentiality of client information contributes to the trust that is the hallmark of the lawyer-client relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or detrimental subjects. The lawyer needs this information to represent the client effectively and, if necessary, to advise the client to refrain from wrongful conduct. Almost without exception, clients come to lawyers in order to determine their rights and what is, in the complex of laws and regulations, deemed to be legal and correct. Based upon experience, lawyers know\* that almost all clients follow the advice given, and the law is upheld. Paragraph (a) thus recognizes a fundamental principle in the lawyer-client relationship, that, in the absence of the client's informed consent,\* a lawyer must not reveal information protected by Business and Professions Code section 6068, subdivision (e)(1). (See, e.g., *Commercial Standard Title Co. v. Superior Court* (1979) 92 Cal.App.3d 934, 945 [155 Cal.Rptr.393].)

*Lawyer-client confidentiality encompasses the lawyer-client privilege, the work-product doctrine and ethical standards of confidentiality*

[2] The principle of lawyer-client confidentiality applies to information a lawyer acquires by virtue of the representation, whatever its source, and encompasses matters communicated in confidence by the client, and therefore protected by the lawyer-client privilege, matters protected by the work product doctrine, and matters protected under ethical standards of confidentiality, all as established in law, rule and policy. (See *In the Matter of Johnson* (Rev. Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179; *Goldstein v. Lees* (1975) 46 Cal.App.3d 614, 621 [120 Cal.Rptr. 253].) The lawyer-client privilege and work-product doctrine apply in judicial and other proceedings in

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which a lawyer may be called as a witness or be otherwise compelled to produce evidence concerning a client. A lawyer's ethical duty of confidentiality is not so limited in its scope of protection for the lawyer-client relationship of trust and prevents a lawyer from revealing the client's information even when not subjected to such compulsion. Thus, a lawyer may not reveal such information except with the informed consent\* of the client or as authorized or required by the State Bar Act, these rules, or other law.

*Narrow exception to duty of confidentiality under this rule*

[3] Notwithstanding the important public policies promoted by lawyers adhering to the core duty of confidentiality, the overriding value of life permits disclosures otherwise prohibited by Business and Professions Code section 6068, subdivision (e)(1). Paragraph (b) is based on Business and Professions Code section 6068, subdivision (e)(2), which narrowly permits a lawyer to disclose information protected by Business and Professions Code section 6068, subdivision (e)(1) even without client consent. Evidence Code section 956.5, which relates to the evidentiary lawyer-client privilege, sets forth a similar express exception. Although a lawyer is not permitted to reveal information protected by section 6068, subdivision (e)(1) concerning a client's past, completed criminal acts, the policy favoring the preservation of human life that underlies this exception to the duty of confidentiality and the evidentiary privilege permits disclosure to prevent a future or ongoing criminal act.

*Lawyer not subject to discipline for revealing information protected by Business and Professions Code section 6068, subdivision (e)(1) as permitted under this rule*

[4] Paragraph (b) reflects a balancing between the interests of preserving client confidentiality and of preventing a criminal act that a lawyer reasonably believes\* is likely to result in death or substantial\* bodily harm to an individual. A lawyer who reveals information protected by Business and Professions Code section 6068, subdivision (e)(1) as permitted under this rule is not subject to discipline.

*No duty to reveal information protected by Business and Professions Code section 6068, subdivision (e)(1)*

[5] Neither Business and Professions Code section 6068, subdivision (e)(2) nor paragraph (b) imposes an

affirmative obligation on a lawyer to reveal information protected by Business and Professions Code section 6068, subdivision (e)(1) in order to prevent harm. A lawyer may decide not to reveal such information. Whether a lawyer chooses to reveal information protected by section 6068, subdivision (e)(1) as permitted under this rule is a matter for the individual lawyer to decide, based on all the facts and circumstances, such as those discussed in Comment [6] of this rule.

*Whether to reveal information protected by Business and Professions Code section 6068, subdivision (e) as permitted under paragraph (b)*

[6] Disclosure permitted under paragraph (b) is ordinarily a last resort, when no other available action is reasonably\* likely to prevent the criminal act. Prior to revealing information protected by Business and Professions Code section 6068, subdivision (e)(1) as permitted by paragraph (b), the lawyer must, if reasonable\* under the circumstances, make a good faith effort to persuade the client to take steps to avoid the criminal act or threatened harm. Among the factors to be considered in determining whether to disclose information protected by section 6068, subdivision (e)(1) are the following:

- (1) the amount of time that the lawyer has to make a decision about disclosure;
- (2) whether the client or a third-party has made similar threats before and whether they have ever acted or attempted to act upon them;
- (3) whether the lawyer believes\* the lawyer's efforts to persuade the client or a third person\* not to engage in the criminal conduct have or have not been successful;
- (4) the extent of adverse effect to the client's rights under the Fifth, Sixth and Fourteenth Amendments of the United States Constitution and analogous rights and privacy rights under Article I of the Constitution of the State of California that may result from disclosure contemplated by the lawyer;
- (5) the extent of other adverse effects to the client that may result from disclosure contemplated by the lawyer; and

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- (6) the nature and extent of information that must be disclosed to prevent the criminal act or threatened harm.

A lawyer may also consider whether the prospective harm to the victim or victims is imminent in deciding whether to disclose the information protected by section 6068, subdivision (e)(1). However, the imminence of the harm is not a prerequisite to disclosure and a lawyer may disclose the information protected by section 6068, subdivision (e)(1) without waiting until immediately before the harm is likely to occur.

*Whether to counsel client or third person\* not to commit a criminal act reasonably\* likely to result in death or substantial\* bodily harm*

[7] Paragraph (c)(1) provides that before a lawyer may reveal information protected by Business and Professions Code section 6068, subdivision (e)(1), the lawyer must, if reasonable\* under the circumstances, make a good faith effort to persuade the client not to commit or to continue the criminal act, or to persuade the client to otherwise pursue a course of conduct that will prevent the threatened death or substantial\* bodily harm, including persuading the client to take action to prevent a third person\* from committing or continuing a criminal act. If necessary, the client may be persuaded to do both. The interests protected by such counseling are the client's interests in limiting disclosure of information protected by section 6068, subdivision (e) and in taking responsible action to deal with situations attributable to the client. If a client, whether in response to the lawyer's counseling or otherwise, takes corrective action—such as by ceasing the client's own criminal act or by dissuading a third person\* from committing or continuing a criminal act before harm is caused—the option for permissive disclosure by the lawyer would cease because the threat posed by the criminal act would no longer be present. When the actor is a nonclient or when the act is deliberate or malicious, the lawyer who contemplates making adverse disclosure of protected information may reasonably\* conclude that the compelling interests of the lawyer or others in their own personal safety preclude personal contact with the actor. Before counseling an actor who is a nonclient, the lawyer should, if reasonable\* under the circumstances, first advise the client of the lawyer's intended course of action. If a client or another person\* has already acted but the intended harm has not yet occurred, the lawyer should consider, if

reasonable\* under the circumstances, efforts to persuade the client or third person\* to warn the victim or consider other appropriate action to prevent the harm. Even when the lawyer has concluded that paragraph (b) does not permit the lawyer to reveal information protected by section 6068, subdivision (e)(1), the lawyer nevertheless is permitted to counsel the client as to why it may be in the client's best interest to consent to the attorney's disclosure of that information.

*Disclosure of information protected by Business and Professions Code section 6068, subdivision (e)(1) must be no more than is reasonably\* necessary to prevent the criminal act*

[8] Paragraph (d) requires that disclosure of information protected by Business and Professions Code section 6068, subdivision (e) as permitted by paragraph (b), when made, must be no more extensive than is necessary to prevent the criminal act. Disclosure should allow access to the information to only those persons\* who the lawyer reasonably believes\* can act to prevent the harm. Under some circumstances, a lawyer may determine that the best course to pursue is to make an anonymous disclosure to the potential victim or relevant law-enforcement authorities. What particular measures are reasonable\* depends on the circumstances known\* to the lawyer. Relevant circumstances include the time available, whether the victim might be unaware of the threat, the lawyer's prior course of dealings with the client, and the extent of the adverse effect on the client that may result from the disclosure contemplated by the lawyer.

*Informing client pursuant to paragraph (c)(2) of lawyer's ability or decision to reveal information protected by Business and Professions Code section 6068, subdivision (e)(1)*

[9] A lawyer is required to keep a client reasonably\* informed about significant developments regarding the representation. (See rule 1.4; Bus. & Prof. Code, § 6068, subd. (m).) Paragraph (c)(2), however, recognizes that under certain circumstances, informing a client of the lawyer's ability or decision to reveal information protected by section 6068, subdivision (e)(1) as permitted in paragraph (b) would likely increase the risk of death or substantial\* bodily harm, not only to the originally-intended victims of the criminal act, but also to the client or members of the client's family, or to the lawyer or the lawyer's

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family or associates. Therefore, paragraph (c)(2) requires a lawyer to inform the client of the lawyer's ability or decision to reveal information protected by section 6068, subdivision (e)(1) as permitted in paragraph (b) only if it is reasonable\* to do so under the circumstances. Paragraph (c)(2) further recognizes that the appropriate time for the lawyer to inform the client may vary depending upon the circumstances. (See Comment [10] of this rule.) Among the factors to be considered in determining an appropriate time, if any, to inform a client are:

- (1) whether the client is an experienced user of legal services;
- (2) the frequency of the lawyer's contact with the client;
- (3) the nature and length of the professional relationship with the client;
- (4) whether the lawyer and client have discussed the lawyer's duty of confidentiality or any exceptions to that duty;
- (5) the likelihood that the client's matter will involve information within paragraph (b);
- (6) the lawyer's belief,\* if applicable, that so informing the client is likely to increase the likelihood that a criminal act likely to result in the death of, or substantial\* bodily harm to, an individual; and
- (7) the lawyer's belief,\* if applicable, that good faith efforts to persuade a client not to act on a threat have failed.

### *Avoiding a chilling effect on the lawyer-client relationship*

[10] The foregoing flexible approach to the lawyer's informing a client of his or her ability or decision to reveal information protected by Business and Professions Code section 6068, subdivision (e)(1) recognizes the concern that informing a client about limits on confidentiality may have a chilling effect on client communication. (See Comment [1].) To avoid that chilling effect, one lawyer may choose to inform the client of the lawyer's ability to reveal information protected by section 6068, subdivision (e)(1) as early as the outset of the representation, while another lawyer may choose to inform a client only at a point when that client has imparted information that comes

within paragraph (b), or even choose not to inform a client until such time as the lawyer attempts to counsel the client as contemplated in Comment [7]. In each situation, the lawyer will have satisfied the lawyer's obligation under paragraph (c)(2), and will not be subject to discipline.

### *Informing client that disclosure has been made; termination of the lawyer-client relationship*

[11] When a lawyer has revealed information protected by Business and Professions Code section 6068, subdivision (e) as permitted in paragraph (b), in all but extraordinary cases the relationship between lawyer and client that is based on trust and confidence will have deteriorated so as to make the lawyer's representation of the client impossible. Therefore, when the relationship has deteriorated because of the lawyer's disclosure, the lawyer is required to seek to withdraw from the representation, unless the client has given informed consent\* to the lawyer's continued representation. The lawyer normally must inform the client of the fact of the lawyer's disclosure. If the lawyer has a compelling interest in not informing the client, such as to protect the lawyer, the lawyer's family or a third person\* from the risk of death or substantial\* bodily harm, the lawyer must withdraw from the representation. (See rule 1.16.)

### *Other consequences of the lawyer's disclosure*

[12] Depending upon the circumstances of a lawyer's disclosure of information protected by Business and Professions Code section 6068, subdivision (e)(1) as permitted by this rule, there may be other important issues that a lawyer must address. For example, a lawyer who is likely to testify as a witness in a matter involving a client must comply with rule 3.7. Similarly, the lawyer must also consider his or her duties of loyalty and competence. (See rules 1.7 and 1.1.)

### *Other exceptions to confidentiality under California law*

[13] This rule is not intended to augment, diminish, or preclude any other exceptions to the duty to preserve information protected by Business and Professions Code section 6068, subdivision (e)(1) recognized under California law.

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### Rule 1.7 Conflict of Interest: Current Clients

(a) A lawyer shall not, without informed written consent\* from each client and compliance with paragraph (d), represent a client if the representation is directly adverse to another client in the same or a separate matter.

(b) A lawyer shall not, without informed written consent\* from each affected client and compliance with paragraph (d), represent a client if there is a significant risk the lawyer's representation of the client will be materially limited by the lawyer's responsibilities to or relationships with another client, a former client or a third person,\* or by the lawyer's own interests.

(c) Even when a significant risk requiring a lawyer to comply with paragraph (b) is not present, a lawyer shall not represent a client without written\* disclosure of the relationship to the client and compliance with paragraph (d) where:

(1) the lawyer has, or knows\* that another lawyer in the lawyer's firm\* has, a legal, business, financial, professional, or personal relationship with or responsibility to a party or witness in the same matter; or

(2) the lawyer knows\* or reasonably should know\* that another party's lawyer is a spouse, parent, child, or sibling of the lawyer, lives with the lawyer, is a client of the lawyer or another lawyer in the lawyer's firm,\* or has an intimate personal relationship with the lawyer.

(d) Representation is permitted under this rule only if the lawyer complies with paragraphs (a), (b), and (c), and:

(1) the lawyer reasonably believes\* that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law; and

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.

(e) For purposes of this rule, "matter" includes any judicial or other proceeding, application, request for a

ruling or other determination, contract, transaction, claim, controversy, investigation, charge, accusation, arrest, or other deliberation, decision, or action that is focused on the interests of specific persons,\* or a discrete and identifiable class of persons.\*

### Comment

[1] Loyalty and independent judgment are essential elements in the lawyer's relationship to a client. The duty of undivided loyalty to a current client prohibits undertaking representation directly adverse to that client without that client's informed written consent.\* Thus, absent consent, a lawyer may not act as an advocate in one matter against a person\* the lawyer represents in some other matter, even when the matters are wholly unrelated. (See *Flatt v. Superior Court* (1994) 9 Cal.4th 275 [36 Cal.Rptr.2d 537].) A directly adverse conflict under paragraph (a) can arise in a number of ways, for example, when: (i) a lawyer accepts representation of more than one client in a matter in which the interests of the clients actually conflict; (ii) a lawyer, while representing a client, accepts in another matter the representation of a person\* who, in the first matter, is directly adverse to the lawyer's client; or (iii) a lawyer accepts representation of a person\* in a matter in which an opposing party is a client of the lawyer or the lawyer's law firm.\* Similarly, direct adversity can arise when a lawyer cross-examines a non-party witness who is the lawyer's client in another matter, if the examination is likely to harm or embarrass the witness. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only economically adverse, such as representation of competing economic enterprises in unrelated litigation, does not ordinarily constitute a conflict of interest and thus may not require informed written consent\* of the respective clients.

[2] Paragraphs (a) and (b) apply to all types of legal representations, including the concurrent representation of multiple parties in litigation or in a single transaction or in some other common enterprise or legal relationship. Examples of the latter include the formation of a partnership for several partners\* or a corporation for several shareholders, the preparation of a pre-nuptial agreement, or joint or reciprocal wills for a husband and wife, or the resolution of an "uncontested" marital dissolution. If a lawyer initially represents multiple clients with the informed written consent\* as required under paragraph (b), and circumstances later develop

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indicating that direct adversity exists between the clients, the lawyer must obtain further informed written consent\* of the clients under paragraph (a).

[3] In *State Farm Mutual Automobile Insurance Company v. Federal Insurance Company* (1999) 72 Cal.App.4th 1422 [86 Cal.Rptr.2d 20], the court held that paragraph (C)(3) of predecessor rule 3-310 was violated when a lawyer, retained by an insurer to defend one suit, and while that suit was still pending, filed a direct action against the same insurer in an unrelated action without securing the insurer's consent. Notwithstanding *State Farm*, paragraph (a) does not apply with respect to the relationship between an insurer and a lawyer when, in each matter, the insurer's interest is only as an indemnity provider and not as a direct party to the action.

[4] Even where there is no direct adversity, a conflict of interest requiring informed written consent\* under paragraph (b) exists if there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities, interests, or relationships, whether legal, business, financial, professional, or personal. For example, a lawyer's obligations to two or more clients in the same matter, such as several individuals seeking to form a joint venture, may materially limit the lawyer's ability to recommend or advocate all possible positions that each might take because of the lawyer's duty of loyalty to the other clients. The risk is that the lawyer may not be able to offer alternatives that would otherwise be available to each of the clients. The mere possibility of subsequent harm does not itself require disclosure and informed written consent.\* The critical questions are the likelihood that a difference in interests exists or will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably\* should be pursued on behalf of each client. The risk that the lawyer's representation may be materially limited may also arise from present or past relationships between the lawyer, or another member of the lawyer's firm\*, with a party, a witness, or another person\* who may be affected substantially by the resolution of the matter.

[5] Paragraph (c) requires written\* disclosure of any of the specified relationships even if there is not a significant risk the relationship will materially limit the

lawyer's representation of the client. However, if the particular circumstances present a significant risk the relationship will materially limit the lawyer's representation of the client, informed written consent\* is required under paragraph (b).

[6] Ordinarily paragraphs (a) and (b) will not require informed written consent\* simply because a lawyer takes inconsistent legal positions in different tribunals\* at different times on behalf of different clients. Advocating a legal position on behalf of a client that might create precedent adverse to the interests of another client represented by a lawyer in an unrelated matter is not sufficient, standing alone, to create a conflict of interest requiring informed written consent.\* Informed written consent\* may be required, however, if there is a significant risk that: (i) the lawyer may temper the lawyer's advocacy on behalf of one client out of concern about creating precedent adverse to the interest of another client; or (ii) the lawyer's action on behalf of one client will materially limit the lawyer's effectiveness in representing another client in a different case, for example, when a decision favoring one client will create a precedent likely to seriously weaken the position taken on behalf of the other client. Factors relevant in determining whether the clients' informed written consent\* is required include: the courts and jurisdictions where the different cases are pending, whether a ruling in one case would have a precedential effect on the other case, whether the legal question is substantive or procedural, the temporal relationship between the matters, the significance of the legal question to the immediate and long-term interests of the clients involved, and the clients' reasonable\* expectations in retaining the lawyer.

[7] Other rules and laws may preclude the disclosures necessary to obtain the informed written consent\* or provide the information required to permit representation under this rule. (See, e.g., Bus. & Prof. Code, § 6068, subd. (e)(1) and rule 1.6.) If such disclosure is precluded, representation subject to paragraph (a), (b), or (c) of this rule is likewise precluded.

[8] Paragraph (d) imposes conditions that must be satisfied even if informed written consent\* is obtained as required by paragraphs (a) or (b) or the lawyer has informed the client in writing\* as required by paragraph (c). There are some matters in which the conflicts are such that even informed written

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consent\* may not suffice to permit representation. (See *Woods v. Superior Court* (1983) 149 Cal.App.3d 931 [197 Cal.Rptr. 185]; *Klemm v. Superior Court* (1977) 75 Cal.App.3d 893 [142 Cal.Rptr. 509]; *Ishmael v. Millington* (1966) 241 Cal.App.2d 520 [50 Cal.Rptr. 592].)

[9] This rule does not preclude an informed written consent\* to a future conflict in compliance with applicable case law. The effectiveness of an advance consent is generally determined by the extent to which the client reasonably\* understands the material risks that the consent entails. The more comprehensive the explanation of the types of future representations that might arise and the actual and reasonably\* foreseeable adverse consequences to the client of those representations, the greater the likelihood that the client will have the requisite understanding. The experience and sophistication of the client giving consent, as well as whether the client is independently represented in connection with giving consent, are also relevant in determining whether the client reasonably\* understands the risks involved in giving consent. An advance consent cannot be effective if the circumstances that materialize in the future make the conflict nonconsentable under paragraph (d). A lawyer who obtains from a client an advance consent that complies with this rule will have all the duties of a lawyer to that client except as expressly limited by the consent. A lawyer cannot obtain an advance consent to incompetent representation. (See rule 1.8.8.)

[10] A material change in circumstances relevant to application of this rule may trigger a requirement to make new disclosures and, where applicable, obtain new informed written consents.\* In the absence of such consents, depending on the circumstances, the lawyer may have the option to withdraw from one or more of the representations in order to avoid the conflict. The lawyer must seek court approval where necessary and take steps to minimize harm to the clients. See rule 1.16. The lawyer must continue to protect the confidences of the clients from whose representation the lawyer has withdrawn. (See rule 1.9(c).)

[11] For special rules governing membership in a legal service organization, see rule 6.3; and for work in conjunction with certain limited legal services programs, see rule 6.5.

### Rule 1.8.1 Business Transactions with a Client and Pecuniary Interests Adverse to a Client

A lawyer shall not enter into a business transaction with a client, or knowingly\* acquire an ownership, possessory, security or other pecuniary interest adverse to a client, unless each of the following requirements has been satisfied:

(a) the transaction or acquisition and its terms are fair and reasonable\* to the client and the terms and the lawyer's role in the transaction or acquisition are fully disclosed and transmitted in writing\* to the client in a manner that should reasonably\* have been understood by the client;

(b) the client either is represented in the transaction or acquisition by an independent lawyer of the client's choice or the client is advised in writing\* to seek the advice of an independent lawyer of the client's choice and is given a reasonable\* opportunity to seek that advice; and

(c) the client thereafter provides informed written consent\* to the terms of the transaction or acquisition, and to the lawyer's role in it.

#### Comment

[1] A lawyer has an "other pecuniary interest adverse to a client" within the meaning of this rule when the lawyer possesses a legal right to significantly impair or prejudice the client's rights or interests without court action. (See *Fletcher v. Davis* (2004) 33 Cal.4th 61, 68 [14 Cal.Rptr.3d 58]; see also Bus. & Prof. Code, § 6175.3 [Sale of financial products to elder or dependent adult clients; Disclosure]; Fam. Code, §§ 2033-2034 [Attorney lien on community real property].) However, this rule does not apply to a charging lien given to secure payment of a contingency fee. (See *Plummer v. Day/Eisenberg, LLP* (2010) 184 Cal.App.4th 38 [108 Cal.Rptr.3d 455].)

[2] For purposes of this rule, factors that can be considered in determining whether a lawyer is independent include whether the lawyer: (i) has a financial interest in the transaction or acquisition; and (ii) has a close legal, business, financial, professional or personal relationship with the lawyer seeking the client's consent.

[3] Fairness and reasonableness under paragraph (a) are measured at the time of the transaction or acquisition based on the facts that then exist.

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[4] In some circumstances, this rule may apply to a transaction entered into with a former client. (Compare *Hunnecutt v. State Bar* (1988) 44 Cal.3d 362, 370-71 [“[W]hen an attorney enters into a transaction with a former client regarding a fund which resulted from the attorney’s representation, it is reasonable to examine the relationship between the parties for indications of special trust resulting therefrom. We conclude that if there is evidence that the client placed his trust in the attorney because of the representation, an attorney-client relationship exists for the purposes of [the predecessor rule] even if the representation has otherwise ended [and] It appears that [the client] became a target of [the lawyer’s] solicitation because he knew, through his representation of her, that she had recently received the settlement fund [and the court also found the client to be unsophisticated].”] with *Wallis v. State Bar* (1942) 21 Cal.2d 322 [finding lawyer not subject to discipline for entering into business transaction with a former client where the former client was a sophisticated businesswoman who had actively negotiated for terms she thought desirable, and the transaction was not connected with the matter on which the lawyer previously represented her].)

[5] This rule does not apply to the agreement by which the lawyer is retained by the client, unless the agreement confers on the lawyer an ownership, possessory, security, or other pecuniary interest adverse to the client. Such an agreement is governed, in part, by rule 1.5. This rule also does not apply to an agreement to advance to or deposit with a lawyer a sum to be applied to fees, or costs or other expenses, to be incurred in the future. Such agreements are governed, in part, by rules 1.5 and 1.15.

[6] This rule does not apply: (i) where a lawyer and client each make an investment on terms offered by a third person\* to the general public or a significant portion thereof; or (ii) to standard commercial transactions for products or services that a lawyer acquires from a client on the same terms that the client generally markets them to others, where the lawyer has no advantage in dealing with the client.

### Rule 1.8.2 Use of Current Client’s Information

A lawyer shall not use a client’s information protected by Business and Professions Code section 6068, subdivision (e)(1) to the disadvantage of the client

unless the client gives informed consent,\* except as permitted by these rules or the State Bar Act.

### Comment

A lawyer violates the duty of loyalty by using information protected by Business and Professions Code section 6068, subdivision (e)(1) to the disadvantage of a current client.

### Rule 1.8.3 Gifts from Client

(a) A lawyer shall not:

(1) solicit a client to make a substantial\* gift, including a testamentary gift, to the lawyer or a person\* related to the lawyer, unless the lawyer or other recipient of the gift is related to the client, or

(2) prepare on behalf of a client an instrument giving the lawyer or a person\* related to the lawyer any substantial\* gift, unless (i) the lawyer or other recipient of the gift is related to the client, or (ii) the client has been advised by an independent lawyer who has provided a certificate of independent review that complies with the requirements of Probate Code section 21384.

(b) For purposes of this rule, related persons\* include a person\* who is “related by blood or affinity” as that term is defined in California Probate Code section 21374, subdivision (a).

### Comment

[1] A lawyer or a person\* related to a lawyer may accept a gift from the lawyer’s client, subject to general standards of fairness and absence of undue influence. A lawyer also does not violate this rule merely by engaging in conduct that might result in a client making a gift, such as by sending the client a wedding announcement. Discipline is appropriate where impermissible influence occurs. (See *Magee v. State Bar* (1962) 58 Cal.2d 423 [24 Cal.Rptr. 839].)

[2] This rule does not prohibit a lawyer from seeking to have the lawyer or a partner\* or associate of the lawyer named as executor of the client’s estate or to another potentially lucrative fiduciary position. Such appointments, however, will be subject to rule 1.7(b) and (c).



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### Rule 1.8.4 [Reserved]

### Rule 1.8.5 Payment of Personal or Business Expenses Incurred by or for a Client

(a) A lawyer shall not directly or indirectly pay or agree to pay, guarantee, or represent that the lawyer or lawyer's law firm\* will pay the personal or business expenses of a prospective or existing client.

(b) Notwithstanding paragraph (a), a lawyer may:

(1) pay or agree to pay such expenses to third persons,\* from funds collected or to be collected for the client as a result of the representation, with the consent of the client;

(2) after the lawyer is retained by the client, agree to lend money to the client based on the client's written\* promise to repay the loan, provided the lawyer complies with rules 1.7(b), 1.7(c), and 1.8.1 before making the loan or agreeing to do so;

(3) advance the costs of prosecuting or defending a claim or action, or of otherwise protecting or promoting the client's interests, the repayment of which may be contingent on the outcome of the matter; and

(4) pay the costs of prosecuting or defending a claim or action, or of otherwise protecting or promoting the interests of an indigent person\* in a matter in which the lawyer represents the client.

(c) "Costs" within the meaning of paragraphs (b)(3) and (b)(4) are not limited to those costs that are taxable or recoverable under any applicable statute or rule of court but may include any reasonable\* expenses of litigation, including court costs, and reasonable\* expenses in preparing for litigation or in providing other legal services to the client.

(d) Nothing in this rule shall be deemed to limit the application of rule 1.8.9.

### Rule 1.8.6 Compensation from One Other than Client

A lawyer shall not enter into an agreement for, charge, or accept compensation for representing a client from one other than the client unless:

(a) there is no interference with the lawyer's independent professional judgment or with the lawyer-client relationship;

(b) information is protected as required by Business and Professions Code section 6068, subdivision (e)(1) and rule 1.6; and

(c) the lawyer obtains the client's informed written consent\* at or before the time the lawyer has entered into the agreement for, charged, or accepted the compensation, or as soon thereafter as reasonably\* practicable, provided that no disclosure or consent is required if:

(1) nondisclosure or the compensation is otherwise authorized by law or a court order; or

(2) the lawyer is rendering legal services on behalf of any public agency or nonprofit organization that provides legal services to other public agencies or the public.

### Comment

[1] A lawyer's responsibilities in a matter are owed only to the client except where the lawyer also represents the payor in the same matter. With respect to the lawyer's additional duties when representing both the client and the payor in the same matter, see rule 1.7.

[2] A lawyer who is exempt from disclosure and consent requirements under paragraph (c) nevertheless must comply with paragraphs (a) and (b).

[3] This rule is not intended to abrogate existing relationships between insurers and insureds whereby the insurer has the contractual right to unilaterally select counsel for the insured, where there is no conflict of interest. (See *San Diego Navy Federal Credit Union v. Cumis Insurance Society* (1984) 162 Cal.App.3d 358 [208 Cal.Rptr. 494].).

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[4] In some limited circumstances, a lawyer might not be able to obtain client consent before the lawyer has entered into an agreement for, charged, or accepted compensation, as required by this rule. This might happen, for example, when a lawyer is retained or paid by a family member on behalf of an incarcerated client or in certain commercial settings, such as when a lawyer is retained by a creditors' committee involved in a corporate debt restructuring and agrees to be compensated for any services to be provided to other similarly situated creditors who have not yet been identified. In such limited situations, paragraph (c) permits the lawyer to comply with this rule as soon thereafter as is reasonably\* practicable.

[5] This rule is not intended to alter or diminish a lawyer's obligations under rule 5.4(c).

### Rule 1.8.7 Aggregate Settlements

(a) A lawyer who represents two or more clients shall not enter into an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregate agreement as to guilty or nolo contendere pleas, unless each client gives informed written consent.\* The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person\* in the settlement.

(b) This rule does not apply to class action settlements subject to court approval.

### Rule 1.8.8 Limiting Liability to Client

A lawyer shall not:

(a) Contract with a client prospectively limiting the lawyer's liability to the client for the lawyer's professional malpractice; or

(b) Settle a claim or potential claim for the lawyer's liability to a client or former client for the lawyer's professional malpractice, unless the client or former client is either:

(1) represented by an independent lawyer concerning the settlement; or

(2) advised in writing\* by the lawyer to seek the advice of an independent lawyer of the client's choice regarding the settlement and

given a reasonable\* opportunity to seek that advice.

### Comment

[1] Paragraph (b) does not absolve the lawyer of the obligation to comply with other law. (See, e.g., Bus. & Prof. Code, § 6090.5.)

[2] This rule does not apply to customary qualifications and limitations in legal opinions and memoranda, nor does it prevent a lawyer from reasonably\* limiting the scope of the lawyer's representation. (See rule 1.2(b).)

### Rule 1.8.9 Purchasing Property at a Foreclosure or a Sale Subject to Judicial Review

(a) A lawyer shall not directly or indirectly purchase property at a probate, foreclosure, receiver's, trustee's, or judicial sale in an action or proceeding in which such lawyer or any lawyer affiliated by reason of personal, business, or professional relationship with that lawyer or with that lawyer's law firm\* is acting as a lawyer for a party or as executor, receiver, trustee, administrator, guardian, or conservator.

(b) A lawyer shall not represent the seller at a probate, foreclosure, receiver, trustee, or judicial sale in an action or proceeding in which the purchaser is a spouse or relative of the lawyer or of another lawyer in the lawyer's law firm\* or is an employee of the lawyer or the lawyer's law firm.\*

(c) This rule does not prohibit a lawyer's participation in transactions that are specifically authorized by and comply with Probate Code sections 9880 through 9885, but such transactions remain subject to the provisions of rules 1.8.1 and 1.7.

### Comment

A lawyer may lawfully participate in a transaction involving a probate proceeding which concerns a client by following the process described in Probate Code sections 9880-9885. These provisions, which permit what would otherwise be impermissible self-dealing by specific submissions to and approval by the courts, must be strictly followed in order to avoid violation of this rule.

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### Rule 1.8.10 Sexual Relations with Current Client

(a) A lawyer shall not engage in sexual relations with a current client who is not the lawyer's spouse or registered domestic partner, unless a consensual sexual relationship existed between them when the lawyer-client relationship commenced.

(b) For purposes of this rule, "sexual relations" means sexual intercourse or the touching of an intimate part of another person\* for the purpose of sexual arousal, gratification, or abuse.

(c) If a person\* other than the client alleges a violation of this rule, no Notice of Disciplinary Charges may be filed by the State Bar against a lawyer under this rule until the State Bar has attempted to obtain the client's statement regarding, and has considered, whether the client would be unduly burdened by further investigation or a charge.

#### Comment

[1] Although this rule does not apply to a consensual sexual relationship that exists when a lawyer-client relationship commences, the lawyer nevertheless must comply with all other applicable rules. (See, e.g., rules 1.1, 1.7, and 2.1.)

[2] When the client is an organization, this rule applies to a lawyer for the organization (whether inside counsel or outside counsel) who has sexual relations with a constituent of the organization who supervises, directs or regularly consults with that lawyer concerning the organization's legal matters. (See rule 1.13.)

[3] Business and Professions Code section 6106.9, including the requirement that the complaint be verified, applies to charges under subdivision (a) of that section. This rule and the statute impose different obligations.

### Rule 1.8.11 Imputation of Prohibitions Under Rules 1.8.1 to 1.8.9

While lawyers are associated in a law firm,\* a prohibition in rules 1.8.1 through 1.8.9 that applies to any one of them shall apply to all of them.

#### Comment

A prohibition on conduct by an individual lawyer in rules 1.8.1 through 1.8.9 also applies to all lawyers associated in a law firm\* with the personally prohibited lawyer. For example, one lawyer in a law firm\* may not enter into a business transaction with a client of another lawyer associated in the law firm\* without complying with rule 1.8.1, even if the first lawyer is not personally involved in the representation of the client. This rule does not apply to rule 1.8.10 since the prohibition in that rule is personal and is not applied to associated lawyers.

### Rule 1.9 Duties to Former Clients

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person\* in the same or a substantially related matter in which that person's\* interests are materially adverse to the interests of the former client unless the former client gives informed written consent.\*

(b) A lawyer shall not knowingly\* represent a person\* in the same or a substantially related matter in which a firm\* with which the lawyer formerly was associated had previously represented a client

(1) whose interests are materially adverse to that person;\* and

(2) about whom the lawyer had acquired information protected by Business and Professions Code section 6068, subdivision (e) and rules 1.6 and 1.9(c) that is material to the matter;

unless the former client gives informed written consent.\*

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm\* has formerly represented a client in a matter shall not thereafter:

(1) use information protected by Business and Professions Code section 6068, subdivision (e) and rule 1.6 acquired by virtue of the representation of the former client to the disadvantage of the former client except as these rules or the State Bar Act would permit with respect to a current client, or when the information has become generally known;\* or

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(2) reveal information protected by Business and Professions Code section 6068, subdivision (e) and rule 1.6 acquired by virtue of the representation of the former client except as these rules or the State Bar Act permit with respect to a current client.

### Comment

[1] After termination of a lawyer-client relationship, the lawyer owes two duties to a former client. The lawyer may not (i) do anything that will injuriously affect the former client in any matter in which the lawyer represented the former client, or (ii) at any time use against the former client knowledge or information acquired by virtue of the previous relationship. (See *Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811 [124 Cal.Rptr.3d 256]; *Wutchumna Water Co. v. Bailey* (1932) 216 Cal. 564 [15 P.2d 505].) For example, (i) a lawyer could not properly seek to rescind on behalf of a new client a contract drafted on behalf of the former client and (ii) a lawyer who has prosecuted an accused person\* could not represent the accused in a subsequent civil action against the government concerning the same matter. (See also Bus. & Prof. Code, § 6131; 18 U.S.C. § 207(a).) These duties exist to preserve a client's trust in the lawyer and to encourage the client's candor in communications with the lawyer.

[2] For what constitutes a "matter" for purposes of this rule, see rule 1.7(e).

[3] Two matters are "the same or substantially related" for purposes of this rule if they involve a substantial\* risk of a violation of one of the two duties to a former client described above in Comment [1]. For example, this will occur: (i) if the matters involve the same transaction or legal dispute or other work performed by the lawyer for the former client; or (ii) if the lawyer normally would have obtained information in the prior representation that is protected by Business and Professions Code section 6068, subdivision (e) and rule 1.6, and the lawyer would be expected to use or disclose that information in the subsequent representation because it is material to the subsequent representation.

[4] Paragraph (b) addresses a lawyer's duties to a client who has become a former client because the lawyer no longer is associated with the law firm\* that represents or represented the client. In that situation, the lawyer has a conflict of interest only when the

lawyer involved has actual knowledge of information protected by Business and Professions Code section 6068, subdivision (e) and rules 1.6 and 1.9(c). Thus, if a lawyer while with one firm\* acquired no knowledge or information relating to a particular client of the firm,\* and that lawyer later joined another firm,\* neither the lawyer individually nor lawyers in the second firm\* would violate this rule by representing another client in the same or a related matter even though the interests of the two clients conflict. See rule 1.10(b) for the restrictions on lawyers in a firm\* once a lawyer has terminated association with the firm.\*

[5] The fact that information can be discovered in a public record does not, by itself, render that information generally known\* under paragraph (c). (See, e.g., *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179.)

[6] With regard to the effectiveness of an advance consent, see rule 1.7, Comment [9]. With regard to imputation of conflicts to lawyers in a firm\* with which a lawyer is or was formerly associated, see rule 1.10. Current and former government lawyers must comply with this rule to the extent required by rule 1.11.

### Rule 1.10 Imputation of Conflicts of Interest: General Rule

(a) While lawyers are associated in a firm,\* none of them shall knowingly\* represent a client when any one of them practicing alone would be prohibited from doing so by rules 1.7 or 1.9, unless

(1) the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm;\* or

(2) the prohibition is based upon rule 1.9(a) or (b) and arises out of the prohibited lawyer's association with a prior firm,\* and

(i) the prohibited lawyer did not substantially participate in the same or a substantially related matter;

(ii) the prohibited lawyer is timely screened\* from any participation in the

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matter and is apportioned no part of the fee therefrom; and

(iii) written\* notice is promptly given to any affected former client to enable the former client to ascertain compliance with the provisions of this rule, which shall include a description of the screening\* procedures employed; and an agreement by the firm\* to respond promptly to any written\* inquiries or objections by the former client about the screening\* procedures.

(b) When a lawyer has terminated an association with a firm,\* the firm\* is not prohibited from thereafter representing a person\* with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm,\* unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm\* has information protected by Business and Professions Code section 6068, subdivision (e) and rules 1.6 and 1.9(c) that is material to the matter.

(c) A prohibition under this rule may be waived by each affected client under the conditions stated in rule 1.7.

(d) The imputation of a conflict of interest to lawyers associated in a firm\* with former or current government lawyers is governed by rule 1.11.

### Comment

[1] In determining whether a prohibited lawyer's previously participation was substantial,\* a number of factors should be considered, such as the lawyer's level of responsibility in the prior matter, the duration of the lawyer's participation, the extent to which the lawyer advised or had personal contact with the former client, and the extent to which the lawyer was exposed to confidential information of the former client likely to be material in the current matter.

[2] Paragraph (a) does not prohibit representation by others in the law firm\* where the person\* prohibited from involvement in a matter is a

nonlawyer, such as a paralegal or legal secretary. Nor does paragraph (a) prohibit representation if the lawyer is prohibited from acting because of events before the person\* became a lawyer, for example, work that the person\* did as a law student. Such persons,\* however, ordinarily must be screened\* from any personal participation in the matter. (See rules 1.0.1(k) and 5.3.)

[3] Paragraph (a)(2)(ii) does not prohibit the screened\* lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is prohibited.

[4] Where a lawyer is prohibited from engaging in certain transactions under rules 1.8.1 through 1.8.9, rule 1.8.11, and not this rule, determines whether that prohibition also applies to other lawyers associated in a firm\* with the personally prohibited lawyer.

[5] The responsibilities of managerial and supervisory lawyers prescribed by rules 5.1 and 5.3 apply to screening\* arrangements implemented under this rule.

[6] Standards for disqualification, and whether in a particular matter (1) a lawyer's conflict will be imputed to other lawyers in the same firm,\* or (2) the use of a timely screen\* is effective to avoid that imputation, are also the subject of statutes and case law. (See, e.g., Code Civ. Proc., § 128, subd. (a)(5); Pen. Code, § 1424; *In re Charlis C.* (2008) 45 Cal.4th 145 [84 Cal.Rptr.3d 597]; *Rhaburn v. Superior Court* (2006) 140 Cal.App.4th 1566 [45 Cal.Rptr.3d 464]; *Kirk v. First American Title Ins. Co.* (2010) 183 Cal.App.4th 776 [108 Cal.Rptr.3d 620].)

### Rule 1.11 Special Conflicts of Interest for Former and Current Government Officials and Employees

(a) Except as law may otherwise expressly permit, a lawyer who has formerly served as a public official or employee of the government:

(1) is subject to rule 1.9(c); and

(2) shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a

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public official or employee, unless the appropriate government agency gives its informed written consent\* to the representation. This paragraph shall not apply to matters governed by rule 1.12(a).

(b) When a lawyer is prohibited from representation under paragraph (a), no lawyer in a firm\* with which that lawyer is associated may knowingly\* undertake or continue representation in such a matter unless:

(1) the personally prohibited lawyer is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written\* notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule

(c) Except as law may otherwise expressly permit, a lawyer who was a public official or employee and, during that employment, acquired information that the lawyer knows\* is confidential government information about a person,\* may not represent a private client whose interests are adverse to that person\* in a matter in which the information could be used to the material disadvantage of that person.\* As used in this rule, the term “confidential government information” means information that has been obtained under governmental authority, that, at the time this rule is applied, the government is prohibited by law from disclosing to the public, or has a legal privilege not to disclose, and that is not otherwise available to the public. A firm\* with which that lawyer is associated may undertake or continue representation in the matter only if the personally prohibited lawyer is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom.

(d) Except as law may otherwise expressly permit, a lawyer currently serving as a public official or employee:

(1) is subject to rules 1.7 and 1.9; and

(2) shall not:

(i) participate in a matter in which the lawyer participated personally and substantially while in private practice or

nongovernmental employment, unless the appropriate government agency gives its informed written consent;\* or

(ii) negotiate for private employment with any person\* who is involved as a party, or as a lawyer for a party, or with a law firm\* for a party, in a matter in which the lawyer is participating personally and substantially, except that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by rule 1.12(b) and subject to the conditions stated in rule 1.12(b).

### Comment

[1] Rule 1.10 is not applicable to the conflicts of interest addressed by this rule.

[2] For what constitutes a “matter” for purposes of this rule, see rule 1.7(e).

[3] Paragraphs (a)(2) and (d)(2) apply regardless of whether a lawyer is adverse to a former client. Both provisions apply when the former public official or employee of the government has personally and substantially participated in the matter. Personal participation includes both direct participation and the supervision of a subordinate’s participation. Substantial\* participation requires that the lawyer’s involvement be of significance to the matter. Participation may be substantial\* even though it is not determinative of the outcome of a particular matter. However, it requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to the matter, but also on the importance of the effort. Personal and substantial\* participation may occur when, for example, a lawyer participates through decision, approval, disapproval, recommendation, investigation or the rendering of advice in a particular matter.

[4] By requiring a former government lawyer to comply with rule 1.9(c), paragraph (a)(1) protects information obtained while working for the government to the same extent as information learned while representing a private client. This provision applies regardless of whether the lawyer was working in a “legal” capacity. Thus, information learned by the lawyer while in public service in an

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administrative, policy, or advisory position also is covered by paragraph (a)(1).

[5] Paragraph (c) operates only when the lawyer in question has actual knowledge of the information; it does not operate with respect to information that merely could be imputed to the lawyer.

[6] When a lawyer has been employed by one government agency and then moves to a second government agency, it may be appropriate to treat that second agency as another client for purposes of this rule, as when a lawyer is employed by a city and subsequently is employed by a federal agency. Because conflicts of interest are governed by paragraphs (a) and (b), the latter agency is required to screen\* the lawyer. Whether two government agencies should be regarded as the same or different clients for conflict of interest purposes is beyond the scope of these rules. (See rule 1.13, Comment [6]; see also *Civil Service Commission v. Superior Court* (1984) 163 Cal.App.3d 70, 76-78 [209 Cal.Rptr. 159].)

[7] Paragraphs (b) and (c) do not prohibit a lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly relating the lawyer's compensation to the fee in the matter in which the lawyer is personally prohibited from participating.

[8] Paragraphs (a) and (d) do not prohibit a lawyer from jointly representing a private party and a government agency when doing so is permitted by rule 1.7 and is not otherwise prohibited by law.

[9] A lawyer serving as a public official or employee of the government may participate in a matter in which the lawyer participated substantially while in private practice or non-governmental employment only if: (i) the government agency gives its informed written consent\* as required by paragraph (d)(2)(i); and (ii) the former client gives its informed written consent\* as required by rule 1.9, to which the lawyer is subject by paragraph (d)(1).

[10] This rule is not intended to address whether in a particular matter: (i) a lawyer's conflict under paragraph (d) will be imputed to other lawyers serving in the same governmental agency; or (ii) the use of a timely screen\* will avoid that imputation. The imputation and screening\* rules for lawyers moving from private practice into government service under paragraph (d) are left to be addressed by case law and

its development. (See *City & County of San Francisco v. Cobra Solutions, Inc.* (2006) 38 Cal.4th 839, 847, 851-54 [43 Cal.Rptr.3d 776]; *City of Santa Barbara v. Superior Court* (2004) 122 Cal.App.4th 17, 26-27 [18 Cal.Rptr.3d 403].) Regarding the standards for recusals of prosecutors in criminal matters, see Penal Code section 1424; *Haraguchi v. Superior Court* (2008) 43 Cal. 4th 706, 711-20 [76 Cal.Rptr.3d 250]; and *Hollywood v. Superior Court* (2008) 43 Cal.4th 721, 727-35 [76 Cal.Rptr.3d 264]. Concerning prohibitions against former prosecutors participating in matters in which they served or participated in as prosecutor, see, e.g., Business and Professions Code section 6131 and 18 United States Code section 207(a).

### Rule 1.12 Former Judge, Arbitrator, Mediator, or Other Third-Party Neutral

(a) Except as stated in paragraph (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer, judicial staff attorney or law clerk to such a person\* or as an arbitrator, mediator, or other third-party neutral, unless all parties to the proceeding give informed written consent.\*

(b) A lawyer shall not seek employment from any person\* who is involved as a party or as lawyer for a party, or with a law firm\* for a party, in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer or as an arbitrator, mediator, or other third-party neutral. A lawyer serving as a judicial staff attorney or law clerk to a judge or other adjudicative officer may seek employment from a party, or with a lawyer or a law firm\* for a party, in a matter in which the staff attorney or clerk is participating personally and substantially, but only with the approval of the court.

(c) If a lawyer is prohibited from representation by paragraph (a), other lawyers in a firm\* with which that lawyer is associated may knowingly\* undertake or continue representation in the matter only if:

(1) the prohibition does not arise from the lawyer's service as a mediator or settlement judge;

(2) the prohibited lawyer is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom; and

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(3) written\* notice is promptly given to the parties and any appropriate tribunal\* to enable them to ascertain compliance with the provisions of this rule.

(d) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

### Comment

[1] Paragraphs (a) and (b) apply when a former judge or other adjudicative officer, or a judicial staff attorney or law clerk to such a person,\* or an arbitrator, mediator, or other third-party neutral, has personally and substantially participated in the matter. Personal participation includes both direct participation and the supervision of a subordinate's participation, as may occur in a chambers with several staff attorneys or law clerks. Substantial\* participation requires that the lawyer's involvement was of significance to the matter. Participation may be substantial\* even though it was not determinative of the outcome of a particular case or matter. A finding of substantiality should be based not only on the effort devoted to the matter, but also on the importance of the effort. Personal and substantial\* participation may occur when, for example, the lawyer participated through decision, recommendation, or the rendering of advice on a particular case or matter. However, a judge who was a member of a multi-member court, and thereafter left judicial office to practice law, is not prohibited from representing a client in a matter pending in the court, but in which the former judge did not participate, or acquire material confidential information. The fact that a former judge exercised administrative responsibility in a court also does not prevent the former judge from acting as a lawyer in a matter where the judge had previously exercised remote or incidental administrative responsibility that did not affect the merits, such as uncontested procedural duties typically performed by a presiding or supervising judge or justice. The term "adjudicative officer" includes such officials as judges pro tempore, referees, and special masters.

[2] Other law or codes of ethics governing third-party neutrals may impose more stringent standards of personal or imputed disqualification. (See rule 2.4.)

[3] Paragraph (c)(2) does not prohibit the screened\* lawyer from receiving a salary or partnership share

established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is personally prohibited from participating.

### Rule 1.13 Organization as Client

(a) A lawyer employed or retained by an organization shall conform his or her representation to the concept that the client is the organization itself, acting through its duly authorized directors, officers, employees, members, shareholders, or other constituents overseeing the particular engagement.

(b) If a lawyer representing an organization knows\* that a constituent is acting, intends to act or refuses to act in a matter related to the representation in a manner that the lawyer knows\* or reasonably should know\* is (i) a violation of a legal obligation to the organization or a violation of law reasonably\* imputable to the organization, and (ii) likely to result in substantial\* injury to the organization, the lawyer shall proceed as is reasonably\* necessary in the best lawful interest of the organization. Unless the lawyer reasonably believes\* that it is not necessary in the best lawful interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act on behalf of the organization as determined by applicable law.

(c) In taking any action pursuant to paragraph (b), the lawyer shall not reveal information protected by Business and Professions Code section 6068, subdivision (e).

(d) If, despite the lawyer's actions in accordance with paragraph (b), the highest authority that can act on behalf of the organization insists upon action, or fails to act, in a manner that is a violation of a legal obligation to the organization or a violation of law reasonably\* imputable to the organization, and is likely to result in substantial\* injury to the organization, the lawyer shall continue to proceed as is reasonably\* necessary in the best lawful interests of the organization. The lawyer's response may include the lawyer's right and, where appropriate, duty to resign or withdraw in accordance with rule 1.16.

(e) A lawyer who reasonably believes\* that he or she has been discharged because of the lawyer's actions taken pursuant to paragraph (b), or who



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resigns or withdraws under circumstances described in paragraph (d), shall proceed as the lawyer reasonably believes\* necessary to assure that the organization's highest authority is informed of the lawyer's discharge, resignation, or withdrawal.

(f) In dealing with an organization's constituents, a lawyer representing the organization shall explain the identity of the lawyer's client whenever the lawyer knows\* or reasonably should know\* that the organization's interests are adverse to those of the constituent(s) with whom the lawyer is dealing.

(g) A lawyer representing an organization may also represent any of its constituents, subject to the provisions of rules 1.7, 1.8.2, 1.8.6, and 1.8.7. If the organization's consent to the dual representation is required by any of these rules, the consent shall be given by an appropriate official, constituent, or body of the organization other than the individual who is to be represented, or by the shareholders.

### Comment

#### *The Entity as the Client*

[1] This rule applies to all forms of private, public and governmental organizations. (See Comment [6].) An organizational client can only act through individuals who are authorized to conduct its affairs. The identity of an organization's constituents will depend on its form, structure, and chosen terminology. For example, in the case of a corporation, constituents include officers, directors, employees and shareholders. In the case of other organizational forms, constituents include the equivalents of officers, directors, employees, and shareholders. For purposes of this rule, any agent or fiduciary authorized to act on behalf of an organization is a constituent of the organization.

[2] A lawyer ordinarily must accept decisions an organization's constituents make on behalf of the organization, even if the lawyer questions their utility or prudence. It is not within the lawyer's province to make decisions on behalf of the organization concerning policy and operations, including ones entailing serious risk. A lawyer, however, has a duty to inform the client of significant developments related to the representation under Business and Professions Code section 6068, subdivision (m) and rule 1.4. Even when a lawyer is not obligated to proceed in accordance with paragraph (b), the lawyer may refer to higher authority, including the

organization's highest authority, matters that the lawyer reasonably believes\* are sufficiently important to refer in the best interest of the organization subject to Business and Professions Code section 6068, subdivision (e) and rule 1.6.

[3] Paragraph (b) distinguishes between knowledge of the conduct and knowledge of the consequences of that conduct. When a lawyer knows\* of the conduct, the lawyer's obligations under paragraph (b) are triggered when the lawyer knows\* or reasonably should know\* that the conduct is (i) a violation of a legal obligation to the organization, or a violation of law reasonably\* imputable to the organization, and (ii) likely to result in substantial\* injury to the organization.

[4] In determining how to proceed under paragraph (b), the lawyer should consider the seriousness of the violation and its potential consequences, the responsibility in the organization and the apparent motivation of the person\* involved, the policies of the organization concerning such matters, and any other relevant considerations. Ordinarily, referral to a higher authority would be necessary. In some circumstances, however, the lawyer may ask the constituent to reconsider the matter. For example, if the circumstances involve a constituent's innocent misunderstanding of law and subsequent acceptance of the lawyer's advice, the lawyer may reasonably\* conclude that the best interest of the organization does not require that the matter be referred to higher authority. If a constituent persists in conduct contrary to the lawyer's advice, it will be necessary for the lawyer to take steps to have the matter reviewed by a higher authority in the organization. If the matter is of sufficient seriousness and importance or urgency to the organization, referral to higher authority in the organization may be necessary even if the lawyer has not communicated with the constituent. For the responsibility of a subordinate lawyer in representing an organization, see rule 5.2.

[5] In determining how to proceed in the best lawful interests of the organization, a lawyer should consider the extent to which the organization should be informed of the circumstances, the actions taken by the organization with respect to the matter and the direction the lawyer has received from the organizational client.

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### *Governmental Organizations*

[6] It is beyond the scope of this rule to define precisely the identity of the client and the lawyer's obligations when representing a governmental agency. Although in some circumstances the client may be a specific agency, it may also be a branch of government or the government as a whole. In a matter involving the conduct of government officials, a government lawyer may have authority under applicable law to question such conduct more extensively than that of a lawyer for a private organization in similar circumstances. Duties of lawyers employed by the government or lawyers in military service may be defined by statutes and regulations. In addition, a governmental organization may establish internal organizational rules and procedures that identify an official, agency, organization, or other person\* to serve as the designated recipient of whistle-blower reports from the organization's lawyers, consistent with Business and Professions Code section 6068, subdivision (e) and rule 1.6. This rule is not intended to limit that authority.

### **Rule 1.14 [Reserved]**

### **Rule 1.15 Safekeeping Funds and Property of Clients and Other Persons\***

(a) All funds received or held by a lawyer or law firm\* for the benefit of a client, or other person\* to whom the lawyer owes a contractual, statutory, or other legal duty, including advances for fees, costs and expenses, shall be deposited in one or more identifiable bank accounts labeled "Trust Account" or words of similar import, maintained in the State of California, or, with written\* consent of the client, in any other jurisdiction where there is a substantial\* relationship between the client or the client's business and the other jurisdiction.

(b) Notwithstanding paragraph (a), a flat fee paid in advance for legal services may be deposited in a lawyer's or law firm's operating account, provided:

- (1) the lawyer or law firm\* discloses to the client in writing\* (i) that the client has a right under paragraph (a) to require that the flat fee be deposited in an identified trust account until the fee is earned, and (ii) that the client is entitled to a refund of any amount of the fee that

has not been earned in the event the representation is terminated or the services for which the fee has been paid are not completed; and

(2) if the flat fee exceeds \$1,000.00, the client's agreement to deposit the flat fee in the lawyer's operating account and the disclosures required by paragraph (b)(1) are set forth in a writing\* signed by the client.

(c) Funds belonging to the lawyer or the law firm\* shall not be deposited or otherwise commingled with funds held in a trust account except:

(1) funds reasonably\* sufficient to pay bank charges; and

(2) funds belonging in part to a client or other person\* and in part presently or potentially to the lawyer or the law firm,\* in which case the portion belonging to the lawyer or law firm\* must be withdrawn at the earliest reasonable\* time after the lawyer or law firm's interest in that portion becomes fixed. However, if a client or other person\* disputes the lawyer or law firm's right to receive a portion of trust funds, the disputed portion shall not be withdrawn until the dispute is finally resolved.

(d) A lawyer shall:

(1) absent good cause, notify a client or other person\* no later than 14 days of the receipt of funds, securities, or other property in which the lawyer knows\* or reasonably should know\* the client or other person\* has an interest;

(2) identify and label securities and properties of a client or other person\* promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable;

(3) maintain complete records of all funds, securities, and other property of a client or other person\* coming into the possession of the lawyer or law firm\*;

(4) promptly account in writing\* to the client or other person\* for whom the lawyer holds funds or property;

(5) preserve records of all funds and property held by a lawyer or law firm\* under this rule for a

## RULES OF PROFESSIONAL CONDUCT

period of no less than five years after final appropriate distribution of such funds or property;

(6) comply with any order for an audit of such records issued pursuant to the Rules of Procedure of the State Bar; and

(7) promptly distribute any undisputed funds or property in the possession of the lawyer or law firm\* that the client or other person\* is entitled to receive.

(e) The Board of Trustees of the State Bar shall have the authority to formulate and adopt standards as to what "records" shall be maintained by lawyers and law firms\* in accordance with subparagraph (d)(3). The standards formulated and adopted by the Board, as from time to time amended, shall be effective and binding on all lawyers.

(f) For purposes of determining a lawyer's compliance with paragraph (d)(7), unless the lawyer, and the client or other person\* agree in writing that the funds or property will continue to be held by the lawyer, there shall be a rebuttable presumption affecting the burden of proof as defined in Evidence Code sections 605 and 606 that a violation of paragraph (d)(7) has occurred if the lawyer, absent good cause, fails to distribute undisputed funds or property within 45-days of the date when the funds become undisputed as defined by paragraph (g). This presumption may be rebutted by proof by a preponderance of evidence that there was good cause for not distributing funds within 45 days of the date when the funds or property became undisputed as defined in paragraph (g).

(g) As used in this rule, "undisputed funds or property" refers to funds or property, or a portion of any such funds or property, in the possession of a lawyer or law firm\* where the lawyer knows\* or reasonably should know\* that the ownership interest of the client or other person\* in the funds or property, or any portion thereof, has become fixed and there are no unresolved disputes as to the client's or other person's\* entitlement to receive the funds or property.

### *Standards:*

Pursuant to this rule, the Board of Trustees of the State Bar adopted the following standards, effective November 1, 2018, as to what "records" shall be

maintained by lawyers and law firms\* in accordance with paragraph (d)(3).

(1) A lawyer shall, from the date of receipt of funds of the client or other person\* through the period ending five years from the date of appropriate disbursement of such funds, maintain:

(a) a written\* ledger for each client or other person\* on whose behalf funds are held that sets forth:

(i) the name of such client or other person\*;

(ii) the date, amount and source of all funds received on behalf of such client or other person\*;

(iii) the date, amount, payee and purpose of each disbursement made on behalf of such client or other person\* and

(iv) the current balance for such client or other person\*;

(b) a written\* journal for each bank account that sets forth:

(i) the name of such account;

(ii) the date, amount and client affected by each debit and credit; and

(iii) the current balance in such account;

(c) all bank statements and cancelled checks for each bank account; and

(d) each monthly reconciliation (balancing) of (a), (b), and (c).

(2) A lawyer shall, from the date of receipt of all securities and other properties held for the benefit of client or other person\* through the period ending five years from the date of appropriate disbursement of such securities and other properties, maintain a written\* journal that specifies:

(a) each item of security and property held;

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- (b) the person\* on whose behalf the security or property is held;
- (c) the date of receipt of the security or property;
- (d) the date of distribution of the security or property; and
- (e) person\* to whom the security or property was distributed.

### Comment

[1] Whether a lawyer owes a contractual, statutory or other legal duty under paragraph (a) to hold funds on behalf of a person\* other than a client in situations where client funds are subject to a third-party lien will depend on the relationship between the lawyer and the third-party, whether the lawyer has assumed a contractual obligation to the third person\* and whether the lawyer has an independent obligation to honor the lien under a statute or other law. In certain circumstances, a lawyer may be civilly liable when the lawyer has notice of a lien and disburses funds in contravention of the lien. (See *Kaiser Foundation Health Plan, Inc. v. Aguiluz* (1996) 47 Cal.App.4th 302 [54 Cal.Rptr.2d 665].) However, civil liability by itself does not establish a violation of this rule. (Compare *Johnstone v. State Bar of California* (1966) 64 Cal.2d 153, 155-156 [49 Cal.Rptr. 97] [“When an attorney assumes a fiduciary relationship and violates his duty in a manner that would justify disciplinary action if the relationship had been that of attorney and client, he may properly be disciplined for his misconduct.”] with *Crooks v. State Bar* (1970) 3 Cal.3d 346, 358 [90 Cal.Rptr. 600] [lawyer who agrees to act as escrow or stakeholder for a client and a third-party owes a duty to the nonclient with regard to held funds].)

[2] As used in this rule, “advances for fees” means a payment intended by the client as an advance payment for some or all of the services that the lawyer is expected to perform on the client’s behalf. With respect to the difference between a true retainer and a flat fee, which is one type of advance fee, see rule 1.5(d) and (e). Subject to rule 1.5, a lawyer or law firm\* may enter into an agreement that defines when or how an advance fee is earned and may be withdrawn from the client trust account.

[3] Absent written\* disclosure and the client’s agreement in a writing\* signed by the client as provided in paragraph (b), a lawyer must deposit a flat

fee paid in advance of legal services in the lawyer’s trust account. Paragraph (b) does not apply to advance payment for costs and expenses. Paragraph (b) does not alter the lawyer’s obligations under paragraph (d) or the lawyer’s burden to establish that the fee has been earned.

[4] Subparagraph (d)(7) is not intended to apply to a fee or expense the client has agreed to pay in advance, or the client file, or any other property that the client or other person\* has agreed in writing that the lawyer will keep or maintain. Regarding a lawyer’s refund of a fee or expense paid in advance, see rule 1.16(e)(2). Regarding the release of a client’s file to the client, see rule 1.16(e)(1).

[5] Upon rebuttal by proof by a preponderance of the evidence of the presumption set forth in paragraph (f), a violation of paragraph (d)(7) must be established by clear and convincing evidence without the benefit of the rebuttable presumption.

[6] Whether or not the rebuttable presumption in paragraph (f) applies, a lawyer must still comply with all other applicable provisions of this rule. This includes a lawyer’s duty to take diligent steps to initiate and complete the resolution of disputes concerning a client’s or other person’s\* entitlement to funds or property received by a lawyer.

[7] Under paragraph (g), possible disputes requiring resolution may include, but are not limited to, disputes concerning entitlement to funds arising from: medical liens; statutory liens; prior attorney liens; costs or expenses; attorney fees; a bank’s policies and fees for clearing a check or draft; any applicable conditions on entitlement such as a plaintiff’s execution of a release and dismissal; or any legal proceeding, such as an interpleader action, concerning the entitlement of any person to receive all or a portion of the funds or property.

**[Publisher’s Note: Rule 1.15 was amended by order of the Supreme Court, effective January 1, 2023.]**

### Rule 1.16 Declining or Terminating Representation

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

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- (1) the lawyer knows\* or reasonably should know\* that the client is bringing an action, conducting a defense, asserting a position in litigation, or taking an appeal, without probable cause and for the purpose of harassing or maliciously injuring any person;\*
  - (2) the lawyer knows\* or reasonably should know\* that the representation will result in violation of these rules or of the State Bar Act;
  - (3) the lawyer's mental or physical condition renders it unreasonably difficult to carry out the representation effectively; or
  - (4) the client discharges the lawyer.
- (b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:
- (1) the client insists upon presenting a claim or defense in litigation, or asserting a position or making a demand in a non-litigation matter, that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law;
  - (2) the client either seeks to pursue a criminal or fraudulent\* course of conduct or has used the lawyer's services to advance a course of conduct that the lawyer reasonably believes\* was a crime or fraud;\*
  - (3) the client insists that the lawyer pursue a course of conduct that is criminal or fraudulent;\*
  - (4) the client by other conduct renders it unreasonably difficult for the lawyer to carry out the representation effectively;
  - (5) the client breaches a material term of an agreement with, or obligation, to the lawyer relating to the representation, and the lawyer has given the client a reasonable\* warning after the breach that the lawyer will withdraw unless the client fulfills the agreement or performs the obligation;
  - (6) the client knowingly\* and freely assents to termination of the representation;
  - (7) the inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal;
  - (8) the lawyer's mental or physical condition renders it difficult for the lawyer to carry out the representation effectively;
  - (9) a continuation of the representation is likely to result in a violation of these rules or the State Bar Act; or
  - (10) the lawyer believes\* in good faith, in a proceeding pending before a tribunal,\* that the tribunal\* will find the existence of other good cause for withdrawal.
- (c) If permission for termination of a representation is required by the rules of a tribunal,\* a lawyer shall not terminate a representation before that tribunal\* without its permission.
- (d) A lawyer shall not terminate a representation until the lawyer has taken reasonable\* steps to avoid reasonably\* foreseeable prejudice to the rights of the client, such as giving the client sufficient notice to permit the client to retain other counsel, and complying with paragraph (e).
- (e) Upon the termination of a representation for any reason:
- (1) subject to any applicable protective order, non-disclosure agreement, statute or regulation, the lawyer promptly shall release to the client, at the request of the client, all client materials and property. "Client materials and property" includes correspondence, pleadings, deposition transcripts, experts' reports and other writings,\* exhibits, and physical evidence, whether in tangible, electronic or other form, and other items reasonably\* necessary to the client's representation, whether the client has paid for them or not; and
  - (2) the lawyer promptly shall refund any part of a fee or expense paid in advance that the lawyer has not earned or incurred. This provision is not applicable to a true retainer fee paid solely for the purpose of ensuring the availability of the lawyer for the matter.
- Comment**
- [1] This rule applies, without limitation, to a sale of a law practice under rule 1.17. A lawyer can be subject to discipline for improperly threatening to terminate a representation. (See *In the Matter of*

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*Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 837.)

[2] When a lawyer withdraws from the representation of a client in a particular matter under paragraph (a) or (b), the lawyer might not be obligated to withdraw from the representation of the same client in other matters. For example, a lawyer might be obligated under paragraph (a)(1) to withdraw from representing a client because the lawyer has a conflict of interest under rule 1.7, but that conflict might not arise in other representations of the client.

[3] Withdrawal under paragraph (a)(1) is not mandated where a lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, or involuntary commitment or confinement, defends the proceeding by requiring that every element of the case be established. (See rule 3.1(b).)

[4] Lawyers must comply with their obligations to their clients under Business and Professions Code section 6068, subdivision (e) and rule 1.6, and to the courts under rule 3.3 when seeking permission to withdraw under paragraph (c). If a tribunal\* denies a lawyer permission to withdraw, the lawyer is obligated to comply with the tribunal's\* order. (See Bus. & Prof. Code, §§ 6068, subd. (b) and 6103.) This duty applies even if the lawyer sought permission to withdraw because of a conflict of interest. Regarding withdrawal from limited scope representations that involve court appearances, compliance with applicable California Rules of Court concerning limited scope representation satisfies paragraph (c).

[5] Statutes may prohibit a lawyer from releasing information in the client materials and property under certain circumstances. (See, e.g., Pen. Code, §§ 1054.2 and 1054.10.) A lawyer in certain criminal matters may be required to retain a copy of a former client's file for the term of his or her imprisonment. (See, Pen. Code, § 1054.9.)

[6] Paragraph (e)(1) does not prohibit a lawyer from making, at the lawyer's own expense, and retaining copies of papers released to the client, or to prohibit a claim for the recovery of the lawyer's expense in any subsequent legal proceeding.

**[Publisher's Note: Comment [5] was amended by order of the Supreme Court, effective June 1, 2020.]**

### Rule 1.17 Sale of a Law Practice

All or substantially\* all of the law practice of a lawyer, living or deceased, including goodwill, may be sold to another lawyer or law firm\* subject to all the following conditions:

(a) Fees charged to clients shall not be increased solely by reason of the sale.

(b) If the sale contemplates the transfer of responsibility for work not yet completed or responsibility for client files or information protected by Business and Professions Code section 6068, subdivision (e)(1), then;

(1) if the seller is deceased, or has a conservator or other person\* acting in a representative capacity, and no lawyer has been appointed to act for the seller pursuant to Business and Professions Code section 6180.5, then prior to the transfer;

(i) the purchaser shall cause a written\* notice to be given to each client whose matter is included in the sale, stating that the interest in the law practice is being transferred to the purchaser; that the client has the right to retain other counsel; that the client may take possession of any client materials and property, as required by rule 1.16(e)(1); and that if no response is received to the notice within 90 days after it is sent, or if the client's rights would be prejudiced by a failure of the purchaser to act during that time, the purchaser may act on behalf of the client until otherwise notified by the client, and

(ii) the purchaser shall obtain the written\* consent of the client. If reasonable\* efforts have been made to locate the client and no response to the paragraph (b)(1)(i) notice is received within 90 days, consent shall be presumed until otherwise notified by the client.

(2) in all other circumstances, not less than 90 days prior to the transfer;

(i) the seller, or the lawyer appointed to act for the seller pursuant to Business and Professions Code section 6180.5, shall cause a written\* notice to be given to each

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client whose matter is included in the sale, stating that the interest in the law practice is being transferred to the purchaser; that the client has the right to retain other counsel; that the client may take possession of any client materials and property, as required by rule 1.16(e)(1); and that if no response is received to the notice within 90 days after it is sent, or if the client's rights would be prejudiced by a failure of the purchaser to act during that time, the purchaser may act on behalf of the client until otherwise notified by the client, and

(ii) the seller, or the lawyer appointed to act for the seller pursuant to Business and Professions Code section 6180.5, shall obtain the written\* consent of the client prior to the transfer. If reasonable\* efforts have been made to locate the client and no response to the paragraph (b)(2)(i) notice is received within 90 days, consent shall be presumed until otherwise notified by the client.

(c) If substitution is required by the rules of a tribunal\* in which a matter is pending, all steps necessary to substitute a lawyer shall be taken.

(d) The purchaser shall comply with the applicable requirements of rules 1.7 and 1.9.

(e) Confidential information shall not be disclosed to a nonlawyer in connection with a sale under this rule.

(f) This rule does not apply to the admission to or retirement from a law firm,\* retirement plans and similar arrangements, or sale of tangible assets of a law practice.

### Comment

[1] The requirement that the sale be of "all or substantially\* all of the law practice of a lawyer" prohibits the sale of only a field or area of practice or the seller's practice in a geographical area or in a particular jurisdiction. The prohibition against the sale of less than all or substantially\* all of a practice protects those clients whose matters are less lucrative and who might find it difficult to secure other counsel if a sale could be limited to substantial\* fee-generating matters. The purchasers are required to

undertake all client matters sold in the transaction, subject to client consent. This requirement is satisfied, however, even if a purchaser is unable to undertake a particular client matter because of a conflict of interest.

[2] Under paragraph (a), the purchaser must honor existing arrangements between the seller and the client as to fees and scope of work and the sale may not be financed by increasing fees charged for client matters transferred through the sale. However, fee increases or other changes to the fee arrangements might be justified by other factors, such as modifications of the purchaser's responsibilities, the passage of time, or reasonable\* costs that were not addressed in the original agreement. Any such modifications must comply with rules 1.4 and 1.5 and other relevant provisions of these rules and the State Bar Act.

[3] Transfer of individual client matters, where permitted, is governed by rule 1.5.1. Payment of a fee to a nonlawyer broker for arranging the sale or purchase of a law practice is governed by rule 5.4(a).

### Rule 1.18 Duties to Prospective Client

(a) A person\* who, directly or through an authorized representative, consults a lawyer for the purpose of retaining the lawyer or securing legal service or advice from the lawyer in the lawyer's professional capacity, is a prospective client.

(b) Even when no lawyer-client relationship ensues, a lawyer who has communicated with a prospective client shall not use or reveal information protected by Business and Professions Code section 6068, subdivision (e) and rule 1.6 that the lawyer learned as a result of the consultation, except as rule 1.9 would permit with respect to information of a former client.

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received from the prospective client information protected by Business and Professions Code section 6068, subdivision (e) and rule 1.6 that is material to the matter, except as provided in paragraph (d). If a lawyer is prohibited from representation under this paragraph, no lawyer in a firm\* with which that lawyer is associated may knowingly\* undertake or continue

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representation in such a matter, except as provided in paragraph (d).

(d) When the lawyer has received information that prohibits representation as provided in paragraph (c), representation of the affected client is permissible if:

(1) both the affected client and the prospective client have given informed written consent,\* or

(2) the lawyer who received the information took reasonable\* measures to avoid exposure to more information than was reasonably\* necessary to determine whether to represent the prospective client; and

(i) the prohibited lawyer is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom; and

(ii) written\* notice is promptly given to the prospective client to enable the prospective client to ascertain compliance with the provisions of this rule.

### Comment

[1] As used in this rule, a prospective client includes a person's\* authorized representative. A lawyer's discussions with a prospective client can be limited in time and depth and leave both the prospective client and the lawyer free, and sometimes required, to proceed no further. Although a prospective client's information is protected by Business and Professions Code section 6068, subdivision (e) and rule 1.6 the same as that of a client, in limited circumstances provided under paragraph (d), a law firm\* is permitted to accept or continue representation of a client with interests adverse to the prospective client. This rule is not intended to limit the application of Evidence Code section 951 (defining "client" within the meaning of the Evidence Code).

[2] Not all persons\* who communicate information to a lawyer are entitled to protection under this rule. A person\* who by any means communicates information unilaterally to a lawyer, without reasonable\* expectation that the lawyer is willing to discuss the possibility of forming a lawyer-client relationship or provide legal advice is not a "prospective client" within the meaning of paragraph (a). In addition, a person\* who discloses information to a lawyer after the lawyer has stated his or her

unwillingness or inability to consult with the person\* (*People v. Gionis* (1995) 9 Cal.4th 1196 [40 Cal.Rptr.2d 456]), or who communicates information to a lawyer without a good faith intention to seek legal advice or representation, is not a prospective client within the meaning of paragraph (a).

[3] In order to avoid acquiring information from a prospective client that would prohibit representation as provided in paragraph (c), a lawyer considering whether or not to undertake a new matter must limit the initial interview to only such information as reasonably\* appears necessary for that purpose.

[4] Under paragraph (c), the prohibition in this rule is imputed to other lawyers in a law firm\* as provided in rule 1.10. However, under paragraph (d)(1), the consequences of imputation may be avoided if the informed written consent\* of both the prospective and affected clients is obtained. (See rule 1.0.1(e-1) [informed written consent].) In the alternative, imputation may be avoided if the conditions of paragraph (d)(2) are met and all prohibited lawyers are timely screened\* and written\* notice is promptly given to the prospective client. Paragraph (d)(2)(i) does not prohibit the screened\* lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is prohibited.

[5] Notice under paragraph (d)(2)(ii) must include a general description of the subject matter about which the lawyer was consulted, and the screening\* procedures employed.

## CHAPTER 2. COUNSELOR

### Rule 2.1 Advisor

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice.

### Comment

[1] A lawyer ordinarily has no duty to initiate investigation of a client's affairs or to give advice that the client has indicated is unwanted, but a lawyer may initiate advice to a client when doing so appears to be in the client's interest.



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[2] This rule does not preclude a lawyer who renders advice from referring to considerations other than the law, such as moral, economic, social and political factors that may be relevant to the client's situation.

### Rule 2.2 [Reserved]

### Rule 2.3 [Reserved]

### Rule 2.4 Lawyer as Third-Party Neutral

(a) A lawyer serves as a third-party neutral when the lawyer assists two or more persons\* who are not clients of the lawyer to reach a resolution of a dispute, or other matter, that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the lawyer to assist the parties to resolve the matter.

(b) A lawyer serving as a third-party neutral shall inform unrepresented parties that the lawyer is not representing them. When the lawyer knows\* or reasonably should know\* that a party does not understand the lawyer's role in the matter, the lawyer shall explain the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client.

#### Comment

[1] In serving as a third-party neutral, the lawyer may be subject to court rules or other law that apply either to third-party neutrals generally or to lawyers serving as third-party neutrals. Lawyer neutrals may also be subject to various codes of ethics, such as the Judicial Council Standards for Mediators in Court Connected Mediation Programs or the Judicial Council Ethics Standards for Neutral Arbitrators in Contractual Arbitration.

[2] A lawyer who serves as a third-party neutral subsequently may be asked to serve as a lawyer representing a client in the same matter. The conflicts of interest that arise for both the individual lawyer and the lawyer's law firm\* are addressed in rule 1.12.

[3] This rule is not intended to apply to temporary judges, referees or court-appointed arbitrators. (See rule 2.4.1.)

### Rule 2.4.1 Lawyer as Temporary Judge, Referee, or Court-Appointed Arbitrator

A lawyer who is serving as a temporary judge, referee, or court-appointed arbitrator, and is subject to canon 6D of the California Code of Judicial Ethics, shall comply with the terms of that canon.

#### Comment

[1] This rule is intended to permit the State Bar to discipline lawyers who violate applicable portions of the California Code of Judicial Ethics while acting in a judicial capacity pursuant to an order or appointment by a court.

[2] This rule is not intended to apply to a lawyer serving as a third-party neutral in a mediation or a settlement conference, or as a neutral arbitrator pursuant to an arbitration agreement. (See rule 2.4.)

## CHAPTER 3. ADVOCATE

### Rule 3.1 Meritorious Claims and Contentions

(a) A lawyer shall not:

(1) bring or continue an action, conduct a defense, assert a position in litigation, or take an appeal, without probable cause and for the purpose of harassing or maliciously injuring any person;\* or

(2) present a claim or defense in litigation that is not warranted under existing law, unless it can be supported by a good faith argument for an extension, modification, or reversal of the existing law.

(b) A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, or involuntary commitment or confinement, may nevertheless defend the proceeding by requiring that every element of the case be established.

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### Rule 3.2 Delay of Litigation

In representing a client, a lawyer shall not use means that have no substantial\* purpose other than to delay or prolong the proceeding or to cause needless expense.

#### Comment

See rule 1.3 with respect to a lawyer's duty to act with reasonable\* diligence and rule 3.1(b) with respect to a lawyer's representation of a defendant in a criminal proceeding. See also Business and Professions Code section 6128, subdivision (b).

### Rule 3.3 Candor Toward the Tribunal\*

(a) A lawyer shall not:

(1) knowingly\* make a false statement of fact or law to a tribunal\* or fail to correct a false statement of material fact or law previously made to the tribunal\* by the lawyer;

(2) fail to disclose to the tribunal\* legal authority in the controlling jurisdiction known\* to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel, or knowingly\* misquote to a tribunal\* the language of a book, statute, decision or other authority; or

(3) offer evidence that the lawyer knows\* to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence, and the lawyer comes to know\* of its falsity, the lawyer shall take reasonable\* remedial measures, including, if necessary, disclosure to the tribunal,\* unless disclosure is prohibited by Business and Professions Code section 6068, subdivision (e) and rule 1.6. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes\* is false.

(b) A lawyer who represents a client in a proceeding before a tribunal\* and who knows\* that a person\* intends to engage, is engaging or has engaged in criminal or fraudulent\* conduct related to the proceeding shall take reasonable\* remedial measures to the extent permitted by Business and

Professions Code section 6068, subdivision (e) and rule 1.6.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding.

(d) In an ex parte proceeding where notice to the opposing party in the proceeding is not required or given and the opposing party is not present, a lawyer shall inform the tribunal\* of all material facts known\* to the lawyer that will enable the tribunal\* to make an informed decision, whether or not the facts are adverse to the position of the client.

#### Comment

[1] This rule governs the conduct of a lawyer in proceedings of a tribunal,\* including ancillary proceedings such as a deposition conducted pursuant to a tribunal's\* authority. See rule 1.0.1(m) for the definition of "tribunal."

[2] The prohibition in paragraph (a)(1) against making false statements of law or failing to correct a material misstatement of law includes citing as authority a decision that has been overruled or a statute that has been repealed or declared unconstitutional, or failing to correct such a citation previously made to the tribunal\* by the lawyer.

#### Legal Argument

[3] Legal authority in the controlling jurisdiction may include legal authority outside the jurisdiction in which the tribunal\* sits, such as a federal statute or case that is determinative of an issue in a state court proceeding or a Supreme Court decision that is binding on a lower court.

[4] The duties stated in paragraphs (a) and (b) apply to all lawyers, including defense counsel in criminal cases. If a lawyer knows\* that a client intends to testify falsely or wants the lawyer to introduce false evidence, the lawyer should seek to persuade the client that the evidence should not be offered and, if unsuccessful, must refuse to offer the false evidence. If a criminal defendant insists on testifying, and the lawyer knows\* that the testimony will be false, the lawyer may offer the testimony in a narrative form if the lawyer made reasonable\* efforts to dissuade the client from the unlawful course of conduct and the lawyer has sought permission from the court to withdraw as required by rule 1.16. (See, e.g., *People v. Johnson* (1998) 62

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Cal.App.4th 608 [72 Cal.Rptr.2d 805]; *People v. Jennings* (1999) 70 Cal.App.4th 899 [83 Cal.Rptr.2d 33].) The obligations of a lawyer under these rules and the State Bar Act are subordinate to applicable constitutional provisions.

### *Remedial Measures*

[5] Reasonable\* remedial measures under paragraphs (a)(3) and (b) refer to measures that are available under these rules and the State Bar Act, and which a reasonable\* lawyer would consider appropriate under the circumstances to comply with the lawyer's duty of candor to the tribunal.\* (See, e.g., rules 1.2.1, 1.4(a)(4), 1.16(a), 8.4; Bus. & Prof. Code, §§ 6068, subd. (d), 6128.) Remedial measures also include explaining to the client the lawyer's obligations under this rule and, where applicable, the reasons for the lawyer's decision to seek permission from the tribunal\* to withdraw, and remonstrating further with the client to take corrective action that would eliminate the need for the lawyer to withdraw. If the client is an organization, the lawyer should also consider the provisions of rule 1.13. Remedial measures do not include disclosure of client confidential information, which the lawyer is required to protect under Business and Professions Code section 6068, subdivision (e) and rule 1.6.

### *Duration of Obligation*

[6] A proceeding has concluded within the meaning of this rule when a final judgment in the proceeding has been affirmed on appeal or the time for review has passed. A prosecutor may have obligations that go beyond the scope of this rule. (See, e.g., rule 3.8(f) and (g).)

### *Ex Parte Communications*

[7] Paragraph (d) does not apply to ex parte communications that are not otherwise prohibited by law or the tribunal.\*

### *Withdrawal*

[8] A lawyer's compliance with the duty of candor imposed by this rule does not require that the lawyer withdraw from the representation. The lawyer may, however, be required by rule 1.16 to seek permission of the tribunal\* to withdraw if the lawyer's compliance with this rule results in a deterioration of the lawyer-client relationship such

that the lawyer can no longer competently and diligently represent the client, or where continued employment will result in a violation of these rules. A lawyer must comply with Business and Professions Code section 6068, subdivision (e) and rule 1.6 with respect to a request to withdraw that is premised on a client's misconduct.

[9] In addition to this rule, lawyers remain bound by Business and Professions Code sections 6068, subdivision (d) and 6106.

## **Rule 3.4 Fairness to Opposing Party and Counsel**

A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence, including a witness, or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person\* to do any such act;

(b) suppress any evidence that the lawyer or the lawyer's client has a legal obligation to reveal or to produce;

(c) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(d) directly or indirectly pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of the witness's testimony or the outcome of the case. Except where prohibited by law, a lawyer may advance, guarantee, or acquiesce in the payment of:

(1) expenses reasonably\* incurred by a witness in attending or testifying;

(2) reasonable\* compensation to a witness for loss of time in attending or testifying; or

(3) a reasonable\* fee for the professional services of an expert witness;

(e) advise or directly or indirectly cause a person\* to secrete himself or herself or to leave the jurisdiction of a tribunal\* for the purpose of making that person\* unavailable as a witness therein;

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(f) knowingly\* disobey an obligation under the rules of a tribunal\* except for an open refusal based on an assertion that no valid obligation exists; or

(g) in trial, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the guilt or innocence of an accused.

### Comment

[1] Paragraph (a) applies to evidentiary material generally, including computerized information. It is a criminal offense to destroy material for purpose of impairing its availability in a pending proceeding or one whose commencement can be foreseen. (See, e.g., Pen. Code, § 135; 18 U.S.C. §§ 1501-1520.) Falsifying evidence is also generally a criminal offense. (See, e.g., Pen. Code, § 132; 18 U.S.C. § 1519.) Applicable law may permit a lawyer to take temporary possession of physical evidence of client crimes for the purpose of conducting a limited examination that will not alter or destroy material characteristics of the evidence. Applicable law may require a lawyer to turn evidence over to the police or other prosecuting authorities, depending on the circumstances. (See *People v. Lee* (1970) 3 Cal.App.3d 514, 526 [83 Cal.Rptr. 715]; *People v. Meredith* (1981) 29 Cal.3d 682 [175 Cal.Rptr. 612].)

[2] A violation of a civil or criminal discovery rule or statute does not by itself establish a violation of this rule. See rule 3.8 for special disclosure responsibilities of a prosecutor.

### Rule 3.5 Contact with Judges, Officials, Employees, and Jurors

(a) Except as permitted by statute, an applicable code of judicial ethics or code of judicial conduct, or standards governing employees of a tribunal,\* a lawyer shall not directly or indirectly give or lend anything of value to a judge, official, or employee of a tribunal.\* This rule does not prohibit a lawyer from contributing to the campaign fund of a judge or judicial officer running for election or confirmation pursuant to applicable law pertaining to such contributions.

(b) Unless permitted to do so by law, an applicable code of judicial ethics or code of judicial conduct, a rule or ruling of a tribunal,\* or a court order, a lawyer shall not directly or indirectly communicate with or

argue to a judge or judicial officer upon the merits of a contested matter pending before the judge or judicial officer, except:

- (1) in open court;
- (2) with the consent of all other counsel and any unrepresented parties in the matter;
- (3) in the presence of all other counsel and any unrepresented parties in the matter;
- (4) in writing\* with a copy thereof furnished to all other counsel and any unrepresented parties in the matter; or
- (5) in ex parte matters.

(c) As used in this rule, “judge” and “judicial officer” shall also include: (i) administrative law judges; (ii) neutral arbitrators; (iii) State Bar Court judges; (iv) members of an administrative body acting in an adjudicative capacity; and (v) law clerks, research attorneys, or other court personnel who participate in the decision-making process, including referees, special masters, or other persons\* 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.

(d) A lawyer connected with a case shall not communicate directly or indirectly with anyone the lawyer knows\* to be a member of the venire from which the jury will be selected for trial of that case.

(e) During trial, a lawyer connected with the case shall not communicate directly or indirectly with any juror.

(f) During trial, a lawyer who is not connected with the case shall not communicate directly or indirectly concerning the case with anyone the lawyer knows\* is a juror in the case.

(g) After discharge of the jury from further consideration of a case a lawyer shall not communicate directly or indirectly with a juror if:

- (1) the communication is prohibited by law or court order;
- (2) the juror has made known\* to the lawyer a desire not to communicate; or

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(3) the communication involves misrepresentation, coercion, or duress, or is intended to harass or embarrass the juror or to influence the juror's actions in future jury service.

(h) A lawyer shall not directly or indirectly conduct an out of court investigation of a person\* who is either a member of a venire or a juror in a manner likely to influence the state of mind of such person\* in connection with present or future jury service.

(i) All restrictions imposed by this rule also apply to communications with, or investigations of, members of the family of a person\* who is either a member of a venire or a juror.

(j) A lawyer shall reveal promptly to the court improper conduct by a person\* who is either a member of a venire or a juror, or by another toward a person\* who is either a member of a venire or a juror or a member of his or her family, of which the lawyer has knowledge.

(k) This rule does not prohibit a lawyer from communicating with persons\* who are members of a venire or jurors as a part of the official proceedings.

(l) For purposes of this rule, "juror" means any empaneled, discharged, or excused juror.

### Comment

[1] An applicable code of judicial ethics or code of judicial conduct under this rule includes the California Code of Judicial Ethics and the Code of Conduct for United States Judges. Regarding employees of a tribunal\* not subject to judicial ethics or conduct codes, applicable standards include the Code of Ethics for the Court Employees of California and 5 United States Code section 7353 (Gifts to Federal employees). The statutes applicable to adjudicatory proceedings of state agencies generally are contained in the Administrative Procedure Act (Gov. Code, § 11340 et seq.; see Gov. Code, § 11370 [listing statutes with the act].) State and local agencies also may adopt their own regulations and rules governing communications with members or employees of a tribunal.\*

[2] For guidance on permissible communications with a juror in a criminal action after discharge of the jury, see Code of Civil Procedure section 206.

[3] It is improper for a lawyer to communicate with a juror who has been removed, discharged, or excused from an empaneled jury, regardless of whether notice is given to other counsel, until such time as the entire jury has been discharged from further service or unless the communication is part of the official proceedings of the case.

### Rule 3.6 Trial Publicity

(a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows\* or reasonably should know\* will (i) be disseminated by means of public communication and (ii) have a substantial\* likelihood of materially prejudicing an adjudicative proceeding in the matter.

(b) Notwithstanding paragraph (a), but only to the extent permitted by Business and Professions Code section 6068, subdivision (e) and rule 1.6, lawyer may state:

(1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons\* involved;

(2) information contained in a public record;

(3) that an investigation of a matter is in progress;

(4) the scheduling or result of any step in litigation;

(5) a request for assistance in obtaining evidence and information necessary thereto;

(6) a warning of danger concerning the behavior of a person\* involved, when there is reason to believe\* that there exists the likelihood of substantial\* harm to an individual or to the public but only to the extent that dissemination by public communication is reasonably\* necessary to protect the individual or the public; and

(7) in a criminal case, in addition to subparagraphs (1) through (6):

(i) the identity, general area of residence, and occupation of the accused;

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(ii) if the accused has not been apprehended, the information necessary to aid in apprehension of that person;\*

(iii) the fact, time, and place of arrest; and

(iv) the identity of investigating and arresting officers or agencies and the length of the investigation.

(c) Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable\* lawyer would believe\* is required to protect a client from the substantial\* undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(d) No lawyer associated in a law firm\* or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).

### Comment

[1] Whether an extrajudicial statement violates this rule depends on many factors, including: (i) whether the extrajudicial statement presents information clearly inadmissible as evidence in the matter for the purpose of proving or disproving a material fact in issue; (ii) whether the extrajudicial statement presents information the lawyer knows\* is false, deceptive, or the use of which would violate Business and Professions Code section 6068, subdivision (d) or rule 3.3; (iii) whether the extrajudicial statement violates a lawful "gag" order, or protective order, statute, rule of court, or special rule of confidentiality, for example, in juvenile, domestic, mental disability, and certain criminal proceedings, (see Bus. & Prof. Code, § 6068, subd. (a) and rule 3.4(f), which require compliance with such obligations); and (iv) the timing of the statement.

[2] This rule applies to prosecutors and criminal defense counsel. See rule 3.8(e) for additional duties of prosecutors in connection with extrajudicial statements about criminal proceedings.

### Rule 3.7 Lawyer as Witness

(a) A lawyer shall not act as an advocate in a trial in which the lawyer is likely to be a witness unless:

(1) the lawyer's testimony relates to an uncontested issue or matter;

(2) the lawyer's testimony relates to the nature and value of legal services rendered in the case; or

(3) the lawyer has obtained informed written consent\* from the client. If the lawyer represents the People or a governmental entity, the consent shall be obtained from the head of the office or a designee of the head of the office by which the lawyer is employed.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm\* is likely to be called as a witness unless precluded from doing so by rule 1.7 or rule 1.9.

### Comment

[1] This rule applies to a trial before a jury, judge, administrative law judge or arbitrator. This rule does not apply to other adversarial proceedings. This rule also does not apply in non-adversarial proceedings, as where a lawyer testifies on behalf of a client in a hearing before a legislative body.

[2] A lawyer's obligation to obtain informed written consent\* may be satisfied when the lawyer makes the required disclosure, and the client gives informed consent\* on the record in court before a licensed court reporter or court recorder who prepares a transcript or recording of the disclosure and consent. See definition of "written" in rule 1.0.1(n).

[3] Notwithstanding a client's informed written consent,\* courts retain discretion to take action, up to and including disqualification of a lawyer who seeks to both testify and serve as an advocate, to protect the trier of fact from being misled or the opposing party from being prejudiced. (See, e.g., *Lyle v. Superior Court* (1981) 122 Cal.App.3d 470 [175 Cal.Rptr. 918].)

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### Rule 3.8 Special Responsibilities of a Prosecutor

The prosecutor in a criminal case shall:

- (a) not institute or continue to prosecute a charge that the prosecutor knows\* is not supported by probable cause;
- (b) make reasonable\* efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable\* opportunity to obtain counsel;
- (c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights unless the tribunal\* has approved the appearance of the accused in propria persona;
- (d) make timely disclosure to the defense of all evidence or information known\* to the prosecutor that the prosecutor knows\* or reasonably should know\* tends to negate the guilt of the accused, mitigate the offense, or mitigate the sentence, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;\* and
- (e) exercise reasonable\* care to prevent persons\* under the supervision or direction of the prosecutor, including investigators, law enforcement personnel, employees or other persons\* assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under rule 3.6.
- (f) When a prosecutor knows\* of new, credible and material evidence creating a reasonable\* likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:
  - (1) promptly disclose that evidence to an appropriate court or authority, and
  - (2) if the conviction was obtained in the prosecutor's jurisdiction,
    - (i) promptly disclose that evidence to the defendant unless a court authorizes delay, and
    - (ii) undertake further investigation, or make reasonable\* efforts to cause an investigation, to determine whether the

defendant was convicted of an offense that the defendant did not commit.

- (g) When a prosecutor knows\* of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.

#### Comment

[1] A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice, that guilt is decided upon the basis of sufficient evidence, and that special precautions are taken to prevent and to rectify the conviction of innocent persons.\* This rule is intended to achieve those results. All lawyers in government service remain bound by rules 3.1 and 3.4.

[2] Paragraph (c) does not forbid the lawful questioning of an uncharged suspect who has knowingly\* waived the right to counsel and the right to remain silent. Paragraph (c) also does not forbid prosecutors from seeking from an unrepresented accused a reasonable\* waiver of time for initial appearance or preliminary hearing as a means of facilitating the accused's voluntary cooperation in an ongoing law enforcement investigation.

[3] The disclosure obligations in paragraph (d) are not limited to evidence or information that is material as defined by *Brady v. Maryland* (1963) 373 U.S. 83 [83 S.Ct. 1194] and its progeny. For example, these obligations include, at a minimum, the duty to disclose impeachment evidence or information that a prosecutor knows\* or reasonably should know\* casts significant doubt on the accuracy or admissibility of witness testimony on which the prosecution intends to rely. Paragraph (d) does not require disclosure of information protected from disclosure by federal or California laws and rules, as interpreted by case law or court orders. Nothing in this rule is intended to be applied in a manner inconsistent with statutory and constitutional provisions governing discovery in California courts. A disclosure's timeliness will vary with the circumstances, and paragraph (d) is not intended to impose timing requirements different from those established by statutes, procedural rules, court orders, and case law interpreting those authorities and the California and federal constitutions.

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[4] The exception in paragraph (d) recognizes that a prosecutor may seek an appropriate protective order from the tribunal\* if disclosure of information to the defense could result in substantial\* harm to an individual or to the public interest.

[5] Paragraph (e) supplements rule 3.6, which prohibits extrajudicial statements that have a substantial\* likelihood of prejudicing an adjudicatory proceeding. Paragraph (e) is not intended to restrict the statements which a prosecutor may make which comply with rule 3.6(b) or 3.6(c).

[6] Prosecutors have a duty to supervise the work of subordinate lawyers and nonlawyer employees or agents. (See rules 5.1 and 5.3.) Ordinarily, the reasonable\* care standard of paragraph (e) will be satisfied if the prosecutor issues the appropriate cautions to law enforcement personnel and other relevant individuals.

[7] When a prosecutor knows\* of new, credible and material evidence creating a reasonable\* likelihood that a person\* outside the prosecutor's jurisdiction was convicted of a crime that the person\* did not commit, paragraph (f) requires prompt disclosure to the court or other appropriate authority, such as the chief prosecutor of the jurisdiction where the conviction occurred. If the conviction was obtained in the prosecutor's jurisdiction, paragraph (f) requires the prosecutor to examine the evidence and undertake further investigation to determine whether the defendant is in fact innocent or make reasonable\* efforts to cause another appropriate authority to undertake the necessary investigation, and to promptly disclose the evidence to the court and, absent court authorized delay, to the defendant. Disclosure to a represented defendant must be made through the defendant's counsel, and, in the case of an unrepresented defendant, would ordinarily be accompanied by a request to a court for the appointment of counsel to assist the defendant in taking such legal measures as may be appropriate. (See rule 4.2.) Statutes may require a prosecutor to preserve certain types of evidence in criminal matters. (See Pen. Code, §§ 1417.1-1417.9.) In addition, prosecutors must obey file preservation orders concerning rights of discovery guaranteed by the Constitution and statutory provisions. (See *People v. Superior Court (Morales)* (2017) 2 Cal.5th 523 [213 Cal.Rptr.3d 581]; *Shorts v. Superior Court* (2018) 24 Cal.App.5th 709 [234 Cal.Rptr.3d 392].)

[8] Under paragraph (g), once the prosecutor knows\* of clear and convincing evidence that the defendant was convicted of an offense that the defendant did not commit, the prosecutor must seek to remedy the conviction. Depending upon the circumstances, steps to remedy the conviction could include disclosure of the evidence to the defendant, requesting that the court appoint counsel for an unrepresented indigent defendant and, where appropriate, notifying the court that the prosecutor has knowledge that the defendant did not commit the offense of which the defendant was convicted.

[9] A prosecutor's independent judgment, made in good faith, that the new evidence is not of such nature as to trigger the obligations of paragraphs (f) and (g), though subsequently determined to have been erroneous, does not constitute a violation of this rule.

**[Publisher's Note: Comment [7] was amended by order of the Supreme Court, effective June 1, 2020.]**

### Rule 3.9 Advocate in Nonadjudicative Proceedings

A lawyer representing a client before a legislative body or administrative agency in connection with a pending nonadjudicative matter or proceeding shall disclose that the appearance is in a representative capacity, except when the lawyer seeks information from an agency that is available to the public.

#### Comment

This rule only applies when a lawyer represents a client in connection with an official hearing or meeting of a governmental agency or a legislative body to which the lawyer or the lawyer's client is presenting evidence or argument. It does not apply to representation of a client in a negotiation or other bilateral transaction with a governmental agency or in connection with an application for a license or other privilege or the client's compliance with generally applicable reporting requirements, such as the filing of income-tax returns. This rule also does not apply to the representation of a client in connection with an investigation or examination of the client's affairs conducted by government investigators or examiners. Representation in such matters is governed by rules 4.1 through 4.4. This rule does not require a lawyer to disclose a client's identity.



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### Rule 3.10 Threatening Criminal, Administrative, or Disciplinary Charges

(a) A lawyer shall not threaten to present criminal, administrative, or disciplinary charges to obtain an advantage in a civil dispute.

(b) As used in paragraph (a) of this rule, the term “administrative charges” means the filing or lodging of a complaint with any governmental organization that may order or recommend the loss or suspension of a license, or may impose or recommend the imposition of a fine, pecuniary sanction, or other sanction of a quasi-criminal nature but does not include filing charges with an administrative entity required by law as a condition precedent to maintaining a civil action.

(c) As used in this rule, the term “civil dispute” means a controversy or potential controversy over the rights and duties of two or more persons\* under civil law, whether or not an action has been commenced, and includes an administrative proceeding of a quasi-civil nature pending before a federal, state, or local governmental entity.

#### Comment

[1] Paragraph (a) does not prohibit a statement by a lawyer that the lawyer will present criminal, administrative, or disciplinary charges, unless the statement is made to obtain an advantage in a civil dispute. For example, if a lawyer believes\* in good faith that the conduct of the opposing lawyer or party violates criminal or other laws, the lawyer may state that if the conduct continues the lawyer will report it to criminal or administrative authorities. On the other hand, a lawyer could not state or imply that a criminal or administrative action will be pursued unless the opposing party agrees to settle the civil dispute.

[2] This rule does not apply to a threat to bring a civil action. It also does not prohibit actually presenting criminal, administrative or disciplinary charges, even if doing so creates an advantage in a civil dispute. Whether a lawyer’s statement violates this rule depends on the specific facts. (See, e.g., *Crane v. State Bar* (1981) 30 Cal.3d 117 [177 Cal.Rptr. 670].) A statement that the lawyer will pursue “all available legal remedies,” or words of similar import, does not by itself violate this rule.

[3] This rule does not apply to: (i) a threat to initiate contempt proceedings for a failure to comply with a court order; or (ii) the offer of a civil compromise in

accordance with a statute such as Penal Code sections 1377 and 1378.

[4] This rule does not prohibit a government lawyer from offering a global settlement or release-dismissal agreement in connection with related criminal, civil or administrative matters. The government lawyer must have probable cause for initiating or continuing criminal charges. (See rule 3.8(a).)

[5] As used in paragraph (b), “governmental organizations” includes any federal, state, local, and foreign governmental organizations. Paragraph (b) exempts the threat of filing an administrative charge that is a prerequisite to filing a civil complaint on the same transaction or occurrence.

## CHAPTER 4. TRANSACTIONS WITH PERSONS\* OTHER THAN CLIENTS

### Rule 4.1 Truthfulness in Statements to Others

In the course of representing a client a lawyer shall not knowingly:\*

(a) make a false statement of material fact or law to a third person;\* or

(b) fail to disclose a material fact to a third person\* when disclosure is necessary to avoid assisting a criminal or fraudulent\* act by a client, unless disclosure is prohibited by Business and Professions Code section 6068, subdivision (e)(1) or rule 1.6.

#### Comment

[1] A lawyer is required to be truthful when dealing with others on a client’s behalf, but generally has no affirmative duty to inform an opposing party of relevant facts. A misrepresentation can occur if the lawyer incorporates or affirms the truth of a statement of another person\* that the lawyer knows\* is false. However, in drafting an agreement or other document on behalf of a client, a lawyer does not necessarily affirm or vouch for the truthfulness of representations made by the client in the agreement or document. A nondisclosure can be the equivalent of a false statement of material fact or law under paragraph (a) where a lawyer makes a partially true but misleading material statement or

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material omission. In addition to this rule, lawyers remain bound by Business and Professions Code section 6106 and rule 8.4.

[2] This rule refers to statements of fact. Whether a particular statement should be regarded as one of fact can depend on the circumstances. For example, in negotiation, certain types of statements ordinarily are not taken as statements of material fact. Estimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim are ordinarily in this category, and so is the existence of an undisclosed principal except where nondisclosure of the principal would constitute fraud.\*

[3] Under rule 1.2.1, a lawyer is prohibited from counseling or assisting a client in conduct that the lawyer knows\* is criminal or fraudulent.\* See rule 1.4(a)(4) regarding a lawyer's obligation to consult with the client about limitations on the lawyer's conduct. In some circumstances, a lawyer can avoid assisting a client's crime or fraud\* by withdrawing from the representation in compliance with rule 1.16.

[4] Regarding a lawyer's involvement in lawful covert activity in the investigation of violations of law, see rule 8.4, Comment [5].

### Rule 4.2 Communication with a Represented Person\*

(a) In representing a client, a lawyer shall not communicate directly or indirectly about the subject of the representation with a person\* the lawyer knows\* to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer.

(b) In the case of a represented corporation, partnership, association, or other private or governmental organization, this rule prohibits communications with:

- (1) A current officer, director, partner,\* or managing agent of the organization; or
- (2) A current employee, member, agent, or other constituent of the organization, if the subject of the communication is any act or omission of such person\* in connection with the matter which may be binding upon or imputed

to the organization for purposes of civil or criminal liability.

(c) This rule shall not prohibit:

- (1) communications with a public official, board, committee, or body; or
- (2) communications otherwise authorized by law or a court order.

(d) For purposes of this rule:

- (1) "Managing agent" means an employee, member, agent, or other constituent of an organization with substantial\* discretionary authority over decisions that determine organizational policy.
- (2) "Public official" means a public officer of the United States government, or of a state, county, city, town, political subdivision, or other governmental organization, with the comparable decision-making authority and responsibilities as the organizational constituents described in paragraph (b)(1).

### Comment

[1] This rule applies even though the represented person\* initiates or consents to the communication. A lawyer must immediately terminate communication with a person\* if, after commencing communication, the lawyer learns that the person\* is one with whom communication is not permitted by this rule.

[2] "Subject of the representation," "matter," and "person" are not limited to a litigation context. This rule applies to communications with any person\*, whether or not a party to a formal adjudicative proceeding, contract, or negotiation, who is represented by counsel concerning the matter to which the communication relates.

[3] The prohibition against communicating "indirectly" with a person\* represented by counsel in paragraph (a) is intended to address situations where a lawyer seeks to communicate with a represented person\* through an intermediary such as an agent, investigator or the lawyer's client. This rule, however, does not prevent represented persons\* from communicating directly with one another with respect to the subject of the representation, nor does it prohibit a lawyer from advising a client concerning

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such a communication. A lawyer may also advise a client not to accept or engage in such communications. The rule also does not prohibit a lawyer who is a party to a legal matter from communicating on his or her own behalf with a represented person\* in that matter.

[4] This rule does not prohibit communications with a represented person\* concerning matters outside the representation. Similarly, a lawyer who knows\* that a person\* is being provided with limited scope representation is not prohibited from communicating with that person\* with respect to matters that are outside the scope of the limited representation. (See, e.g., Cal. Rules of Court, rules 3.35 – 3.37, 5.425 [Limited Scope Representation].)

[5] This rule does not prohibit communications initiated by a represented person\* seeking advice or representation from an independent lawyer of the person's\* choice.

[6] If a current constituent of the organization is represented in the matter by his or her own counsel, the consent by that counsel to a communication is sufficient for purposes of this rule.

[7] This rule applies to all forms of governmental and private organizations, such as cities, counties, corporations, partnerships, limited liability companies, and unincorporated associations. When a lawyer communicates on behalf of a client with a governmental organization, or certain employees, members, agents, or other constituents of a governmental organization, however, special considerations exist as a result of the right to petition conferred by the First Amendment of the United States Constitution and article I, section 3 of the California Constitution. Paragraph (c)(1) recognizes these special considerations by generally exempting from application of this rule communications with public boards, committees, and bodies, and with public officials as defined in paragraph (d)(2) of this rule. Communications with a governmental organization constituent who is not a public official, however, will remain subject to this rule when the lawyer knows\* the governmental organization is represented in the matter and the communication with that constituent falls within paragraph (b)(2).

[8] Paragraph (c)(2) recognizes that statutory schemes, case law, and court orders may authorize communications between a lawyer and a person\*

that would otherwise be subject to this rule. Examples of such statutory schemes include those protecting the right of employees to organize and engage in collective bargaining, employee health and safety, and equal employment opportunity. The law also recognizes that prosecutors and other government lawyers are authorized to contact represented persons,\* either directly or through investigative agents and informants, in the context of investigative activities, as limited by relevant federal and state constitutions, statutes, rules, and case law. (See, e.g., *United States v. Carona* (9th Cir. 2011) 630 F.3d 917; *United States v. Talao* (9th Cir. 2000) 222 F.3d 1133.) The rule is not intended to preclude communications with represented persons\* in the course of such legitimate investigative activities as authorized by law. This rule also is not intended to preclude communications with represented persons\* in the course of legitimate investigative activities engaged in, directly or indirectly, by lawyers representing persons\* whom the government has accused of or is investigating for crimes, to the extent those investigative activities are authorized by law.

[9] A lawyer who communicates with a represented person\* pursuant to paragraph (c) is subject to other restrictions in communicating with the person.\* (See, e.g. Bus. & Prof. Code, § 6106; *Snider v. Superior Court* (2003) 113 Cal.App.4th 1187, 1213 [7 Cal.Rptr.3d 119]; *In the Matter of Dale* (2005) 4 Cal. State Bar Ct. Rptr. 798.)

### Rule 4.3 Communicating with an Unrepresented Person\*

(a) In communicating on behalf of a client with a person\* who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows\* or reasonably should know\* that the unrepresented person\* incorrectly believes\* the lawyer is disinterested in the matter, the lawyer shall make reasonable\* efforts to correct the misunderstanding. If the lawyer knows\* or reasonably should know\* that the interests of the unrepresented person\* are in conflict with the interests of the client, the lawyer shall not give legal advice to that person,\* except that the lawyer may, but is not required to, advise the person\* to secure counsel.

(b) In communicating on behalf of a client with a person\* who is not represented by counsel, a lawyer

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shall not seek to obtain privileged or other confidential information the lawyer knows\* or reasonably should know\* the person\* may not reveal without violating a duty to another or which the lawyer is not otherwise entitled to receive.

### Comment

[1] This rule is intended to protect unrepresented persons,\* whatever their interests, from being misled when communicating with a lawyer who is acting for a client.

[2] Paragraph (a) distinguishes between situations in which a lawyer knows\* or reasonably should know\* that the interests of an unrepresented person\* are in conflict with the interests of the lawyer's client and situations in which the lawyer does not. In the former situation, the possibility that the lawyer will compromise the unrepresented person's\* interests is so great that the rule prohibits the giving of any legal advice, apart from the advice to obtain counsel. A lawyer does not give legal advice merely by stating a legal position on behalf of the lawyer's client. This rule does not prohibit a lawyer from negotiating the terms of a transaction or settling a dispute with an unrepresented person.\* So long as the lawyer discloses that the lawyer represents an adverse party and not the person,\* the lawyer may inform the person\* of the terms on which the lawyer's client will enter into the agreement or settle the matter, prepare documents that require the person's\* signature, and explain the lawyer's own view of the meaning of the document and the underlying legal obligations.

[3] Regarding a lawyer's involvement in lawful covert activity in the investigation of violations of law, see rule 8.4, Comment [5].

### Rule 4.4 Duties Concerning Inadvertently Transmitted Writings\*

Where it is reasonably\* apparent to a lawyer who receives a writing\* relating to a lawyer's representation of a client that the writing\* was inadvertently sent or produced, and the lawyer knows\* or reasonably should know\* that the writing\* is privileged or subject to the work product doctrine, the lawyer shall:

(a) refrain from examining the writing\* any more than is necessary to determine that it is privileged or subject to the work product doctrine, and

(b) promptly notify the sender.

### Comment

[1] If a lawyer determines this rule applies to a transmitted writing,\* the lawyer should return the writing\* to the sender, seek to reach agreement with the sender regarding the disposition of the writing,\* or seek guidance from a tribunal.\* (See *Rico v. Mitsubishi* (2007) 42 Cal.4th 807, 817 [68 Cal.Rptr.3d 758].) In providing notice required by this rule, the lawyer shall comply with rule 4.2.

[2] This rule does not address the legal duties of a lawyer who receives a writing\* that the lawyer knows\* or reasonably should know\* may have been inappropriately disclosed by the sending person.\* (See *Clark v. Superior Court* (2011) 196 Cal.App.4th 37 [125 Cal.Rptr.3d 361].)

## CHAPTER 5. LAW FIRMS\* AND ASSOCIATIONS

### Rule 5.1 Responsibilities of Managerial and Supervisory Lawyers

(a) A lawyer who individually or together with other lawyers possesses managerial authority in a law firm,\* shall make reasonable\* efforts to ensure that the firm\* has in effect measures giving reasonable\* assurance that all lawyers in the firm\* comply with these rules and the State Bar Act.

(b) A lawyer having direct supervisory authority over another lawyer, whether or not a member or employee of the same law firm,\* shall make reasonable\* efforts to ensure that the other lawyer complies with these rules and the State Bar Act.

(c) A lawyer shall be responsible for another lawyer's violation of these rules and the State Bar Act if:

(1) the lawyer orders or, with knowledge of the relevant facts and of the specific conduct, ratifies the conduct involved; or

(2) the lawyer, individually or together with other lawyers, possesses managerial authority in the law firm\* in which the other lawyer practices, or has direct supervisory authority over the other lawyer, whether or not a member or employee of the same law firm,\* and knows\*

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of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable\* remedial action.

### Comment

#### *Paragraph (a) – Duties Of Managerial Lawyers To Reasonably\* Assure Compliance with the Rules*

[1] Paragraph (a) requires lawyers with managerial authority within a law firm\* to make reasonable\* efforts to establish internal policies and procedures designed, for example, to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property, and ensure that inexperienced lawyers are properly supervised.

[2] Whether particular measures or efforts satisfy the requirements of paragraph (a) might depend upon the law firm's structure and the nature of its practice, including the size of the law firm,\* whether it has more than one office location or practices in more than one jurisdiction, or whether the firm\* or its partners\* engage in any ancillary business.

[3] A partner,\* shareholder or other lawyer in a law firm\* who has intermediate managerial responsibilities satisfies paragraph (a) if the law firm\* has a designated managing lawyer charged with that responsibility, or a management committee or other body that has appropriate managerial authority and is charged with that responsibility. For example, the managing lawyer of an office of a multi-office law firm\* would not necessarily be required to promulgate firm-wide policies intended to reasonably\* assure that the law firm's lawyers comply with the rules or State Bar Act. However, a lawyer remains responsible to take corrective steps if the lawyer knows\* or reasonably should know\* that the delegated body or person\* is not providing or implementing measures as required by this rule.

[4] Paragraph (a) also requires managerial lawyers to make reasonable\* efforts to assure that other lawyers in an agency or department comply with these rules and the State Bar Act. This rule contemplates, for example, the creation and implementation of reasonable\* guidelines relating to the assignment of cases and the distribution of workload among lawyers in a public sector legal agency or other legal department. (See, e.g., State Bar of California, Guidelines on Indigent Defense Services Delivery Systems (2006).)

#### *Paragraph (b) – Duties of Supervisory Lawyers*

[5] Whether a lawyer has direct supervisory authority over another lawyer in particular circumstances is a question of fact.

#### *Paragraph (c) – Responsibility for Another's Lawyer's Violation*

[6] The appropriateness of remedial action under paragraph (c)(2) would depend on the nature and seriousness of the misconduct and the nature and immediacy of its harm. A managerial or supervisory lawyer must intervene to prevent avoidable consequences of misconduct if the lawyer knows\* that the misconduct occurred.

[7] A supervisory lawyer violates paragraph (b) by failing to make the efforts required under that paragraph, even if the lawyer does not violate paragraph (c) by knowingly\* directing or ratifying the conduct, or where feasible, failing to take reasonable\* remedial action.

[8] Paragraphs (a), (b), and (c) create independent bases for discipline. This rule does not impose vicarious responsibility on a lawyer for the acts of another lawyer who is in or outside the law firm.\* Apart from paragraph (c) of this rule and rule 8.4(a), a lawyer does not have disciplinary liability for the conduct of a partner,\* associate, or subordinate lawyer. The question of whether a lawyer can be liable civilly or criminally for another lawyer's conduct is beyond the scope of these rules.

### **Rule 5.2 Responsibilities of a Subordinate Lawyer**

(a) A lawyer shall comply with these rules and the State Bar Act notwithstanding that the lawyer acts at the direction of another lawyer or other person.\*

(b) A subordinate lawyer does not violate these rules or the State Bar Act if that lawyer acts in accordance with a supervisory lawyer's reasonable\* resolution of an arguable question of professional duty.

### Comment

When lawyers in a supervisor-subordinate relationship encounter a matter involving professional judgment as to the lawyers' responsibilities under

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these rules or the State Bar Act and the question can reasonably\* be answered only one way, the duty of both lawyers is clear and they are equally responsible for fulfilling it. Accordingly, the subordinate lawyer must comply with his or her obligations under paragraph (a). If the question reasonably\* can be answered more than one way, the supervisory lawyer may assume responsibility for determining which of the reasonable\* alternatives to select, and the subordinate may be guided accordingly. If the subordinate lawyer believes\* that the supervisor's proposed resolution of the question of professional duty would result in a violation of these rules or the State Bar Act, the subordinate is obligated to communicate his or her professional judgment regarding the matter to the supervisory lawyer.

### Rule 5.3 Responsibilities Regarding Nonlawyer Assistants

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) a lawyer who individually or together with other lawyers possesses managerial authority in a law firm,\* shall make reasonable\* efforts to ensure that the firm\* has in effect measures giving reasonable\* assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer;
- (b) a lawyer having direct supervisory authority over the nonlawyer, whether or not an employee of the same law firm,\* shall make reasonable\* efforts to ensure that the person's\* conduct is compatible with the professional obligations of the lawyer; and
- (c) a lawyer shall be responsible for conduct of such a person\* that would be a violation of these rules or the State Bar Act if engaged in by a lawyer if:

- (1) the lawyer orders or, with knowledge of the relevant facts and of the specific conduct, ratifies the conduct involved; or

- (2) the lawyer, individually or together with other lawyers, possesses managerial authority in the law firm\* in which the person\* is employed, or has direct supervisory authority over the person,\* whether or not an employee of the same law firm,\* and knows\* of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable\* remedial action.

### Comment

Lawyers often utilize nonlawyer personnel, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer must give such assistants appropriate instruction and supervision concerning all ethical aspects of their employment. The measures employed in instructing and supervising nonlawyers should take account of the fact that they might not have legal training.

### Rule 5.3.1 Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Lawyer

- (a) For purposes of this rule:

- (1) "Employ" means to engage the services of another, including employees, agents, independent contractors and consultants, regardless of whether any compensation is paid;

- (2) "Member" means a member of the State Bar of California;

- (3) "Involuntarily inactive member" means a member who is ineligible to practice law as a result of action taken pursuant to Business and Professions Code sections 6007, 6203, subdivision (d)(1), or California Rules of Court, rule 9.31(d);

- (4) "Resigned member" means a member who has resigned from the State Bar while disciplinary charges are pending; and

- (5) "Ineligible person" means a member whose current status with the State Bar of California is disbarred, suspended, resigned, or involuntarily inactive.

- (b) A lawyer shall not employ, associate in practice with, or assist a person\* the lawyer knows\* or reasonably should know\* is an ineligible person to perform the following on behalf of the lawyer's client:

- (1) Render legal consultation or advice to the client;

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- (2) Appear on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer;
  - (3) Appear as a representative of the client at a deposition or other discovery matter;
  - (4) Negotiate or transact any matter for or on behalf of the client with third parties;
  - (5) Receive, disburse or otherwise handle the client's funds; or
  - (6) Engage in activities that constitute the practice of law.
- (c) A lawyer may employ, associate in practice with, or assist an ineligible person to perform research, drafting or clerical activities, including but not limited to:
- (1) Legal work of a preparatory nature, such as legal research, the assemblage of data and other necessary information, drafting of pleadings, briefs, and other similar documents;
  - (2) Direct communication with the client or third parties regarding matters such as scheduling, billing, updates, confirmation of receipt or sending of correspondence and messages; or
  - (3) Accompanying an active lawyer in attending a deposition or other discovery matter for the limited purpose of providing clerical assistance to the active lawyer who will appear as the representative of the client.
- (d) Prior to or at the time of employing, associating in practice with, or assisting a person\* the lawyer knows\* or reasonably should know\* is an ineligible person, the lawyer shall serve upon the State Bar written\* notice of the employment, including a full description of such person's current bar status. The written\* notice shall also list the activities prohibited in paragraph (b) and state that the ineligible person will not perform such activities. The lawyer shall serve similar written\* notice upon each client on whose specific matter such person\* will work, prior to or at the time of employing, associating with, or assisting such person\* to work on the client's specific matter. The lawyer shall obtain proof of service of the client's

written\* notice and shall retain such proof and a true and correct copy of the client's written\* notice for two years following termination of the lawyer's employment by the client.

(e) A lawyer may, without client or State Bar notification, employ, associate in practice with, or assist an ineligible person whose sole function is to perform office physical plant or equipment maintenance, courier or delivery services, catering, reception, typing or transcription, or other similar support activities.

(f) When the lawyer no longer employs, associates in practice with, or assists the ineligible person, the lawyer shall promptly serve upon the State Bar written\* notice of the termination.

### Comment

If the client is an organization, the lawyer shall serve the notice required by paragraph (d) on its highest authorized officer, employee, or constituent overseeing the particular engagement. (See rule 1.13.)

*[Publisher's Note re rule 5.3.1: Operative January 1, 2019, Business and Professions Code section 6002, in part, provides that any provision of law referring to the "member of the State Bar" shall be deemed to refer to a licensee of the State Bar. In accordance with this law, references to a "member" included in the current Rules of Professional Conduct are deemed to refer to a "licensee."]*

### Rule 5.4 Financial and Similar Arrangements with Nonlawyers

(a) A lawyer or law firm\* shall not share legal fees directly or indirectly with a nonlawyer or with an organization that is not authorized to practice law, except that:

(1) an agreement by a lawyer with the lawyer's firm,\* partner,\* or associate may provide for the payment of money or other consideration over a reasonable\* period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;\*

(2) a lawyer purchasing the practice of a deceased, disabled or disappeared lawyer may pay the agreed-upon purchase price, pursuant to

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rule 1.17, to the lawyer's estate or other representative;

(3) a lawyer or law firm\* may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement, provided the plan does not otherwise violate these rules or the State Bar Act;

(4) a lawyer or law firm\* may pay a prescribed registration, referral, or other fee to a lawyer referral service established, sponsored and operated in accordance with the State Bar of California's Minimum Standards for Lawyer Referral Services;

(5) a lawyer or law firm\* may share with or pay a court-awarded legal fee to a nonprofit organization that employed, retained, recommended, or facilitated employment of the lawyer or law firm\* in the matter; or

(6) a lawyer or law firm\* may share with or pay a legal fee that is not court-awarded but arises from a settlement or other resolution of the matter with a nonprofit organization that employed, retained, recommended, or facilitated employment of the lawyer or law firm\* in the matter provided:

(i) the nonprofit organization qualifies under section 501(c)(3) of the Internal Revenue Code;

(ii) the lawyer or law firm\* enters into a written\* agreement to divide the fee with the nonprofit organization;

(iii) the lawyer or law firm\* obtains the client's consent in writing,\* either at the time the lawyer or law firm\* enters into the agreement with the nonprofit organization to divide the fee or as soon thereafter as reasonably\* practicable, after a full written\* disclosure to the client of the fact that a division of fees will be made, the identity of the lawyer or law firm\* and the nonprofit organization that are parties to the division, and the terms of the division, including the restriction imposed under paragraph (a)(6)(iv); and

(iv) the total fee charged by the lawyer or law firm\* is not increased solely by reason of the agreement to divide fees.

(b) A lawyer shall not form a partnership or other organization with a nonlawyer if any of the activities of the partnership or other organization consist of the practice of law.

(c) A lawyer shall not permit a person\* who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's independent professional judgment or interfere with the lawyer-client relationship in rendering legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or other organization authorized to practice law for a profit if:

(1) a nonlawyer owns any interest in it, except that a fiduciary representative of a lawyer's estate may hold the lawyer's stock or other interest for a reasonable\* time during administration;

(2) a nonlawyer is a director or officer of the corporation or occupies a position of similar responsibility in any other form of organization; or

(3) a nonlawyer has the right or authority to direct or control the lawyer's independent professional judgment.

(e) The Board of Trustees of the State Bar shall formulate and adopt Minimum Standards for Lawyer Referral Services, which, as from time to time amended, shall be binding on lawyers. A lawyer shall not accept a referral from, or otherwise participate in, a lawyer referral service unless it complies with such Minimum Standards for Lawyer Referral Services.

(f) A lawyer shall not practice with or in the form of a nonprofit legal aid, mutual benefit or advocacy group if the nonprofit organization allows any third person\* to interfere with the lawyer's independent professional judgment, or with the lawyer-client relationship, or allows or aids any person\* to practice law in violation of these rules or the State Bar Act.



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### Comment

[1] Paragraph (a) does not prohibit a lawyer or law firm\* from paying a bonus to or otherwise compensating a nonlawyer employee from general revenues received for legal services, provided the arrangement does not interfere with the independent professional judgment of the lawyer or lawyers in the firm\* and does not violate these rules or the State Bar Act. However, a nonlawyer employee's bonus or other form of compensation may not be based on a percentage or share of fees in specific cases or legal matters.

[2] Paragraph (a) also does not prohibit payment to a nonlawyer third-party for goods and services provided to a lawyer or law firm;\* however, the compensation to a nonlawyer third-party may not be determined as a percentage or share of the lawyer's or law firm's overall revenues or tied to fees in particular cases or legal matters. A lawyer may pay to a nonlawyer third-party, such as a collection agency, a percentage of past due or delinquent fees in concluded matters that the third-party collects on the lawyer's behalf.

[3] Paragraph (a)(5) permits a lawyer to share with or pay court-awarded legal fees to nonprofit legal aid, mutual benefit, and advocacy groups that are not engaged in the unauthorized practice of law. (See *Frye v. Tenderloin Housing Clinic, Inc.* (2006) 38 Cal.4th 23 [40 Cal.Rptr.3d 221]; see also rule 6.3.) Under the specified circumstances, paragraph (a)(6) permits a lawyer to share with or pay legal fees arising from a settlement or other resolution of the matter to 501(c)(3) organizations, such as nonprofit legal aid and charitable groups that are not engaged in the unauthorized practice of law. Paragraphs (a)(5) and (a)(6) include the concept of a nonprofit organization facilitating the employment of a lawyer to provide legal services. One example of such facilitation is a nonprofit organization's operation of a law practice incubator program.

[4] A lawyer or law firm\* who has agreed to share with or pay legal fees to a qualifying organization under paragraphs (a)(5) or (a)(6) remains obligated to exercise independent professional judgment in the client's best interest. See rules 1.7 and 2.1. Regarding a lawyer's contribution of legal fees to a legal services organization, see rule 1.0, Comment [5] on financial support for programs providing pro bono legal services.

[5] Nothing in paragraphs (a)(5) or (a)(6) is intended to alter the regulation of lawyer referral activity set forth in Business and Professions Code section 6155. In addition, a lawyer must comply with rules 5.4(a)(4) and 7.2(b).

[6] This rule is not intended to affect case law regarding the relationship between insurers and lawyers providing legal services to insureds. (See, e.g., *Gafcon, Inc. v. Ponsor Associates* (2002) 98 Cal.App.4th 1388 [120 Cal.Rptr.2d 392].)

[7] Paragraph (c) is not intended to alter or diminish a lawyer's obligations under rule 1.8.6 (Compensation from One Other than Client).

**[Publisher's Note: Rule 5.4 was amended by order of the Supreme Court, effective March 22, 2021.]**

### Rule 5.5 Unauthorized Practice of Law; Multijurisdictional Practice of Law

(a) A lawyer admitted to practice law in California shall not:

- (1) practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction; or
- (2) knowingly\* assist a person\* in the unauthorized practice of law in that jurisdiction.

(b) A lawyer who is not admitted to practice law in California shall not:

- (1) except as authorized by these rules or other law, establish or maintain a resident office or other systematic or continuous presence in California for the practice of law; or
- (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in California.

### Comment

Paragraph (b)(1) prohibits lawyers from practicing law in California unless otherwise entitled to practice law in this state by court rule or other law. (See, e.g., Bus. & Prof. Code, § 6125 et seq.; see also Cal. Rules of Court, rules 9.40 [counsel pro hac vice], 9.41 [appearances by military counsel], 9.42 [certified law students], 9.43 [out-of-state attorney arbitration counsel program], 9.44 [registered foreign legal

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consultant], 9.45 [registered legal services attorneys], 9.46 [registered in-house counsel], 9.47 [attorneys practicing temporarily in California as part of litigation], 9.48 [non-litigating attorneys temporarily in California to provide legal services].)

### Rule 5.6 Restrictions on a Lawyer's Right to Practice

(a) Unless authorized by law, a lawyer shall not participate in offering or making:

(1) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement that concerns benefits upon retirement; or

(2) an agreement that imposes a restriction on a lawyer's right to practice in connection with a settlement of a client controversy, or otherwise.

(b) A lawyer shall not participate in offering or making an agreement which precludes the reporting of a violation of these rules.

(c) This rule does not prohibit an agreement that is authorized by Business and Professions Code sections 6092.5, subdivision (i) or 6093.

#### Comment

[1] Concerning the application of paragraph (a)(1), see Business and Professions Code section 16602; *Howard v. Babcock* (1993) 6 Cal.4th 409, 425 [25 Cal.Rptr.2d 80].

[2] Paragraph (a)(2) prohibits a lawyer from offering or agreeing not to represent other persons\* in connection with settling a claim on behalf of a client.

[3] This rule does not prohibit restrictions that may be included in the terms of the sale of a law practice pursuant to rule 1.17.

### Rule 5.7 [Reserved]

## CHAPTER 6. PUBLIC SERVICE

### Rule 6.1 [Reserved]

### Rule 6.2 [Reserved]

### Rule 6.3 Membership in Legal Services Organization

A lawyer may serve as a director, officer or member of a legal services organization, apart from the law firm\* in which the lawyer practices, notwithstanding that the organization serves persons\* having interests adverse to a client of the lawyer. The lawyer shall not knowingly\* participate in a decision or action of the organization:

(a) if participating in the decision or action would be incompatible with the lawyer's obligations to a client under Business and Professions Code section 6068, subdivision (e)(1) or rules 1.6(a), 1.7, 1.9, or 1.18; or

(b) where the decision or action could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer.

#### Comment

Lawyers should support and participate in legal service organizations. A lawyer who is an officer or a member of such an organization does not thereby have a lawyer-client relationship with persons\* served by the organization. However, there is potential conflict between the interests of such persons\* and the interests of the lawyer's clients. If the possibility of such conflict disqualified a lawyer from serving on the board of a legal services organization, the profession's involvement in such organizations would be severely curtailed.

### Rule 6.4 [Reserved]

### Rule 6.5 Limited Legal Services Programs

(a) A lawyer who, under the auspices of a program sponsored by a court, government agency, bar association, law school, or nonprofit organization, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

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(1) is subject to rules 1.7 and 1.9(a) only if the lawyer knows\* that the representation of the client involves a conflict of interest; and

(2) is subject to rule 1.10 only if the lawyer knows\* that another lawyer associated with the lawyer in a law firm\* is prohibited from representation by rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), rule 1.10 is inapplicable to a representation governed by this rule.

(c) The personal disqualification of a lawyer participating in the program will not be imputed to other lawyers participating in the program.

### Comment

[1] Courts, government agencies, bar associations, law schools and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services — such as advice or the completion of legal forms that will assist persons\* in addressing their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, whenever a lawyer-client relationship is established, there is no expectation that the lawyer's representation of the client will continue beyond that limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen\* for conflicts of interest as is generally required before undertaking a representation.

[2] A lawyer who provides short-term limited legal services pursuant to this rule must secure the client's informed consent\* to the limited scope of the representation. (See rule 1.2(b).) If a short-term limited representation would not be reasonable\* under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this rule, these rules and the State Bar Act, including the lawyer's duty of confidentiality under Business and Professions Code section 6068, subdivision (e)(1) and rules 1.6 and 1.9, are applicable to the limited representation.

[3] A lawyer who is representing a client in the circumstances addressed by this rule ordinarily is not able to check systematically for conflicts of interest.

Therefore, paragraph (a)(1) requires compliance with rules 1.7 and 1.9(a) only if the lawyer knows\* that the representation presents a conflict of interest for the lawyer. In addition, paragraph (a)(2) imputes conflicts of interest to the lawyer only if the lawyer knows\* that another lawyer in the lawyer's law firm\* would be disqualified under rules 1.7 or 1.9(a).

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's law firm,\* paragraph (b) provides that imputed conflicts of interest are inapplicable to a representation governed by this rule except as provided by paragraph (a)(2). Paragraph (a)(2) imputes conflicts of interest to the participating lawyer when the lawyer knows\* that any lawyer in the lawyer's firm\* would be disqualified under rules 1.7 or 1.9(a). By virtue of paragraph (b), moreover, a lawyer's participation in a short-term limited legal services program will not be imputed to the lawyer's law firm\* or preclude the lawyer's law firm\* from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, rules 1.7, 1.9(a), and 1.10 become applicable.

## CHAPTER 7.

### INFORMATION ABOUT LEGAL SERVICES

#### Rule 7.1 Communications Concerning a Lawyer's Services

(a) A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the communication considered as a whole not materially misleading.

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(b) The Board of Trustees of the State Bar may formulate and adopt standards as to communications that will be presumed to violate rule 7.1, 7.2, 7.3, 7.4 or 7.5. The standards shall only be used as presumptions affecting the burden of proof in disciplinary proceedings involving alleged violations of these rules. "Presumption affecting the burden of proof" means that presumption defined in Evidence Code sections 605 and 606. Such standards formulated and adopted by the Board, as from time to time amended, shall be effective and binding on all lawyers.

### Comment

[1] This rule governs all communications of any type whatsoever about the lawyer or the lawyer's services, including advertising permitted by rule 7.2. A communication includes any message or offer made by or on behalf of a lawyer concerning the availability for professional employment of a lawyer or a lawyer's law firm\* directed to any person.\*

[2] A communication that contains an express guarantee or warranty of the result of a particular representation is a false or misleading communication under this rule. (See also Bus. & Prof. Code, § 6157.2, subd. (a).)

[3] This rule prohibits truthful statements that are misleading. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is also misleading if it is presented in a manner that creates a substantial\* likelihood that it will lead a reasonable\* person\* to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable\* factual foundation. Any communication that states or implies "no fee without recovery" is also misleading unless the communication also expressly discloses whether or not the client will be liable for costs.

[4] A communication that truthfully reports a lawyer's achievements on behalf of clients or former clients, or a testimonial about or endorsement of the lawyer, may be misleading if presented so as to lead a reasonable\* person\* to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Similarly, an unsubstantiated

comparison of the lawyer's services or fees with the services or fees of other lawyers may be misleading if presented with such specificity as would lead a reasonable\* person\* to conclude that the comparison can be substantiated. An appropriate disclaimer or qualifying language often avoids creating unjustified expectations.

[5] This rule prohibits a lawyer from making a communication that states or implies that the lawyer is able to provide legal services in a language other than English unless the lawyer can actually provide legal services in that language or the communication also states in the language of the communication the employment title of the person\* who speaks such language.

[6] Rules 7.1 through 7.5 are not the sole basis for regulating communications concerning a lawyer's services. (See, e.g., Bus. & Prof. Code, §§ 6150 – 6159.2, 17000 et seq.) Other state or federal laws may also apply.

### Rule 7.2 Advertising

(a) Subject to the requirements of rules 7.1 and 7.3, a lawyer may advertise services through any written,\* recorded or electronic means of communication, including public media.

(b) A lawyer shall not compensate, promise or give anything of value to a person\* for the purpose of recommending or securing the services of the lawyer or the lawyer's law firm,\* except that a lawyer may:

(1) pay the reasonable\* costs of advertisements or communications permitted by this rule;

(2) pay the usual charges of a legal services plan or a qualified lawyer referral service. A qualified lawyer referral service is a lawyer referral service established, sponsored and operated in accordance with the State Bar of California's Minimum Standards for a Lawyer Referral Service in California;

(3) pay for a law practice in accordance with rule 1.17;

(4) refer clients to another lawyer or a nonlawyer professional pursuant to an arrangement not otherwise prohibited under

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these Rules or the State Bar Act that provides for the other person\* to refer clients or customers to the lawyer, if:

- (i) the reciprocal referral arrangement is not exclusive; and
  - (ii) the client is informed of the existence and nature of the arrangement;
- (5) offer or give a gift or gratuity to a person\* having made a recommendation resulting in the employment of the lawyer or the lawyer's law firm,\* provided that the gift or gratuity was not offered or given in consideration of any promise, agreement, or understanding that such a gift or gratuity would be forthcoming or that referrals would be made or encouraged in the future.

(c) Any communication made pursuant to this rule shall include the name and address of at least one lawyer or law firm\* responsible for its content.

### Comment

[1] This rule permits public dissemination of accurate information concerning a lawyer and the lawyer's services, including for example, the lawyer's name or firm\* name, the lawyer's contact information; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance. This rule, however, prohibits the dissemination of false or misleading information, for example, an advertisement that sets forth a specific fee or range of fees for a particular service where, in fact, the lawyer charges or intends to charge a greater fee than that stated in the advertisement.

[2] Neither this rule nor rule 7.3 prohibits communications authorized by law, such as court-approved class action notices.

### *Paying Others to Recommend a Lawyer*

[3] Paragraph (b)(1) permits a lawyer to compensate employees, agents, and vendors who are engaged to provide marketing or client-

development services, such as publicists, public-relations personnel, business-development staff, and website designers. See rule 5.3 for the duties of lawyers and law firms\* with respect to supervising the conduct of nonlawyers who prepare marketing materials and provide client development services.

[4] Paragraph (b)(4) permits a lawyer to make referrals to another lawyer or nonlawyer professional, in return for the undertaking of that person\* to refer clients or customers to the lawyer. Such reciprocal referral arrangements must not interfere with the lawyer's professional judgment as to making referrals or as to providing substantive legal services. (See rules 2.1 and 5.4(c).) Conflicts of interest created by arrangements made pursuant to paragraph (b)(4) are governed by rule 1.7. A division of fees between or among lawyers not in the same law firm\* is governed by rule 1.5.1.

### Rule 7.3 Solicitation of Clients

(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment when a significant motive for doing so is the lawyer's pecuniary gain, unless the person\* contacted:

- (1) is a lawyer; or
- (2) has a family, close personal, or prior professional relationship with the lawyer.

(b) A lawyer shall not solicit professional employment by written,\* recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

- (1) the person\* being solicited has made known\* to the lawyer a desire not to be solicited by the lawyer; or
- (2) the solicitation is transmitted in any manner which involves intrusion, coercion, duress or harassment.

(c) Every written,\* recorded or electronic communication from a lawyer soliciting professional employment from any person\* known\* to be in need of legal services in a particular matter shall include the word "Advertisement" or words of similar import on the outside envelope, if any, and at the beginning and

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ending of any recorded or electronic communication, unless the recipient of the communication is a person\* specified in paragraphs (a)(1) or (a)(2), or unless it is apparent from the context that the communication is an advertisement.

(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person, live telephone or real-time electronic contact to solicit memberships or subscriptions for the plan from persons\* who are not known\* to need legal services in a particular matter covered by the plan.

(e) As used in this rule, the terms “solicitation” and “solicit” refer to an oral or written\* targeted communication initiated by or on behalf of the lawyer that is directed to a specific person\* and that offers to provide, or can reasonably\* be understood as offering to provide, legal services.

### Comment

[1] A lawyer’s communication does not constitute a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website or a television commercial, or if it is in response to a request for information or is automatically generated in response to Internet searches.

[2] Paragraph (a) does not apply to situations in which the lawyer is motivated by considerations other than the lawyer’s pecuniary gain. Therefore, paragraph (a) does not prohibit a lawyer from participating in constitutionally protected activities of bona fide public or charitable legal-service organizations, or bona fide political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to its members or beneficiaries. (See, e.g., *In re Primus* (1978) 436 U.S. 412 [98 S.Ct. 1893].)

[3] This rule does not prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a bona fide group or prepaid legal plan for their members, insureds, beneficiaries or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or lawyer’s firm\* is willing to offer.

[4] Lawyers who participate in a legal service plan as permitted under paragraph (d) must comply with rules 7.1, 7.2, and 7.3(b). (See also rules 5.4 and 8.4(a).)

### Rule 7.4 Communication of Fields of Practice and Specialization

(a) A lawyer shall not state that the lawyer is a certified specialist in a particular field of law, unless:

(1) the lawyer is currently certified as a specialist by the Board of Legal Specialization, or any other entity accredited by the State Bar to designate specialists pursuant to standards adopted by the Board of Trustees; and

(2) the name of the certifying organization is clearly identified in the communication.

(b) Notwithstanding paragraph (a), a lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer may also communicate that his or her practice specializes in, is limited to, or is concentrated in a particular field of law, subject to the requirements of rule 7.1.

### Rule 7.5 Firm\* Names and Trade Names

(a) A lawyer shall not use a firm\* name, trade name or other professional designation that violates rule 7.1.

(b) A lawyer in private practice shall not use a firm\* name, trade name or other professional designation that states or implies a relationship with a government agency or with a public or charitable legal services organization, or otherwise violates rule 7.1.

(c) A lawyer shall not state or imply that the lawyer practices in or has a professional relationship with a law firm\* or other organization unless that is the fact.

### Comment

The term “other professional designation” includes, but is not limited to, logos, letterheads, URLs, and signature blocks.

### Rule 7.6 [Reserved]

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### CHAPTER 8. MAINTAINING THE INTEGRITY OF THE PROFESSION

#### Rule 8.1 False Statement Regarding Application for Admission to Practice Law

(a) An applicant for admission to practice law shall not, in connection with that person's\* own application for admission, make a statement of material fact that the lawyer knows\* to be false, or make such a statement with reckless disregard as to its truth or falsity.

(b) A lawyer shall not, in connection with another person's\* application for admission to practice law, make a statement of material fact that the lawyer knows\* to be false.

(c) An applicant for admission to practice law, or a lawyer in connection with an application for admission, shall not fail to disclose a fact necessary to correct a statement known\* by the applicant or the lawyer to have created a material misapprehension in the matter, except that this rule does not authorize disclosure of information protected by Business and Professions Code section 6068, subdivision (e) and rule 1.6.

(d) As used in this rule, "admission to practice law" includes admission or readmission to membership in the State Bar; reinstatement to active membership in the State Bar; and any similar process relating to admission or certification to practice law in California or elsewhere.

#### Comment

[1] A person\* who makes a false statement in connection with that person's\* own application for admission to practice law may be subject to discipline under this rule after that person\* has been admitted. (See, e.g., *In re Gossage* (2000) 23 Cal.4th 1080 [99 Cal.Rptr.2d 130].)

[2] A lawyer's duties with respect to a *pro hac vice* application or other application to a court for admission to practice law are governed by rule 3.3.

[3] A lawyer representing an applicant for admission to practice law is governed by the rules applicable to the lawyer-client relationship, including Business and Professions Code section 6068, subdivision (e)(1) and

rule 1.6. A lawyer representing a lawyer who is the subject of a disciplinary proceeding is not governed by this rule but is subject to the requirements of rule 3.3.

#### Rule 8.1.1 Compliance with Conditions of Discipline and Agreements in Lieu of Discipline

A lawyer shall comply with the terms and conditions attached to any agreement in lieu of discipline, any public or private reproof, or to other discipline administered by the State Bar pursuant to Business and Professions Code sections 6077 and 6078 and California Rules of Court, rule 9.19.

#### Comment

Other provisions also require a lawyer to comply with agreements in lieu of discipline and conditions of discipline. (See, e.g., Bus. & Prof. Code, § 6068, subds. (k), (l).)

#### Rule 8.2 Judicial Officials

(a) A lawyer shall not make a statement of fact that the lawyer knows\* to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge or judicial officer, or of a candidate for election or appointment to judicial office.

(b) A lawyer who is a candidate for judicial office in California shall comply with canon 5 of the California Code of Judicial Ethics. For purposes of this rule, "candidate for judicial office" means a lawyer seeking judicial office by election. The determination of when a lawyer is a candidate for judicial office by election is defined in the terminology section of the California Code of Judicial Ethics. A lawyer's duty to comply with this rule shall end when the lawyer announces withdrawal of the lawyer's candidacy or when the results of the election are final, whichever occurs first.

(c) A lawyer who seeks appointment to judicial office shall comply with canon 5B(1) of the California Code of Judicial Ethics. A lawyer becomes an applicant seeking judicial office by appointment at the time of first submission of an application or personal data questionnaire to the appointing authority. A lawyer's duty to comply with this rule shall end when the lawyer advises the appointing

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authority of the withdrawal of the lawyer's application.

### Comment

To maintain the fair and independent administration of justice, lawyers should defend judges and courts unjustly criticized. Lawyers also are obligated to maintain the respect due to the courts of justice and judicial officers. (See Bus. & Prof. Code, § 6068, subd. (b).)

### Rule 8.3 Reporting Professional Misconduct

(a) A lawyer shall, without undue delay, inform the State Bar, or a tribunal\* with jurisdiction to investigate or act upon such misconduct, when the lawyer knows\* of credible evidence that another lawyer has committed a criminal act or has engaged in conduct involving dishonesty, fraud,\* deceit, or reckless or intentional misrepresentation or misappropriation of funds or property that raises a substantial\* question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects.

(b) Except as required by paragraph (a), a lawyer may, but is not required to, report to the State Bar a violation of these Rules or the State Bar Act.

(c) For purposes of this rule, "criminal act" as used in paragraph (a) excludes conduct that would be a criminal act in another state, United States territory, or foreign jurisdiction, but would not be a criminal act in California.

(d) This rule does not require or authorize disclosure of information gained by a lawyer while participating in a substance use or mental health program, or require disclosure of information protected by Business and Professions Code section 6068, subdivision (e) and rules 1.6 and 1.8.2; mediation confidentiality; the lawyer-client privilege; other applicable privileges; or by other rules or laws, including information that is confidential under Business and Professions Code section 6234.

### Comment

[1] This rule does not abrogate a lawyer's obligations to report the lawyer's own conduct as required by these rules or the State Bar Act. (See, e.g.,

rule 8.4.1(d) and (e); Bus. & Prof. Code, § 6068, subd. (o).)

[2] The duty to report under paragraph (a) is not intended to discourage lawyers from seeking counsel. This rule does not apply to a lawyer who is consulted about or retained to represent a lawyer whose conduct is in question, or to a lawyer consulted in a professional capacity by another lawyer on whether the inquiring lawyer has a duty to report a third-party lawyer under this rule. The duty to report under paragraph (a) does not apply if the report would involve disclosure of information that is gained by a lawyer while participating as a member of a state or local bar association ethics hotline or similar service.

[3] The duty to report without undue delay under paragraph (a) requires the lawyer to report as soon as the lawyer reasonably believes\* the reporting will not cause material prejudice or damage to the interests of a client of the lawyer or a client of the lawyer's firm.\* The lawyer should also consider the applicability of other rules such as rules 1.4 (the duty to communicate), 1.7(b) (material limitation conflict), 5.1 (responsibilities of managerial and supervisory lawyers), and 5.2 (responsibilities of a subordinate lawyer).

[4] This rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this rule. The term "substantial\* question" refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware.

[5] Information about a lawyer's misconduct or fitness may be received by a lawyer while participating in a substance use or mental health program, including but not limited to the Attorney Diversion and Assistance Program. (See Bus. & Prof. Code, § 6234.) In these circumstances, providing for an exception to the reporting requirement of paragraph (a) of this rule encourages lawyers to seek treatment through such programs. Conversely, without such an exception, lawyers may hesitate to seek assistance from these programs, which may then result in additional harm to their professional careers and additional injury to the welfare of clients and the public.



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[6] The rule permits reporting to either the State Bar or to “a tribunal\* with jurisdiction to investigate or act upon such misconduct.” A determination whether to report to a tribunal,\* instead of the State Bar, will depend on whether the misconduct arises during pending litigation and whether the particular tribunal\* has the power to “investigate or act upon” the alleged misconduct. Where the litigation is pending before a non-judicial tribunal,\* such as a private arbitrator, reporting to the tribunal\* may not be sufficient. If the tribunal\* is a proper reporting venue, evidence of lawyer misconduct adduced during those proceedings may be admissible evidence in subsequent disciplinary proceedings. (*Caldwell v. State Bar* (1975) 13 Cal.3d 488, 497.) Furthermore, a report to the proper tribunal\* may also trigger obligations for the tribunal\* to report the misconduct to the State Bar or to take other “appropriate corrective action.” (See Bus. & Prof. Code, §§ 6049.1, 6086.7, 6068.8; and Cal. Code of Jud. Ethics, canon 3D(2).)

[7] A report under this rule to a tribunal\* concerning another lawyer’s criminal act or fraud\* may constitute a “reasonable\* remedial measure” within the meaning of rule 3.3(b).

[8] In addition to reporting as required by paragraph (a), a report may also be made to another appropriate agency. A lawyer must not threaten to present criminal, administrative or disciplinary charges to obtain an advantage in a civil dispute in violation of rule 3.10.

[9] A lawyer may also be disciplined for participating in an agreement that precludes the reporting of a violation of the rules. (See rule 5.6(b); and Bus. & Prof. Code, § 6090.5.)

[10] Communications to the State Bar relating to lawyer misconduct are “privileged, and no lawsuit predicated thereon may be instituted against any person.” (Bus. & Prof. Code, § 6094.) However, lawyers may be subject to criminal penalties for false and malicious reports or complaints filed with the State Bar or be subject to discipline or other penalties by offering false statements or false evidence to a tribunal.\* (See rule 3.3(a); Bus. & Prof. Code, §§ 6043.5, subd. (a), 6068, subd. (d).)

**[Publisher’s Note:** Rule 8.3 was approved by order of the Supreme Court, effective August 1, 2023.]

### Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (a) violate these rules or the State Bar Act, knowingly\* assist, solicit, or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud,\* deceit, or reckless or intentional misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official, or to achieve results by means that violate these rules, the State Bar Act, or other law; or
- (f) knowingly\* assist, solicit, or induce a judge or judicial officer in conduct that is a violation of an applicable code of judicial ethics or code of judicial conduct, or other law. For purposes of this rule, “judge” and “judicial officer” have the same meaning as in rule 3.5(c).

### Comment

[1] A violation of this rule can occur when a lawyer is acting in propria persona or when a lawyer is not practicing law or acting in a professional capacity.

[2] Paragraph (a) does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

[3] A lawyer may be disciplined for criminal acts as set forth in Business and Professions Code sections 6101 et seq., or if the criminal act constitutes “other misconduct warranting discipline” as defined by California Supreme Court case law. (See *In re Kelley* (1990) 52 Cal.3d 487 [276 Cal.Rptr. 375].)

[4] A lawyer may be disciplined under Business and Professions Code section 6106 for acts involving moral turpitude, dishonesty, or corruption, whether intentional, reckless, or grossly negligent.

[5] Paragraph (c) does not apply where a lawyer advises clients or others about, or supervises, lawful covert activity in the investigation of violations of civil

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or criminal law or constitutional rights, provided the lawyer's conduct is otherwise in compliance with these rules and the State Bar Act.

[6] This rule does not prohibit those activities of a particular lawyer that are protected by the First Amendment to the United States Constitution or by Article I, section 2 of the California Constitution.

### **Rule 8.4.1 Prohibited Discrimination, Harassment and Retaliation**

(a) In representing a client, or in terminating or refusing to accept the representation of any client, a lawyer shall not:

(1) unlawfully harass or unlawfully discriminate against persons\* on the basis of any protected characteristic; or

(2) unlawfully retaliate against persons.\*

(b) In relation to a law firm's operations, a lawyer shall not:

(1) on the basis of any protected characteristic,

(i) unlawfully discriminate or knowingly\* permit unlawful discrimination;

(ii) unlawfully harass or knowingly\* permit the unlawful harassment of an employee, an applicant, an unpaid intern or volunteer, or a person\* providing services pursuant to a contract; or

(iii) unlawfully refuse to hire or employ a person\*, or refuse to select a person\* for a training program leading to employment, or bar or discharge a person\* from employment or from a training program leading to employment, or discriminate against a person\* in compensation or in terms, conditions, or privileges of employment; or

(2) unlawfully retaliate against persons.\*

(c) For purposes of this rule:

(1) "protected characteristic" means race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical

condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, military and veteran status, or other category of discrimination prohibited by applicable law, whether the category is actual or perceived;

(2) "knowingly permit" means to fail to advocate corrective action where the lawyer knows\* of a discriminatory policy or practice that results in the unlawful discrimination or harassment prohibited by paragraph (b);

(3) "unlawfully" and "unlawful" shall be determined by reference to applicable state and federal statutes and decisions making unlawful discrimination or harassment in employment and in offering goods and services to the public; and

(4) "retaliate" means to take adverse action against a person\* because that person\* has (i) opposed, or (ii) pursued, participated in, or assisted any action alleging, any conduct prohibited by paragraphs (a)(1) or (b)(1) of this rule.

(d) A lawyer who is the subject of a State Bar investigation or State Bar Court proceeding alleging a violation of this rule shall promptly notify the State Bar of any criminal, civil, or administrative action premised, whether in whole or part, on the same conduct that is the subject of the State Bar investigation or State Bar Court proceeding.

(e) Upon being issued a notice of a disciplinary charge under this rule, a lawyer shall:

(1) if the notice is of a disciplinary charge under paragraph (a) of this rule, provide a copy of the notice to the California Department of Fair Employment and Housing and the United States Department of Justice, Coordination and Review Section; or

(2) if the notice is of a disciplinary charge under paragraph (b) of this rule, provide a copy of the notice to the California Department of Fair Employment and Housing and the United States Equal Employment Opportunity Commission.

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- (f) This rule shall not preclude a lawyer from:
- (1) representing a client alleged to have engaged in unlawful discrimination, harassment, or retaliation;
  - (2) declining or withdrawing from a representation as required or permitted by rule 1.16; or
  - (3) providing advice and engaging in advocacy as otherwise required or permitted by these rules and the State Bar Act.

### Comment

[1] Conduct that violates this rule undermines confidence in the legal profession and our legal system and is contrary to the fundamental principle that all people are created equal. A lawyer may not engage in such conduct through the acts of another. (See rule 8.4(a).) In relation to a law firm's operations, this rule imposes on all law firm\* lawyers the responsibility to advocate corrective action to address known\* harassing or discriminatory conduct by the firm\* or any of its other lawyers or nonlawyer personnel. Law firm\* management and supervisory lawyers retain their separate responsibility under rules 5.1 and 5.3. Neither this rule nor rule 5.1 or 5.3 imposes on the alleged victim of any conduct prohibited by this rule any responsibility to advocate corrective action.

[2] The conduct prohibited by paragraph (a) includes the conduct of a lawyer in a proceeding before a judicial officer. (See Cal. Code Jud. Ethics, canon 3B(6) ["A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation against parties, witnesses, counsel, or others."].) A lawyer does not violate paragraph (a) by referring to any particular status or group when the reference is relevant to factual or legal issues or arguments in the representation. While both the parties and the court retain discretion to refer such conduct to the State Bar, a court's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of paragraph (a).

[3] A lawyer does not violate this rule by limiting the scope or subject matter of the lawyer's practice or by limiting the lawyer's practice to members of

underserved populations. A lawyer also does not violate this rule by otherwise restricting who will be accepted as clients for advocacy-based reasons, as required or permitted by these rules or other law.

[4] This rule does not apply to conduct protected by the First Amendment to the United States Constitution or by Article I, section 2 of the California Constitution.

[5] What constitutes a failure to advocate corrective action under paragraph (c)(2) will depend on the nature and seriousness of the discriminatory policy or practice, the extent to which the lawyer knows\* of unlawful discrimination or harassment resulting from that policy or practice, and the nature of the lawyer's relationship to the lawyer or law firm\* implementing that policy or practice. For example, a law firm\* non-management and non-supervisory lawyer who becomes aware that the law firm\* is engaging in a discriminatory hiring practice may advocate corrective action by bringing that discriminatory practice to the attention of a law firm\* management lawyer who would have responsibility under rule 5.1 or 5.3 to take reasonable\* remedial action upon becoming aware of a violation of this rule.

[6] Paragraph (d) ensures that the State Bar and the State Bar Court will be provided with information regarding related proceedings that may be relevant in determining whether a State Bar investigation or a State Bar Court proceeding relating to a violation of this rule should be abated.

[7] Paragraph (e) recognizes the public policy served by enforcement of laws and regulations prohibiting unlawful discrimination, by ensuring that the state and federal agencies with primary responsibility for coordinating the enforcement of those laws and regulations is provided with notice of any allegation of unlawful discrimination, harassment, or retaliation by a lawyer that the State Bar finds has sufficient merit to warrant issuance of a notice of a disciplinary charge.

[8] This rule permits the imposition of discipline for conduct that would not necessarily result in the award of a remedy in a civil or administrative proceeding if such proceeding were filed.

[9] A disciplinary investigation or proceeding for conduct coming within this rule may also be initiated and maintained if such conduct warrants discipline under California Business and Professions Code sections 6106 and 6068, the California Supreme

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Court's inherent authority to impose discipline, or other disciplinary standard.

### Rule 8.5 Disciplinary Authority; Choice of Law

#### (a) Disciplinary Authority.

A lawyer admitted to practice in California is subject to the disciplinary authority of California, regardless of where the lawyer's conduct occurs. A lawyer not admitted in California is also subject to the disciplinary authority of California if the lawyer provides or offers to provide any legal services in California. A lawyer may be subject to the disciplinary authority of both California and another jurisdiction for the same conduct.

#### (b) Choice of Law.

In any exercise of the disciplinary authority of California, the rules of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a matter pending before a tribunal,\* the rules of the jurisdiction in which the tribunal\* sits, unless the rules of the tribunal\* provide otherwise; and

(2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes\* the predominant effect of the lawyer's conduct will occur.

### Comment

#### *Disciplinary Authority*

The conduct of a lawyer admitted to practice in California is subject to the disciplinary authority of California. (See Bus. & Prof. Code, §§ 6077, 6100.) Extension of the disciplinary authority of California to other lawyers who provide or offer to provide legal services in California is for the protection of the residents of California. A lawyer disciplined by a disciplinary authority in another jurisdiction may be subject to discipline in California for the same conduct. (See, e.g., § 6049.1.)

# STATE BAR ACT

*[Publisher's Note: This publication is updated annually. Unless otherwise indicated, statutory provisions are effective on January 1 following enactment. To assist readers with legislative research, following each provision is a brief note which includes the chapter number and year of relevant legislation. For selected provisions, an operative date is provided; however, this publication is not intended to be a substitute for legal advice or comprehensive legal research of original sources.]*

## CHAPTER 4. ATTORNEYS

### ARTICLE 1 GENERAL PROVISIONS

#### § 6000 Short Title

This chapter of the Business and Professions Code constitutes the chapter on attorneys. It may be cited as the State Bar Act. (Origin: State Bar Act, § 1. Added by Stats. 1939, ch. 34.)

#### § 6001 State Bar; Perpetual Succession; Seal; Revenue; Powers; Laws Applicable

The State Bar of California is a public corporation. It is hereinafter designated as the State Bar.

The State Bar has perpetual succession and a seal and it may sue and be sued. It may, for the purpose of carrying into effect and promoting its objectives:

- (a) Make contracts.
- (b) Borrow money, contract debts, issue bonds, notes and debentures and secure the payment or performance of its obligations.
- (c) Own, hold, use, manage and deal in and with real and personal property.
- (d) Construct, alter, maintain and repair buildings and other improvements to real property.
- (e) Purchase, lease, obtain options upon, acquire by gift, bequest, devise or otherwise, any real or personal property or any interest therein.

(f) Sell, lease, exchange, convey, transfer, assign, encumber, pledge, dispose of any of its real or personal property or any interest therein, including without limitation all or any portion of its income or revenues from license fees paid or payable by licensees.

(g) Do all other acts incidental to the foregoing or necessary or expedient for the administration of its affairs and the attainment of its purposes.

Pursuant to those powers enumerated in subdivisions (a) to (g), inclusive, it is recognized that the State Bar has authority to raise revenue in addition to that provided for in Section 6140 and other statutory provisions. The State Bar is empowered to raise that additional revenue by any lawful means. However, as of March 31, 2018, the State Bar shall not create any foundations or nonprofit corporations.

The State Bar shall conspicuously publicize to its licensees in the annual fees statement and other appropriate communications, including its Internet Web site and electronic communications, that its licensees have the right to limit the sale or disclosure of licensee information not reasonably related to regulatory purposes. In those communications the State Bar shall note the location of the State Bar's privacy policy, and shall also note the simple procedure by which a licensee may exercise his or her right to prohibit or restrict, at the licensee's option, the sale or disclosure of licensee information not reasonably related to regulatory purposes. On or before May 1, 2005, the State Bar shall report to the Assembly and Senate Committees on Judiciary regarding the procedures that it has in place to ensure that licensees can appropriately limit the use of their licensee information not reasonably related to regulatory purposes, and the number of licensees choosing to utilize these procedures.

No law of this state restricting, or prescribing a mode of procedure for the exercise of powers of state public bodies or state agencies, or classes thereof, including, but not by way of limitation, the provisions contained in Division 3 (commencing with Section 11000), Division 4 (commencing with Section 16100), and Part 1 (commencing with Section 18000) and Part 2 (commencing with Section 18500) of Division 5, of Title 2 of the Government Code, shall be applicable to the State Bar, unless the Legislature expressly so declares. Notwithstanding the foregoing or any other law, pursuant to Sections 6026.7 and 6026.11, the State Bar is subject to the California Public Records Act (Chapter 3.5

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(commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and, commencing April 1, 2016, the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code). (Origin: State Bar Act, § 2. Added by Stats. 1939, ch. 34. Amended by Stats. 1957, ch. 1526; Stats. 1978, ch. 380; Stats. 1988, ch. 1149; Stats. 2004, ch. 356; Stats. 2015, ch. 537; Stats. 2017, ch. 422; Stats. 2018, ch. 659.)

### **§ 6001.1 State Bar—Protection of the Public as the Highest Priority**

Protection of the public, which includes support for greater access to, and inclusion in, the legal system, shall be the highest priority for the State Bar of California and the board of trustees in exercising their licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount. (Added by Stats. 2011, ch. 417. Amended by Stats. 2018, ch. 659.)

**§ 6001.2** (Added by Stats. 2011, ch. 417. Repealed by Stats. 2022, ch. 419.)

### **§ 6001.3 Legislative Intent, Findings, and Declarations; Development, Report, and Implementation of Goals**

(a) It is the intent of the Legislature that the State Bar maintain its commitment to and support of effective policies and activities to enhance access, fairness, and diversity in the legal profession and the elimination of bias in the practice of law.

(b) The Legislature finds and declares the following:

(1) The rich diversity of the people of California requires a justice system that is equally accessible and free of bias and is a core value of the legal profession.

(2) Diversity and inclusion are an integral part of the State Bar's public protection mission to build, retain, and maintain a diverse legal profession to provide quality and culturally sensitive services to an ever-increasing diverse population.

(3) Diversity increases public trust and confidence and the appearance of fairness in the justice system and therefore increases access to justice.

(4) The State Bar should continue to increase diversity and inclusion in the legal profession.

(c) The State Bar shall develop and implement a plan to meet the goals set forth in this section, which may include, but is not limited to, an assessment of needed revenue. The State Bar shall prepare and submit a report to the Legislature, by March 15, 2019, and every two years thereafter, on the plan and its implementation, including a description of activities undertaken to support the plan, their outcomes, and their effectiveness. (Added by Stats. 2018, ch. 659.)

### **§ 6001.4 State Bar Employee Compensation and Benefits**

Commencing on or before February 1, 2011, the State Bar shall make available, upon request of a member of the public, the classification and total annual compensation paid to each of its employees by name, as well as any and all rules, policies, and agreements pertaining to the compensation and benefits of any employees of the State Bar. (Added by Stats. 2010, ch. 476.)

## **§ 6002 Licensees**

(a) The licensees of the State Bar are all persons admitted and licensed to practice law in this State except justices and judges of courts of record during their continuance in office.

(b) As used in this chapter or any other provision of law, "member of the State Bar" shall be deemed to refer to a licensee of the State Bar. (Origin: State Bar Act, §§ 3, 7. Added by Stats. 1939, ch. 34. Amended by Stats. 2018, ch. 659.)

### **§ 6002.1 Official Licensing Records**

(a) A licensee of the State Bar shall maintain all of the following on the official licensing records of the State Bar:

(1) The licensee's current office address and telephone number or, if no office is maintained, the address to be used for State Bar purposes or

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purposes of the agency charged with attorney discipline.

(2) All specialties in which the licensee is certified.

(3) Any other jurisdictions in which the licensee is admitted and the dates of his or her admission.

(4) The jurisdiction, and the nature and date of any discipline imposed by another jurisdiction, including the terms and conditions of any probation imposed, and, if suspended or disbarred in another jurisdiction, the date of any reinstatement in that jurisdiction.

(5) Any other information as may be required by agreement with or by conditions of probation imposed by the agency charged with attorney discipline.

A licensee shall notify the licensing records office of the State Bar of any change in the information required by paragraphs (1), (4), and (5) within 30 days of any change and of the change in the information required by paragraphs (2) and (3) on or before the first day of February of each year.

(b) Every former licensee of the State Bar who has been ordered by the Supreme Court to comply with Rule 9.20 of the California Rules of Court shall maintain on the official licensing records of the State Bar the former licensee's current address and within 10 days after any change therein, shall file a change of address with a licensing records office of the State Bar until such time as the former licensee is no longer subject to the order.

(c) The notice initiating a proceeding conducted under this chapter may be served upon the licensee or former licensee of the State Bar to whom it is directed by certified mail, return receipt requested, addressed to the licensee or former licensee at the latest address shown on the official licensing records of the State Bar. The service is complete at the time of the mailing but any prescribed period of notice and any right or duty to do any act or make any response within any prescribed period or on a date certain after the notice is served by mail shall be extended five days if the place of address is within the State of California, 10 days if the place of address is outside the State of California but within the United States, and 20 days if the place of address is outside the United States. A licensee of the State Bar or former licensee may waive the requirements of this subdivision and may, with the written consent of

another licensee of the State Bar, designate that other licensee to receive service of any notice or papers in any proceeding conducted under this chapter.

(d) The State Bar shall not make available to the general public the information specified in paragraph (5) of subdivision (a) unless that information is required to be made available by a condition of probation. That information is, however, available to the State Bar, the Supreme Court, or the agency charged with attorney discipline.

(e) The State Bar may develop a prescribed form for the making of reports required by this section, usage of which it may require by rule or regulation. (Added by Stats. 1985, ch. 453. Amended by Stats. 1986, ch. 475; Stats. 2007, ch. 474; Stats. 2018, ch. 659.)

### **§ 6003      Classes of Licensees**

Licensees of the State Bar are divided into two classes:

(a) Active licensees.

(b) Inactive licensees. (Origin: State Bar Act, § 4. Added by Stats. 1939, ch. 34. Amended by Stats. 2018, ch. 659.)

### **§ 6004      Active Licensees**

Every licensee of the State Bar is an active licensee until as in section 6007 of this code provided or at the licensee's request, the licensee is enrolled as an inactive licensee. (Origin: State Bar Act, §§ 5, 6. Added by Stats. 1939, ch. 34. Amended by Stats. 1957, ch. 737; Stats. 1977, ch. 58; Stats. 2018, ch. 659.)

### **§ 6005      Inactive Licensees**

Inactive licensees are those licensees who have requested that they be enrolled as inactive licensees or who have been enrolled as inactive licensees as set forth in Section 6007. (Origin: State Bar Act, § 5. Added by Stats. 1939, ch. 34. Amended by Stats. 1957, ch. 737; Stats. 2011, ch. 417; Stats. 2018, ch. 659.)

### **§ 6006      Retirement from Practice; Privileges of Inactive Licensees**

Active licensees who retire from practice shall be enrolled as inactive licensees at their request.

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Inactive licensees are not entitled to hold office, vote, or practice law. Those who are enrolled as inactive licensees at their request may, on application and payment of all fees required, become active licensees. Those who are or have been enrolled as inactive licensees at their request are licensees of the State Bar for purposes of Section 15 of Article VI of the California Constitution. Those who are enrolled as inactive licensees pursuant to Section 6007 may become active licensees as provided in that section.

Inactive licensees have such other privileges, not inconsistent with this chapter, as the board of trustees provides. (Origin: State Bar Act, § 8. Added by Stats. 1939, ch. 34. Amended by Stats. 1957, ch. 737; Stats. 1977, ch. 58; Stats. 1989, ch. 1425; Stats. 2011, ch. 417; Stats. 2018, ch. 659.)

### **§ 6007      Involuntary Enrollment as an Inactive Licensee**

(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.



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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

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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). (Added by Stats. 1968, ch. 1374, operative July 1, 1969. Amended by Stats. 1969, ch. 351; Stats. 1972, ch. 489; Stats. 1975, ch. 86, effective May 17, 1975; Stats. 1977, ch. 58; Stats. 1983, ch. 254; Stats. 1985, ch. 453; Stats. 1986, ch. 1114; Stats. 1988, ch. 1159; Stats. 1996, ch. 1104; Stats. 2011, ch. 417; Stats. 2018, ch. 659.)

### **§ 6008 Property; Exemption from Taxation**

All property of the State Bar is hereby declared to be held for essential public and governmental purposes in the judicial branch of the government and such property is exempt from all taxes of the State or any city, city and county, district, public corporation, or other political subdivision, public body or public agency. (Added by Stats. 1957, ch. 1526.)

#### **§ 6008.1 Bonds, Notes, etc.; Liability; Approval**

No bond, note, debenture, evidence of indebtedness, mortgage, deed of trust, assignment, pledge, contract, lease, agreement, or other contractual obligation of the State Bar shall:

(a) Create a debt or other liability of the state nor of any entity other than the State Bar (or any successor public corporation).

(b) Create any personal liability on the part of the licensees of the State Bar or the members of the board of trustees or any person executing the same, by reason of the issuance or execution thereof.

(c) Be required to be approved or authorized under the provisions of any other law or regulation of this state. (Added by Stats. 1957, ch. 1526. Amended by Stats. 2011, ch. 417; Stats. 2018, ch. 659.)

#### **§ 6008.2 Bonds, Notes, etc.; Exemption from Taxation**

Bonds, notes, debentures and other evidences of indebtedness of the State Bar are hereby declared to be issued for essential public and governmental purposes in the judicial branch of the government and, together with interest thereon and income therefrom, shall be exempt from taxes. (Added by Stats. 1957, ch. 1526.)

**§ 6008.3 Default Upon Obligations; Rights and Remedies**

The State Bar may vest in any obligee or trustee the right, in the event of default upon any obligation of the State Bar, to take possession of property of the State Bar, cause the appointment of a receiver for such property, acquire title thereto through foreclosure proceedings, and exercise such other rights and remedies as may be mutually agreed upon between the State Bar and the holder or proposed holder of any such obligation. (Added by Stats. 1957, ch. 1526.)

**§ 6008.4 Exercise of Powers by Board of Trustees**

All powers granted to the State Bar by Sections 6001 and 6008.3 may be exercised and carried out by action of its board of trustees. In any resolution, indenture, contract, agreement, or other instrument providing for, creating, or otherwise relating to, any obligation of the State Bar, the board may make, fix, and provide such terms, conditions, covenants, restrictions, and other provisions as the board deems necessary or desirable to facilitate the creation, issuance, or sale of such obligation or to provide for the payment or security of such obligation and any interest thereon, including, but not limited to, covenants and agreements relating to fixing and maintaining license fees. (Added by Stats. 1957, ch. 1526. Amended by Stats. 2011, ch. 417; Stats. 2018, ch. 659.)

**§ 6008.5** (Added by Stats. 1957, ch. 1526. Repealed by Stats. 2017, ch. 422.)

**§ 6008.6 Award of Contracts—Limits, Request for Proposal Procedure**

The State Bar shall award no contract for goods, services, or both, for an aggregate amount in excess of fifty thousand dollars (\$50,000), or for information technology goods, services, or both, for an aggregate amount in excess of one hundred thousand dollars (\$100,000), except pursuant to the standards established in Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code and approval of the board of trustees. In the event that approval for a particular contract by the board is not feasible because approval of the contract is necessary prior to the next regularly scheduled meeting of the board of trustees, the chief executive officer of the State

Bar may approve the contract after consultation with and approval by a designated committee of the board and subject to notification of the full board at the board's next regularly scheduled meeting. The State Bar shall establish a request for proposal procedure by rule, pursuant to the general standards established in Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code. For the purposes of this section, "information technology" includes, but is not limited to, all electronic technology systems and services, automated information handling, system design and analysis, conversion voice, video, and data communications, network systems, requisite facilities, equipment, system controls, stimulation, electronic commerce, and all related interactions between people and machines. (Added by Stats. 1999, ch. 342. Amended by Stats. 2010, ch. 2; Stats. 2017, ch. 422.)

**§ 6008.7 Purchasing Policies; Align with Other State Agencies**

The State Bar shall, by January 1, 2019, develop purchasing policies that align with the purchasing policies of other state agencies. (Added by Stats. 2017, ch. 417.)

**§ 6009 City or County Registration of Attorneys Who Qualify as Lobbyists; Lobbyist Information That May be Required to be Disclosed**

(a) Notwithstanding any other provision of law, a city, county, or city and county may require attorneys who qualify as lobbyists, as defined by the local jurisdiction, to register and disclose their lobbying activities directed toward the local agencies of those jurisdictions, in the same manner and to the same extent such registration and disclosure is required of nonattorney lobbyists. Any prohibitions against specified activities by lobbyists enacted by a city, county, or city and county shall also apply to attorneys who qualify as lobbyists.

(b) For purposes of this section, information about a lobbyist that may be required to be disclosed is:

- (1) The name, business address, and telephone number of the lobbyist, of any lobbying firm of which the lobbyist is a partner, owner, officer, or employee; and of any persons or lobbying firms paid to lobby by the lobbyist.

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(2) The name, business address, and business telephone number of each client who pays the lobbyist to lobby; the specific matter and agency lobbied, itemized by client; and the amount of money paid to the lobbyist for lobbying and the total expenses of the lobbyist for lobbying, itemized by client.

(3) All gifts or payments made by the lobbyist to officials in the jurisdiction, itemized by the name of the official, the amount, date, and description of the gift or payment, and the names of the person making the gift or payment and the person receiving the gift or payment.

(4) All campaign contributions made, arranged, or delivered by the lobbyist to officials in the jurisdiction, specified by amount, date, and name of the official receiving the contribution. (Added Stats. 1994, ch. 526.)

### **§ 6009.3 Attorney to Inform Client in Writing Concerning Voluntary Contributions**

The Legislature finds and declares that it is important to inform taxpayers that they may make voluntary contributions to certain funds or programs, as provided on the state income tax return. The Legislature further finds and declares that many taxpayers remain unaware of the voluntary contribution check-offs on the state income tax return. Therefore, it is the intent of the Legislature to encourage all persons who prepare state income tax returns, including attorneys, to inform their clients in writing, prior to the completion of any state income tax return, that they may make a contribution to any voluntary contribution check-off on the state income tax return if they so choose. (Added by Stats. 1997, ch. 337. Amended by Stats. 1998, ch. 485.)

### **§ 6009.5 Collection and Reporting of Demographic Data—Procedures and Limitations**

The State Bar shall adopt procedures to facilitate reporting of mandatory and voluntary information by providing licensees with a centralized mechanism for reporting information online at the State Bar Internet Web site, including, but not limited to, data required to be provided pursuant to the State Bar Act, or by other statutes, rules, and case law, and demographic information. Any demographic data collected shall be used only for general purposes and shall not be

identified to any individual licensee or his or her State Bar record. (Added by Stats. 2006, ch. 390. Amended by Stats. 2018, ch. 659.)

**§ 6009.7** (Added by Stats. 2011, ch. 417. Repealed by Stats. 2017, ch. 422.)

## **ARTICLE 2 ADMINISTRATION**

### **§ 6010 Board of Trustees in General**

(a) The State Bar is governed by a board known as the board of trustees of the State Bar. The board has the powers and duties conferred by this chapter.

(b) As used in this chapter or any other provision of law, “board of governors” shall be deemed to refer to the board of trustees. (Origin: State Bar Act, § 20. Added by Stats. 1939, ch. 34. Amended by Stats. 2011, ch. 417.)

**§ 6011** (Added by Stats. 1938, ch. 34. Repealed by Stats. 2021, ch. 723.)

**§ 6012** (Added by Stats. 2011, ch. 417. Repealed by Stats. 2017, ch. 422.)

**§ 6012.5** (Added by Stats. 1989, ch. 1223. Repealed by Stats. 2011, ch. 417.)

### **§ 6013.1 State Bar Board of Trustees—Appointment of Attorney Members by the Supreme Court; State Bar Administrative Responsibilities for Appointment Process**

(a) The Supreme Court shall appoint five attorney members of the board pursuant to a process that the Supreme Court may prescribe. These attorney members shall serve for a term of four years and may be reappointed by the Supreme Court for one additional term only.

(b) An attorney member elected pursuant to Section 6013.2 may be appointed by the Supreme Court pursuant to this section to a term as an appointed attorney member.

(c) The Supreme Court shall fill any vacancy in the term of, and make any reappointment of, any appointed attorney member.

(d) When making appointments to the board, the Supreme Court should consider appointing attorneys that represent the following categories: legal services; small firm or solo practitioners; historically underrepresented groups, including consideration of race, ethnicity, gender, and sexual orientation; and legal academics. In making appointments to the board, the Supreme Court should also consider geographic distribution, years of practice, particularly attorneys who are within the first five years of practice or 36 years of age and under, and participation in voluntary local or state bar activities.

(e) The State Bar shall be responsible for carrying out the administrative responsibilities related to the appointment process described in subdivision (a). (Former § 6013.1 added by Stats. 1989, ch. 1223, repealed by Stats. 2011, ch. 417. New § 6013.1 added by Stats. 2011, ch. 417; Stats. 2017, ch. 422.)

**§ 6013.2** (Added by Stats. 2011, ch. 417. Repealed by Stats. 2017, ch. 422.)

**§ 6013.3 State Bar Board of Trustees—Appointment of Attorney Members by the Senate Committee on Rules and by the Speaker of the Assembly**

(a) One attorney member of the board shall be appointed by the Senate Committee on Rules and one attorney member of the board shall be appointed by the Speaker of the Assembly.

(b) An attorney member appointed pursuant to this section shall serve for a term of four years. Vacancies shall be filled for the remainder of the term. An appointed attorney member may be reappointed pursuant to this section. (Added by Stats. 2011, ch. 417. Amended by Stats. 2017, ch. 422.)

**§ 6013.4** (Added by Stats. 1978, ch. 995. Repealed by Stats. 2011, ch. 417.)

**§ 6013.5 Public Members; Appointment; Qualifications; Term**

(a) Effective January 1, 2018, a maximum of six members of the board shall be members of the public who have never been licensees of the State Bar or admitted to practice before any court in the United States.

(b) Each of these members shall serve for a term of four years. Vacancies shall be filled for the remainder of the term.

(c) Effective January 1, 2018, one public member shall be appointed by the Senate Committee on Rules and one public member shall be appointed by the Speaker of the Assembly.

(d) Four public members shall be appointed by the Governor, subject to the confirmation of the Senate.

(e) Each respective appointing authority shall fill any vacancy in and make any reappointment to each respective office. (Added by Stats. 1975, ch. 874. Amended by Stats. 1979, ch. 1041; Stats. 1984, ch. 16; Stats. 2017, ch. 422; Stats. 2018, ch. 659.)

**§ 6013.5.5 Public Members Appointment or Reappointment to the State Bar Board of Trustees—Applicable Provisions**

Subdivision (c) of Sections 450.2 to 450.6, inclusive, shall apply to public members appointed or reappointed on or after January 1, 2012. (Added by Stats. 2011, ch. 417. Amended by Stats. 2022, ch. 569.)

**§ 6013.6 Employment by Public Agencies; Reduced Compensation; Job-Related Benefits**

(a) Except as provided in subdivision (b), any full-time employee of any public agency who serves as a member of the Trustees of the State Bar of California shall not suffer any loss of rights, promotions, salary increases, retirement benefits, tenure, or other job-related benefits, which he or she would otherwise have been entitled to receive.

(b) Notwithstanding the provisions of subdivision (a), any public agency which employs a person who serves as a member of the Board of Trustees of the State Bar of California may reduce the employee's salary, but no other right or job-related benefit, pro rata to the extent

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that the employee does not work the number of hours required by statute or written regulation to be worked by other employees of the same grade in any particular pay period and the employee does not claim available leave time. The employee shall be afforded the opportunity to perform job duties during other than regular working hours if such a work arrangement is practical and would not be a burden to the public agency.

(c) The Legislature finds that service as a member of the Board of Trustees of the State Bar of California by a person employed by a public agency is in the public interest. (Added by Stats. 1990, ch. 473, effective August 8, 1990. Amended by Stats. 2011, ch. 417.)

**§ 6014** (Added by Stats. 1939, ch. 34. Amended by Stats. 1975, ch. 874. Repealed by Stats. 2011, ch. 417.)

### **§ 6015 Qualifications of Members**

No person is eligible for attorney membership on the board unless both of the following conditions are satisfied:

- (a) He or she is an active licensee of the State Bar.
- (b) Either:
  - (1) Prior to October 31, 2020, if elected, he or she maintains his or her principal office for the practice of law within the State Bar district from which he or she is elected.
  - (2) If appointed by the Supreme Court or the Legislature, he or she maintains his or her principal office for the practice of law within the State of California. (Added by Stats. 1939, ch. 34. Amended by Stats. 1975, ch. 874; Stats. 1985, ch. 465; Stats. 1989, ch. 1223; Stats. 2011, ch. 417; Stats. 2017, ch. 422; Stats. 2018, ch. 659.)

### **§ 6016 Tenure of Members; Vacancies; Interim Board**

- (a) The term of office of each attorney member of the board shall be four years. Vacancies shall be filled for the remainder of the term.
- (b) The board of trustees may provide by rule for an interim board to act in the place and stead of the board when because of vacancies during terms of office there is less than a quorum of the board.

(c) The time served during the remainder of a midterm vacancy by any member appointed to fill that vacancy shall not count toward any term limits for the member filling the vacancy. (Added by Stats. 1939, ch. 34. Amended by Stats. 1968, ch. 545; Stats. 1975, ch. 874; Stats. 2002, ch. 415, effective Sept. 9, 2002; Stats. 2011, ch. 417; Stats. 2017, ch. 422; Stats. 2018, ch. 659; Stats. 2022, ch. 419.)

**§ 6017** (Origin: State Bar Act, § 14. Added by Stats. 1939, ch. 34. Repealed by Stats. 2011, ch. 417.)

**§ 6018** (Added by Stats. 2011, ch. 417. Repealed by Stats. 2017, ch. 422.)

### **§ 6019 Elections**

Each place upon the board for which a member is to be appointed shall for the purposes of the appointment be deemed a separate office. (Origin: State Bar Act, § 15. Added by Stats. 1939, ch. 34. Amended by Stats. 1981, ch. 836; Stats. 2002, ch. 415, effective September 9, 2002; Stats. 2011, ch. 417.)

### **§ 6020 Officers in General**

The officers of the State Bar are a chair, a vice chair, and a secretary. (Origin: State Bar Act, § 10. Amended by Stats. 1957, ch. 551; Stats. 2011, ch. 417; Stats. 2017, ch. 422; Stats. 2018, ch. 659.)

### **§ 6021 Election; Time; Assumption of Duties; Reelection and Term of President; President Serving as Member of the Board**

- (a) On the effective date of the measure adding this subdivision, the selection of the chair and vice chair of the board shall be made by appointment of the Supreme Court.
- (b) For 2018, the Supreme Court shall appoint a chair and a vice chair to serve a term that commences upon appointment and ends at the conclusion of the annual meeting in 2018. Thereafter, the term of the chair and the vice chair shall be one year, and the chair and vice chair shall assume the duties of their respective offices at the conclusion of the annual meeting following their appointment. The chair and vice chair shall not serve more than two terms, except that a chair or vice chair

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who is appointed to fill a vacancy for the balance of a term is eligible to serve two full terms in addition to the remainder of the term for which he or she was appointed.

(c) The president and vice president in place on the effective date of the measure adding this subdivision shall retain their positions until the chair and vice chair are appointed. (Origin: State Bar Act, § 11. Added by Stats. 1939, ch. 34. Amended by Stats. 1943, ch. 278; Stats. 1957, ch. 551; Stats. 1970, ch. 510; Stats. 1973, ch. 17, effective Apr. 6, 1973; Stats. 1985, ch. 465; Stats. 2002, ch. 415, effective Sept. 9, 2002; Stats. 2011, ch. 417; Stats. 2014, ch. 429; Stats. 2017, ch. 422.)

**§ 6022** (Origin: State Bar Act, § 18. Repealed by Stats. 2019, ch. 698.)

### **§ 6023 Continuance in Office**

The officers of the State Bar shall continue in office until their successors are appointed or selected. (Origin: State Bar Act, § 19. Amended by Stats. 2018, ch. 659.)

### **§ 6024 Duties of Officers**

The chair shall preside at all meetings of the State Bar and of the board, and in the event of his or her absence or inability to act, the vice chair shall preside.

Other duties of the chair and the vice chair, and the duties of the secretary, shall be such as the board may prescribe. (Origin: State Bar Act, § 17. Amended by Stats. 1985, ch. 465; Stats. 2011, ch. 417; Stats. 2018, ch. 659.)

### **§ 6025 Rules and Regulations; Meetings and Quorum**

Subject to the laws of this State, the board may formulate and declare rules and regulations necessary or expedient for the carrying out of this chapter. (Origin: State Bar Act, § 27. Amended by Stats. 2019, ch. 698.)

**§ 6026** (Origin: State Bar Act, § 40. Added by Stats. 1939, ch. 34. Repealed by Stats. 2019, ch. 698.)

**§ 6026.5** (Added by Stats. 2015, ch. 537. Repealed by Stats. 2017, ch. 422.)

### **§ 6026.7 Meetings of the Board of Trustees—Open Meeting Requirements**

(a) The State Bar is subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code) and all meetings of the State Bar are subject to the Bagley-Keene Open Meeting Act.

(b) Notwithstanding any other law, the Bagley-Keene Open Meeting Act shall not apply to the Judicial Nominees Evaluation Commission or the State Bar Court.

(c) In addition to the grounds authorized in the Bagley-Keene Open Meeting Act, a closed session may be held for those meetings, or portions thereof, relating to any of the following:

(1) Appeals from decisions of the Board of Legal Specialization refusing to certify or recertify an applicant or suspending or revoking a specialist's certificate.

(2) The preparation of examination materials, the approval, the grading, or the security of test administration of examinations for certification of a specialist.

(3) The preparation of examination materials, the approval, the grading, or the security of test administration of the California Bar Examination or the First-Year Law Students' Examination.

(4) Matters related to the Committee of Bar Examiners' consideration of moral character, including allegations of criminal or professional misconduct, competence, or physical or mental health of an individual, requests by applicants for testing accommodations in connection with an application for admission to practice law, or appeals of the Committee of Bar Examiners' determinations.

(5) Information about a law school's operations that constitutes a trade secret as defined in subdivision (d) of Section 3426.1 of the Civil Code.

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(d) Notwithstanding subdivision (e) of Section 11125.7 of the Government Code, the State Bar shall accept public comment in open session on all matters that are agendaized for discussion or decision by the board of trustees, whether in an open or a closed session. (Former § 6026.7 added by Stats. 2011, ch. 417, repealed by Stats. 2015, ch. 537. New § 6026.7 added by Stats. 2015, ch. 537, operative April 1, 2016. Amended by Stats. 2017, ch. 422; Stats. 2020, ch. 360.)

### **§ 6026.11 Conformance with the California Public Records Act**

The State Bar is subject to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and all public records and writings of the State Bar are subject to the California Public Records Act. (Added by Stats. 2015, ch. 537.)

### **§ 6027 Special Meetings**

Special meetings of the State Bar may be held at such times and places as the board provides. (Origin: State Bar Act, § 41.)

### **§ 6028 Payment of Expenses; Compensation**

(a) The board may make appropriations and disbursements from the funds of the State Bar to pay all necessary expenses for effectuating the purposes of this chapter.

(b) Except as provided in subdivision (c), no member of the board shall receive any other compensation than his or her necessary expenses connected with the performance of his or her duties as a member of the board.

(c) Public members of the board appointed pursuant to the provisions of Section 6013.5, and public members of the examining committee appointed pursuant to Section 6046.5 shall receive, out of funds appropriated by the board for this purpose, fifty dollars (\$50) per day for each day actually spent in the discharge of official duties, but in no event shall this payment exceed five hundred dollars (\$500) per month. In addition, these public members shall receive, out of funds appropriated by the board, necessary expenses connected with the performance of their duties. (Origin: State Bar Act, § 28.

Amended by Stats. 1977, ch. 304, effective July 8, 1977; Stats. 1982, ch. 327, effective June 30, 1982; Stats. 1985, ch. 453; Stats. 2004, ch. 529.)

### **§ 6029 Appointment of Committees, Officers and Employees; Salaries and Expenses**

(a) The board may appoint such committees, officers and employees as it deems necessary or proper, and fix and pay salaries and necessary expenses.

(b) The members of the executive committee of the board shall include at least one board member appointed by each of the following appointing authorities:

- (1) The Supreme Court.
- (2) The Governor.
- (3) The Speaker of the Assembly.
- (4) The Senate Committee on Rules. (Origin: State Bar Act, § 22. Amended by Stats. 2017, ch. 422.)

### **§ 6030 Executive Functions; Enforcement of Chapter; Injunction**

The board shall be charged with the executive function of the State Bar and the enforcement of the provisions of this chapter. The violation or threatened violation of any provision of Articles 7 (commencing with section 6125) and 9 (commencing with section 6150) of this chapter may be enjoined in a civil action brought in the superior court by the State Bar and no undertaking shall be required of the State Bar. (Origin: State Bar Act, § 21. Amended by Stats. 1961, ch. 2033.)

### **§ 6031 Functions in Aid of Jurisprudence, Justice; Evaluation of Justices**

(a) The board may aid in all matters pertaining to the advancement of the science of jurisprudence or to the improvement of the administration of justice.

(b) Notwithstanding this section or any other law, the board shall not conduct or participate in, or authorize any committee, agency, employee, or commission of the State Bar to conduct or participate in any evaluation, review, or report on the qualifications, integrity, diligence, or judicial ability of any specific justice of a



court provided for in Section 2 or 3 of Article VI of the California Constitution without prior review and statutory authorization by the Legislature.

The provisions of this subdivision shall not be construed to prohibit a licensee of the State Bar from conducting or participating in such an evaluation, review, or report in his or her individual capacity.

The provisions of this subdivision shall not be construed to prohibit an evaluation of potential judicial appointees or nominees as authorized by Section 12011.5 of the Government Code. (Origin: State Bar Act, § 23. Amended by Stats. 1945, ch. 177; Stats. 1984, ch. 16; Stats. 2018, ch. 659.)

**§ 6031.5 Conference of Delegates, State Bar Sections—Restriction on Funding, Voluntary Fees**

(a) The California Lawyers Association and its activities shall not be funded with mandatory fees collected pursuant to subdivision (a) of Section 6140.

The State Bar may provide the California Lawyers Association with administrative and support services, provided the California Lawyers Association agrees, before such services are provided, to the nature, scope, and cost of those services. The State Bar shall be reimbursed for the full cost of those services out of funds collected pursuant to subdivision (b) or funds provided by the California Lawyers Association. The financial audit specified in Section 6145 shall confirm that the amount assessed by the State Bar for providing the services reimburses the costs of providing them, and shall verify that mandatory fees are not used to fund the California Lawyers Association. The State Bar and the California Lawyers Association may also contract for other services provided by the State Bar or by the California Lawyers Association.

(b) Notwithstanding any other law, the State Bar shall collect fees for the California Lawyers Association provided the Board of Trustees of the State Bar determines that both of the following conditions are met: (1) the California Lawyers Association continues to comply with the requirements in subdivision (b) of Section 6056, and (2) the California Lawyers Association continues to serve a public purpose by providing the services described in subdivision (g) of Section 6056. The California Lawyers Association shall pay for the actual costs of the collection.

(c) (1) Notwithstanding any other law, the State Bar is expressly authorized to collect, in conjunction with the State Bar's collection of its annual license fees up to and through the collection of fees authorized for the year 2019, voluntary fees or donations on behalf of the Conference of Delegates of California Bar Associations, the independent nonprofit successor entity to the former Conference of Delegates of the State Bar which has been incorporated for the purposes of aiding in matters pertaining to the advancement of the science of jurisprudence or to the improvement of the administration of justice, and to convey any unexpended voluntary fees or donations previously made to the Conference of Delegates of the State Bar pursuant to this section to the Conference of Delegates of California Bar Associations. The Conference of Delegates of California Bar Associations shall pay for the cost of the collection. The State Bar and the Conference of Delegates of California Bar Associations may also contract for other services. The financial audit specified in Section 6145 shall confirm that the amount of any contract shall fully cover the costs of providing the services, and shall verify that mandatory fees are not used to fund any successor entity.

(2) The Conference of Delegates of California Bar Associations, which is the independent nonprofit successor entity to the former Conference of Delegates of the State Bar as referenced in paragraph (1), is a voluntary association, is not a part of the State Bar of California, and shall not be funded in any way through mandatory fees collected by the State Bar of California. Any contribution or membership option included with a State Bar of California mandatory fees billing statement shall include a statement that the Conference of Delegates of California Bar Associations is not a part of the State Bar of California and that membership in that organization is voluntary.

(3) This subdivision shall become inoperative on January 1, 2020. (Added by Stats. 1999, ch. 342. Amended by Stats. 2002, ch. 415, effective September 9, 2002; Stats. 2003, ch. 334; Stats. 2017, ch. 422; Stats. 2018, ch. 659.)

**§ 6032 California Supreme Court Historical Society; Funding; Fees**

Notwithstanding any other law, the State Bar is expressly authorized to collect, in conjunction with the State Bar's collection of its annual license fees, voluntary fees on behalf of and for the purpose of funding the California Supreme Court Historical Society, which advances the science of jurisprudence by preserving and disseminating to the general public the history of the Supreme Court and the Judicial Branch. (Added by Stats. 2002, ch. 415, effective September 9, 2002. Amended by Stats. 2018, ch. 659.)

**§ 6032.1 Funding of California ChangeLawyers**

Notwithstanding any other law, the State Bar is expressly authorized to collect, in conjunction with the State Bar's collection of its annual license fees, voluntary donations on behalf of and for the purpose of funding California ChangeLawyers, which promotes a better justice system for all Californians. (Added by Stats. 2019, ch. 698.)

**§ 6032.5 Public Interest Attorney Loan Repayment Account**

(a) The Public Interest Attorney Loan Repayment Account is hereby established within the State Treasury.

(b) Funds from an IOLTA account that escheat to the state and are deposited into the Public Interest Attorney Loan Repayment Account pursuant to subdivision (c) of Section 1564.5 of the Code of Civil Procedure shall be used, upon appropriation by the Legislature, by the Student Aid Commission for the purpose of providing increased funding for, both the administration of and the provision of loan assistance pursuant to, the Public Interest Attorney Loan Repayment Program pursuant to Article 12 (commencing with Section 69740) of Chapter 2 of Part 42 of Division 5 of Title 3 of the Education Code. (Added by Stats. 2015, ch. 488.)

**§ 6033 Nonprofit Organizations Providing Free Legal Services—Collection of Voluntary Financial Support; Task Force Study**

(a) Notwithstanding any other law, the State Bar is expressly authorized to facilitate the professional responsibilities of licensees by collecting, in conjunction with the State Bar's collection of its annual license fees

or otherwise, voluntary financial support for nonprofit organizations that provide free legal services to persons of limited means. All funds received for programs related to this section shall be distributed to qualified legal services projects and support centers as provided in Section 6216 without deduction for administrative fees, costs, or expenses by the State Bar. Any fees, costs, or expenses associated with administering this section shall be absorbed within the costs allowed by and paid from the funds specified in Section 6216.

(b) To implement this section, the State Bar, in consultation with the Chief Justice of California, shall appoint a task force of key stakeholders to analyze the mechanisms and experience of bar associations that have adopted programs for the collection of financial contributions from bar licensees and shall propose an appropriate method for facilitating the collection and distribution of voluntary contributions that is best calculated to generate the greatest level of financial support and participation from State Bar licensees, taking into account such issues as the justice-gap between the legal needs of low-income people in California and the legal resources available to assist them. The method and any recommended voluntary contribution amount adopted by the Board of Trustees of the State Bar of California shall be implemented for the 2008 fiscal year, and shall be reviewed and adjusted as needed after two years and, thereafter, every five years as needed, in consultation with affected service providers and other key stakeholders. (Added by Stats. 2006, ch. 165. Amended by Stats. 2011, ch. 417; Stats. 2014, ch. 429; Stats. 2018, ch. 659.)

**§ 6034 Collection of Unpaid Amounts Owed to State Bar**

The State Bar of California is authorized and directed to participate as a state agency in the Interagency Intercept Collections Program established pursuant to Section 12419.2 of the Government Code for the collection of any unpaid amounts owed to the State Bar of California, including any fine, penalty, assessment, cost, or reimbursement imposed under Section 6086.10, subdivision (c) of Section 6140.5, and any other applicable law. All funds received by the State Bar of California shall be allocated for the purposes established pursuant to Section 6033. (Added by Stats. 2013, ch. 681.)

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### **§ 6034.1 Public Interest Attorney Loan Repayment Account**

(a) Any entity of the State Bar of California exploring a regulatory sandbox or the licensing of nonattorneys as paraprofessionals shall do all of the following:

(1) Prioritize protecting individuals, especially those in need of legal assistance, from unscrupulous actors, including those actors seeking to do business in the legal field, above all else.

(2) Prioritize increasing access to justice for persons who qualify for legal assistance from qualified legal services organizations or from State Department of Social Services-funded immigration legal services.

(3) Exclude corporate ownership of law firms and splitting legal fees with nonlawyers, which has historically been banned by common law and statute due to grave concerns that it could undermine consumer protection by creating conflicts of interests that are difficult to overcome and fundamentally infringe on the basic and paramount obligations of attorneys to their clients.

(4) Adhere to, and not propose any abrogation of, the restrictions on the unauthorized practice of law, including, but not limited to, Sections 13405 and 16951 of the Corporations Code.

(b) This section does not limit the State Bar's ability to provide limited practice licenses to law students and law graduates under certain conditions, and with the supervision of an active State Bar-licensed attorney.

(c) This section does not limit the examination of the use of technology to increase access to justice for persons who qualify for legal assistance from qualified legal services organizations or from State Department of Social Services-funded immigration legal services, low-income individuals, and small businesses, so long as proposals adhere to, and do not propose any abrogation of, the restrictions on the unauthorized practice of law, including, but not limited to, Sections 13405 and 16951 of the Corporations Code.

(d) This section does not preclude the State Bar from seeking feedback from legal services organizations, including organizations that provide legal services in

family law and immigration law, community-based organizations, and consumers about options for increasing access to legal services.

(e) The State Bar shall not expend any funds, regardless of the source, on activities that do not meet the requirements of this section.

(f) The State Bar shall report to the Senate and Assembly Committees on Judiciary by January 15, 2023, on the total of all funding spent since 2018 to study the creation of a regulatory sandbox or the licensing of nonattorneys as paraprofessionals. The report shall be disaggregated by year, by source of funding, and by the use of funding, including, but not limited to, salaries, travel, food and beverage, facility rental, and lobbying.

(g) This section shall remain in effect only until January 1, 2025, and as of that date is repealed. (Added by Stats. 2022, ch. 419. Repealed as of January 1, 2025, by its own provisions.)

## **ARTICLE 2.5 CONFLICTS OF INTEREST**

### **§ 6035 Definitions**

Unless the contrary is stated or clearly appears from the context, the definitions set forth in Chapter 2 (commencing with section 82000) of Title 9 of the Government Code shall govern the interpretation of this article. (Added by Stats. 1978, ch. 752, effective September 14, 1978.)

### **§ 6036 Disqualification of Member for Financial or Personal Conflict; Exceptions; Disclosure**

(a) Any member of the board of trustees shall disqualify himself or herself from making, participating in the making of, or attempting to influence any decisions of the board or a committee of the board in which he or she has a financial interest, as that term is defined in Section 87103 of the Government Code, that it is reasonably foreseeable may be affected materially by the decision.

(b) Any member of the board of trustees shall likewise disqualify himself or herself when there exists a personal nonfinancial interest that will prevent the member from

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applying disinterested skill and undivided loyalty to the State Bar in making or participating in the making of decisions.

(c) Notwithstanding subdivisions (a) and (b), no member shall be prevented from making or participating in the making of any decision to the extent his or her participation is legally required for the action or decision to be made. The fact that a member's vote is needed to break a tie does not make his or her participation legally required for the purposes of this section.

(d) A member required to disqualify himself or herself because of a conflict of interest shall (1) immediately disclose the interest, (2) withdraw from any participation in the matter, (3) refrain from attempting to influence another member, and (4) refrain from voting. It is sufficient for the purpose of this section that the member indicate only that he or she has a disqualifying financial or personal interest.

(e) For purposes of this article and unless otherwise specified, "member" means any appointed or elected member of the board of trustees. (Added by Stats. 1978, ch. 752, effective September 14, 1978; Stats. 2005, ch. 341; Stats. 2011, ch. 417.)

### **§ 6037 Violations by Members; Validity of Action or Decision of Board; Termination of Member; Misdemeanor; Civil and Criminal Penalties**

No action or decision of the board or committee of the board shall be invalid because of the participation therein by a member or members in violation of Section 6036. However, any member who intentionally violates the provisions of subdivision (a) of Section 6036 is guilty of a misdemeanor, punishable by imprisonment in the county jail not exceeding five days, or by a fine not exceeding one thousand dollars (\$1,000), or by both, and, if the member is an attorney member of the board, a certified copy of the record of conviction shall be transmitted to the Supreme Court for disposition as provided in Sections 6101 and 6102. Upon entry of final judgment of conviction, the member's term of office on the board of trustees, and duties and authority incidental thereto, shall automatically terminate. Any member who intentionally violates the provisions of subdivision (b) of Section 6036 shall be liable for a civil penalty not to exceed five hundred dollars (\$500) for each violation, which shall be assessed and recovered in a civil action in a court of competent jurisdiction brought in the name of

the state only by a district attorney of a county in which the member resides or maintains offices and the penalty collected shall be paid to the treasurer of that county. (Added by Stats. 1978, ch. 752, effective September 14, 1978. Amended by Stats. 1981, ch. 714; Stats. 1983, ch. 1092; Stats. 2011, ch. 417.)

### **§ 6038 Governmental Decisions of Specified State Agencies; Applicability of Conflict of Interest Provisions to Members Thereof**

Attorney members of the Judicial Council, members of the Commission on Judicial Performance who are not judges, and employees designated in the Conflict of Interest Code of the State Bar of California are subject to provisions of this article with respect to making, participating in the making, or attempting to influence, governmental decisions of their respective state agencies other than decisions of a judicial or quasi-judicial nature. (Added by Stats. 1984, ch. 727, effective July 1, 1985.)

## **ARTICLE 3 INVESTIGATIONS, EXAMINING COMMITTEE, SUBPOENAS, AND OTHER PROCEEDINGS**

**§ 6040** (Origin: State Bar Act, § 30. Added by Stats. 1939, ch. 34. Amended by Stats. 2011, ch. 417. Repealed by Stats. 2018, ch. 659.)

**§ 6041** (Origin: State Bar Act, § 30. Amended by Stats. 1981, ch. 836. Repealed by Stats. 2018, ch. 659.)

**§ 6042** (Origin: State Bar Act, § 31. Added by Stats. 1939, ch. 34. Amended by Stats. 2011, ch. 417. Repealed by Stats. 2018, ch. 659.)

**§ 6043** (Origin: State Bar Act, § 32. Amended by Stats. 1963, ch. 1496. Repealed by Stats. 2018, ch. 659.)

### **§ 6043.5 Complaints; False and Malicious**

(a) Every person who reports to the State Bar or causes a complaint to be filed with the State Bar that an attorney has engaged in professional misconduct, knowing the report or complaint to be false and malicious, is guilty of a misdemeanor.

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(b) The State Bar may, in its discretion, notify the appropriate district attorney or city attorney that a person has filed what the State Bar believes to be a false and malicious report or complaint against an attorney and recommend prosecution of the person under subdivision (a). (Added by Stats. 1990, ch. 1639.)

### **§ 6044 Investigative Powers**

The chief trial counsel, with or without the filing or presentation of any complaint, may initiate and conduct investigations of all matters affecting or relating to:

- (a) The discipline of the licensees of the State Bar.
- (b) The acts or practices of a person whom the chief trial counsel has reason to believe has violated or is about to violate any provision of Articles 7 (commencing with section 6125) and 9 (commencing with section 6150) of this chapter.
- (c) Any other matter within the jurisdiction of the State Bar. (Origin: State Bar Act, § 34. Amended by Stats. 1961, ch. 2033; Stats. 2018, ch. 659.)

### **§ 6044.5 Disclosure of Information from Investigations or Formal Proceedings**

(a) When an investigation or formal proceeding concerns alleged misconduct which may subject a licensee to criminal prosecution for any felony, or any lesser crime committed during the course of the practice of law, or in any manner that the client of the licensee was a victim, or may subject the licensee to disciplinary charges in another jurisdiction, the State Bar shall disclose, in confidence, information not otherwise public under this chapter to the appropriate agency responsible for criminal or disciplinary enforcement or exchange that information with that agency.

(b) The Chief Trial Counsel or designee may disclose, in confidence, information not otherwise public under this chapter as follows:

- (1) To government agencies responsible for enforcement of civil and criminal laws or for professional licensing of individuals.
- (2) To members of the Judicial Nominees Evaluation Commission or a review committee thereof as to matters concerning nominees in any jurisdiction. (Added by Stats. 1988, ch. 1159.)

Amended by Stats. 1996, ch. 1104; Stats. 2018, ch. 659.)

**§ 6045** (Origin: State Bar Act, § 33. Repealed by Stats. 2018, ch. 659.)

### **§ 6046 Examining Committee; Powers; Composition**

The board may establish an examining committee having the power:

- (a) To examine all applicants for admission to practice law.
- (b) To administer the requirements for admission to practice law.
- (c) To certify to the Supreme Court for admission those applicants who fulfill the requirements provided in this chapter.

The examining committee shall be comprised of 19 members, 10 of whom shall be licensees of the State Bar or judges of courts of record in this state and nine of whom shall be public members who have never been licensees of the State Bar or admitted to practice before any court in the United States. At least one of the attorney members shall have been admitted to practice law in this state within three years from the date of the member's appointment to the examining committee. (Origin: State Bar Act, § 24. Amended by Stats. 1986, ch. 1392; Stats. 1988, ch. 1159; Stats. 2018, ch. 659.)

### **§ 6046.5 Examining Committee Public Member Appointments; Term; Rights and Duties**

Three of the public members of the examining committee shall be appointed by the Senate Rules Committee, three of the public members shall be appointed by the Speaker of the Assembly, and three of the public members shall be appointed by the Governor. They shall serve for a term of four years, except that of the initial public members so appointed, two shall serve for two years and four shall serve for four years, as shall be determined by lot. The public members appointed pursuant to the amendment of this section during the 1987-88 Regular Session of the Legislature shall serve for four years. The public members shall have the same rights, powers, and privileges as any attorney member except that such a member shall not participate in the drafting of questions submitted to applicants on the

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California Bar examination. (Added by Stats. 1975, ch. 874. Amended by Stats. 1986, ch. 1392; Stats. 1988, ch. 1159; Stats. 1996, ch. 866; Stats. 2018, ch. 659.)

### **§ 6046.6 Report to Legislature; Notice of Change in Bar Exam; Scaling**

(a) The examining committee shall not alter the bar examination in a manner that requires the substantial modification of the training or preparation required for passage of the examination, except after giving two years' notice of that change. This requirement does not apply to a change in the bar examination that is applicable only at the option of the applicant.

(b) The examining committee shall communicate and cooperate with the Law School Council.

(c) Scaling may be used on the bar examination for the purpose of maintaining an examination of uniform difficulty from year to year. (Added by Stats. 1986, ch. 1392. Amended by Stats. 1996, ch. 866.)

### **§ 6046.7 Adoption of Rules for the Regulation and Oversight of Unaccredited Law Schools—Collection of Fees to Fund Regulatory Responsibilities**

(a) (1) Notwithstanding any other provision of law, the Committee of Bar Examiners shall adopt rules that shall be effective on and after January 1, 2008, for the regulation and oversight of unaccredited law schools that are required to be authorized to operate as a business in California and to have an administrative office in California, including correspondence schools, that are not accredited by the American Bar Association or the Committee of Bar Examiners, with the goal of ensuring consumer protection and a legal education at an affordable cost.

(2) Notwithstanding any other provision of law, the committee shall adopt rules that shall be effective on and after January 1, 2008, for the regulation and oversight of nonlaw school legal programs leading to a juris doctor (J.D.) degree, bachelor of laws (LL.B.) degree, or other law study degree.

(b) Commencing January 1, 2008, the committee shall assess and collect a fee from unaccredited law schools

and legal programs in nonlaw schools in an amount sufficient to fund the regulatory and oversight responsibilities imposed by this section. Nothing in this subdivision precludes the board of trustees from using other funds or fees collected by the State Bar or by the committee to supplement the funding of the regulatory and oversight responsibilities imposed by this section with other funds, if that supplemental funding is deemed necessary and appropriate to mitigate some of the additional costs of the regulation and oversight to facilitate the provision of a legal education at an affordable cost. (Added by Stats. 2006, ch. 534. Amended by Stats. 2011, ch. 417.)

### **§ 6046.8 Evaluation of Bar Exam Adjustment of Exam or Passing Score; Report to Supreme Court and Legislature**

At least once every seven years, or more frequently if directed by the Supreme Court, the board of trustees shall oversee an evaluation of the bar examination to determine if it properly tests for minimally needed competence for entry-level attorneys and shall make a determination, supported by findings, whether to adjust the examination or the passing score based on the evaluation. The board of trustees shall report the results of the evaluation and any determination regarding adjustment in the passing score to the Supreme Court and the Legislature no later than March 15, 2018, and at least every seven years from the date of the previous report. (Added by Stats. 2017, ch. 422.)

### **§ 6047 Rules and Regulations of Examining Committee**

Subject to the approval of the board, the examining committee may adopt such reasonable rules and regulations as may be necessary or advisable for the purpose of making effective the qualifications prescribed in Article 4. (Origin: State Bar Act, § 24.1.)

**§ 6048** (Origin: State Bar Act, § 26. Repealed by Stats. 2018, ch. 659.)

### **§ 6049 Power to Take Evidence, Administer Oaths, and Issue Subpoenas**

(a) In the conduct of investigations and upon the trial and hearing of all matters, the State Bar Court may do all of the following:

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(1) Take and hear evidence pertaining to the proceeding.

(2) Administer oaths and affirmations.

(3) Compel, by subpoena, the attendance of witnesses and the production of books, papers and documents pertaining to the proceeding.

(b) In the conduct of investigations, the chief trial counsel or his or her designee, may compel, by subpoena, the attendance of witnesses and the production of books, papers, and documents pertaining to the investigation.

(c) In the conduct of all formal proceedings, each party may compel, by subpoena, the attendance of witnesses and the production of books, papers, and documents pertaining to the proceeding. (Origin: State Bar Act, §§ 26, 34. Amended by Stats. 1985, ch. 453; Stats. 1988, ch. 1159; Stats. 2018, ch. 659.)

### **§ 6049.1 Professional Misconduct Proceeding in Another Jurisdiction; Expedited Disciplinary Proceeding**

(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. (Added by Stats. 1985, ch. 453. Amended by Stats. 2018, ch. 659.)

### **§ 6049.2 Introduction of Transcripts of Testimony Given in Contested Civil Action or Special Proceeding**

In all disciplinary proceedings pursuant to this chapter, the testimony of a witness given in a contested civil action or special proceeding to which the person complained against is a party, or in whose behalf the action or proceeding is prosecuted or defended, may be received in evidence, so far as relevant and material to the issues in the disciplinary proceedings, by means of a duly authenticated transcript of such testimony and without proof of the nonavailability of the witness; provided, the State Bar Court may order the production of and testimony by such witness, in lieu of or in addition to receiving a transcript of his or her testimony and may decline to receive in evidence any such transcript of

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testimony, in whole or in part, when it appears that the testimony was given under circumstances that did not require or allow an opportunity for full cross-examination. (Added by Stats. 1961, ch. 2033. Amended by Stats. 2018, ch. 659.)

### **§ 6050 Disobedience of Subpoena as Contempt**

Whenever any person subpoenaed to appear and give testimony or to produce books, papers or documents refuses to appear or testify before the subpoenaing body, or to answer any pertinent or proper questions, or to produce such books, papers or documents, he or she is in contempt of the subpoenaing body. (Origin: State Bar Act, § 34. Amended by Stats. 1985, ch. 453.)

### **§ 6051 Attachment for Disobeying Subpoena; Proceedings and Punishment; Alternative Procedure; Order to Show Cause**

The State Bar Court or the chief trial counsel may report the fact that a person under subpoena is in contempt of the subpoenaing body to the superior court in and for the county in which the proceeding, investigation or other matter is being conducted and thereupon the court may issue an attachment in the form usual in the superior court, directed to the sheriff of the county, commanding the sheriff to attach the person and immediately bring him or her before the court.

On the return of the attachment, and the production of the person attached, the superior court has jurisdiction of the matter, and the person charged may purge himself or herself of the contempt in the same way, and the same proceedings shall be had, and the same penalties may be imposed, and the same punishment inflicted, as in the case of a witness subpoenaed to appear and give evidence on the trial of a civil cause before a superior court.

In lieu of the procedure specified above, the court may enter an order directing the person alleged to be in contempt to appear before the court at a specified time and place and then and there show cause why he or she has not attended or testified or produced the writings as required. A copy of the order shall be served upon that person. If it appears to the court that the subpoena was regularly issued and no good cause is shown for the refusal to appear or testify or produce the writings, the court shall enter an order that the person appear, testify,

or produce writings, as the case may be. Upon failure to obey the order, the person shall be dealt with as for contempt of court.

A proceeding pursuant to this section shall be entitled "In the Matter of (state name), Alleged Contemnor re State Bar (proceeding, investigation or matter) No. (insert number)." (Origin: State Bar Act, § 34. Amended by Stats. 1963, ch. 1496; Stats. 1985, ch. 453; Stats. 2018, ch. 659.)

### **§ 6051.1 Motion to Quash Subpoena**

A motion to quash a subpoena issued pursuant to Section 6049 shall be brought in the State Bar Court. (Added by Stats. 1985, ch. 453.)

### **§ 6052 Administration of Oaths; Issuance of Subpoenas; Depositions**

The State Bar Court or the chief trial counsel, or their designee, may administer oaths and issue any subpoena pursuant to Section 6049.

Depositions may be taken and used as provided in the rules of procedure adopted by the board pursuant to this chapter. (Amended by Stats. 1961, ch. 2033; Stats. 1965, ch. 290; Stats. 1981 ch. 184; Stats. 1985, ch. 453; Stats. 2019, ch. 698.)

### **§ 6053 Examination of Mental or Physical Condition, Reports**

Whenever in an investigation or proceeding provided for or authorized by this chapter, the mental or physical condition of the licensee of the State Bar is a material issue, the board or the committee having jurisdiction may order the licensee to be examined by one or more physicians or psychiatrists designated by it. The reports of such persons shall be made available to the licensee and the State Bar and may be received in evidence in such investigation or proceeding. (Added by Stats. 1968, ch. 1374, operative July 1, 1969. Amended by Stats. 2018, ch. 659.)

### **§ 6054 Criminal History Information; Fingerprinting**

(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. (Added by Stats. 1986, ch. 78. Amended by Stats. 1988, ch. 1159; Stats. 2017, ch. 422; Stats. 2018, ch. 659.)

## ARTICLE 3.5 CALIFORNIA LAWYERS ASSOCIATION

### § 6055 Nonprofit Association Act

This article shall be known, and may be cited, as the Nonprofit Association Act. (Added by Stats. 2017, ch. 422.)

### § 6056 Creation of Association; Nature of Corporation; Governance; Assistance from State Bar

(a) The State Bar, acting pursuant to Section 6001, shall assist the Sections of the State Bar to incorporate as a private, nonprofit corporation organized under Section 501(c)(6) of the Internal Revenue Code and shall transfer the functions and activities of the 16 State Bar Sections and the California Young Lawyers Association to the new private, nonprofit corporation, to be called the California Lawyers Association. The California Lawyers Association shall be a voluntary association, shall not be a part of the State Bar, and shall not be funded in any way through mandatory fees collected by the State Bar. The California Lawyers Association shall have independent contracting authority and full control of its resources. The California Lawyers Association shall not be considered a state, local, or other public body for any purpose, including, but not limited to, the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code) and the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code).

(b) The California Lawyers Association shall establish the criteria for membership in the California Young Lawyers Association. The California Lawyers Association may change the name of the California Young Lawyers Association to another name consistent with the criteria for membership and its mission.

(c) The State Bar may assist the California Lawyers Association in gaining appointment to the American Bar Association (ABA) House of Delegates, consistent with the California Lawyers Association's mission and subject to the consent of the ABA.

(d) The State Bar shall support the California Lawyers Association's efforts to partner with the Continuing Education of the Bar (CEB), subject to agreement by the University of California.

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(e) The State Bar of California shall ensure that State Bar staff who support the Sections, as of September 15, 2017, are reassigned to other comparable positions within the State Bar.

(f) The Sections of the State Bar or the California Lawyers Association and the State Bar shall enter into a memorandum of understanding regarding the terms of separation of the Sections of the State Bar from the State Bar and mandatory duties of the California Lawyers Association, including a requirement to provide all of the following:

- (1) Low- and no-cost mandatory continuing legal education (MCLE).
- (2) Expertise and information to the State Bar, as requested.
- (3) Educational programs and materials to the licensees of the State Bar and the public.

(g) The State Bar of California shall assist the California Lawyers Association in meeting the association's requirement to provide low- and no-cost MCLE by the inclusion on the State Bar's internet website of easily accessible links to the low- and no-cost MCLE provided by the California Lawyers Association. (Added by Stats. 2017, ch. 422. Amended by Stats. 2018, ch. 659; Stats. 2021, ch. 723; Stats. 2022, ch. 28.)

### **§ 6056.3 Transfers from State Bar to Association**

(a) On or before January 31, 2018, the State Bar shall transfer to the Association all membership fees and other funds paid for membership in the sections or paid in sponsorships, donations, or funds for the benefit of the sections, including, but not limited to, State Bar section financial reserves, with an accounting that specifies which funds are attributable to each individual section of the Association. The State Bar shall work with the Association to transfer all contracts previously entered into by the State Bar on behalf of the sections, as soon as practicable, consistent with any contractual obligations and legal requirements, unless an alternative arrangement is mutually acceptable to the State Bar and the Association.

(b) On or before January 31, 2018, the State Bar shall provide an itemized list of any outstanding expenses, including contracts made on behalf of section activities.

(c) The State Bar and the Association shall confer and work cooperatively to establish an orderly transition plan.

(d) All current intellectual property of the Sections of the State Bar and the board of governors, currently in the possession of the State Bar, shall be transferred to and retained by the Association, including, but not limited to, publications, educational materials, online education, membership lists of section members, and products.

(e) Programs created by the sections within the State Bar's online education catalog shall be transferred to the Association.

(f) The amount of the State Bar sections' reserves that are to be transferred shall be determined by cooperative review and accounting between the State Bar and the Association no later than January 31, 2018. If the State Bar and Sections of the State Bar do not agree on the amount by January 31, 2018, the parties shall submit the matter to binding arbitration by a neutral arbitrator who will determine the amount. If the parties cannot agree on a neutral arbitrator, each shall select a neutral arbitrator and the two neutral arbitrators shall select a single neutral arbitrator to determine the amount. The neutral arbitrator chosen to oversee the matter may hire an auditor to assist in this task. The fees charged by the arbitrator, including any auditor fees, shall be borne equally by the State Bar and the Association.

(g) The State Bar shall no longer include individual sections or voluntary organizations that are similar to Sections of the State Bar as they existed before being transferred to the Association. (Added by Stats. 2017, ch. 422.)

## ARTICLE 4

### ADMISSION TO THE PRACTICE OF LAW

#### **§ 6060 Qualifications; Examination and Fee**

To be certified to the Supreme Court for admission and a license to practice law, a person who has not been admitted to practice law in a sister state, United States jurisdiction, possession, territory, or dependency or in a foreign country shall:

- (a) Be at least 18 years of age.

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- (b) (1) Be of good moral character.
- (2) (A) In reviewing whether an applicant is of good moral character under this subdivision, the staff of the State Bar or the members of the examining committee shall not review or consider the person's medical records relating to mental health, except if the applicant seeks to use the record for either of the following purposes:
  - (i) To demonstrate that the applicant is of good moral character.
  - (ii) As a mitigating factor to explain a specific act of misconduct.(B) The staff of the State Bar and members of the examining committee shall not request or seek to review any medical records relating to mental health, including by obtaining the consent of the applicant to disclose such records, except as requested by an applicant and for a purpose specified in subparagraph (A).
- (c) Before beginning the study of law, have done either of the following:
  - (1) Completed at least two years of college work, which college work shall be at least one-half of the collegiate work acceptable for a bachelor's degree granted on the basis of a four-year period of study by a college or university approved by the examining committee.
  - (2) Have attained in apparent intellectual ability the equivalent of at least two years of college work by taking examinations in subject matters and achieving the scores as are prescribed by the examining committee.(d) Have registered with the examining committee as a law student within 90 days after beginning the study of law. The examining committee, upon a showing of good cause, may permit a later registration.
- (e) Have done either of the following:
  - (1) Had conferred upon them a juris doctor (J.D.) degree or a bachelor of laws (LL.B.) degree by a law school accredited by the examining committee or approved by the American Bar Association.
  - (2) Studied law diligently and in good faith for at least four years in any of the following manners:
    - (A) (i) In a law school that is authorized or approved to confer professional degrees and requires classroom attendance of its students for a minimum of 270 hours a year.
    - (ii) A person who has received their legal education in a foreign state or country where the common law of England does not constitute the basis of jurisprudence shall demonstrate to the satisfaction of the examining committee that the person's education, experience, and qualifications qualify them to take the examination.
  - (B) In a law office in this state and under the personal supervision of a licensee of the State Bar of California who is, and for at least the last five years continuously has been, engaged in the active practice of law. It is the duty of the supervising attorney to render any periodic reports to the examining committee as the committee may require.
  - (C) In the chambers and under the personal supervision of a judge of a court of record of this state. It is the duty of the supervising judge to render any periodic reports to the examining committee as the committee may require.
  - (D) By instruction in law from a correspondence law school authorized or approved to confer professional degrees by this state, which requires 864 hours of preparation and study per year for four years.
  - (E) By any combination of the methods referred to in this paragraph.
- (f) Have passed any examination in professional responsibility or legal ethics as the examining committee may prescribe.
- (g) Have passed the general bar examination given by the examining committee.
- (h) (1) Have passed a law students' examination administered by the examining committee after completion of their first year of law study. Those

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who pass the examination within its first three administrations, or within the first four administrations as provided in paragraph (3), upon becoming eligible to take the examination, shall receive credit for all law studies completed to the time the examination is passed. Those who do not pass the examination within the number of administrations allowed by this subdivision, upon becoming eligible to take the examination, but who subsequently pass the examination, shall receive credit for one year of legal study only.

- (2) (A) This requirement does not apply to a student who has satisfactorily completed their first year of law study at a law school accredited by the examining committee and who has completed at least two years of college work prior to matriculating in the accredited law school, nor shall this requirement apply to an applicant who has passed the bar examination of a sister state or of a country in which the common law of England constitutes the basis of jurisprudence.

(B) The law students' examination shall be administered twice a year at reasonable intervals

- (3) If any of the first three administrations of the law students' examination described in paragraph (1) includes the June 2020 administration, the applicant shall be permitted to pass the examination within its first four administrations upon becoming eligible to take the examination and shall receive credit for all law studies completed to the time the examination is passed. (Origin: State Bar Act, § 24.2. Amended by Stats. 1953, ch. 1090; Stats. 1959, ch. 1084; Stats. 1970, ch. 251; Stats. 1971, ch. 1748; Stats. 1972, ch. 1285; Stats. 1973, ch. 1052; Stats. 1974, ch. 316, effective May 31, 1974; Stats. 1987, ch. 239; Stats. 1990, ch. 707; Stats. 1996, ch. 866; Stats. 2001, ch. 46; Stats. 2018, ch. 659; Stats. 2019, ch. 152; Stats. 2020, ch. 360.)

### **§ 6060.1 Violation of University or Law School Rules**

- (a) Any disciplinary action taken against an individual at a university or an accredited law school for violation of university or law school rules of conduct shall not be

used as the sole basis for denying the individual admission to practice law in the State of California.

- (b) This section shall not apply to university or law school violations which involve moral turpitude or that result in criminal prosecution under the laws of the State of California or any other state. (Added by Stats. 1990, ch. 1639.)

### **§ 6060.2 Confidentiality of Proceedings re Moral Character**

- (a) All investigations or proceedings conducted by the State Bar concerning the moral character of an applicant shall be confidential and shall not be disclosed pursuant to any state law, including, but not limited to, the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) unless the applicant, in writing, waives the confidentiality. However, the records of the proceeding may be subject to lawfully issued subpoenas.

- (b) Notwithstanding subdivision (a), the records of the proceeding may be disclosed in response to either of the following:

(1) A lawfully issued subpoena.

(2) A written request from a government agency responsible for either the enforcement of civil or criminal laws or the professional licensing of individuals that is conducting an investigation about the applicant. (Added by Stats. 1990, ch. 1639. Amended by Stats. 2015, ch. 537, effective October 2, 2017; Stats. 2017, ch. 422.)

### **§ 6060.25 Confidentiality of Information Provided by Applicant to the State Bar for Admission and License to Practice Law**

- (a) Notwithstanding any other law, any identifying information submitted by an applicant to the State Bar for admission and a license to practice law and all State Bar admission records, including, but not limited to, bar examination scores, law school grade point average (GPA), undergraduate GPA, Law School Admission Test scores, race or ethnicity, and any information contained within the State Bar Admissions database or any file or other data created by the State Bar with information submitted by the applicant that may identify an individual applicant, other than information described in subdivision (b), shall be confidential and shall not be

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disclosed pursuant to any state law, including, but not limited to, the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(b) Subject to existing state and federal laws protecting education records, subdivision (a) does not prohibit the disclosure of any of the following:

(1) The names of applicants who have passed any examination administered, given, or prescribed by the Committee of Bar Examiners.

(2) Information that is provided at the request of an applicant to another jurisdiction where the applicant is seeking admission to the practice of law.

(3) Information provided to a law school that is necessary for the purpose of the law school's compliance with accreditation or regulatory requirements. Beginning with the release of results from the July 2018 bar examination, the information provided to a law school shall also include the bar examination results of the law school's graduates allocated to the law school and the scores of any graduate allocated to the law school who did not pass the bar examination and who consents to the release of his or her scores to the law school. Consent of a law school graduate to the release of his or her scores may be obtained by a check-off on the graduate's application to take the bar examination. For purposes of this paragraph, "scores" means the same scores reported to a graduate who did not successfully pass the bar examination.

(4) Information provided to the National Conference of Bar Examiners or a successor nonprofit organization in connection to the State Bar's administration of any examination.

(5) This subdivision shall apply retroactively to January 1, 2016.

(c) Disclosure of any of the information in paragraphs (2) to (4), inclusive, of subdivision (b) shall not constitute a waiver under Section 6254.5 of the Government Code of the exemption from disclosure provided for in subdivision (a) of this section.

(d) (1) Notwithstanding any other law except existing state and federal laws protecting education records, any information received from an

educational or testing entity that is collected by the State Bar for the purpose of conducting a Law School Bar Exam Performance Study as the State Bar has been directed to do by the California Supreme Court by letter dated February 28, 2017, other than aggregate, summary, or statistical data that does not identify any person and does not provide substantial risk of identification of any person, shall be confidential and shall not be disclosed pursuant to any state law, including, but not limited to, the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(2) Nothing in this subdivision is intended to impact any litigation pending on the effective date of the measure that added this subdivision. (Added by Stats. 2015, ch. 537. Amended by Stats. 2017, ch. 422.)

### **§ 6060.3 Late Filing Fees; Refunds**

(a) An application to take the California bar examination administered in February must be filed with the examining committee not later than the first business day of the preceding November, and an application to take the California bar examination administered in July must be filed with the examining committee not later than the first business day of the preceding April. However, an applicant who was unsuccessful on the examination last administered shall be allowed 10 business days from the date of the general announcement of results of that examination in which to timely file an application to take the next scheduled examination.

(b) The examining committee may accept applications to take the California bar examination filed after the timely deadlines specified in subdivision (a) from applicants if the application is accompanied by the timely application fee and the late filing fee fixed by the board as follows:

(1) An application to take the California bar examination filed between the first and last business days in November for the February examination or between the first and last business days of April for the July examination shall be accepted if it is accompanied by the timely filing fee and a late fee not to exceed fifty dollars (\$50).

(2) An application to take the California bar examination filed between the last business day of

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November and January 1 for the February examination or between the last business day of April and June 1 for the July examination shall be accepted if it is accompanied by the timely filing fee and a late fee not to exceed two hundred fifty dollars (\$250).

(3) An application to take the California bar examination filed after January 1 for the February examination and after June 1 for the July examination shall not be accepted.

(c) Application fees for the California bar examination, including fees for late filing, shall be refunded if the applicant does not take the California bar examination because of the death of an immediate family member or the serious illness or disabling injury of the applicant or a member of his or her immediate family. A deduction may be made from the refund for administrative costs. The board shall adopt regulations for the administration of this subdivision. This subdivision shall not be construed to prohibit the refund of fees in instances other than those specified. (Former § 6060.3 added by Stats. 1986, ch. 1510 and 28, repealed by Stats. 1996, ch. 866. New § 6060.3 added by Stats. 1996, ch. 866. Amended by Stats. 2001, ch. 46; Stats. 2018, ch. 659.)

### **§ 6060.5 Different Bar Examination for Particular Applicants**

Neither the board, nor any committee authorized by it, shall require that applicants for admission to practice law in California pass different final bar examinations depending upon the manner or school in which they acquire their legal education.

This section shall not prohibit the board, or any committee authorized by it, from establishing a different bar examination for applicants who are admitted to practice before the highest court of another state or of any jurisdiction where the common law of England constitutes the basis of jurisprudence. (Original section added by Stats. 1946, ch. 65; Repealed by Stats. 1959, ch. 1268; present section added by Stats. 1971, ch. 1666.)

### **§ 6060.6 Identification Number in Lieu of Social Security Number**

Notwithstanding Section 30 of this code and Section 17520 of the Family Code, the Committee of Bar Examiners may accept for registration, and the State Bar may process for an original or renewed license to

practice law, an application from an individual containing a federal tax identification number, or other appropriate identification number as determined by the State Bar, in lieu of a social security number, if the individual is not eligible for a social security account number at the time of application and is not in noncompliance with a judgment or order for support pursuant to Section 17520 of the Family Code. (Added by Stats. 2005, ch. 610.)

### **§ 6060.7 Approval, Regulation and Oversight of Degree-Granting Law Schools by Examining Committee**

(a) From January 1, 2007, to December 31, 2007, law schools and law study degree programs shall be subject to the following:

(1) The examining committee shall be responsible for the approval, regulation, and oversight of degree-granting law schools that (A) exclusively offer bachelor's, master's, or doctorate degrees in law, such as juris doctor, and (B) do not meet the criteria set forth in Section 94750 of the Education Code. This paragraph does not apply to unaccredited law schools, which remain subject to the jurisdiction of the Bureau of Private Postsecondary Education or its successor agency.

(2) If a law school that does not meet the criteria set forth in Section 94750 of the Education Code offers educational services other than bachelor's, master's, or doctorate-degree programs in law, only the law school's degree programs in law shall be subject to the approval, regulation, and oversight of the examining committee.

(b) On and after January 1, 2008, law schools and law study degree programs shall be subject to the following:

(1) The examining committee shall be responsible for the approval, regulation, and oversight of degree-granting law schools that (A) exclusively offer bachelor's, master's, or doctorate degrees in law, such as juris doctor, and (B) do not meet the criteria set forth in Section 94750 of the Education Code.

(2) If a law school that does not meet the criteria set forth in Section 94750 of the Education Code offers educational services other than bachelor's, master's, or doctorate-degree programs in law, only the law school's degree programs in law shall

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be subject to the approval, regulation, and oversight of the examining committee.

(3) If a nonlaw school that does not meet the criteria set forth in Section 94750 of the Education Code offers educational programs leading to a juris doctor (J.D.) degree, bachelor of laws (LL.B.) degree, or other law study degree, those programs shall be subject to the regulation and oversight of the examining committee. The provisions of this paragraph shall not apply to paralegal programs. (Added by Stats. 2006, ch. 534.)

### **§ 6060.9 Accreditation of Law Schools; Prohibited Conditions**

Approval of any agency or agencies not existing under and by virtue of the laws of this State shall not be made a condition for accreditation of any California law school. (Added by Stats. 1957, ch. 647.)

### **§ 6061 Disclosure Statements—Unaccredited Law Schools**

Any law school that is not accredited by the examining committee of the State Bar shall provide every student with a disclosure statement, subsequent to the payment of any application fee but prior to the payment of any registration fee, containing all of the following information:

(a) The school is not accredited. However, in addition, if the school has been approved by other agencies, that fact may be so stated.

(b) Where the school has not been in operation for 10 years, the assets and liabilities of the school. However, if the school has had prior affiliation with another school that has been in operation more than 10 years, has been under the control of another school that has been in operation more than 10 years, or has been a successor to a school in operation more than 10 years, this subdivision is not applicable.

(c) The number and percentage of students who have taken and who have passed the first-year law student's examination and the final bar examination in the previous five years, or since the establishment of the school, whichever time is less, which shall include only those students who have been certified by the school to take the examinations.

(d) The number of legal volumes in the library. This subdivision does not apply to correspondence schools.

(e) The educational background, qualifications and experience of the faculty, and whether or not the faculty members and administrators (e.g., the dean) are licensees of the California State Bar.

(f) The ratio of faculty to students for the previous five years or since the establishment of the school, whichever time is less.

(g) Whether or not the school has applied for accreditation, and if so, the date of application and whether or not that application has been withdrawn, is currently pending, or has been finally denied. The school need only disclose information relating to applications made in the previous five years.

(h) That the education provided by the school may not satisfy the requirements of other states for the practice of law. Applicants should inquire regarding those requirements, if any, to the state in which they may wish to practice.

The disclosure statement required by this section shall be signed by each student, who shall receive as a receipt a copy of his or her signed disclosure statement. If any school does not comply with these requirements, it shall make a full refund of all fees paid by students.

Subject to approval by the board, the examining committee may adopt reasonable rules and regulations as are necessary for the purpose of ensuring compliance with this section. (Added by Stats. 1986, ch. 1392. Amended by Stats. 2006, ch. 534; Stats. 2007, ch. 130; Stats. 2018, ch. 659.)

### **§ 6061.5 Affiliation Disclosure—Unaccredited Law Schools**

A law school that is not accredited by the examining committee of the State Bar may refer to itself as a university or part of a university and, if it so refers to itself, shall state whether or not the law school is associated with an undergraduate school. (Added by Stats. 2006, ch. 534.)

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### **§ 6061.7 Law Schools Not Approved by the American Bar Association; Website Disclosures; Required Information; Accuracy of Information**

(a) Any law school that is not approved by the American Bar Association shall publicly disclose on its Internet Web site, with a link from the Internet home page under "Admissions," all of the following information:

- (1) Admissions data.
- (2) Tuition, fees, and financial aid.
- (3) Conditional scholarships.
- (4) Enrollment data.
- (5) Number of full-time and part-time faculty, technically trained librarians, and administrators.
- (6) Average class size of each required course and the number of clinical offerings.
- (7) Employment outcomes for graduates.
- (8) Bar passage data.

(b) (1) The information in subdivision (a) shall be disclosed in a standardized information report that is readily accessible to current and prospective students in a manner that is complete, accurate, and not misleading to a reasonable student or applicant.

(2) The State Bar may create a standardized information report template.

(3) Any law school that is not approved by the American Bar Association shall include the standardized information report as part of the annual compliance report required to be submitted to the State Bar by all law schools that are not approved by the American Bar Association and are regulated by the examining committee of the State Bar.

(4) A law school may use the information report template to comply with the information disclosure required under subdivision (a).

(c) Any law school that is not approved by the American Bar Association shall publicly disclose on its Internet Web site, in a readable and comprehensive

manner, all of the following information on a current basis:

- (1) Refund policy.
- (2) Curricular offerings, academic calendar, and academic requirements.
- (3) Policy regarding the transfer of credit earned at another institution of higher education.

(d) The law school's transfer of credit policy shall include, at a minimum, both of the following:

(1) A statement of the criteria established by the law school regarding the acceptance of credit earned for coursework completed at another institution.

(2) A list of institutions, if any, with which the law school has established an articulation agreement and the terms of any such agreement. If the law school has not entered into a transfer or articulation agreement with any other college or university, the institution shall disclose that fact.

(e) All information that a law school reports, publicizes, or distributes pursuant to this section shall be complete, accurate, and not misleading to a reasonable law school student or applicant. A law school shall use due diligence in obtaining and verifying such information.

(f) A law school that is not approved by the American Bar Association shall distribute the data required under paragraph (3) of subdivision (a) to all applicants being offered conditional scholarships at the time the scholarship offer is made.

(g) For the purposes of this section, the following definitions apply:

(1) "Admissions data" means information from the most recently enrolled fall semester class including the total number of applications, the total number of accepted students, and the 75th, 50th, and 25th percentile scores for the undergraduate grade point averages and law school admission test scores of admitted students.

(2) "Bar passage data" means the most current cumulative bar pass rates defined and reported by the examining committee of the State Bar.

(3) "Conditional scholarship" means any financial aid award, the retention of which is dependent



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upon the student maintaining a minimum grade point average or class standing other than that ordinarily required to remain in good academic standing.

(4) "Curricular offering" means only those courses offered in the current and past two academic years.

(5) "Employment outcomes for graduates" means the results of a survey by the law school, taken three years after graduation, that breaks down the employment rate of graduates in each of the first three years after graduation, including the rate of employment of graduates in jobs where a Juris Doctor degree is required by the employer and the rate of employment of graduates in jobs where a Juris Doctor degree is an advantage in employment.

(6) "Enrollment data" means information about the number of students who are admitted to the school per class per year for the past three years, the number of students who transfer to and from the school per class per year for the past three years, and the number of students who do not continue to attend the school each year for the past three years on either a voluntary or involuntary basis.

(7) "Transfer or articulation agreement" means an agreement between the law school and any other college or university that provides for the transfer of credits earned in the program of instruction. (Added by Stats. 2016, ch. 87.)

### § 6062 Out-of-State Attorneys

(a) To be certified to the Supreme Court for admission, and a license to practice law, a person who has been admitted to practice law in a sister state, United States jurisdiction, possession, territory, or dependency the United States may hereafter acquire shall:

- (1) Be of the age of at least 18 years
- (2) Be of good moral character.
- (3) Have passed the general bar examination given by the examining committee. However, if that person has been an active licensee in good standing of the bar of the admitting sister state or United States jurisdiction, possession, or territory

for at least four years immediately preceding the first day of the examination applied for, he or she may elect to take the Attorneys' Examination rather than the general bar examination. Attorneys admitted less than four years and attorneys admitted four years or more in another jurisdiction but who have not been active licensees in good standing of their admitting jurisdiction for at least four years immediately preceding the first day of the examination applied for must take the general bar examination administered to general applicants not admitted as attorneys in other jurisdictions.

(4) Have passed an examination in professional responsibility or legal ethics as the examining committee may prescribe.

(b) To be certified to the Supreme Court for admission, and a license to practice law, a person who has been admitted to practice law in a jurisdiction other than in a sister state, United States jurisdiction, possession, or territory shall:

- (1) Be of the age of at least 18 years.
- (2) Be of good moral character.
- (3) Have passed the general bar examination given by the examining committee.
- (4) Have passed an examination in professional responsibility or legal ethics as the examining committee may prescribe.

(c) The amendments to this section made at the 1997-98 Regular Session of the Legislature shall be applicable on and after January 1, 1997, and do not constitute a change in, but are declaratory of, existing law. (Origin: State Bar Act, § 24.3. Amended by Stats. 1941, ch. 766; Stats. 1945, ch. 176; Stats. 1967, ch. 970; Stats. 1970, ch. 251; Stats. 1971, ch. 1748; Stats. 1972, ch. 1285; Stats. 1974, ch. 34; Stats. 1996, ch. 866; Stats. 1998, ch. 29, effective April 29, 1998; Stats. 2001, ch. 46; Stats. 2018, ch. 659.)

**[Publisher's Note: The following paragraph concerns out-of-state attorneys and reciprocal admission to the State Bar of California. It was added by Stats. 2000, ch. 247, but not codified and is provided below for your information.]**

SECTION 1. It is the intent of the Legislature that the Supreme Court of California should adopt rules permitting the admission to the practice of law in

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California of an attorney who is licensed in another state and who has not passed the California State Bar examination, if the state in which the attorney is licensed to practice affords the same opportunity to licensed attorneys from California. The Legislature also recognizes that the question of reciprocal admission is a complex one, and it, therefore, requests that the Supreme Court appoint a task force to study and make recommendations regarding whether and under what circumstances, attorneys who are licensed to practice law in other states and who have not passed the California State Bar examination may be permitted to practice law in California. The task force study should consider all of the following factors:

- (a) Years of practice in other states.
- (b) Admission to practice law in another state.
- (c) Specialization of the attorney's practice in another state.
- (d) The attorney's intended scope of practice in California.
- (e) The admission requirements in the state or states in which the attorney has been licensed to practice.
- (f) Reciprocity with and comity with other states.
- (g) Moral character requirements.
- (h) Disciplinary implications.
- (i) Consumer protection.

### **§ 6063 Fees**

Applicants for admission to practice shall pay such reasonable fees, fixed by the board, as may be necessary to defray the expense of administering the provisions of this chapter, relating to admission to practice. These fees shall be collected by the examining committee and paid into the treasury of the State Bar. (Origin: State Bar Act, § 24.4.)

### **§ 6064 Admission**

(a) Upon certification by the examining committee that the applicant has fulfilled the requirements for admission to practice law, the Supreme Court may admit the applicant as an attorney at law in all the courts of this state and may direct an order to be entered upon its

records to that effect. A certificate of admission thereupon shall be given to the applicant by the clerk of the court.

(b) Upon certification by the examining committee that an applicant who is not lawfully present in the United States has fulfilled the requirements for admission to practice law, the Supreme Court may admit that applicant as an attorney at law in all the courts of this state and may direct an order to be entered upon its records to that effect. A certificate of admission thereupon shall be given to the applicant by the clerk of the court. (Origin: State Bar Act, § 24.5. Amended by Stats. 2013, ch. 573.)

### **§ 6064.1 Advocacy of Overthrow of Government**

No person who advocates the overthrow of the Government of the United States or of this State by force, violence, or other unconstitutional means, shall be certified to the Supreme Court for admission and a license to practice law. (Added by Stats. 1951, ch. 179.)

### **§ 6065 Inspection of Papers and Grading**

(a) (1) Any unsuccessful applicant for admission to practice, after he or she has taken any examination and within four months after the results thereof have been declared, has the right to inspect his or her examination papers at the office of the examining committee located nearest to the place at which the applicant took the examination.

(2) The applicant also has the right to inspect the grading of the papers whether the record thereof is marked upon the examination or otherwise.

(b) This section shall become operative on January 1, 2009. (Added by Stats. 2002, ch. 415, effective September 9, 2002. Amended Stats. 2003, ch. 334.)

### **§ 6066 Review of Refusal of Certification**

Any person refused certification to the Supreme Court for admission to practice may have the action of the board, or of any committee authorized by the board to make a determination on its behalf, pursuant to the provisions of this chapter, reviewed by the Supreme Court, in accordance with the procedure prescribed by the court. (Origin: State Bar Act, § 38.)

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### § 6067 Oath

Every person on his admission shall take an oath to support the Constitution of the United States and the Constitution of the State of California, and faithfully to discharge the duties of any attorney at law to the best of his knowledge and ability. A certificate of the oath shall be indorsed upon his license. (Added by Stats. 1939, ch. 34.)

### § 6068 Duties of Attorney

It is the duty of an attorney to do all of the following:

- (a) To support the Constitution and laws of the United States and of this state.
- (b) To maintain the respect due to the courts of justice and judicial officers.
- (c) To counsel or maintain those actions, proceedings, or defenses only as appear to him or her legal or just, except the defense of a person charged with a public offense.
- (d) To employ, for the purpose of maintaining the causes confided to him or her those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law.
- (e)
  - (1) To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client.
  - (2) Notwithstanding paragraph (1), an attorney may, but is not required to, reveal confidential information relating to the representation of a client to the extent that the attorney reasonably believes the disclosure is necessary to prevent a criminal act that the attorney reasonably believes is likely to result in death of, or substantial bodily harm to, an individual.
- (f) To advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he or she is charged.
- (g) Not to encourage either the commencement or the continuance of an action or proceeding from any corrupt motive of passion or interest.

(h) Never to reject, for any consideration personal to himself or herself, the cause of the defenseless or the oppressed.

(i) To cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against himself or herself. However, this subdivision shall not be construed to deprive an attorney of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privileges. This subdivision shall not be construed to require an attorney to cooperate with a request that requires him or her to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the attorney's practice. Any exercise by an attorney of any constitutional or statutory privilege shall not be used against the attorney in a regulatory or disciplinary proceeding against him or her.

(j) To comply with the requirements of Section 6002.1.

(k) To comply with all conditions attached to any disciplinary probation, including a probation imposed with the concurrence of the attorney.

(l) To keep all agreements made in lieu of disciplinary prosecution with the State Bar.

(m) To respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

(n) To provide copies to the client of certain documents under time limits and as prescribed in a rule of professional conduct which the board shall adopt.

(o) To report to the State Bar, in writing, within 30 days of the time the attorney has knowledge of any of the following:

(1) The filing of three or more lawsuits in a 12-month period against the attorney for malpractice or other wrongful conduct committed in a professional capacity.

(2) The entry of judgment against the attorney in a civil action for fraud, misrepresentation, breach of fiduciary duty, or gross negligence committed in a professional capacity.

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(3) The imposition of judicial sanctions against the attorney, except for sanctions for failure to make discovery or monetary sanctions of less than one thousand dollars (\$1,000).

(4) The bringing of an indictment or information charging a felony against the attorney.

(5) The conviction of the attorney, including any verdict of guilty, or plea of guilty or no contest, of a felony, or a misdemeanor committed in the course of the practice of law, or in a manner in which a client of the attorney was the victim, or a necessary element of which, as determined by the statutory or common law definition of the misdemeanor, involves improper conduct of an attorney, including dishonesty or other moral turpitude, or an attempt or a conspiracy or solicitation of another to commit a felony or a misdemeanor of that type.

(6) The imposition of discipline against the attorney by a professional or occupational disciplinary agency or licensing board, whether in California or elsewhere.

(7) Reversal of judgment in a proceeding based in whole or in part upon misconduct, grossly incompetent representation, or willful misrepresentation by an attorney.

(8) As used in this subdivision, "against the attorney" includes claims and proceedings against any firm of attorneys for the practice of law in which the attorney was a partner at the time of the conduct complained of and any law corporation in which the attorney was a shareholder at the time of the conduct complained of unless the matter has to the attorney's knowledge already been reported by the law firm or corporation.

(9) The State Bar may develop a prescribed form for the making of reports required by this section, usage of which it may require by rule or regulation.

(10) This subdivision is only intended to provide that the failure to report as required herein may serve as a basis of discipline. (Origin: Code Civ. Proc., § 282. Amended by Stats. 1985, ch. 453; Stats. 1986, ch. 475; Stats. 1988, ch. 1159; Stats. 1990, ch. 1639; Stats. 1999, ch. 221; Stats. 1999, ch. 342; Stats. 2001, ch. 24; Stats. 2003, ch. 765, operative July 1, 2004; Stats. 2018, ch. 659.)

### **§ 6068.11 Attorneys: Defense of Insureds, State Bar Study**

(a) The Legislature finds and declares that the opinion in *State Farm Mutual Auto Insurance Company v. Federal Insurance Company* (1999) 72 Cal.App.4th 1422, raises issues concerning the relationship between an attorney and an insurer when the attorney is retained by the insurer to represent the insured. These issues involve both the Rules of Professional Conduct for attorneys and procedural issues affecting the conduct of litigation.

(b) The board in consultation with representatives of associations representing the defense bar, the plaintiffs bar, the insurance industry and the Judicial Council, shall conduct a study concerning the legal and professional responsibility issues that may arise as a result of the relationship between an attorney and an insurer when the attorney is retained by the insurer to represent an insured, and subsequently, the attorney is retained to represent a party against another party insured by the insurer. The board shall prepare a report that identifies and analyzes the issues and, if appropriate, provides recommendations for changes to the Rules of Professional Conduct and relevant statutes. The board shall submit the report to the Legislature and the Supreme Court of California on or before July 1, 2002.

(c) This section shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date. (Added by Stats. 2000, ch. 472. Repealed by Stats. 2001, ch. 438.)

*[Publisher's Note: Business and Professions Code § 6068.11 was repealed on January 1, 2003. It is provided above for your information.]*

### **§ 6069 Authorization for Disclosure of Financial Records; Subpoena; Notice; Review**

(a) Every member of the State Bar shall be deemed by operation of this law to have irrevocably authorized the disclosure to the State Bar and the Supreme Court pursuant to Section 7473 of the Government Code of any and all financial records held by financial institutions as defined in subdivisions (a) and (b) Section 7465 of the Government Code pertaining to accounts which the member must maintain in accordance with the Rules of Professional Conduct; provided that no such financial records shall be disclosed to the State Bar without a subpoena therefor having been issued pursuant to

Section 6049 of this code, and further provided that the board of trustees shall by rule provide notice to the member similar to that notice provided for in subdivision (d) of Section 7473 of the Government Code. Such notice may be sent by mail addressed to the member's current office or other address for State Bar purposes as shown on the member's registration records of the State Bar.

The State Bar shall, by mail addressed to the member's current office or other address for State Bar purposes as shown on the member's registration records of the State Bar, notify its members annually of the provisions of this subdivision.

(b) With regard to the examination of all financial records other than those mentioned in subdivision (a), held by financial institutions as defined in subdivisions (a) and (b) of Section 7465 of the Government Code, no such financial records shall be disclosed to the State Bar without a subpoena therefor having been issued pursuant to Section 6049 of this code and the board of trustees shall by rule provide for service of a copy of the subpoena on the customer as defined in subdivision (d) of Section 7465 of the Government Code and an opportunity for the customer to move the board or committee having jurisdiction to quash the subpoena prior to examination of the financial records. Review of the actions of the board or any committee on such motions shall be had only by the Supreme Court in accordance with the procedure prescribed by the court. Service of a copy of any subpoena issued pursuant to this subdivision (b) may be made on a member of the State Bar by mail addressed to the member's current office or other address for State Bar purposes as shown on the member's registration records of the State Bar. If the customer is other than a member, service shall be made pursuant to Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure, except that service may be made by an employee of the State Bar.

(c) For purposes of this section, "member of the State Bar" or "member" means every member of the State Bar, law firm in California of which a member of the State Bar is a member, and law corporation within the meaning of Article 10 of Chapter 4 of Division 3 of this code. (Added by Stats. 1976, ch. 1320; Amended by Stats. 1978, ch. 1346; Stats. 2011, ch. 417.)

**§ 6069.5** (Added by Stats. 2017, ch. 422. Repealed by Stats. 2021, ch. 723.)

## ARTICLE 4.5 MANDATORY CONTINUING LEGAL EDUCATION

### **§ 6070 Establishment and Administration; Adoption of Rule by Supreme Court**

(a) The State Bar shall request the California Supreme Court to adopt a rule of court authorizing the State Bar to establish and administer a mandatory continuing legal education program. The rule that the State Bar requests the Supreme Court to adopt shall require that, within designated 36-month periods, all active licensees of the State Bar shall complete at least 25 hours of legal education activities approved by the State Bar or offered by a State Bar-approved provider, with four of those hours in legal ethics. The legal education activities shall focus on California law and practice and federal law as relevant to its practice in California or tribal law. A licensee of the State Bar who fails to satisfy the mandatory continuing legal education requirements of the program authorized by the Supreme Court rule shall be enrolled as an inactive licensee pursuant to rules adopted by the Board of Trustees of the State Bar.

(b) For purposes of this section, statewide associations of public agencies and incorporated, nonprofit professional associations of attorneys, including the California Lawyers Association, shall be certified as State Bar approved providers upon completion of an appropriate application process to be established by the State Bar. The certification may be revoked only by majority vote of the board, after notice and hearing, and for good cause shown. Programs provided by the California District Attorneys Association or the California Public Defenders Association, or both, including, but not limited to, programs provided pursuant to Title 1.5 (commencing with Section 11500) of Part 4 of the Penal Code, are deemed to be legal education activities approved by the State Bar or offered by a State Bar-approved provider.

(c) Notwithstanding the provisions of subdivision (a), officers and elected officials of the State of California, and full-time professors at law schools accredited by the State Bar of California, the American Bar Association, or both, shall be exempt from the provisions of this section. Full-time employees of the State of California, acting within the scope of their employment, shall be exempt from the provisions of this section. Nothing in this section shall prohibit the State of California, or any political subdivision thereof, from establishing or

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maintaining its own continuing education requirements for its employees.

(d) The California Lawyers Association shall provide and encourage the development of low-cost programs and materials by which licensees of the State Bar may satisfy their continuing education requirements. Special emphasis shall be placed upon the use of internet capabilities and computer technology in the development and provision of no-cost and low-cost programs and materials. Towards this purpose, as a condition of the State Bar's collection of membership fees on behalf of the California Lawyers Association pursuant to subdivision (b) of Section 6031.5, the California Lawyers Association shall ensure that any licensee possessing or having access to the Internet or specified generally available computer technology shall be capable of satisfying the full self-study portion of his or her MCLE requirement at a cost of twenty dollars (\$20) per hour or less. (Added by Stats. 1989, ch. 1425. Amended by Stats. 1999, ch. 342; Stats. 2011, ch. 417; Stats. 2017, ch. 422; Stats. 2018, ch. 659.)

**[Publisher's Note:** *The following paragraph concerns mandatory continuing legal education and was added by Stats. 1999, ch. 342, but not codified. It is provided below for your information. See also, Appendix C for MCLE Rules and additional information regarding MCLE requirement.*]

SEC. 10. The Legislature finds and declares that it is in the public interest to continue the mandatory continuing legal education requirements for attorneys licensed to practice law. The Legislature further finds and declares that officers and elected officials of the State of California, and their full-time employees undergo ongoing continuing legal education in their review of the implementation of current statutes and regulations, including any court interpretation of a statute or regulation, and in their consideration and analysis of proposed changes in those statutes and regulations, thereby warranting their exemption from the requirements of Section 6070 of the Business and Professions Code. The Legislature also finds and declares that full-time law professors at accredited law schools also undergo ongoing continuing legal education in their review of the statutes and regulations of this state, including any court interpretation of a statute or regulation, thereby warranting their exemption from the requirements of Section 6070 of the Business and Professions Code.

### § 6070.5 Mandatory Continuing Education Curriculum; Training on Implicit Bias

(a) The State Bar shall adopt regulations to require, as of January 1, 2022, that the mandatory continuing legal education (MCLE) curriculum for all licensees under this chapter includes training on implicit bias and the promotion of bias-reducing strategies to address how unintended biases regarding race, ethnicity, gender identity, sexual orientation, socioeconomic status, or other characteristics undermine confidence in the legal system. A licensee shall meet the requirements of this section for each MCLE compliance period ending after January 31, 2022.

(b) When approving MCLE providers to offer the training required by subdivision (a), the State Bar shall require that the MCLE provider meets, at a minimum, all of the following requirements:

(1) The MCLE provider shall make reasonable efforts to recruit and hire trainers who are representative of the diversity of persons that California's legal system serves.

(2) The trainers shall have either academic training in implicit bias or experience educating legal professionals about implicit bias and its effects on people accessing and interacting with the legal system.

(3) The training shall include a component regarding the impact of implicit bias, explicit bias, and systemic bias on the legal system and the effect this can have on people accessing and interacting with the legal system.

(4) The training shall include actionable steps licensees can take to recognize and address their own implicit biases.

(c) As part of the certification, approval, or renewal process for MCLE-approved provider status, or more frequently if required by the State Bar, the MCLE provider shall attest to its compliance with the requirements of subdivision (b) and shall confirm that it will continue to comply with those requirements for the duration of the provider's approval period. (Added by Stats. 2019, ch. 418. Amended by Stats. 2020, ch. 36.)

**§ 6071 Legal Education in Remedies  
Available for Civil Rights Violations; Amendment  
of Rule by Supreme Court**

(a) The State Bar shall request the California Supreme Court to amend Rule 9.31 of the California Rules of Court, relating to the mandatory continuing education program, to provide that one hour of the mandatory eight hours of legal education activities in legal ethics or law practice management, instead, may be satisfied by one hour of legal education activity in the civil and criminal remedies available for civil rights violations.

(b) This section shall not affect the requirement that all active licensees of the State Bar complete at least four hours of legal education activity in ethics within designated 36-month periods. (Added by Stats. 1991, ch. 607. Amended by Stats. 2007, ch. 474; Stats. 2018, ch. 659.)

**ARTICLE 4.7  
CONTRACTS FOR LEGAL SERVICES**

**§ 6072 Pro Bono Legal Services Certification;  
Failure to Comply, Considerations; Definitions**

(a) A contract with the state for legal services that exceeds fifty thousand dollars (\$50,000) shall include a certification by the contracting law firm that the firm agrees to make a good faith effort to provide, during the duration of the contract, a minimum number of hours of pro bono legal services, or an equivalent amount of financial contributions to qualified legal services projects and support centers, as defined in Section 6213, during each year of the contract equal to the lesser of either  
(1) 30 multiplied by the number of full-time attorneys in the firm's offices in the state, with the number of hours prorated on an actual day basis for any contract period of less than a full year or (2) 10 percent of its contract with the state. "Ten percent of the contract" shall mean the number of hours equal to 10 percent of the contract amount divided by the average billing rate of the firm.

(b) Failure to make a good faith effort may be cause for nonrenewal of a state contract for legal services and may be taken into account when determining the award of future contracts with the state for legal services. If a firm fails to provide the hours of pro bono legal services set forth in its certification, the following

factors shall be considered in determining whether the firm made a good faith effort:

(1) The actual number of hours of pro bono legal services or the amount of financial contributions provided by the firm during the term of the contract.

(2) The firm's efforts to obtain pro bono legal work from legal services programs, pro bono programs, and other relevant communities or groups.

(3) The firm's history of providing pro bono legal services or the amount of financial contributions, or other activities of the firm that evidence a good faith effort to provide pro bono legal services or the amount of financial contributions, such as the adoption of a pro bono policy or the creation of a pro bono committee.

(4) The types of pro bono legal services provided, including the quantity and complexity of cases as well as the nature of the relief sought.

(5) The extent to which the failure to provide the hours of pro bono legal services or the amount of financial contributions set forth in the certification is the result of extenuating circumstances unforeseen at the time of the certification.

(c) In awarding a contract with the state for legal services that exceeds fifty thousand dollars (\$50,000), the awarding department shall consider the efforts of a potential contracting law firm to provide, during the 12-month period prior to award of the contract, the minimum number of hours of pro bono legal services described in subdivision (a). Other things being equal, the awarding department shall award a contract for legal services to firms that have provided, during the 12-month period prior to award of the contract, the minimum number of hours of pro bono legal services described in subdivision (a).

(d) As used in this section, "pro bono legal services" means the provision of legal services either:

(1) Without fee or expectation of fee to either:

(A) Persons who are indigent or of limited means.

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(B) Charitable, religious, civic, community, governmental, and educational organizations in matters designed primarily to address the economic, health, and social needs of persons who are indigent or of limited means.

(2) At no fee or substantially reduced fee to groups or organizations seeking to secure or protect civil rights, civil liberties, or public rights.

(e) Nothing in this section shall subject a contracting law firm that fails to provide the minimum number of hours of pro bono legal services described in subdivision (a) to civil or criminal liability, nor shall that failure be grounds for invalidating an existing contract for legal services.

(f) This article shall not apply to state contracts with, or appointments made by the judiciary of, an attorney, law firm, or organization for the purposes of providing legal representation to low- or middle-income persons, in either civil, criminal, or administrative matters.

(g) This article shall not apply to contracts entered into between the state and an attorney or law firm if the legal services contracted for are to be performed outside the State of California.

(h) The provisions of this article shall become operative on January 1, 2003. (Added by Stats. 2001, ch. 880, operative on January 1, 2003. Amended by Stats. 2002, ch. 137; Stats. 2012, ch. 758.)

***[Publisher's Note: The following paragraphs concern pro bono legal services as a professional responsibility and were added by Stats. 2001, ch. 880, but not codified. They are provided below for your information.]***

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) The provision of pro bono legal services is the professional responsibility of California attorneys as an integral part of the privilege of practicing law in this state.

(b) Each year, thousands of Californians, particularly those of limited means, must rely on pro bono legal services in order to exercise their fundamental right of access to justice in California. Without access to pro bono services, many Californians would be precluded from pursuing important legal rights and protections.

(c) In recent years, many law firms in California have been fortunate to experience a robust increase in average attorney income. However, during the same time period, there has regrettably been a decline in the average number of pro bono services being rendered by attorneys in this state.

(d) Without legislative action to bolster pro bono activities, there is a serious risk that the provision of critical pro bono legal services will continue to substantially decrease.

SECTION 2. It is the intent of the Legislature to do the following:

(a) To reaffirm the importance and integral public function of California attorneys and law firms striving to provide reasonable levels of pro bono legal services to Californians who need those services.

(b) To strengthen the state's resolve to ensure that all Californians, especially those of limited means, have an effective means to exercise their fundamental right of access to the courts.

## ARTICLE 4.8 PRO BONO SERVICES

### § 6073 Pro Bono Services—Fulfillment of Commitment by Financial Support to Organizations Providing Free Legal Services

It has been the tradition of those learned in the law and licensed to practice law in this state to provide voluntary pro bono legal services to those who cannot afford the help of a lawyer. Every lawyer authorized and privileged to practice law in California is expected to make a contribution. In some circumstances, it may not be feasible for a lawyer to directly provide pro bono services. In those circumstances, a lawyer may instead fulfill his or her individual pro bono ethical commitment, in part, by providing financial support to organizations providing free legal services to persons of limited means. In deciding to provide that financial support, the lawyer should, at minimum, approximate the value of the hours of pro bono legal service that he or she would otherwise have provided. In some circumstances, pro bono contributions may be measured collectively, as by a firm's aggregate pro bono activities or financial contributions. Lawyers also make invaluable contributions through their other



voluntary public service activities that increase access to justice or improve the law and the legal system. In view of their expertise in areas that critically affect the lives and well-being of members of the public, lawyers are uniquely situated to provide invaluable assistance in order to benefit those who might otherwise be unable to assert or protect their interests, and to support those legal organizations that advance these goals. (Added by Stats. 2007, ch. 474. Amended by Stats. 2008, ch. 179.)

**§ 6074 Pro Bono Civil Legal Assistance to Veterans and Their Families**

(a) The Legislature finds that securing civil legal assistance is difficult for veterans, service members, and their families who cannot afford legal services, for reasons unique to their military or veteran status. The Legislature further finds that the State Bar is uniquely suited to bring together organizations to help coordinate the delivery of civil legal services for veterans and service members and their families.

(b) The State Bar shall engage with local bar associations, legal aid organizations, veterans service providers, military service providers, and volunteer attorneys and encourage those groups to provide legal services to veterans and service members and their families who otherwise cannot afford legal services and collaborate, as appropriate, to improve access to and delivery of these services throughout the state.

(c) The State Bar shall provide resources and educational materials to attorneys and the public in order to support the purposes of this section by, among other things, doing the following:

(1) Compiling a list of local bar associations, legal aid organizations, veterans service providers, military service providers, and volunteer attorneys willing to provide pro bono legal services to veterans and service members, organized by city and county, and posting the list on its internet website.

(2) Conducting a statewide survey of programs that provide civil legal assistance to veterans in order to identify whether and where there is a need for legal advice clinics, publishing a report and recommendations based upon its findings no later than December 31, 2018, and posting the report on its internet website. (Added by Stats. 2017, ch. 401. Amended by Stats. 2019, ch. 303.)

**ARTICLE 5  
DISCIPLINARY AUTHORITY OF THE  
BOARD OF TRUSTEES**

**§ 6075 Method as Alternative and Cumulative**

In their relation to the provisions of Article 6, concerning the disciplinary authority of the courts, the provisions of this article provide a complete alternative and cumulative method of hearing and determining accusations against licensees of the State Bar. (Added by Stats. 1939, ch. 34. Amended by Stats. 2018, ch. 659.)

**§ 6076 Rules of Professional Conduct; Formulation**

With the approval of the Supreme Court, the Board of Trustees may formulate and enforce rules of professional conduct for all licensees of the State Bar. (Origin: State Bar Act, § 25. Added by Stats. 1939, ch. 34. Amended by Stats. 2011, ch. 417; Stats. 2018, ch. 659.)

**§ 6076.5** (Added by Stats. 1977, ch. 478. Repealed by Stats. 2019, ch. 698.)

**§ 6077 Rules of Professional Conduct—Sanctions for their Violation**

The Rules of Professional Conduct adopted by the board, when approved by the Supreme Court, are binding upon all licensees of the State Bar.

For a willful breach of any of these rules, the State Bar Court has power to discipline attorneys by reproof, public or private, or to recommend to the Supreme Court the suspension from practice for a period not exceeding three years of licensees of the State Bar. (Origin: State Bar Act, § 29. Added by Stats. 1939, ch. 34. Amended by Stats. 1957, ch. 1249; Stats. 2018, ch. 659; Stats. 2019, ch. 698.)

**§ 6077.5 Attorney Collection Agencies**

An attorney and his or her employees who are employed primarily to assist in the collection of a consumer debt owed to another, as defined by Section 1788.2 of the Civil Code, shall comply with all of the following:

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(a) The obligations imposed on debt collectors pursuant to Article 2 (commencing with Section 1788.10) of Title 1.6C of Part 4 of Division 3 of the Civil Code.

(b) Any employee of an attorney who is not a licensee of the State Bar of California, when communicating with a consumer debtor or with any person other than the debtor concerning a consumer debt, shall identify himself or herself, by whom he or she is employed, and his or her title or job capacity.

(c) Without the prior consent of the debtor given directly to the attorney or his or her employee or the express permission of a court of competent jurisdiction, an attorney or his or her employee shall not communicate with a debtor in connection with the collection of any debt at any unusual time or place, or time or place known, or which should be known, to be inconvenient to the debtor. In the absence of knowledge of circumstances to the contrary, an attorney or his or her employee shall assume that the convenient time for communicating with the debtor is after 8 a.m. and before 9 p.m., local time at the consumer's location.

(d) If a debtor notifies an attorney or his or her employee in writing that the debtor refuses to pay a debt or that the debtor wishes the attorney or his or her employee to cease further communications with the debtor, the attorney or his or her employee shall not communicate further with the debtor with respect to such debt, except as follows:

- (1) To advise the debtor that the attorney or his or her employee's further efforts are being terminated.
- (2) To notify the debtor that the attorney or his or her employee or creditor may invoke specific remedies which are ordinarily invoked by such attorney or creditor.
- (3) Where applicable, to notify the debtor that the attorney or creditor intends to invoke his or her specific remedy.
- (4) Where a suit has been filed or is about to be filed and the debtor is not represented by counsel or has appeared in the action on the debt in propria persona.

For the purpose of this section, "debtor" includes the debtor's spouse, parent, or guardian, if the debtor is a minor, executor, or administrator.

(e) An attorney or his or her employee shall not take or threaten to take any nonjudicial action to effect disposition or disablement of property if (1) there is no present right to possession of the property claimed as collateral through an enforceable security interest; (2) there is no present intention to take possession of the property; or (3) the property is exempt by law from that disposition or disablement.

(f) An attorney or his or her employee shall not cause charges to be made to any person for communications, by concealment of the true purposes of the communication. The charges include, but are not limited to, collect telephone calls and telegram fees.

(g) Within five days after the initial communication with a debtor in connection with the collection of any unsecured debt, an attorney or his or her employee shall, unless the following information is contained in the initial communication or the debtor has paid the debt, send the debtor a written notice containing the following:

- (1) The amount of the debt.
- (2) The name of the creditor to whom the debt is owed.
- (3) A statement that unless the debtor, within 30 days receipt of the notice, disputes the validity of the debt or any portion thereof, the debt will be assumed to be valid by the attorney or his or her employee.
- (4) A statement that if the debtor notifies the debt collector in writing within the 30-day period that the debt, or any portion thereof, is disputed, the attorney or his or her employee will obtain a writing, if any exists, evidencing the debt or a copy of the judgment against the debtor and a copy of such writing or judgment will be mailed to the debtor by the attorney or his or her employee.
- (5) A statement that, upon the debtor's written request within the 30-day period, the attorney or his or her employee will provide the debtor the name and address of the original creditor, if different from the current creditor.

If the debtor notifies the attorney or his or her employee in writing within the 30-day period described in this section that the debt or any portion thereof is disputed, or that the debtor requests the name and address of the original creditor, the attorney and his or her employee

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shall cease collection of the debt or any disputed portion thereof, except for filing suit thereon, until the attorney obtains a writing, if any exists, evidencing the debt or a copy of a judgment or the name and address of the original creditor, and a copy of such writing or judgment or the name and address of the original creditor is mailed to the debtor by the attorney or his or her employee.

(h) If any debtor owes multiple debts and makes any single payment to any attorney or his or her employee with respect to the debts, the attorney may not apply such payment to any debt which is disputed by the debtor and, where applicable, shall apply such payment in accordance with the debtor's directions.

(i) A willful breach of this section constitutes cause for the imposition of discipline of the attorney in accordance with section 6077. (Added by Stats. 1984, ch. 118. Amended by Stats. 2018, ch. 659.)

### **§ 6078 Power to Discipline and Reinstate**

After a hearing for any of the causes set forth in the laws of the State of California warranting disbarment, suspension, or other discipline, the State Bar Court has the power to recommend to the Supreme Court the disbarment or suspension from practice of licensees or to discipline them by reproof, public or private, without such recommendation.

The State Bar Court may pass upon all petitions for reinstatement. (Origin: State Bar Act, § 26. Amended by Stats. 2018, ch. 659.)

### **§ 6079.1 State Bar Court Hearing Judges**

(a) The Supreme Court shall appoint a presiding judge of the State Bar Court. In addition, five hearing judges shall be appointed, two by the Supreme Court, one by the Governor, one by the Senate Committee on Rules, and one by the Speaker of the Assembly, to efficiently decide any and all regulatory matters pending before the Hearing Department of the State Bar Court. The presiding judge and all other judges of that department shall be appointed for a term of six years and may be reappointed for additional six-year terms. Any judge appointed under this section shall be subject to admonition, censure, removal, or retirement by the Supreme Court upon the same grounds as provided for judges of courts of record of this state.

(b) Judges of the State Bar Court appointed under this section shall not engage in the private practice of law. The State Bar Court shall be broadly representative of the ethnic, sexual, and racial diversity of the population of California and composed in accordance with Sections 11140 and 11141 of the Government Code. Each judge:

(1) Shall have been a licensee of the State Bar for at least five years.

(2) Shall not have any record of the imposition of discipline as an attorney in California or any other jurisdiction.

(3) Shall meet any other requirements as may be established by subdivision (d) of Section 12011.5 of the Government Code.

(c) Applicants for appointment or reappointment as a State Bar Court judge shall be screened by an applicant evaluation committee as directed by the Supreme Court. The committee, appointed by the Supreme Court, shall submit evaluations and recommendations to the appointing authority and the Supreme Court as provided in Rule 9.11 of the California Rules of Court, or as otherwise directed by the Supreme Court. The committee shall submit no fewer than three recommendations for each available position.

(d) For judges appointed pursuant to this section or Section 6086.65, the board shall fix and pay reasonable compensation and expenses and provide adequate supporting staff and facilities. Hearing judges shall be paid 91.3225 percent of the salary of a superior court judge. The presiding judge shall be paid the same salary as a superior court judge.

(e) From among the licensees of the State Bar or retired judges, the Supreme Court or the board may appoint pro tempore judges to decide matters in the Hearing Department of the State Bar Court when a judge of the State Bar Court is unavailable to serve without undue delay to the proceeding. Subject to modification by the Supreme Court, the board may set the qualifications, terms, and conditions of service for pro tempore judges and may, in its discretion, compensate some or all of them out of funds appropriated by the board for this purpose.

(f) A judge or pro tempore judge appointed under this section shall hear every regulatory matter pending in the Hearing Department of the State Bar Court as to which the taking of testimony or offering of evidence at trial has not commenced, and when so assigned, shall

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sit as the sole adjudicator, except for rulings that are to be made by the presiding judge of the State Bar Court or referees of other departments of the State Bar Court.

(g) Any judge or pro tempore judge of the State Bar Court as well as any employee of the State Bar assigned to the State Bar Court shall have the same immunity that attaches to judges in judicial proceedings in this state. Nothing in this subdivision limits or alters the immunities accorded the State Bar, its officers and employees, or any judge or referee of the State Bar Court as they existed prior to January 1, 1989. This subdivision does not constitute a change in, but is cumulative with, existing law.

(h) Nothing in this section shall be construed to prohibit the board from appointing persons to serve without compensation to arbitrate fee disputes under Article 13 (commencing with Section 6200) or to monitor the probation of a licensee of the State Bar, whether those appointed under Section 6079, as added by Chapter 1114 of the Statutes of 1986, serve in the State Bar Court or otherwise. (Added by Stats. 1999, ch. 221. Amended by Stats. 2000, ch. 246; Stat. 2002, ch. 784; Stats. 2007, ch. 474; Stats. 2018, ch. 659.)

### **§ 6079.4 Privilege; Exercise of Not Deemed Failure to Cooperate**

The exercise by an attorney of his or her privilege under the Fifth Amendment to the Constitution of the United States, or of any other constitutional or statutory privileges shall not be deemed a failure to cooperate within the meaning of subdivision (i) of Section 6068. (Added by Stats. 1990, ch. 1639.)

### **§ 6079.5 Chief Trial Counsel; Appointment; Term; Qualifications**

(a) The board shall appoint a lawyer admitted to practice in California to serve as chief trial counsel. He or she shall be appointed for a term of four years and may be reappointed for additional four-year periods. He or she shall serve at the pleasure of the board. He or she shall not engage in private practice. The State Bar shall notify the Senate Committee on Rules and the Senate and Assembly Committees on Judiciary within seven days of the dismissal or hiring of a chief trial counsel.

The appointment of the chief trial counsel is subject to confirmation by the Senate, and the time limits

prescribed in Section 1774 of the Government Code for Senate confirmation and for service in office are applicable to the appointment.

He or she shall report to and serve under the Regulation, Admissions, and Discipline Oversight Committee of the Board of Trustees of the State Bar or its successor committee on attorney discipline, and shall not serve under the direction of the chief executive officer.

(b) The chief trial counsel shall have the following qualifications:

(1) Be an attorney licensed to practice in the State of California, be in good standing and shall not have committed any disciplinary offenses in California or any other jurisdiction.

(2) Have a minimum of five years of experience in the practice of law, including trial experience, with law practice in broad areas of the law.

(3) Have a minimum of two years of prosecutorial experience or similar experience in administrative agency proceedings or disciplinary agencies.

(4) Have a minimum of two years of experience in an administrative role, overseeing staff functions.

The board may except an appointee from any of the above qualifications for good cause upon a determination of necessity to obtain the most qualified person.

On or after July 1, 1987, the chief trial counsel may, as prescribed by the Supreme Court, petition the court for a different disposition of a matter than the recommendations of the review department or the board to the court. (Added by Stats. 1986, ch. 1114. Amended by Stats. 2002, ch. 415, effective September 9, 2002; Stats. 2011, ch. 417.)

### **§ 6080 Records**

The State Bar Court shall keep a record of all State Bar Court disciplinary proceedings. In all disciplinary proceedings resulting in a recommendation to the Supreme Court for disbarment or suspension, the State Bar Court shall keep a transcript of the evidence and proceedings therein and shall make findings of fact thereon. The State Bar Court shall render a decision to be recorded in its minutes. In disciplinary proceedings in which no discipline has been imposed, the records thereof may be destroyed after five years. (Origin: State

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Bar Act, § 26. Amended by Stats. 1965, ch. 920; Stats. 2018, ch. 659.)

### **§ 6081 Report to Supreme Court**

Upon the making of any decision recommending the disbarment or suspension from practice of any licensee of the State Bar, the State Bar Court shall immediately file a certified copy of the decision, together with the transcript and the findings, with the Clerk/Executive Officer of the Supreme Court. Upon enrolling a licensee as an inactive licensee pursuant to Section 6007 of this code, or upon terminating or refusing to terminate such enrollment pursuant to such section the State Bar Court shall immediately give appropriate written notice to the licensee and to the Clerk/Executive Officer of the Supreme Court. (Origin: State Bar Act, § 26. Amended by Stats. 1957, ch. 737; Stats. 2017, ch. 36; Stats. 2018, ch. 659.)

#### **§ 6081.1 Transcription of Oral Testimony**

Nothing in Sections 6080 and 6081 shall require the State Bar Court to transcribe oral testimony unless ordered by the Supreme Court or requested by a party at the party's expense. (Added by Stats. 1988, ch. 1159.)

### **§ 6082 Review by Supreme Court**

Any person complained against and any person whose reinstatement the State Bar Court may refuse to recommend may have the action of the State Bar Court reviewed by the California Supreme Court in accordance with the procedure prescribed by the California Supreme Court. (Origin: State Bar Act, § 38. Amended by Stats. 1988, ch. 1217; Stats. 2018, ch. 659.)

### **§ 6083 Petition to Review; Burden of Proof**

(a) A petition to review or to reverse or modify any decision recommending the disbarment or suspension from practice of a licensee of the State Bar may be filed with the Supreme Court by the licensee within 60 days after the filing of the decision recommending such discipline.

(b) A petition to review or to reverse or modify any decision reproving a licensee of the State Bar, or any action enrolling the licensee as an inactive licensee pursuant to section 6007 of this code, or refusing to restore the inactive licensee to an active license,

pursuant to such section may be filed with the Supreme Court by the licensee within 60 days after service upon him or her of notice of such decision or action.

(c) Upon such review the burden is upon the petitioner to show wherein the decision or action is erroneous or unlawful. (Origin: State Bar Act, § 26. Amended by Stats. 1957, ch. 737; Stats. 2018, ch. 659.)

### **§ 6084 Order by Supreme Court**

(a) When no petition to review or to reverse or modify has been filed by either party within the time allowed therefor, or the petition has been denied, the decision or order of the State Bar Court shall be final and enforceable. In any case in which a petition to review or to reverse or modify is filed by either party within the time allowed therefor, the Supreme Court shall make such order as it may deem proper in the circumstances. Nothing in this subdivision abrogates the Supreme Court's authority, on its own motion, to review de novo the decision or order of the State Bar Court.

(b) Notice of such order shall be given to the licensee and to the State Bar.

(c) A petition for rehearing may be filed within the time generally provided for petitions for rehearing in civil cases.

(d) For willful failure to comply with a disciplinary order or an order of the Supreme Court, or any part thereof, a licensee may be held in contempt of court. The contempt action may be brought by the State Bar in any of the following courts:

(1) In the Los Angeles or San Francisco Superior Court.

(2) In the superior court of the county of the licensee's address as shown on current State Bar licensing records.

(3) In the superior court of the county where the act or acts occurred.

(4) In the superior court of the county in which the licensee's regular business address is located.

Changes of venue may be requested pursuant to the applicable provisions of Title 4 (commencing with Section 392) of Part 2 of the Code of Civil Procedure. (Origin: State Bar Act, § 26. Amended by Stats. 1957, ch. 737; Stats. 1988, ch. 1159; Stats. 2018, ch. 659.)

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### **§ 6085 Rights of Person Complained Against**

Any person complained against shall be given fair, adequate and reasonable notice and have a fair, adequate and reasonable opportunity and right:

- (a) To defend against the charge by the introduction of evidence.
- (b) To receive any and all exculpatory evidence from the State Bar after the initiation of a disciplinary proceeding in State Bar Court, and thereafter when this evidence is discovered and available. This subdivision shall not require the disclosure of mitigating evidence.
- (c) To be represented by counsel.
- (d) To examine and cross-examine witnesses.
- (e) To exercise any right guaranteed by the State Constitution or the United States Constitution, including the right against self-incrimination.

He or she shall also have the right to the issuance of subpoenas for attendance of witnesses to appear and testify or produce books and papers, as provided in this chapter. (Origin: State Bar Act, § 35. Amended by Stats. 1994, ch. 190; Stats. 1999, ch. 221.)

### **§ 6085.5 Disciplinary Charges; Pleas to Allegations**

There are three kinds of pleas to the allegations of a notice of disciplinary charges or other pleading which initiates a disciplinary proceeding against a licensee:

- (a) Admission of culpability.
- (b) Denial of culpability.
- (c) Nolo contendere, subject to the approval of the State Bar Court. The court shall ascertain whether the licensee completely understands that a plea of nolo contendere shall be considered the same as an admission of culpability and that, upon a plea of nolo contendere, the court shall find the licensee culpable. The legal effect of such a plea shall be the same as that of an admission of culpability for all purposes, except that the plea and any admissions required by the court during any inquiry it makes as to the voluntariness of, or the factual basis for, the pleas, may not be used against the licensee as an admission in any civil suit based upon or growing out of the act upon which the disciplinary

proceeding is based. (Added by Stats. 1996, ch. 1104. Amended by Stats. 2018, ch. 659.)

### **§ 6086 Procedure**

The board of trustees, subject to the provisions of this chapter, may by rule provide the mode of procedure in all cases of complaints against licensees. (Origin: State Bar Act, § 37. Added by Stats. 1939, ch. 34. Amended by Stats. 2011, ch. 417; Stats. 2018, ch. 659.)

### **§ 6086.1 Disciplinary Proceeding Hearings and Records Shall be Public**

- (a) (1) Subject to subdivision (b), and except as otherwise provided by law, hearings and records of original disciplinary proceedings in the State Bar Court shall be public, following a notice to show cause.

(2) Subject to subdivision (b), and except as otherwise provided by law, hearings and records of the following matters shall be public:

(A) Filings for involuntary inactive enrollment or restriction under subdivision (a), (c), (d), or (e) of Section 6007.

(B) Petitions for reinstatement under Section 6078.

(C) Proceedings for suspension or disbarment under Section 6101 or 6102.

(D) Payment information from the Client Security Fund pursuant to Section 6140.5.

(E) Actions to cease a law practice or assume a law practice under Section 6180 or 6190.

- (b) All disciplinary investigations are confidential until the time that formal charges are filed and all investigations of matters identified in paragraph (2) of subdivision (a) are confidential until the formal proceeding identified in paragraph (2) of subdivision (a) is instituted. These investigations shall not be disclosed pursuant to any state law, including, but not limited to, the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). This confidentiality

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requirement may be waived under any of the following exceptions:

- (1) The licensee whose conduct is being investigated may waive confidentiality.
  - (2) The Chief Trial Counsel or Chair of the State Bar may waive confidentiality, but only when warranted for protection of the public. Under those circumstances, after private notice to the licensee, the Chief Trial Counsel or Chair of the State Bar may issue, if appropriate, one or more public announcements or make information public confirming the fact of an investigation or proceeding, clarifying the procedural aspects and current status, and defending the right of the licensee to a fair hearing. If the Chief Trial Counsel or Chair of the State Bar for any reason declines to exercise the authority provided by this paragraph, or disqualifies himself or herself from acting under this paragraph, he or she shall designate someone to act in his or her behalf. Conduct of a licensee that is being inquired into by the State Bar but that is not the subject of a formal investigation shall not be disclosed to the public.
  - (3) The Chief Trial Counsel or his or her designee may waive confidentiality pursuant to Section 6044.5.
- (c) Notwithstanding the confidentiality of investigations, the State Bar shall disclose to any member of the public so inquiring, any information reasonably available to it pursuant to subdivision (o) of Section 6068, and to Sections 6086.7, 6086.8, and 6101, concerning a licensee of the State Bar which is otherwise a matter of public record, including civil or criminal filings and dispositions. (Added by Stats. 1990, ch. 163. Amended by Stats. 1992, ch. 1265; Stats. 2015, ch. 537; Stats. 2018, ch. 659.)

### § 6086.2 State Bar Records

All State Bar records pertaining to admissions, licensing, and the administration of the program authorized by Article 14 of this chapter shall be available to the Office of Trial Counsel and the Office of Investigations for use in the investigation and prosecution of complaints against licensees of the State Bar, except to the extent that disclosure is prohibited by law. (Added by Stats. 1988, ch. 1159. Amended by Stats. 2018, ch. 659.)

### § 6086.5 State Bar Court; Establishment; Powers; Rules

The board of trustees shall establish a State Bar Court, to act in its place and stead in the determination of disciplinary and reinstatement proceedings and proceedings pursuant to subdivisions (b) and (c) of Section 6007 to the extent provided by rules adopted by the board of trustees pursuant to this chapter. In these proceedings the State Bar Court may exercise the powers and authority vested in the board of trustees by this chapter, including those powers and that authority vested in committees of, or established by, the board, except as limited by rules of the board of trustees within the scope of this chapter.

Access to records of the State Bar Court shall be governed by court rules and laws applicable to records of the judiciary and not the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

For the purposes of Sections 6007, 6043, 6049, 6049.2, 6050, 6051, 6052, 6077 (excluding the first sentence), 6078, 6080, 6081, and 6082, "board" includes the State Bar Court.

Nothing in this section shall authorize the State Bar Court to adopt rules of professional conduct or rules of procedure.

The Executive Committee of the State Bar Court may adopt rules of practice for the conduct of all proceedings within its jurisdiction. These rules may not conflict with the rules of procedure adopted by the board, unless approved by the Supreme Court. (Added by Stats. 1965, ch. 973. Amended by Stats. 1977, ch. 58; Stats. 1985, ch. 453; Stats. 1988, ch. 1159; Stats. 2011, ch. 417; Stats. 2017, ch. 422.)

### § 6086.65 State Bar Court Review Department

(a) There is a Review Department of the State Bar Court, that consists of the Presiding Judge of the State Bar Court and two Review Department judges appointed by the Supreme Court. The judges of the Review Department shall be nominated, appointed, and subject to discipline as provided by subdivision (a) of Section 6079.1, shall be qualified as provided by subdivision (b) of Section 6079.1, and shall be compensated as provided for the presiding judge by subdivision (d) of Section 6079.1. However, the two Review Department judges may be appointed to, and paid as, positions occupying

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one-half the time and pay of the presiding judge. Candidates shall be rated and screened pursuant to Rule 9.11 of the California Rules of Court or as otherwise directed by the Supreme Court.

(b) The Presiding Judge of the State Bar Court shall appoint an Executive Committee of the State Bar Court of no fewer than seven persons, including one person who has never been a licensee of the State Bar or admitted to practice law before any court in the United States. The Executive Committee may adopt rules of practice for the operation of the State Bar Court as provided in Section 6086.5.

(c) Any decision or order reviewable by the Review Department and issued by a judge of the State Bar Court appointed pursuant to Section 6079.1 may be reviewed only upon timely request of a party to the proceeding and not on the Review Department's own motion. The standard to be applied by the Review Department in reviewing a decision, order, or ruling by a hearing judge fully disposing of a proceeding is established in Rule 9.12 of the California Rules of Court, or as otherwise directed by the Supreme Court. (Added by Stats. 1999, ch. 221. Amended by Stats. 2000, ch. 246; Stats. 2007, ch. 474; Stats. 2018, ch. 659.)

### **§ 6086.7 Court Notification to State Bar for Misconduct, Misrepresentation, Incompetent Representation and Imposition of Sanctions**

(a) A court shall notify the State Bar of any of the following:

(1) A final order of contempt imposed against an attorney that may involve grounds warranting discipline under this chapter. The court entering the final order shall transmit to the State Bar a copy of the relevant minutes, final order, and transcript, if one exists.

(2) Whenever a modification or reversal of a judgment in a judicial proceeding is based in whole or in part on the misconduct, incompetent representation, or willful misrepresentation of an attorney.

(3) The imposition of any judicial sanctions against an attorney, except sanctions for failure to make discovery or monetary sanctions of less than one thousand dollars (\$1,000).

(4) The imposition of any civil penalty upon an attorney pursuant to Section 8620 of the Family Code.

(5) A violation described in paragraph (1) of subdivision (a) of Section 1424.5 of the Penal Code by a prosecuting attorney, if the court finds that the prosecuting attorney acted in bad faith and the impact of the violation contributed to a guilty verdict, guilty or nolo contendere plea, or, if identified before conclusion of trial, seriously limited the ability of a defendant to present a defense.

(b) In the event of a notification made under subdivision (a) the court shall also notify the attorney involved that the matter has been referred to the State Bar.

(c) The State Bar shall investigate any matter reported under this section as to the appropriateness of initiating disciplinary action against the attorney. (Added by Stats. 1990, ch. 483. Amended by Stats. 2003, ch. 469; Stats. 2015, ch. 467.)

### **§ 6086.8 Reporting Requirements—Court, Insurers and Attorneys**

(a) Within 20 days after a judgment by a court of this state that a licensee of the State Bar of California is liable for any damages resulting in a judgment against the attorney in any civil action for fraud, misrepresentation, breach of fiduciary duty, or gross negligence committed in a professional capacity, the court which rendered the judgment shall report that fact in writing to the State Bar of California.

(b) Every claim or action for damages against a licensee of the State Bar of California for fraud, misrepresentation, breach of fiduciary duty, or negligence committed in a professional capacity shall be reported to the State Bar of California within 30 days of receipt by the admitted insurer or licensed surplus brokers providing professional liability insurance to that licensee of the State Bar.

(c) An attorney who does not possess professional liability insurance shall send a complete written report to the State Bar as to any settlement, judgment, or arbitration award described in subdivision (b), in the manner specified in that subdivision. (Added by Stats. 1986, ch. 475. Amended by Stats. 1988, ch. 1159; Stats. 2018, ch. 659.)



**§ 6086.10 Payment of Cost of Disciplinary Proceedings**

(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. (Added by Stats. 1986, ch. 662. Amended by Stats. 2003, ch. 334; Stats. 2018, ch. 659; Stats. 2020, ch. 360.)

**§ 6086.13 Imposition of Monetary Sanction in Disciplinary Matter**

(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. (Added by Stats. 1992, ch. 1270. Amended by Stats. 1993, ch. 926; Stats. 2018, ch. 659.)

**§ 6086.14 Alternative Dispute Resolution Discipline Mediation Program—Formulation and Administration**

(a) The Board of Trustees of the State Bar is authorized to formulate and adopt rules and regulations necessary to establish an alternative dispute resolution discipline mediation program to resolve complaints against attorneys that do not warrant the institution of formal

investigation or prosecution. The program should identify sources of client dissatisfaction and provide a mediation process to resolve those complaints or disputes unless the client objects to mediation. The refusal of an attorney to participate in the State Bar's alternative dispute resolution discipline mediation program established pursuant to this section, or the failure of an attorney to comply with any agreement reached in the State Bar's alternative dispute resolution discipline mediation program may subject that attorney to discipline. The rules may authorize discipline mediation under this article to proceed under discipline mediation programs sponsored by local bar associations in this state. The rules shall authorize a local bar association to charge a reasonable administrative fee for the purpose of offsetting the costs of maintaining the discipline mediation programs.

(b) The board of trustees shall have the authority to formulate and adopt standards and guidelines to implement the alternative dispute resolution discipline mediation program. The standards and guidelines formulated and adopted by the board, as from time to time amended, shall be effective and binding on all licensees, and may encompass any discipline mediation programs sponsored by local bar associations.

(c) It is the intent of the Legislature that the authorization of an alternative dispute resolution discipline mediation program not be construed as limiting or altering the powers of the Supreme Court of this state or the State Bar to disbar or discipline licensees of the State Bar. The records relating to the alternative dispute resolution discipline mediation program may be made available in any subsequent disciplinary action pursuant to any rule, standard, or guideline adopted by the Board of Trustees of the State Bar. (Added by Stats. 1993, ch. 982. Amended by Stats. 1994, ch. 479; Stats. 2011, ch. 417; Stats. 2018, ch. 659.)

#### **§ 6086.15 State Bar Annual Discipline Report to Legislature**

(a) The State Bar shall issue an Annual Discipline Report by October 31 of each year describing the performance and condition of the State Bar discipline system, including all matters that affect public protection. Except as set forth in subdivision (d), the report shall cover the period from July 1 of the previous calendar year to June 30 of the year in which the report is issued and shall include accurate and complete descriptions of all of the following:

(1) The inventory of cases within the Office of Chief Trial Counsel which were open at the start of the reporting period, were opened during the reporting period, remain pending with the office at the close of the reporting period, or were disposed of during the reporting period by closure, by filing of a stipulation with the State Bar Court, by filing of a notice of disciplinary charges with the State Bar Court, or by transmittal of a criminal conviction to the State Bar Court. The State Bar shall also report on its success in meeting the case processing goals set forth in Section 6094.5, including, but not limited to, tables showing the number and percentage of cases meeting each goal, the number and percentage of those cases not disposed of within the case processing goals, and a high-level explanation of the reasons for failing to meet those case processing goals. The inventory of cases shall not be limited to case types that could result in the filing of a notice of disciplinary charges in the State Bar Court, but shall also include Nonattorney Unauthorized Practice of Law (NA-UPL), Section 6007 matters, moral character matters, resignations with charges pending, and mini-reinstatements.

(2) The number of inquiries and complaints and their disposition.

(3) The number, average pending times, and types of matters self-reported by licensees of the State Bar pursuant to subdivision (o) of Section 6068 and subdivision (c) of Section 6086.8.

(4) The number, average pending times, and types of matters reported by other sources pursuant to Sections 6086.7, 6086.8, 6091.1, subdivisions (b) and (c) of Section 6101, and Section 6175.6.

(5) The speed of complaint handling and dispositions by type, measured by the median and the average processing times.

(6) The number, average pending times, and types of filed notices of disciplinary charges and formal disciplinary outcomes.

(7) The number, average pending times, and types of other matters, including petitions to terminate practice pursuant to Section 6180 or 6190, interim suspensions and license restrictions pursuant to Section 6007, motions to enforce a binding arbitration award, judgment, or agreement

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pursuant to subdivision (d) of Section 6203, motions to revoke probation, letters of warning, private reprovings, admonitions, and agreements in lieu of discipline.

(8) The number, average pending times, and outcomes of complaints involving a State Bar licensee who has been disbarred or who has resigned, and is engaged in the unauthorized practice of law, including referrals to district attorneys, city attorneys, or other prosecuting authorities, or petitions to terminate practice pursuant to Section 6180.

(9) The number, average pending times, and outcomes of complaints against nonattorneys engaged in the unauthorized practice of law, including referrals to district attorneys, city attorneys, or other prosecuting authorities; petitions to terminate practice pursuant to Section 6126.3; or referrals to prosecuting authorities or actions by the State Bar pursuant to Section 6126.7.

(10) A description of the condition of the Client Security Fund, including an accounting of payouts.

(11) An accounting of the cost of the discipline system by function.

(12) Compliance with the requirement of Section 6101 to transmit, within 30 days of receipt, the record of any criminal conviction which involves or may involve moral turpitude to the Supreme Court, or to close the matter if transmittal to the Supreme Court is not appropriate.

(b) The Annual Discipline Report shall include statistical information presented in a consistent manner for year-to-year comparison.

(c) The Annual Discipline Report shall be presented to the Chief Justice of California, to the Governor, to the Speaker of the Assembly, to the President pro Tempore of the Senate, and to the Assembly and Senate Judiciary Committees, for their consideration and shall be considered a public document.

(d) (1) All data relating to the items set forth in subdivision (a) shall also be reported, if available, for the preceding five years. Data from 2020 and prior years shall be reported for the calendar year. Except as specified in paragraph (2), data from 2021 and future years shall be reported based on the state fiscal year.

(2) The Annual Discipline Report due on October 31, 2022, shall include data from both the prior state fiscal year and the prior calendar year. (Added by Stats. 1992, ch. 1265. Amended by Stats. 1994, ch. 146 (previously § 6086.13). Amended by Stats. 1995, ch. 88; Stats. 2001, ch. 745; Stats. 2015, ch. 537; Stats. 2018, ch. 659; Stats. 2021, ch. 723.)

### **§ 6087 Effect of Chapter on Powers of Supreme Court**

Nothing in this chapter shall be construed as limiting or altering the powers of the Supreme Court of this State to disbar or discipline licensees of the bar as this power existed prior to the enactment of Chapter 34 of the Statutes of 1927, relating to the State Bar of California.

Notwithstanding any other law, the Supreme Court may by rule authorize the State Bar to take any action otherwise reserved to the Supreme Court in any matter arising under this chapter or initiated by the Supreme Court; provided, that any such action by the State Bar shall be reviewable by the Supreme Court pursuant to such rules as the Supreme Court may prescribe. (Origin: State Bar Act, § 26. Amended by Stats. 1951, ch. 177; Stats. 1988, ch. 1159; Stats. 2018, ch. 659.)

### **§ 6088 Provision for Rules**

The board may provide by rule that alleged facts in a proceeding are admitted upon failure to answer, failure to appear at formal hearing, or failure to deny matters specified in a request for admissions; the party in whose favor the facts are admitted shall not be required to otherwise prove any facts so admitted. However, the rules shall provide a fair opportunity for the party against whom facts are admitted to be relieved of the admission upon a satisfactory showing, made within 30 days of notice that facts are admitted, that (a) the admissions were the result of mistake or excusable neglect, and (b) the admitted facts are actually denied by the party. (Added by Stats. 1986, ch. 1114.)

## **ARTICLE 5.5 MISCELLANEOUS DISCIPLINARY PROVISIONS**

**§ 6090** (Added by 1986, ch. 475. Repealed by Stats. 2018, ch. 659.)

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### **§ 6090.5 Attorney/Client Agreement Not to File Complaint—Cause for Discipline**

(a) It is cause for suspension, disbarment, or other discipline for any licensee, whether acting on their own behalf or on behalf of someone else, whether or not in the context of litigation to solicit, agree, or seek agreement, that:

- (1) Misconduct or the terms of a settlement of a claim for misconduct shall not be reported to the State Bar.
- (2) A complainant shall withdraw a disciplinary complaint or shall not cooperate with the investigation or prosecution conducted by the State Bar.
- (3) The record of any action or proceeding shall be sealed from review by the State Bar.

(b) This section applies to all agreements or attempts to seek agreements, irrespective of the commencement or settlement of a civil action. (Added by Stats. 1986, ch. 475. Amended by Stats. 1996, ch. 1104; Stats. 2018, ch. 659; Stats. 2020, ch. 360.)

### **§ 6090.6 State Bar Access to Nonpublic Court Records**

In a disciplinary proceeding, the State Bar shall have access, on an ex parte basis, to all nonpublic court records relevant to the competence or performance of its licensees, provided that these records shall remain confidential and shall not be disclosed pursuant to any state law, including, but not limited to, the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). This access, for investigation and enforcement purposes, shall not be limited by any court order sealing those records, except a court order authorized by Section 851.6, 851.7, 851.8, or 851.85 of the Penal Code. The State Bar may disclose publicly the nature and content of those records, including sealed records other than those specified immediately above in this section, after notice of intention to disclose all or a part of the records has been given to the parties in the underlying action. A party to the underlying action who would be adversely affected by the disclosure may serve notice on the State Bar within 10 days of receipt of the notice of intention to disclose the records that it opposes the disclosure and will seek a hearing in the court of

competent jurisdiction on an expedited basis. (Added by Stats. 1988, ch. 1159. Amended by Stats. 2015, ch. 537; Stats. 2018, ch. 659.)

### **§ 6091 Trust Fund Accounts—State Bar Investigation/ Audit**

If a client files a complaint with the State Bar alleging that his or her trust fund is being mishandled, the State Bar shall investigate and may require an audit if it determines that circumstances warrant.

At the client's written request, the attorney shall furnish the client with a complete statement of the funds received and disbursed and any charges upon the trust account, within 10 calendar days after receipt of the request. Such requests may not be made more often than once each 30 days unless a client files a complaint with the State Bar and the State Bar determines that more statements are warranted. (Added by Stats. 1986, ch. 475.)

### **§ 6091.1 Client Trust Fund Accounts—Investigation of Overdrafts and Misappropriations**

(a) The Legislature finds that overdrafts and misappropriations from attorney trust accounts are serious problems, and determines that it is in the public interest to ensure prompt detection and investigation of instances involving overdrafts and misappropriations from attorney trust accounts.

A financial institution, including any branch, which is a depository for attorney trust accounts under subdivision (a) or (b) of Section 6211, shall report to the State Bar in the event any properly payable instrument is presented against an attorney trust account containing insufficient funds, irrespective of whether or not the instrument is honored.

(b) All reports made by the financial institution shall be in the following format:

- (1) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and shall include a copy of the dishonored instrument, if such a copy is normally provided to depositors.
- (2) In the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial

institution, the attorney or law firm, the account number, the date of presentation for payment, and the date paid, as well as the amount of overdraft created thereby. These reports shall be made simultaneously with, and within the time provided by law for notice of dishonor, if any. If an instrument presented against insufficient funds is honored, then the report shall be made within five banking days of the date of presentation for payment against insufficient funds.

(c) Every attorney practicing or admitted to practice in this state shall, as a condition thereof, be conclusively deemed to have consented to the reporting and production requirements of this section.

(d) Nothing in this section shall preclude a financial institution from charging an attorney or law firm for the reasonable cost of producing the reports and records required by subdivisions (a) and (b). (Added by Stats. 1988, ch. 1159.)

#### **§ 6091.2 Definitions Applicable to Section 6091.1**

As used in Section 6091.1:

(a) "Financial institution" means a bank, savings and loan, or other financial institution serving as a depository for attorney trust accounts under subdivision (a) or (b) of Section 6211.

(b) "Properly payable" means an instrument that, if presented in the normal course of business, is in a form requiring payment under the laws of this state.

(c) "Notice of dishonor" means the notice that a financial institution is required to give, under the laws of this state, upon presentation of an instrument that the institution dishonors. (Added by Stats. 1988, ch. 1159. Amended by Stats. 2007, ch. 422.)

#### **§ 6092 Attorney Competency—Study and Report to Legislature**

The State Bar may engage the services of consultants and an unpaid volunteer peer review committee and undertake any other steps that may be appropriate for devising methods for determining and improving attorney competence. (Added by Stats. 1986, ch. 475. Amended by Stats. 1987, ch. 56; Stats. 2001, ch. 24; Stats. 2018, ch. 659.)

#### **§ 6092.5 Duties of Disciplinary Agency**

In addition to any other duties specified by law, the State Bar shall do all of the following:

(a) Promptly notify the complainant of the disposition of each matter.

(b) Notify all of the following of a lawyer's involuntary enrollment as an inactive licensee and termination of that enrollment, or any suspension or disbarment, and the reinstatement to active license of a suspended or disbarred attorney:

(1) The presiding judge of the superior court in the county where the attorney most recently maintained an office for the practice of law, with a request that the judge notify the courts and judges in the county.

(2) The local bar association, if there is one, in the county or area where the attorney most recently maintained an office for the practice of law.

(3) The appropriate disciplinary authority in any other jurisdiction where the attorney is admitted to practice.

(c) Upon receipt of the certified copy of the record of conviction of a lawyer, as provided by subdivision (c) of Section 6101, promptly forward a certified copy of the judgment of conviction to the disciplinary agency in each jurisdiction in which the lawyer is admitted.

(d) Maintain permanent records of discipline and other matters within its jurisdiction, and compile statistics to aid in the administration of the system, including, but not limited to, a single log of all complaints received, investigative files, statistical summaries of docket processing and case dispositions, transcripts of all proceedings which have been transcribed, and other records as the State Bar or court require to be maintained.

(e) Expunge records of the State Bar as directed by the California Supreme Court.

(f) Pursuant to directions from the California Supreme Court, undertake whatever investigations are assigned to it.

(g) Provide information to prospective complainants regarding the nature and procedures of the disciplinary

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system, the criteria for prosecution of disciplinary complaints, the client security fund, and fee arbitration procedures.

(h) Inform the public, local bar associations and other organizations, and any other interested parties about the work of the State Bar and the right of all persons to make a complaint.

(i) Make agreements with respondents in lieu of disciplinary proceedings, regarding conditions of practice, further legal education, or other matters. These agreements may be used by the State Bar in any subsequent proceeding involving the lawyer. (Added by Stats. 1986, ch. 475. Amended by Stats. 2018, ch. 659.)

### **§ 6093 Conditions of Probation**

(a) Whenever probation is imposed by the State Bar Court or by the Office of Trial Counsel with the agreement of the respondent, any conditions may be imposed which will reasonably serve the purposes of the probation.

(b) Violation of a condition of probation constitutes cause for revocation of any probation then pending, and may constitute cause for discipline.

(c) Proceedings to revoke probation shall be expedited. The standard of proof is the preponderance of the evidence. (Added by Stats. 1986, ch. 475. Amended by Stats. 1988, ch. 1159.)

### **§ 6093.5 Notify Complainant of Status of Complaint**

Upon request, the State Bar shall notify a complainant of the status of his or her complaint and shall provide him or her with a written summary of any response by the attorney to his or her complaint if the response was the basis for dismissal of the complaint. A complainant shall be notified in writing of the disposition of his or her complaint, and of the reasons for the disposition.

Receipt of a written complaint shall be acknowledged by the State Bar within two weeks of its receipt.

A complainant may also designate another person as his or her agent to receive copies of the information to which he or she is entitled pursuant to this section. This is in addition to any designation by a complainant of one of his or her elected representatives to receive the

information. (Added by Stats. 1986, ch. 475. Amended by Stats. 1995, ch. 88; Stats. 2018, ch. 659.)

### **§ 6094 Communications to Disciplinary Agency Privileged**

(a) Communications to the State Bar relating to lawyer misconduct or disability or competence, or any communication related to an investigation or proceeding and testimony given in the proceeding are privileged, and no lawsuit predicated thereon may be instituted against any person. The State Bar and officers and employees are subject to the rules governing liability of public entities, officers, and employees specified in Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

Nothing in this subdivision limits or alters the privileges accorded communications to the State Bar or testimony given in investigations or proceedings conducted by it or the immunities accorded complainants, informants, witnesses, the State Bar, its officers, and employees as existed prior to the enactment of this section. This subdivision does not constitute a change in, but is cumulative with the existing law.

(b) Upon application by the State Bar and notice to the appropriate prosecuting authority, the superior court may grant immunity from criminal prosecution to a witness in any State Bar proceeding. (Added by Stats. 1986, ch. 475. Amended by Stats. 2018, ch. 659.)

### **§ 6094.5 Goals and Policy of Disciplinary Agency**

(a) It is the goal and policy of the State Bar to ensure that matters are handled competently, accurately, and timely. Until processing goals are established pursuant to subdivision (b) and codified in statute, the goal and policy of the State Bar is to dismiss a complaint, admonish the attorney, or have the Office of Chief Trial Counsel file formal charges within six months after it receives a complaint alleging attorney misconduct. As to complaints designated as complicated matters by the Chief Trial Counsel, it shall be the goal and policy of the State Bar to dismiss a complaint, admonish the attorney or have the Office of Chief Trial Counsel file formal charges within 12 months after it receives a complaint alleging attorney misconduct.

(b) No later than October 31, 2022, the State Bar shall propose case processing standards for competently,

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accurately, and timely resolving cases within the Office of Chief Trial Counsel.

(1) The case processing standards shall take into account all relevant factors, including, but not limited to, the mechanics of the discipline process, the risk to public protection, including multiple complaints against the same attorney, reasonable expectations of the public for resolution of complaints, and the complexity of cases. The case processing standards shall be based on and reflect all of the following:

(A) A review of case processing standards in attorney discipline systems in at least five other states, including large and small jurisdictions, with the goal of reviewing jurisdictions that have strong and effective discipline systems that protect the public.

(B) Consultation with state and national experts on attorney discipline.

(C) Reports from the Legislative Analyst's Office.

(D) Reports from the California State Auditor.

(2) The State Bar shall conduct an analysis of the data collected in subparagraphs (A) to (D), inclusive, of paragraph (1) and develop proposed case processing standards that reflect the goal of resolving attorney discipline cases in a timely, effective, and efficient manner while having small backlogs of attorney discipline cases and best protecting the public.

(3) Goals for case processing and disposition that are intended to encourage the prompt disposition of matters and apply to the overall inventory of matters of the type specified in subdivision (b) are not meant to create deadlines for individual cases, are not jurisdictional, and shall not serve as a bar or defense to any disciplinary investigation or proceeding.

(4) The analysis shall include staffing requirements for the Office of Chief Trial Counsel to achieve the case processing goals described in this paragraph.

(5) The State Bar shall provide its analysis and recommendations to the Legislative Analyst's

Office for review. The Legislative Analyst's Office shall report to the Senate and Assembly Judiciary Committees on its review of the State Bar's proposal. The State Bar shall provide the Legislative Analyst's Office with any available information to assist the Legislative Analyst's Office in its review.

(6) It is the intent of the Legislature to enact legislation that would codify in statute case processing goals for the State Bar's discipline system based on the State Bar's proposal and the Legislative Analyst's Office review of that proposal to improve the effectiveness of the State Bar's attorney discipline system, best protect the public, and remain in place for an extended period of time to allow for adequate oversight of the State Bar and its performance over time.

(c) The case processing goals described in subdivision (a) shall not apply to the following matters: Nonattorney Unauthorized Practice of Law (NA-UPL), Section 6007 matters, moral character matters, resignations with charges pending, mini-reinstatements, and criminal conviction matters.

(d) To ensure that criminal conviction matters are handled competently, accurately, and timely, the State Bar shall report on its compliance with the requirement of Section 6101 to transmit, within 30 days of receipt, 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.

(e) Consistent with Section 6026.11, a notice of disciplinary charges is a public record when filed.

(f) The State Bar, subject to its record retention policy, shall respond within a reasonable time to inquiries as to the status of pending disciplinary cases in which a notice to show cause has been filed, or as to public discipline that has been imposed upon an attorney in California, or to the extent known by the agency, elsewhere, and, to the extent such information is known to the agency, all criminal cases in which an indictment or information has been brought charging a felony against an attorney or an attorney has been convicted of a felony, or convicted of any misdemeanor committed in the course of the practice of law or in any manner such that a client of the attorney was the victim, or any felony or misdemeanor, a necessary

element of which, as determined by the statutory or common law definition of the crime, involves improper conduct of an attorney, including interference with the administration of justice, running and capping, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, dishonesty or other moral turpitude, or an attempt of a conspiracy or solicitation of another to commit such a crime. Such information acquired from the State Bar under this section shall not be used by an attorney to solicit business. The State Bar shall adopt regulations to carry out the purposes of this subdivision. (Added by Stats. 1986, ch. 475; Amended by Stats. 1988, ch. 1159; Stats. 2001, ch. 745; Stats. 2018, ch. 659; Stats. 2021, ch. 723.)

**§ 6095 Disciplinary Procedures—Public Hearings; Reports, Audits**

(a) The State Bar shall annually hold at least two public hearings, one in southern California and one in northern California, to hear proposals on bar disciplinary procedures, attorney competency, and admissions procedures.

(b) To the extent the information is known to the State Bar, it shall report annually to the Assembly and Senate Judiciary Committees concerning the judicial or disciplinary disposition of all criminal or disciplinary proceedings involving the allegation of the commission of a felony by an attorney. (Added by Stats. 1986, ch. 475. Amended by Stats. 1995, ch. 88; Stats. 2004, ch. 193; Stats. 2018, ch. 659.)

**§ 6095.1 Complaints Against Attorneys—Statistical Information; Reports to Legislative Committees; Equitable Use of Resources**

(a) Beginning on April 1, 2000, and through March 31, 2001, the State Bar shall compile statistics indicating the number of complaints against attorneys, broken down to reflect the percentage of complaints brought against attorneys practicing as solo practitioners, in small law firms or partnerships, and in large law firms. The State Bar shall also compile statistics indicating the percentage of complaints that are prosecuted, and the outcomes of those prosecutions against solo practitioners, attorneys practicing in small law firms or partnerships, and attorneys practicing in large law firms. For the purposes of the study, agreements in lieu of discipline shall not be counted as prosecutions.

Practicing attorneys shall provide any information that is requested by the bar deemed necessary for the purpose of compiling the statistics. For purposes of this section, “small law firm” means a firm, partnership, association, corporation, or limited liability partnership that includes 10 or fewer attorneys.

(b) On or before June 30, 2001, the State Bar shall issue a written report to the Senate Committee on Judiciary and the Assembly Committee on Judiciary on procedures used in the disciplinary process to ensure that resources of the State Bar are used fairly and equitably in the investigation and prosecution of complaints against attorneys. In particular, the report shall focus on whether disciplinary proceedings are brought in disproportionate numbers against attorneys practicing as solo practitioners or in small law firms or partnerships, as compared to proceedings brought against attorneys practicing in large law firms. The report shall also describe any procedures in place or under consideration to correct any institutional bias and shall include a discussion of, and recommendations regarding, any additional changes to the discipline process that would make it more equitable. In particular, the State Bar shall consider disciplinary avenues other than the investigation and prosecution of complaints against attorneys. After issuing the report, the State Bar shall continue to compile and maintain statistics pursuant to subdivision (a), and shall make those statistics available to the public upon request.

(c) Procedures used in the disciplinary process shall ensure that resources of the State Bar are used fairly and equitably in the investigation and prosecution of complaints against all attorneys. Disciplinary proceedings shall not be brought in disproportionate numbers against attorneys practicing as solo practitioners or in small law firms or partnerships, as compared to proceedings brought against attorneys practicing in large law firms, unless the number of complaints against solo practitioners, or attorneys practicing in small law firms or partnerships, is commensurate with the higher number of disciplinary proceedings.

(d) The report of the State Bar prepared pursuant to this section shall not be used as a defense or mitigating factor in any disciplinary proceeding against an attorney. (Added by Stats. 1999, ch. 221.)



**ARTICLE 6**  
**DISCIPLINARY AUTHORITY OF THE COURTS**

**§ 6100 Disbarment or Suspension**

For any of the causes provided in this article, arising after an attorney's admission to practice, he or she may be disbarred or suspended by the Supreme Court. Nothing in this article limits the inherent power of the Supreme Court to discipline, including to summarily disbar, any attorney. (Origin: Code of Civ. Proc., § 287. Amended by Stats. 1951, ch. 177; Stats. 1985, ch. 453.)

**§ 6101 Conviction of Crimes Involving Moral Turpitude**

(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 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. (Origin: Code Civ. Proc., §§ 287(1), 288, 289. Amended by Stats. 1953, ch. 44; Stats. 1955, ch. 1190; Stats. 1984, ch. 1355; Stats. 1996, ch. 1104; Stats. 2019, ch. 698.)

**§ 6102 Conviction of Crime—Suspension and Disbarment 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,

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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 disbaring 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. (Origin: Code Civ. Proc., § 299. Amended by Stats. 1941, ch. 1183; Stats. 1955, ch. 1190; Stats. 1981, ch. 714; Stats. 1985, ch. 453; Stats. 1996, ch. 1104; Stats. 2018, ch. 659.)

### **§ 6103 Sanctions for Violation of Oath or Attorney's Duties**

A willful disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear, and any violation of the oath taken by him, or of his duties as such attorney, constitute causes for disbarment or suspension. (Origin: Code Civ. Proc., § 287(2). Added by Stats. 1939, ch. 34.)

### **§ 6103.5 Communicate Written Offer of Settlement to Client**

(a) A licensee of the State Bar shall promptly communicate to the licensee's client all amounts, terms, and conditions of any written offer of settlement made by or on behalf of an opposing party. As used in this section, "client" includes any person employing the licensee of the State Bar who possesses the authority to accept an offer of settlement, or in a class action, who is a representative of the class.

(b) Any written offer of settlement or any required communication of a settlement offer, as described in subdivision (a), shall be discoverable by either party in any action in which the existence or communication of the offer of settlement is an issue before the trier of fact. (Added by Stats. 1986, ch. 1238. Amended by Stats. 1987, ch. 213; Stats. 2018, ch. 659.)

### **§ 6103.6 Violation of Probate Code Section 15687 or Part 3.5 of Division 11 of Probate Code—Grounds for Discipline**

Violation of Section 15687 of the Probate Code, or of Part 3.5 (commencing with Section 21350) or Part 3.7 (commencing with Section 21360) of Division 11 of the

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Probate Code, shall be grounds for discipline, if the attorney knew or should have known of the facts leading to the violation. This section shall only apply to violations that occur on or after January 1, 1994. (Added by Stats. 1993, ch. 293. Amended by Stats. 1995, ch. 730; Stats. 2010, ch. 620.)

### **§ 6103.7 Report of Suspected Immigration Status Cause for Discipline**

It is cause for suspension, disbarment, or other discipline for any licensee of the State Bar to report suspected immigration status or threaten to report suspected immigration status of a witness or party to a civil or administrative action or his or her family member to a federal, state, or local agency because the witness or party exercises or has exercised a right related to his or her employment or hiring of residential real property, broadly interpreted. As used in this section, “family member” means a spouse, parent, sibling, child, uncle, aunt, niece, nephew, cousin, grandparent, or grandchild related by blood, adoption, marriage, or domestic partnership. (Added by Stats. 2013, ch. 577. Amended by Stats. 2017, ch. 489; Stats. 2018, ch. 659.)

### **§ 6104 Appearing for Party without Authority**

Corruptly or willfully and without authority appearing as attorney for a party to an action or proceeding constitutes a cause for disbarment or suspension. (Origin: Code Civ. Proc., § 287(3).)

### **§ 6105 Permitting Misuse of Name**

Lending his name to be used as attorney by another person who is not an attorney constitutes a cause for disbarment or suspension. (Origin: Code Civ. Proc., § 287(4).)

### **§ 6106 Moral Turpitude, Dishonesty or Corruption Irrespective of Criminal Conviction**

The commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not, constitutes a cause for disbarment or suspension.

If the act constitutes a felony or misdemeanor, conviction thereof in a criminal proceeding is not a condition precedent to disbarment or suspension from practice therefor. (Origin: Code Civ. Proc., § 287(5). Added by Stats. 1939, ch. 34.)

### **§ 6106.1 Advocacy of Overthrow of Government**

Advocating the overthrow of the Government of the United States or of this State by force, violence, or other unconstitutional means, constitutes a cause for disbarment or suspension. (Added by Stats. 1951, ch. 179.)

### **§ 6106.2 Violation of Civil Code Section 55.3; Violation of Specified Provisions of Civil Code Section 55.31 or 55.32**

(a) It shall constitute cause for the imposition of discipline of an attorney within the meaning of this chapter for an attorney to engage in any conduct in violation of Section 55.3, subdivision (b) or (c) of Section 55.31, or paragraph (2) of subdivision (a) or subdivision (b) of Section 55.32 of the Civil Code.

(b) This section shall become operative on January 1, 2016. (Added by Stats. 2012, ch. 383, effective September 19, 2012.)

### **§ 6106.3 Mortgage Loan Modifications: Violation of Civil Code Section 2944.6—Grounds for Discipline**

(a) It shall constitute cause for the imposition of discipline of an attorney within the meaning of this chapter for an attorney to engage in any conduct in violation of Section 2944.6 of the Civil Code.

(b) This section shall become operative on January 1, 2017. (Added by Stats. 2009, ch. 630. Amended by Stats. 2012, ch. 563, operative January 1, 2017.)

*[Publisher’s Note: The following paragraph concerns Business and Professions Code 6106.3 and was added by Stats. 2009, ch. 630, but not codified. It is provided below for your information.]*

SEC. 14. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the

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Constitution and shall go into immediate effect. The facts constituting the necessity are: With foreclosures at historic levels, foreclosure rescue scams are pervasive and rampant. In order to prevent financially stressed homeowners from being victimized and to provide them with needed protection at the earliest possible time, it is necessary that this act take effect immediately.

### **§ 6106.5 Insurance Claims; Fraud**

It shall constitute cause for disbarment or suspension for an attorney to engage in any conduct prohibited under Section 1871.4 of the Insurance Code or Section 550 of the Penal Code. (Added by Stats. 1978, ch. 174, effective May 31, 1978. Amended by Stats. 1988, ch. 1159; Stats. 1991, ch. 116; Stats. 2000, ch. 867.)

### **§ 6106.6 Insurance Claims; Fraud; Investigation of Licensee**

The State Bar shall investigate any licensee against whom an information or indictment has been filed that alleges a violation of Section 550 of the Penal Code or Section 1871.4 of the Insurance Code, if the district attorney does not otherwise object to initiating an investigation. (Added by Stats. 2000, ch. 867.)

### **§ 6106.7 Professional Sports Service Contracts**

It shall constitute cause for the imposition of discipline of an attorney within the meaning of this chapter for an attorney to violate any provision of the Miller-Ayala Athlete Agents Act (Chapter 2.5 (commencing with Section 18895) of Division 8), or to violate any provision of Chapter 1 (commencing with Section 1500) of Part 6 of Division 2 of the Labor Code, prior to January 1, 1997, or to violate any provision of the law of any other state regulating athlete agents. (Added by Stats. 1985, ch. 1133. Amended by Stats. 1996, ch. 858.)

### **§ 6106.8 Sexual Involvement Between Lawyers and Clients; Rule of Professional Conduct**

(a) The Legislature hereby finds and declares that there is no rule that governs propriety of sexual relationships between lawyers and clients. The Legislature further finds and declares that it is difficult to separate sound judgment from emotion or bias which may result from sexual involvement between a

lawyer and his or her client during the period that an attorney-client relationship exists, and that emotional detachment is essential to the lawyer's ability to render competent legal services. Therefore, in order to ensure that a lawyer acts in the best interest of his or her client, a rule of professional conduct governing sexual relations between attorneys and their clients shall be adopted.

(b) With the approval of the Supreme Court, the State Bar shall adopt a rule of professional conduct governing sexual relations between attorneys and their clients in cases involving, but not limited to, probate matters and domestic relations, including dissolution proceedings, child custody cases, and settlement proceedings.

(c) The State Bar shall submit the proposed rule to the Supreme Court for approval no later than January 1, 1991.

(d) Intentional violation of this rule shall constitute a cause for suspension or disbarment. (Added by Stats. 1989, ch. 1008.)

### **§ 6106.9 Sexual Relations Between Attorney and Client**

(a) It shall constitute cause for the imposition of discipline of an attorney within the meaning of this chapter for an attorney to do any of the following:

(1) Expressly or impliedly condition the performance of legal services for a current or prospective client upon the client's willingness to engage in sexual relations with the attorney.

(2) Employ coercion, intimidation, or undue influence in entering into sexual relations with a client.

(3) Continue representation of a client with whom the attorney has sexual relations if the sexual relations cause the attorney to perform legal services incompetently in violation of Rule 3-110 of the Rules of Professional Conduct of the State Bar of California, or if the sexual relations would, or would be likely to, damage or prejudice the client's case.

(b) Subdivision (a) shall not apply to sexual relations between attorneys and their spouses or persons in an equivalent domestic relationship or to ongoing

consensual sexual relationships that predate the initiation of the attorney-client relationship.

(c) Where an attorney in a firm has sexual relations with a client but does not participate in the representation of that client, the attorneys in the firm shall not be subject to discipline under this section solely because of the occurrence of those sexual relations.

(d) For the purposes of this section, "sexual relations" means sexual intercourse or the touching of an intimate part of another person for the purpose of sexual arousal, gratification, or abuse.

(e) Any complaint made to the State Bar alleging a violation of subdivision (a) shall be verified under oath by the person making the complaint. (Added by Stats. 1992, ch. 740.)

**§ 6107 Proceedings Upon Court's Own Knowledge or Upon Information**

The proceedings to disbar or suspend an attorney, on grounds other than the conviction of a felony or misdemeanor, involving moral turpitude, may be taken by the court for the matters within its knowledge, or may be taken upon the information of another. (Origin: Code Civ. Proc., § 289.)

**§ 6108 Accusation**

If the proceedings are upon the information of another, the accusation shall be in writing and shall state the matters charged, and be verified by the oath of some person, to the effect that the charges therein contained are true.

The verification may be made upon information and belief when the accusation is presented by an organized bar association. (Origin: Code Civ. Proc., §§ 290, 291.)

**§ 6109 Order to Appear and Answer; Service**

Upon receiving the accusation, the court shall make an order requiring the accused to appear and answer it at a specified time, and shall cause a copy of the order and of the accusation to be served upon the accused at least five days before the day appointed in the order. (Origin: Code Civ. Proc., § 292.)

**§ 6110 Citation**

The court or judge may direct the service of a citation to the accused, requiring him to appear and answer the accusation, to be made by publication for thirty days in a newspaper of general circulation published in the county in which the proceeding is pending, if it appears by affidavit to the satisfaction of the court or judge that the accused either:

- (a) Resides out of the State.
- (b) Has departed from the State.
- (c) Can not, after due diligence, be found within the State.
- (d) Conceals himself to avoid the service of the order to show cause.

The citation shall be:

- (a) Directed to the accused.
- (b) Recite the date of the filing of the accusation, the name of the accuser, and the general nature of the charges against him.
- (c) Require him to appear and answer the accusation at a specified time.

On proof of the publication of the citation as herein required, the court has jurisdiction to proceed to hear the accusation and render judgment with like effect as if an order to show cause and a copy of the accusation had been personally served on the accused. (Origin: Code Civ. Proc., § 292.)

**§ 6111 Appearance; Determination Upon Default**

The accused shall appear at the time appointed in the order, and answer the accusation, unless, for sufficient cause, the court assigns another day for that purpose. If he does not appear, the court may proceed and determine the accusation in his absence. (Origin: Code Civ. Proc., § 293.)

**§ 6112 Answer**

The accused may answer to the accusation either by objecting to its sufficiency or by denying it.

If he objects to the sufficiency of the accusation, the objection shall be in writing, but need not be in any specific form. It is sufficient if it presents intelligibly the grounds of the objection.

If he denies the accusation, the denial may be oral and without oath, and shall be entered upon the minutes. (Origin: Code Civ. Proc., §§ 294, 295.)

**§ 6113 Time for Answer After Objection**

If an objection to the sufficiency of the accusation is not sustained, the accused shall answer within the time designated by the court. (Origin: Code Civ. Proc., § 296.)

**§ 6114 Judgment Upon Plea of Guilty or Failure to Answer; Trial Upon Denial of Charges**

If the accused pleads guilty, or refuses to answer the accusation, the court shall proceed to judgment of disbarment or suspension.

If he denies the matters charged, the court shall, at such time as it may appoint, proceed to try the accusation. (Origin: Code Civ. Proc., § 297.)

**§ 6115 Reference to Take Depositions**

The court may, in its discretion, order a reference to a committee to take depositions in the matter. (Origin: Code Civ. Proc., § 298.)

**§ 6116 Judgment**

When an attorney has been found guilty of the charges made in proceedings not based upon a record of conviction, judgment shall be rendered disbaring the attorney or suspending him from practice for a limited time, according to the gravity of the offense charged. (Origin: Code Civ. Proc., § 299.)

**§ 6117 Effect of Disbarment or Suspension**

During such disbarment or suspension, the attorney shall be precluded from practicing law.

When disbarred, his name shall be stricken from the roll of attorneys. (Origin: Code Civ. Proc., § 299.)

**ARTICLE 7  
UNLAWFUL PRACTICE OF LAW**

**§ 6125 Necessity of Active Licensee Status in State Bar**

No person shall practice law in California unless the person is an active licensee of the State Bar. (Origin: State Bar Act, § 47. Amended by Stats. 1990, ch. 1639; Stats. 2018, ch. 659.)

**§ 6126 Unauthorized Practice or Advertising as a Misdemeanor**

(a) Any person advertising or holding himself or herself out as practicing or entitled to practice law or otherwise practicing law who is not an active licensee of the State Bar, or otherwise authorized pursuant to statute or court rule to practice law in this state at the time of doing so, is guilty of a misdemeanor punishable by up to one year in a county jail or by a fine of up to one thousand dollars (\$1,000), or by both that fine and imprisonment. Upon a second or subsequent conviction, the person shall be confined in a county jail for not less than 90 days, except in an unusual case where the interests of justice would be served by imposition of a lesser sentence or a fine. If the court imposes only a fine or a sentence of less than 90 days for a second or subsequent conviction under this subdivision, the court shall state the reasons for its sentencing choice on the record.

(b) Any person who has been involuntarily enrolled as an inactive licensee of the State Bar, or whose license has been suspended, or has been disbarred, or has resigned from the State Bar with charges pending, and thereafter practices or attempts to practice law, advertises or holds himself or herself out as practicing or otherwise entitled to practice law, is guilty of a crime punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code or in a county jail for a period not to exceed six months. However, any person who has been involuntarily enrolled as an inactive licensee of the State Bar pursuant to paragraph (1) of subdivision (e) of Section 6007 and who knowingly thereafter practices or attempts to practice law, or advertises or holds himself or herself out as practicing or otherwise entitled to practice law, is guilty of a crime punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code or in a county jail for a period not to exceed six months.

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(c) The willful failure of a licensee of the State Bar, or one who has resigned or been disbarred, to comply with an order of the Supreme Court to comply with Rule 9.20 of the California Rules of Court, constitutes a crime punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code or in a county jail for a period not to exceed six months.

(d) The penalties provided in this section are cumulative to each other and to any other remedies or penalties provided by law. (Origin: State Bar Act, § 49; Pen. Code, § 161a. Added by Stats. 1939, ch. 34. Amended by Stats. 1939, ch. 980; Stats. 1988, ch. 1159; Stats. 2002, ch. 394; Stats. 2007, ch. 130; Stats. 2007, ch. 474; Stats. 2011, ch. 15, effective Apr. 4, 2011, operative Oct. 1, 2011; Stats. 2018, ch. 659.)

### **§ 6126.3 Authority of Courts; Assumption of Jurisdiction Over Practices of Persons Who Advertise or Hold Themselves Out as Entitled to Practice Law but are Not Licensees of the State Bar or Otherwise Authorized to Practice Law**

(a) In addition to any criminal penalties pursuant to Section 6126 or to any contempt proceedings pursuant to Section 6127, the courts of the state shall have the jurisdiction provided in this section when a person advertises or holds himself or herself out as practicing or entitled to practice law, or otherwise practices law, without being an active licensee of the State Bar or otherwise authorized pursuant to statute or court rule to practice law in this state at the time of doing so.

(b) The State Bar, or the superior court on its own motion, may make application to the superior court for the county where the person described in subdivision (a) maintains or more recently has maintained his or her principal office for the practice of law or where he or she resides, for assumption by the court of jurisdiction over the practice to the extent provided in this section. In any proceeding under this section, the State Bar shall be permitted to intervene and to assume primary responsibility for conducting the action.

(c) An application made pursuant to subdivision (b) shall be verified, and shall state facts showing all of the following:

(1) Probable cause to believe that the facts set forth in subdivision (a) of Section 6126 have occurred.

(2) The interest of the applicant.

(3) Probable cause to believe that the interests of a client or of an interested person or entity will be prejudiced if the proceeding is not maintained.

(d) The application shall be set for hearing, and an order to show cause shall be issued directing the person to show cause why the court should not assume jurisdiction over the practice as provided in this section. A copy of the application and order to show cause shall be served upon the person by personal delivery or, as an alternate method of service, by certified or registered mail, return receipt requested, addressed to the person either at the address at which he or she maintains, or more recently has maintained, his or her principal office or at the address where he or she resides. Service is complete at the time of mailing, but any prescribed period of notice and any right or duty to do any act or make any response within that prescribed period or on a date certain after notice is served by mail shall be extended five days if the place of address is within the State of California, 10 days if the place of address is outside the State of California but within the United States, and 20 days if the place of address is outside the United States. If the State Bar is not the applicant, copies shall also be served upon the Office of the Chief Trial Counsel of the State Bar in similar manner at the time of service on the person who is the subject of the application. The court may prescribe additional or alternative methods of service of the application and order to show cause, and may prescribe methods of notifying and serving notices and process upon other persons and entities in cases not specifically provided herein.

(e) If the court finds that the facts set forth in subdivision (a) of Section 6126 have occurred and that the interests of a client or an interested person or entity will be prejudiced if the proceeding provided herein is not maintained, the court may make an order assuming jurisdiction over the person's practice pursuant to this section. If the person to whom the order to show cause is directed does not appear, the court may make its order upon the verified application or upon such proof as it may require. Thereupon, the court shall appoint one or more active licensees of the State Bar to act under its direction to mail a notice of cessation of practice, pursuant to subdivision (g), and may order those appointed attorneys to do one or more of the following:

(1) Examine the files and records of the practice and obtain information as to any pending matters **that may require attention.**

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(2) Notify persons and entities who appear to be clients of the person of the occurrence of the event or events stated in subdivision (a) of Section 6126, and inform them that it may be in their best interest to obtain other legal counsel.

(3) Apply for an extension of time pending employment of legal counsel by the client.

(4) With the consent of the client, file notices, motions, and pleadings on behalf of the client where jurisdictional time limits are involved and other legal counsel has not yet been obtained.

(5) Give notice to the depositor and appropriate persons and entities who may be affected, other than clients, of the occurrence of the event or events.

(6) Arrange for the surrender or delivery of clients' papers or property.

(7) Arrange for the appointment of a receiver, where applicable, to take possession and control of any and all bank accounts relating to the affected person's practice.

(8) Do any other acts that the court may direct to carry out the purposes of this section. The court shall have jurisdiction over the files and records and over the practice of the affected person for the limited purposes of this section, and may make all orders necessary or appropriate to exercise this jurisdiction. The court shall provide a copy of any order issued pursuant to this section to the Office of the Chief Trial Counsel of the State Bar.

(f) Anyone examining the files and records of the practice of the person described in subdivision (a) shall observe any lawyer-client privilege under Sections 950 and 952 of the Evidence Code and shall make disclosure only to the extent necessary to carry out the purposes of this section. That disclosure shall be a disclosure that is reasonably necessary for the accomplishment of the purpose for which the person described in subdivision (a) was consulted. The appointment of a licensee of the State Bar pursuant to this section shall not affect the lawyer-client privilege, which privilege shall apply to communications by or to the appointed licensees to the same extent as it would have applied to communications by or to the person described in subdivision (a).

(g) The notice of cessation of law practice shall contain any information that may be required by the court,

including, but not limited to, the finding by the court that the facts set forth in subdivision (a) of Section 6126 have occurred and that the court has assumed jurisdiction of the practice. The notice shall be mailed to all clients, to opposing counsel, to courts and agencies in which the person has pending matters with an identification of the matter, to the Office of the Chief Trial Counsel of the State Bar, and to any other person or entity having reason to be informed of the court's assumption of the practice.

(h) Nothing in this section shall authorize the court or an attorney appointed by it pursuant to this section to approve or disapprove of the employment of legal counsel, to fix terms of legal employment, or to supervise or in any way undertake the conduct of the practice, except to the limited extent provided by paragraphs (3) and (4) of subdivision (e).

(i) Unless court approval is first obtained, neither the attorney appointed pursuant to this section, nor his or her corporation, nor any partner or associate of the attorney shall accept employment as an attorney by any client of the affected person on any matter pending at the time of the appointment. Action taken pursuant to paragraphs (3) and (4) of subdivision (e) shall not be deemed employment for purposes of this subdivision.

(j) Upon a finding by the court that it is more likely than not that the application will be granted and that delay in making the orders described in subdivision (e) will result in substantial injury to clients or to others, the court, without notice or upon notice as it shall prescribe, may make interim orders containing any provisions that the court deems appropriate under the circumstances. Such an interim order shall be served in the manner provided in subdivision (d) and, if the application and order to show cause have not yet been served, the application and order to show cause shall be served at the time of serving the interim order.

(k) No person or entity shall incur any liability by reason of the institution or maintenance of a proceeding brought under this section. No person or entity shall incur any liability for an act done or omitted to be done pursuant to order of the court under this section. No person or entity shall be liable for failure to apply for court jurisdiction under this section. Nothing in this section shall affect any obligation otherwise existing between the affected person and any other person or entity.



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(l) An order pursuant to this section is not appealable and shall not be stayed by petition for a writ, except as ordered by the superior court or by the appellate court.

(m) A licensee of the State Bar appointed pursuant to this section shall serve without compensation. However, the licensee may be paid reasonable compensation by the State Bar in cases where the State Bar has determined that the licensee has devoted extraordinary time and services that were necessary to the performance of the licensee's duties under this article. All payments of compensation for time and services shall be at the discretion of the State Bar. Any licensee shall be entitled to reimbursement from the State Bar for necessary expenses incurred in the performance of the licensee's duties under this article. Upon court approval of expenses or compensation for time and services, the State Bar shall be entitled to reimbursement therefor from the person described in subdivision (a) or his or her estate. (Added by Stats. 2005, ch. 273. Amended by Stats. 2006, ch. 538.; Stats. 2018, ch. 659.)

### **§ 6126.4 Authority of Courts to Assume Jurisdiction Extends to Immigration Consultants**

Section 6126.3 shall apply to a person acting in the capacity of an immigration consultant pursuant to Chapter 19.5 (commencing with Section 22440) who advertises or holds himself or herself out as practicing or entitled to practice law, or otherwise practices law. (Added by Stats. 2006, ch. 605.)

### **§ 6126.5 Relief**

(a) In addition to any remedies and penalties available in any enforcement action brought in the name of the people of the State of California by the Attorney General, a district attorney, or a city attorney, acting as a public prosecutor, the court shall award relief in the enforcement action for any person who obtained services offered or provided in violation of Section 6125 or 6126 or who purchased any goods, services, or real or personal property in connection with services offered or provided in violation of Section 6125 or 6126 against the person who violated Section 6125 or 6126, or who sold goods, services, or property in connection with that violation. The court shall consider the following relief:

- (1) Actual damages.
- (2) Restitution of all amounts paid.

(3) The amount of penalties and tax liabilities incurred in connection with the sale or transfer of assets to pay for any goods, services, or property.

(4) Reasonable attorney's fees and costs expended to rectify errors made in the unlawful practice of law.

(5) Prejudgment interest at the legal rate from the date of loss to the date of judgment.

(6) Appropriate equitable relief, including the rescission of sales made in connection with a violation of law.

(b) The relief awarded under paragraphs (1) to (6), inclusive, of subdivision (a) shall be distributed to, or on behalf of, the person for whom it was awarded or, if it is impracticable to do so, shall be distributed as may be directed by the court pursuant to its equitable powers.

(c) The court shall also award the Attorney General, district attorney, or city attorney reasonable attorney's fees and costs and, in the court's discretion, exemplary damages as provided in Section 3294 of the Civil Code.

(d) This section shall not be construed to create, abrogate, or otherwise affect claims, rights, or remedies, if any, that may be held by a person or entity other than those law enforcement agencies described in subdivision (a). The remedies provided in this section are cumulative to each other and to the remedies and penalties provided under other laws. (Added by Stats. 2001, ch. 304.)

### **§ 6126.7 Translation of Specified Phrases; Violation; Remedies**

(a) It is a violation of subdivision (a) of Section 6126 for any person who is not an attorney to literally translate from English into another language, in any document, including an advertisement, stationery, letterhead, business card, or other comparable written material, any words or titles, including, but not limited to, "notary public," "notary," "licensed," "attorney," or "lawyer," that imply that the person is an attorney. As provided in this subdivision, the literal translation of the phrase "notary public" into Spanish as "notario publico" or "notario," is expressly prohibited.

(b) For purposes of this section, "literal translation of" or "to literally translate" a word, title, or phrase from one language means the translation of a word, title, or

phrase without regard to the true meaning of the word or phrase in the language that is being translated.

(c) (1) In addition to any other remedies and penalties prescribed in this article, a person who violates this section shall be subject to a civil penalty not to exceed one thousand dollars (\$1,000) per day for each violation, to be assessed and collected in a civil action brought by the State Bar.

(2) In assessing the amount of the civil penalty, the court may consider relevant circumstances presented by the parties to the case, including, but not limited to, the following:

(A) The nature and severity of the misconduct.

(B) The number of violations.

(C) The length of time over which the misconduct occurred, and the persistence of the misconduct.

(D) The wilfulness of the misconduct.

(E) The defendant's assets, liabilities, and net worth.

(3) The court shall grant a prevailing plaintiff reasonable attorneys' fees and costs.

(4) A civil action brought under this section shall be commenced within four years after the cause of action accrues.

(5) In a civil action brought by the State Bar under this section, the civil penalty collected shall be paid to the State Bar and allocated to the fund established pursuant to Section 6033 to provide free legal services related to immigration reform act services to clients of limited means or to a fund for the purposes of mitigating unpaid claims of injured immigrant clients under Section 22447, as directed by the Board of Trustees of the State Bar. The board shall annually report any collection and expenditure of funds for the preceding calendar year, as authorized by this section, to the Assembly and Senate Committees on Judiciary. The report required by this section may be included in the report described in Section 6086.15. (Added by Stats. 2013, ch. 574.)

## § 6127 Contempt of Court

The following acts or omissions in respect to the practice of law are contempts of the authority of the courts:

(a) Assuming to be an officer or attorney of a court and acting as such, without authority.

(b) Advertising or holding oneself out as practicing or as entitled to practice law or otherwise practicing law in any court, without being an active licensee of the State Bar.

Proceedings to adjudge a person in contempt of court under this section are to be taken in accordance with the provisions of Title V of Part III of the Code of Civil Procedure. (Origin: Code Civ. Proc., §§ 281, 1209. Added by Stats. 1939, ch. 34. Amended by Stats. 1939, ch. 980; Stats. 2018, ch. 659.)

## § 6127.5 Law Corporation Under Professional Corporation Act

Nothing in sections 6125, 6126 and 6127 shall be deemed to apply to the acts and practices of a law corporation duly certificated pursuant to the Professional Corporation Act, as contained in Part 4 (commencing with section 13400) of Division 3 of Title 1 of the Corporations Code, and pursuant to Article 10 (commencing with section 6160) of Chapter 4 of Division 3 of this code, when the law corporation is in compliance with the requirements of (a) the Professional Corporation Act; (b) Article 10 (commencing with section 6160) of Chapter 4 of Division 3 of this code; and (c) all other statutes and all rules and regulations now or hereafter enacted or adopted pertaining to such corporation and the conduct of its affairs. (Added by Stats. 1968, ch. 1375.)

## § 6128 Deceit, Collusion, Delay of Suit and Improper Receipt of Money as Misdemeanor

Every attorney is guilty of a misdemeanor who either:

(a) Is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party.

(b) Willfully delays his client's suit with a view to his own gain.

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(c) Willfully receives any money or allowance for or on account of any money which he has not laid out or become answerable for.

Any violation of the provisions of this section is punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both. (Origin: Pen. Code § 160. Added by Stats. 1939, ch. 34. Amended by Stats. 1976, ch. 1125.)

### **§ 6129 Buying Claim as Misdemeanor**

Every attorney who, either directly or indirectly, buys or is interested in buying any evidence of debt or thing in action, with intent to bring suit thereon, is guilty of a misdemeanor.

Any violation of the provisions of this section is punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both. (Origin: Pen. Code § 161. Amended by Stats. 1976, ch. 1125.)

### **§ 6130 Disbarred or Suspended Attorney Suing as Assignee**

No person, who has been an attorney, shall while a judgment of disbarment or suspension is in force appear on his own behalf as plaintiff in the prosecution of any action where the subject of the action has been assigned to him subsequent to the entry of the judgment of disbarment or suspension and solely for purpose of collection. (Origin: Code Civ. Proc., § 300.)

### **§ 6131 Aiding Defense Where Partner or Self has Acted as Public Prosecutor; Misdemeanor and Disbarment**

Every attorney is guilty of a misdemeanor and, in addition to the punishment prescribed therefor, shall be disbarred:

(a) Who directly or indirectly advises in relation to, or aids, or promotes the defense of any action or proceeding in any court the prosecution of which is carried on, aided or promoted by any person as district attorney or other public prosecutor with whom such person is directly or indirectly connected as a partner.

(b) Who, having himself prosecuted or in any manner aided or promoted any action or proceeding in any court as district attorney or other public prosecutor, afterwards, directly or indirectly, advises in relation to or takes any part in the defense thereof, as attorney or otherwise, or who takes or receives any valuable consideration from or on behalf of any defendant in any such action upon any understanding or agreement whatever having relation to the defense thereof.

This section does not prohibit an attorney from defending himself in person, as attorney or counsel, when prosecuted, either civilly or criminally. (Origin: Pen. Code, §§ 162, 163. Added by Stats. 1939, ch. 34.)

### **§ 6132 Law Firm Name—Removal of Name of Disciplined Attorney**

Any law firm, partnership, corporation, or association which contains the name of an attorney who is disbarred, or who resigned with charges pending, in its business name shall remove the name of that attorney from its business name, and from all signs, advertisements, letterhead, and other materials containing that name, within 60 days of the disbarment or resignation. (Added by Stats. 1988, ch. 1159.)

### **§ 6133 Supervision of Disciplined Attorney Activities by Law Firms**

Any attorney or any law firm, partnership, corporation, or association employing an attorney who has resigned, or who is under actual suspension from the practice of law, or is disbarred, shall not permit that attorney to practice law or so advertise or hold himself or herself out as practicing law and shall supervise him or her in any other assigned duties. A willful violation of this section constitutes a cause for discipline. (Added by Stats. 1988, ch. 1159.)

## **ARTICLE 8 REVENUE**

### **§ 6140 Annual License Fee; Time of Payment**

(a) The board shall fix the annual license fee for active licensees for 2023 at a sum not exceeding three hundred ninety dollars (\$390), except that if the State Bar has entered into a contract to sell its San Francisco office

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building by October 31, 2022, the sum shall not exceed three hundred eighty-six dollars (\$386).

(b) The annual license fee for active licensees is payable on or before the first day of February of each year. If the board finds it appropriate and feasible, it may provide by rule for payment of fees on an installment basis with interest, by credit card, or by other means, and may charge licensees choosing any alternative method of payment an additional fee to defray costs incurred by that election.

(c) This section shall become operative on January 1, 2023. This section shall remain in effect only until January 1, 2024, and as of that date is repealed. (Added by Stats. 2022, ch. 419.)

**§ 6140.01** (Added by Stats. 2010, ch. 476. Amended by Stats. 2011, ch. 417, and repealed by its own terms, operative January 1, 2014.)

### **§ 6140.02 Association Adoption of Dues Schedule; Voluntary Payment; Collection of Membership Fees**

(a) The California Lawyers Association shall adopt a dues schedule for membership and shall provide that schedule to the State Bar by October 1 of each year.

(b) Payment of dues for membership in the California Lawyers Association and individual sections of the California Lawyers Association is voluntary. Each licensee of the State Bar shall have the option of joining the California Lawyers Association and one or more individual sections by including the dues set by the schedule established pursuant to subdivision (a) with that State Bar licensee's annual license fees. Any contribution or membership option included with a State Bar of California mandatory fees billing statement shall include a statement that the California Lawyers Association is not a part of the State Bar and that membership in that organization is voluntary.

(c) The State Bar shall collect, in conjunction with the collection of its annual license fees under Section 6140, membership fees for the California Lawyers Association as provided by subdivision (b) of Section 6031.5.

(d) This section is not intended to limit the California Lawyers Association membership to licensees of the State Bar or restrict the California Lawyers Association from collecting membership dues or donations by other

means. (Added by Stats. 2017, ch. 422. Amended by Stats. 2018, ch. 659.)

### **§ 6140.03 Increase in Annual Fee to Support Nonprofits Providing Free Legal Services to Needy; Opt Out Provision**

(a) The board shall increase each of the annual license fees fixed by Sections 6140 and 6141 by an additional forty-five dollars (\$45), to be allocated only for the purposes established pursuant to Section 6033 and subdivision (b), except to the extent that a licensee elects not to support those activities.

(b) (1) Five dollars (\$5) of the forty-five-dollar (\$45) fee shall be allocated to qualified legal services projects or qualified support centers, as defined in Section 6213, to fund law student summer fellowships for the purpose of supporting law students interested in pursuing a career in legal services for indigent persons. The State Bar shall not make any deductions from the five dollars (\$5) for any reason, including, but not limited to, administrative fees, costs, or expenses of the State Bar.

(2) Except as provided in paragraphs (4) and (5), funds shall be allocated pursuant to a competitive grant process administered by the Legal Services Trust Fund Commission and not through the formula set forth in Section 6216.

(3) In awarding these grants, preference shall be given to fund proposals for fellowships serving rural or underserved communities and that serve clients regardless of immigration or citizenship status.

(4) Any funds under paragraph (1) not allocated as of January 1, 2025, shall be distributed to qualified legal services projects and support centers pursuant to the formula set forth in Section 6216.

(5) The allocation described in this subdivision shall remain in effect until December 31, 2024, and after that date, the entire forty-five dollars (\$45) shall be allocated only for the purposes established pursuant to Section 6033.

(c) The invoice provided to licensees for payment of the annual license fee shall provide each licensee the option of deducting forty-five dollars (\$45) from the annual license fee if the licensee elects not to have this

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amount allocated for the purposes established pursuant to Section 6033.

(d) This section shall become operative on January 1, 2023. (Added by Stats. 2020, ch. 360. Amended by Stats. 2022, ch. 419.)

### **§ 6140.05 State Bar Lobbying Activities—Keller Deduction; Limits on Expenditures**

(a) At the election of the board, the invoice provided to licensees for payment of the annual license fee may provide each licensee the option of adding up to five dollars (\$5) to the annual fee if the licensee elects to support lobbying and related activities by the State Bar outside of the parameters established by the United States Supreme Court in *Keller v. State Bar of California* (1990) 496 U.S. 1.

(b) For the support or defense of lobbying and related activities conducted by the State Bar on or after January 1, 2000, outside of the parameters of *Keller v. State Bar of California*, and in support or defense of any litigation arising therefrom, the Board of Trustees of the State Bar shall not expend a sum exceeding the amount paid by licensees pursuant to the optional increase for lobbying and related activities, as set forth in subdivision (a).

(c) As used in this section, “lobbying and related activities by the State Bar” includes the consideration of measures by the Board of Trustees of the State Bar that are deemed outside the parameters established in *Keller v. State Bar*, the purview determination, lobbying and the preparation for lobbying of the measures, and any litigation in support or defense of that lobbying.

(d) This section shall become operative on January 1, 2023. (Added by Stats. 2022, ch. 419.)

### **§ 6140.1 Annual Budget**

(a) The State Bar annually shall submit its adopted final budget by February 28, so that the budget can be reviewed and approved in conjunction with any bill that would authorize the imposition of license fees. Each budget shall include the estimated revenues, expenditures, and staffing levels for all of the programs and funds administered by the State Bar. In addition to the final budget, the submission shall also include the proposed budget for the following year. Any bill that authorizes the imposition of license fees shall be a fiscal bill and shall be referred to the appropriate fiscal

committees; provided, however, that the bill may be approved by a majority vote

(b) The State Bar shall submit the budget documents in a form comparable to the documents prepared by state departments for inclusion in the Governor’s Budget and the salaries and wages supplement. In addition, the bar shall provide supplementary schedules detailing operating expenses and equipment, all revenue sources, any reimbursements or interfund transfers, fund balances, and other related supporting documentation. The bar shall submit budget change proposals with its final budget, explaining the need for any differences between the current and proposed budgets. (Added by Stats. 1986, ch. 2, effective February 4, 1986. Amended by Stats. 1986, ch. 1510; Stats. 1987, ch. 688; Stats. 1988, ch. 1149; Stats. 1992, ch. 1296; Stats. 2018, ch. 659.)

### **§ 6140.12 State Bar Five-Year Strategic Plan; Implementation and Reporting Requirements**

The board shall complete and implement a five-year strategic plan to be updated every two years. In conjunction with the submission of the board’s adopted final budget as required by Section 6140.1, the chair shall report to the Supreme Court, the Governor, and the Senate and Assembly Committees on Judiciary on the measures the board has taken to implement the strategic plan and shall indicate the measures the board will need to take in the remaining years of the strategic plan to address the projected needs contained in the plan. (Added by Stats. 2011, ch. 417. Amended by Stats. 2018, ch. 659.)

### **§ 6140.16 State Bar Work Force Plan**

(a) To align its staffing with its mission to protect the public as provided in Section 6001.1 and to provide guidance to the State Bar and the Legislature in allocating resources, the State Bar shall develop and implement a workforce plan for its discipline system and conduct a public sector compensation and benefits study. The workforce plan and compensation study shall be used to reassess the numbers and classifications of staff required to conduct the activities of the State Bar’s disciplinary activities.

(b) The workforce planning shall include the development and recommendation of an appropriate backlog goal, an assessment of the staffing needed to achieve that goal while ensuring that the discipline process is not compromised, and the creation of policies

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and procedures sufficient to provide adequate guidance to the staff of each unit within the discipline system.

(c) In addition to the requirements in subdivisions (a) and (b), the State Bar shall conduct a thorough analysis of its priorities and necessary operating costs and develop a spending plan, which includes its fund balances, to determine a reasonable amount for the annual license fee that reflects its actual or known costs and those to implement its workforce plan.

(d) The State Bar shall submit a report on its workforce plan and spending plan to the Legislature by May 15, 2016, so that the plans can be reviewed in conjunction with the bill that would authorize the imposition of the State Bar's license fee. The report shall be submitted in compliance with Section 9795 of the Government Code. The State Bar shall complete and implement its workforce plan by December 31, 2016. (Former § 6140.16 added by Stats. 1990, ch. 1639, repealed by Stats. 2015, ch. 537. New § 6140.16 added by Stats. 2015, ch. 537. Amended by Stats. 2018, ch. 659.)

### **§ 6140.2 Goal for Timely Disposition of Complaints**

The State Bar shall set as a goal the improvement of its disciplinary system so that no more than six months will elapse from the receipt of complaints to the time of dismissal, admonishment of the attorney involved, or the filing of formal charges by the State Bar Office of Trial Counsel. As to complaints designated as complicated matters by the Chief Trial Counsel, it shall be the goal and policy of the State Bar to dismiss a complaint, admonish the attorney, or have the State Bar Office of Trial Counsel file formal charges within 12 months after it receives a complaint alleging attorney misconduct. (Added by Stats. 1986, ch. 2, effective February 4, 1986. Amended by Stats. 2004, ch. 193; Stats. 2021, ch. 723.)

**§ 6140.3** (Added by Stats. 1986, ch. 2. Repealed by Stats. 2007, ch. 474.)

**§ 6140.3** (Added by Stats. 2008, ch. 165, and repealed by its own terms, operative January 1, 2014.)

**§ 6140.35** (Added by Stats. 2007, ch. 474. Amended by Stats. 2010, ch. 476, and repealed by its own terms, operative January 1, 2014.)

**§ 6140.36** (Added by Stats. 2008, ch. 165. Amended by Stats. 2010, ch. 476, and repealed by its own terms, operative January 1, 2014.)

### **§ 6140.37 Information Technology Projects—In-House Employee Preference**

The State Bar shall have a preference for using in-house employees for information technology projects, whenever possible. Nothing in this section shall be read to be inconsistent with any memorandum of understanding between the State Bar and the recognized employee organizations or any relevant principles of labor law. (Added by Stats. 2010, ch. 2, operative January 25, 2010.)

**§ 6140.38** (Added by Stats. 2010, ch. 2. Amended by Stats. 2011, ch. 296, and repealed by its own terms, operative January 1, 2014.)

### **§ 6140.5 Client Security Fund; Establishment; Payments; Administration; Funding**

(a) The board shall establish and administer a Client Security Fund to relieve or mitigate pecuniary losses caused by the dishonest conduct of licensees of the State Bar, foreign legal consultants registered with the State Bar, and attorneys registered with the State Bar under the Multijurisdictional Practice Program, arising from or connected with the practice of law. Any payments from the fund shall be discretionary and shall be subject to regulation, conditions, and rules as the board shall prescribe. The board may delegate the administration of the fund to the State Bar Court, or to any board or committee created by the board of trustees.

(b) Upon making a payment to a person who has applied to the fund for payment to relieve or mitigate pecuniary losses caused by the dishonest conduct of a licensee, the State Bar is subrogated, to the extent of that payment, to the rights of the applicant against any person or persons who, or entity that, caused the pecuniary loss. The State Bar may bring an action to enforce those rights within three years from the date of payment to the applicant.

(c) Any licensee whose actions have caused the payment of funds to an applicant from the Client Security Fund shall owe those funds to the State Bar and reimburse the Client Security Fund for all moneys paid

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out as a result of the licensee's conduct with interest, in addition to payment of the assessment for the procedural costs of processing the claim. The State Bar may collect any money paid out by the Client Security Fund pursuant to this subdivision through any means provided by law.

(d) For a publicly reprovved or suspended licensee, the reimbursed amount by the Client Security Fund, plus applicable interest and costs, shall be paid as a condition of continued practice. This amount shall be added to and become a part of the license fee of a publicly reprovved or suspended licensee.

(e) For a licensee who resigns with disciplinary charges pending or a licensee who is resigned or disbarred, the reimbursed amount by the Client Security Fund, plus applicable interest and costs, shall be paid as a condition of applying for reinstatement of the licensee's license to practice law or return to active license status.

(f) Any assessment against an attorney pursuant to subdivision (c) that is part of an order imposing a public reprovval on a licensee or is part of an order imposing discipline or accepting a resignation with a disciplinary matter pending, or any reimbursed amount that is part of a final determination by the Client Security Fund, may also be enforced as a money judgment. This subdivision does not limit the power of the Supreme Court to alter the restitution amount owed pursuant to an order imposing public reprovval on a licensee or an order imposing discipline or accepting a resignation with a disciplinary matter pending, or to authorize the State Bar Court to do the same.

(g) To obtain a money judgment pursuant to subdivision (f) that is not part of a court order imposing a public reprovval on a licensee or is not part of a court order imposing discipline or accepting a resignation with a disciplinary matter pending, the State Bar shall file a certified copy of the Notice of Payment of the Client Security Fund with the clerk of the superior court of any county. The clerk shall immediately enter judgment in conformity with the Notice of Payment. The judgment shall have the same force and effect as a judgment in a civil action and may be enforced in the same manner as any other judgment.

(h) The defense of laches shall not be raised by the licensee whose actions have caused the payment of funds to an applicant from the Client Security Fund with respect to any payment owed to the State Bar, or with

respect to any collections efforts by the State Bar for those payments.

(i) Subdivisions (c), (f), and (h) have, and shall have, retroactive application, as well as prospective application.

(j) As used in this section, "licensee" shall include a foreign legal consultant registered with the State Bar. (Added by Stats. 1971, ch. 1338. Amended by Stats. 1986, ch. 2, effective February 4, 1986; Stats. 1986, ch. 1510; Stats. 1988, ch. 484; Stats. 1988, ch. 1159, Stats. 2003, 334; Stats. 2005, ch. 341; Stats. 2011, ch. 417; Stats. 2018, ch. 659; Stats. 2020, ch. 360.)

### **§ 6140.55 Increase Annual License Fee—Client Security Fund**

The board may increase the annual license fees fixed by it pursuant to Section 6140 by an additional amount per active licensee not to exceed forty dollars (\$40), and the annual license fees fixed by it pursuant to Section 6141 by an additional amount per inactive licensee not to exceed ten dollars (\$10), in any year, the additional amount to be applied only for the purposes of the Client Security Fund and the costs of its administration, including, but not limited to, the costs of processing, determining, defending, or insuring claims against the fund. (Added by Stats. 1988, ch. 1149. Amended by Stats. 1990, ch. 1639; Stats. 2001, ch. 24; Stats. 2005, ch. 341; Stats. 2018, ch. 659.)

### **§ 6140.56 State Bar Analysis and Review of Client Security Fund; Report to Legislature**

(a) To ensure that the Client Security Fund can adequately protect the public and relieve or mitigate financial losses caused by the dishonest conduct of licensees of the State Bar by paying claims in a timely manner, the State Bar shall conduct a thorough analysis of the Client Security Fund, including a review of the State Bar's oversight of the Client Security Fund, to ensure that the structure provides for the most effective and efficient operation of the fund, a determination of the ongoing needs of the fund to satisfy claims in a timely manner, a review of additional efforts that can be taken to increase the collection of payments from the responsible attorneys, and a review of other State Bar expenditures to determine whether other expenditures that do not directly impact the State Bar's public protection functions, including, but not limited to, executive salaries and benefits, can be reduced or

redirected in order to better fund the Client Security Fund through existing revenue, and, whether, after all other options have been fully and thoroughly exhausted, an increase in license fees is necessary to ensure that the Client Security Fund can timely pay claims.

(b) The State Bar shall submit a report on its analysis of the Client Security Fund to the Legislature by March 15, 2018, so that the plans can be reviewed in conjunction with the bill that would authorize the imposition of the State Bar's license fee. The report shall be submitted in compliance with Section 9795 of the Government Code.

(c) For purposes of this section, "timely manner" means within 12 months from either the time the claim is received by the State Bar or the resolution of the underlying discipline case involving an attorney licensee that is a prerequisite to paying the claim, whichever is later. (Added by Stats. 2017, ch. 422. Amended by Stats. 2018, ch. 659.)

#### **§ 6140.6 Costs of Disciplinary System**

The board may increase the annual license fees fixed by Sections 6140 and 6141 by an additional amount not to exceed twenty-five dollars (\$25) to be applied to the costs of the disciplinary system. (Added by Stats. 1986, ch. 1510. Amended by Stats. 1990, ch. 1639; Stats. 2005, ch. 341; Stats. 2018, ch. 659.)

#### **§ 6140.7 Disciplinary Costs Added to License Fee**

Costs assessed against a licensee publicly reprovved or suspended, where suspension is stayed and the licensee is not actually suspended, shall be added to and become a part of the license fee of the licensee, for the next calendar year. Unless time for payment of discipline costs is extended pursuant to subdivision (c) of Section 6086.10, costs assessed against a licensee who resigns with disciplinary charges pending or by a licensee who is actually suspended or disbarred shall be paid as a condition of applying for reinstatement of his or her license to practice law or return to active license status. (Added by Stats. 1986, ch. 662. Amended by Stats. 1996, ch. 1104; Stats. 2004, ch. 529; Stats. 2018, ch. 659.)

#### **§ 6140.8 Order Imposed on Licensee to Pay Restitution; Money Judgment Enforcement; Application with Client Security Fund**

(a) Any order imposing upon a licensee public reprovval, discipline, or accepting a resignation with a disciplinary matter pending, in which the licensee is ordered to pay restitution is enforceable as a money judgment by the payee. In the entry or enforcement of any money judgment based on such order, the payee shall reduce the amount owed by the licensee to the payee by any reimbursement received by the payee from the Client Security Fund or by any amount received as criminal restitution ordered pursuant to subdivision (f) of Section 1202.4 of the Penal Code, or by the combined amount, if applicable.

(b) A money judgment entered pursuant to this section shall not affect the right of a payee to file an application with the Client Security Fund to recover any portion of the subject restitution as provided by Section 6140.5, or as otherwise provided by law.

(c) A payee or other applicant who files an application with the Client Security Fund has an ongoing obligation to inform the Client Security Fund as to any payment recovered directly or indirectly from the attorney or any other source.

(d) To the extent that a payee or other applicant has already collected on any portion of the loss, the Client Security Fund may reduce any qualifying reimbursable amount by the amount collected.

(e) To the extent that the Client Security Fund reimburses a payee or other applicant, as provided in Section 6140.5, the licensee or former licensee shall reimburse the Client Security Fund for that payment.

(f) As used in this section, "payee" means an individual or entity who is identified as the beneficiary of restitution in any order imposing upon a licensee public reprovval, discipline, or accepting a resignation with a disciplinary matter pending, in which the licensee is ordered to pay restitution to such individual or entity. (Added by Stats. 2020, ch. 360.)

#### **§ 6140.9 Support for Programs Established Pursuant to Attorney Diversion and Assistance Act and Related Programs**

(a) Moneys for the support of the program established pursuant to Article 15 (commencing with Section 6230),



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treatment services for those who cannot afford to pay, and related programs approved by the committee established pursuant to Section 6231 shall be paid in whole or part by a fee of ten dollars (\$10) per active licensee per year, and by a fee of five dollars (\$5) per inactive licensee per year, except that for 2020 only, the fee shall be one dollar (\$1) per active licensee and zero dollars (\$0) per inactive licensee. The State Bar is not required to expend any additional funds to either support those programs or to provide treatment services for those who cannot afford to pay.

(b) On and after January 1, 2019, one dollar (\$1) of the ten-dollar (\$10) fee paid by each active licensee pursuant to subdivision (a) shall be transferred by the State Bar to a statewide nonprofit corporation, established by attorneys that has, for the last 25 years or more, provided peer support to attorneys recovering from alcohol and substance abuse in a confidential and anonymous manner, to fund the support of recovery efforts of the nonprofit corporation. In 2020 only, the statewide nonprofit corporation shall receive the one dollar (\$1) fee paid by each active licensee.

(c) Any nonprofit corporation that receives funds pursuant to subdivision (b) shall submit an annual report to the State Bar accounting for the use of the funds. The report shall be submitted to the State Bar no later than March 1, 2020, and no later than March 1 of each year thereafter. The report shall include, but not be limited to, the following:

- (1) An accounting of all receipts and expenditures of the funds.
- (2) The balance of the funds as of the end of the previous calendar year.
- (3) A brief narrative describing the goals of the work supported by the expenditures.
- (4) A summary of the number of clients served, the modality of treatment, and any outcome data on the impact of the treatment.

(d) The board may seek alternative sources for funding the program. Any excess funds not needed to support the program, including reserve funds, may be transferred to fund the Client Security Fund established pursuant to Section 6140.5, provided there are sufficient funds available to fully support the program. (Added by Stats. 1988, ch. 1149. Amended by Stats. 2001, ch. 129; Stats. 2005, ch. 341, Stats. 2017, ch. 422; Stats. 2018, ch. 659; Stats. 2019, ch. 698.)

### **§ 6141 Inactive License Fee; Waivers**

(a) On January 1, 2022, and thereafter, the board shall fix the annual license fee for inactive licensees at a sum not exceeding ninety-seven dollars and forty cents (\$97.40), except that if the State Bar has entered into a contract to sell its San Francisco office building by October 31, 2022, the sum shall not exceed ninety-six dollars and forty cents (\$96.40). The annual license fee for inactive licensees is payable on or before the first day of February of each year.

(b) An inactive licensee shall not be required to pay the annual license fee for inactive licensees for any calendar year following the calendar year in which the licensee attains 70 years of age.

(c) This section shall become operative on January 1, 2023. (Added by Stats. 2022, ch. 419.)

#### **§ 6141.1 Waiver of License Fee**

(a) The payment by any licensee of the annual license fee, any portion thereof, or any penalty thereon, may be waived by the board as it may provide by rule. The board may require submission of recent federal and state income tax returns and other proof of financial condition as to those licensees seeking waiver of all or a portion of their fee or penalties on the ground of financial hardship.

(b) The board shall adopt a rule or rules providing that an active licensee who can demonstrate total gross annual individual income from all sources of less than sixty thousand dollars and thirty-five cents (\$60,478.35), which is reflective of the previous limit adjusted for 20 years of inflation pursuant to the Consumer Price Index, shall presumptively qualify for a waiver of 25 percent of the annual license fee. (Added by Stats. 1941, ch. 144. Amended by Stats. 1977, ch. 58; Stats. 1988, ch. 1149; Stats. 1999, ch. 342; Stats. 2003, ch. 334; Stats. 2005, ch. 341; Stats. 2018, ch. 659; Stats. 2019, 698.)

#### **§ 6141.3 Affinity Programs; Use of Revenues**

(a) Except as provided in subdivision (b), the State Bar shall provide offers of discounts and other benefits to active and inactive licensees of the State Bar, including, but not limited to, insurance and noninsurance affinity programs, until December 31, 2018, and insurance affinity programs only, after December 31, 2018. Any revenue generated by these programs shall be used as follows:

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(1) For all revenue received from January 1, 2018, until December 31, 2018, 50 percent of the revenue shall be used to assist the California Lawyers Association in transitioning to an independent entity, 25 percent of the revenue shall be distributed to qualified legal services projects and support centers as provided in Section 6216, and 25 percent shall be used to support the discipline functions of the State Bar or to support the Client Security Fund.

(2) For all revenue received on and after January 1, 2019, until December 31, 2019, 50 percent of the revenue shall be distributed to qualified legal services projects and support centers as provided in Section 6216, and 50 percent of the revenue shall be used to support the discipline functions of the State Bar or to support the Client Security Fund.

(b) Notwithstanding subdivision (a), if approved by the board of trustees, California ChangeLawyers, and Cal Bar Affinity, a subsidiary of California ChangeLawyers, the State Bar may transfer administration of the programs offering discounts and other benefits to active and inactive licensees of the State Bar under subdivision (a) to Cal Bar Affinity provided that any revenue received, less the administrative costs of the State Bar and Cal Bar Affinity in operating the programs, up to a maximum of 12 percent of the revenue received, and less the taxes incurred by Cal Bar Affinity in operating the programs, shall be distributed as follows from January 1, 2019, until December 31, 2019:

(1) All of the revenue received from the noninsurance affinity programs shall be kept by California ChangeLawyers, which shall distribute 50 percent of that revenue to support the programs of California ChangeLawyers and 50 percent of that revenue to qualified legal services projects and support centers as provided in Section 6216.

(2) For all revenue received from the insurance affinity programs, 50 percent of the revenue shall be kept by California ChangeLawyers, which shall distribute 50 percent of that revenue to support the programs of California ChangeLawyers and 50 percent of that revenue to qualified legal services projects and support centers in accordance with the formula provided in Section 6216, and 50 percent of the revenue shall be used to support the

discipline functions of the State Bar or to support the Client Security Fund.

(c) If approved by the California Lawyers Association, California ChangeLawyers, and Cal Bar Affinity, and provided the California Lawyers Association complies with the requirement in subdivision (e), all revenue received from the noninsurance affinity programs and the insurance affinity programs, less the administrative costs of the State Bar and Cal Bar Affinity in operating the programs, up to a maximum of 12 percent of the revenue received, and the taxes incurred by Cal Bar Affinity in operating the programs, shall be distributed as follows on and after January 1, 2020:

(1) The first one hundred fifty thousand dollars (\$150,000) of revenue received in 2020 and the first one hundred fifty thousand dollars (\$150,000) received in 2021 shall go to the California Commission on Access to Justice, payable as follows:

(A) Seventy-five thousand dollars (\$75,000) shall be paid on or before March 31, 2020, and seventy-five thousand dollars (\$75,000) shall be paid on or before June 30, 2020.

(B) Thirty-seven thousand five hundred dollars (\$37,500) shall be paid on or before March 31, 2021, thirty-seven thousand five hundred dollars (\$37,500) shall be paid on or before June 30, 2021, thirty-seven thousand five hundred dollars (\$37,500) shall be paid on or before September 30, 2021, and thirty-seven thousand five hundred dollars (\$37,500) shall be paid on or before December 31, 2021.

(2) Any additional revenue shall be distributed as follows:

(A) One-third of the remaining revenue shall go to California ChangeLawyers.

(B) One-third of the remaining revenue shall go to the California Lawyers Association or an affiliated 501(c)(3) organization to support their respective diversity, equity and inclusion, access to justice, and civic engagement efforts.

(C) One-third of the remaining revenue shall go to California ChangeLawyers, which shall distribute that revenue to qualified legal services projects and support centers in accordance with the formula provided in Section 6216. However, in any year, a qualified legal services project or support center, as defined in Section 6213, may elect in writing to direct their allocation for that year to California ChangeLawyers for fellowships for law students and law graduates at qualified legal services projects and support centers. California ChangeLawyers shall utilize a competitive grant application process for determining grant awards. In awarding these statewide grants, preference shall be given to qualified legal services projects or support centers that serve rural or underserved communities and that serve clients regardless of immigration or citizenship status. The minimum grant amount shall be ten thousand dollars (\$10,000).

(d) Given the public protection mission of the State Bar, the Legislature finds that it would be inappropriate for the State Bar to administer the program on a long-term basis. Therefore, should the program continue to operate after December 31, 2018, it is the intent of the Legislature that the program be administered by an entity other than the State Bar.

(e) If the California Lawyers Association elects to accept any share of the affinity funds revenue under this section, the California Lawyers Association shall not create or operate, or participate in the creation or operation, or otherwise solicit its members, or arrange to have its members solicited, for any affinity or royalty program involving similar insurance or noninsurance products or services with a percentage or share of costs being distributed to the California Lawyers Association, other than as provided in this section. If the California Lawyers Association creates or operates, or participates in the creation or operation, or otherwise solicits its members, or arranges to have its members solicited for any affinity or royalty program involving the sale of insurance or noninsurance products or services with a percentage or share of costs being distributed to the California Lawyers Association, all funds that would have been provided to the California Lawyers Association from affinity or royalty programs that transferred from the

State Bar or are similar to programs that transferred from the State Bar shall be provided to California ChangeLawyers, which shall distribute 50 percent of that revenue to support the programs of California ChangeLawyers and 50 percent of that revenue to qualified legal services projects and support centers as provided in subparagraph (C) of paragraph (2) of subdivision (c) of this section. (Added by Stats. 2017, ch. 422. Amended by Stats. 2018, ch. 659; Stats. 2019, ch. 698; Stats. 2021, ch. 723.)

#### **§ 6142 Certificate of Payment**

Upon the payment of the annual license fees, including any costs imposed pursuant to Section 6140.7, and penalties imposed pursuant to Section 6143, each licensee shall receive a certificate issued under the direction of the board evidencing the payment. (Origin: State Bar Act, § 44. Amended by Stats. 1986, ch. 662; Stats. 1988, ch. 1149; Stats. 2018, ch. 659.)

#### **§ 6143 Suspension for Nonpayment and Reinstatement; Penalties**

Any licensee, active or inactive, failing to pay any fees, penalties, or costs after they become due, and after two months written notice of his or her delinquency, shall have his or her license suspended.

The licensee may be reinstated upon the payment of accrued fees or costs and such penalties as may be imposed by the board, not exceeding double the amount of delinquent fees, penalties, or costs. (Origin: State Bar Act, § 46. Amended by Stats. 1986, ch. 662; Stats. 1988, ch. 1149; Stats. 2018, ch. 659.)

#### **§ 6143.5 Licensees Failure to Pay Child Support**

Any licensee, active or inactive, failing to pay any child support after it becomes due shall be subject to Section 17520 of the Family Code. (Added by Stats. 1992, ch. 50. Amended by Stats. 2000, ch. 808; Stats. 2018, ch. 659.)

#### **§ 6144 Disposition of Fees**

(a) All fees shall be paid into the treasury of the State Bar, and, when so paid, shall become part of its funds.

(b) Notwithstanding subdivision (a) and consistent with the reimbursement requirement under Section 6031.5,

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all fees paid pursuant to Section 6140.02 shall be paid by the State Bar to the Association, and, when paid, shall become part of the funds of the Association. (Origin: State Bar Act, § 46. Amended by Stats. 2017, ch. 422.)

### **§ 6144.1 Net Proceeds from Sale or Lease of Real Property Held By State Bar**

(a) The net proceeds from the sale of real property, after payment of obligations and encumbrances and reasonable costs of acquiring and relocating its facilities, if any, shall be held by the State Bar without expenditure or commitment for any purpose until approved by the Legislature by statute. The net proceeds from the lease of real property, after payment of obligations and encumbrances and reasonable costs of acquiring and relocating its facilities, if any, shall be used by the State Bar for the protection of the public.

(b) Notwithstanding subdivision (a), the net proceeds from the sale of the State Bar's San Francisco office building, after payment of obligations and encumbrances and the minimally reasonable costs of acquiring and relocating its facilities, if any, shall be held by the State Bar without expenditure or commitment for any purpose until approved by the Legislature by statute. However, up to 10 percent of the net proceeds may be used every fiscal year for improvement of the State Bar's discipline system. These moneys shall not supplant any funds that are already being spent on the discipline system or that have been planned in the prior fiscal year to spend on the discipline system. (Added by Stats. 2014, ch. 429. Amended by Stats. 2017, ch. 422; Stats. 2022, ch. 419.)

### **§ 6144.5 Annual License Fees Augmentation—Legislative Intent**

It is the intent of the Legislature to confirm, validate, and declare effective the annual license fees, and all augmentations, including, but not limited to, those made under Sections 6140.3 and 6140.6, fixed and collected by the board for 1990, and all other acts arising from and related thereto. (Added by Stats. 1990, ch. 1639. Amended by Stats. 2018, ch. 659.)

### **§ 6145 Annual Financial Statement; Bi-Annual Performance Audit**

(a) The board shall engage the services of an independent national or regional public accounting firm with at least five years of experience in governmental

auditing for an audit of its financial statement for each fiscal year. The financial statement shall be promptly certified under oath by the chief financial officer of the State Bar, and a copy of the audit and financial statement shall be submitted within 120 days of the close of the fiscal year to the board, to the Chief Justice of the Supreme Court, and to the Assembly and Senate Committees on Judiciary.

The audit also shall examine the receipts and expenditures of the State Bar to ensure that the funds collected on behalf of the Conference of Delegates of California Bar Associations as the independent successor entity to the former Conference of Delegates of the State Bar are conveyed to that entity, that the State Bar has been paid or reimbursed for the full cost of any administrative and support services provided to the successor entity, including the collection of fees or donations on its behalf, and that no mandatory fees are being used to fund the activities of the successor entity.

In selecting the accounting firm, the board shall consider the value of continuity, along with the risk that continued long-term engagements of an accounting firm may affect the independence of that firm.

(b) The board shall contract with the California State Auditor's Office to conduct a performance audit of the State Bar's operations from July 1, 2000, to December 31, 2000, inclusive. A copy of the performance audit shall be submitted by May 1, 2001, to the board, to the Chief Justice of the Supreme Court, and to the Assembly and Senate Committees on Judiciary.

Every two years thereafter, the board shall contract with the California State Auditor's Office to conduct a performance audit of the State Bar's operations for the respective fiscal year, commencing with January 1, 2002, to December 31, 2002, inclusive. A copy of the performance audit shall be submitted within 120 days of the close of the fiscal year for which the audit was performed to the board, to the Chief Justice of the Supreme Court, and to the Assembly and Senate Committees on Judiciary.

For the purposes of this subdivision, the California State Auditor's Office may contract with a third party to conduct the performance audit. This subdivision is not intended to reduce the number of audits the California State Auditor's Office may otherwise be able to conduct.

(c) (1) For the 2023 audit required pursuant to subdivision (b), the California State Auditor's Office

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shall conduct a performance audit of the State Bar as set forth in this subdivision. The State Bar shall provide technical assistance, data, or information as requested by the California State Auditor. It is the intent of the Legislature that this audit may be reviewed in conjunction with the legislation that authorizes the State Bar's licensing fee in 2023.

(2) The audit shall evaluate each program or division of the State Bar receiving support from the annual State Bar licensing fees and other fees required of active and inactive licensees.

(3) The audit shall, at minimum, include all of the following for each program or division described by paragraph (2):

(A) An assessment of how much fee revenue, staff, and resources are currently budgeted and subsequently expended to perform existing tasks and responsibilities.

(B) An assessment of whether the State Bar has appropriate program performance measures in place and how these measures are used for budgeting purposes.

(C) An assessment of the usage of any real property sold by the State Bar.

(D) A review of the State Bar's cost allocation plan used to allocate administrative costs.

(E) A review of any proposals for additional funding or resources requested by the State Bar to determine whether these proposals are necessary to meet the State Bar's public protection function, as well as the accuracy of identified associated funding needs, after reviewing how existing resources are used.

(F) A calculation of how much fee revenue would be needed from each State Bar active and inactive licensee to fully offset State Bar costs to perform existing tasks and responsibilities and to support additional proposed expenditures determined to be necessary to meet the State Bar's public protection function. This calculation shall take into account any proposed business process reengineering, reallocations, or efficiencies identified by the California State Auditor.

(4) The audit shall include an evaluation of how the State Bar administers discipline cases that require an outside investigator or prosecutor and how that process can be improved, including the cost-effectiveness and timeliness of such investigations and prosecutions.

(5) The audit required by this subdivision shall be submitted by April 15, 2023, to the board of trustees, the Chief Justice of the Supreme Court, and to the Assembly and Senate Committees on Judiciary.

(6) The State Bar shall use existing resources to reimburse the California State Auditor's Office for the costs of conducting the audit required by this subdivision. (Added by Stats. 1999, ch. 342. Amended by Stats. 2002, ch. 415, effective September 9, 2002; Stats. 2003, ch. 334; Stats. 2006, ch. 15; Stats. 2007, ch. 130; Stats. 2012, ch. 281; Stats. 2015, ch. 537; Stats. 2017, ch. 422; Stats. 2018, ch. 659; Stats. 2021, ch. 723; Stats. 2022, ch. 419.)

## ARTICLE 8.5 FEE AGREEMENTS

### § 6146 Limitations; Periodic Payments; Definitions

(a) An attorney shall not contract for or collect a contingency fee for representing any person seeking damages in connection with an action for injury or damage against a health care provider based upon such person's alleged professional negligence in excess of the following limits:

(1) Twenty-five percent of the dollar amount recovered if the recovery is pursuant to settlement agreement and release of all claims executed by all parties thereto prior to a civil complaint or demand for arbitration being filed.

(2) Thirty-three percent of the dollar amount recovered if the recovery is pursuant to settlement, arbitration, or judgment after a civil complaint or demand for arbitration is filed.

(3) If an action is tried in a civil court or arbitrated, the attorney representing the plaintiff or claimant may file a motion with the court or

arbitrator for a contingency fee in excess of the percentage stated in paragraph (2), which motion shall be filed and served on all parties to the action and decided in the court's discretion based on evidence establishing good cause for the higher contingency fee.

The limitations shall apply regardless of whether the recovery is by settlement, arbitration, or judgment, or whether the person for whom the recovery is made is a responsible adult, an infant, or a person of unsound mind.

(b) If periodic payments are awarded to the plaintiff pursuant to Section 667.7 of the Code of Civil Procedure, the court shall place a total value on these payments based upon the projected life expectancy of the plaintiff and include this amount in computing the total award from which attorney's fees are calculated under this section.

(c) For purposes of this section:

(1) "Recovered" means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim. Costs of medical care incurred by the plaintiff and the attorney's office-overhead costs or charges are not deductible disbursements or costs for such purpose.

(2) "Health care provider" means any person licensed or certified pursuant to Division 2 (commencing with Section 500), or licensed pursuant to the Osteopathic Initiative Act, or the Chiropractic Initiative Act, or licensed pursuant to Chapter 2.5 (commencing with Section 1440) of Division 2 of the Health and Safety Code; and any clinic, health dispensary, or health facility, licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code. "Health care provider" includes the legal representatives of a health care provider.

(3) "Professional negligence" is a negligent act or omission to act by a health care provider in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death, provided that the services are within the scope of services for which the provider is licensed and which are not within any restriction imposed by the licensing agency or licensed hospital. (Added by Stats. 1975, 2nd Ex. Sess., ch. 1; Amended by Stats. 1975, 2nd Ex. Sess., ch. 2,

effective September 24, 1975, operative December 12, 1975; Stats. 1981, ch. 714; Stats. 1987, ch. 1498; Stats. 2022, ch. 17.)

**§ 6147 Contingency Fee Contract: Contents; Effect of Noncompliance; Application to Contracts for Recovery of Workers' Compensation Benefits**

(a) An attorney who contracts to represent a client on a contingency fee basis shall, at the time the contract is entered into, provide a duplicate copy of the contract, signed by both the attorney and the client, or the client's guardian or representative, to the plaintiff, or to the client's guardian or representative. The contract shall be in writing and shall include, but is not limited to, all of the following:

(1) A statement of the contingency fee rate that the client and attorney have agreed upon.

(2) A statement as to how disbursements and costs incurred in connection with the prosecution or settlement of the claim will affect the contingency fee and the client's recovery.

(3) A statement as to what extent, if any, the client could be required to pay any compensation to the attorney for related matters that arise out of their relationship not covered by their contingency fee contract. This may include any amounts collected for the plaintiff by the attorney.

(4) Unless the claim is subject to the provisions of Section 6146, a statement that the fee is not set by law but is negotiable between attorney and client.

(5) If the claim is subject to the provisions of Section 6146, a statement that the rates set forth in that section are the maximum limits for the contingency fee agreement, and that the attorney and client may negotiate a lower rate.

(b) Failure to comply with any provision of this section renders the agreement voidable at the option of the plaintiff, and the attorney shall thereupon be entitled to collect a reasonable fee.

(c) This section shall not apply to contingency fee contracts for the recovery of workers' compensation benefits.

(d) This section shall become operative on January 1, 2000. (Added by Stats. 1993, ch. 982. Amended by Stats. 1994, ch. 479; Stats. 1996, ch. 1104, operative January 1, 2000.)

**§ 6147.5 Contingency Fee Contracts; Recovery of Claims between Merchants**

(a) Sections 6147 and 6148 shall not apply to contingency fee contracts for the recovery of claims between merchants as defined in Section 2104 of the Commercial Code, arising from the sale or lease of goods or services rendered, or money loaned for use, in the conduct of a business or profession if the merchant contracting for legal services employs 10 or more individuals.

(b) (1) In the instances in which no written contract for legal services exists as permitted by subdivision (a), an attorney shall not contract for or collect a contingency fee in excess of the following limits:

(A) Twenty percent (20%) of the first three hundred dollars (\$300) collected.

(B) Eighteen percent (18%) of the next one thousand seven hundred dollars (\$1,700) collected.

(C) Thirteen percent (13%) of sums collected in excess of two thousand dollars (\$2,000).

(2) However, the following minimum charges may be charged and collected:

(A) Twenty-five dollars (\$25) in collections of seventy-five dollars (\$75) to one hundred twenty-five dollars (\$125).

(B) Thirty-three and one-third percent of collections less than seventy-five dollars (\$75). (Added by Stats. 1990, ch. 713.)

**§ 6148 Written Fee Contract: Contents; Effect of Noncompliance**

(a) In any case not coming within Section 6147 in which it is reasonably foreseeable that total expense to a client, including attorney fees, will exceed one thousand dollars (\$1,000), the contract for services in the case shall be in writing. At the time the contract is entered into, the attorney shall provide a duplicate copy of the contract

signed by both the attorney and the client, or the client's guardian or representative, to the client or to the client's guardian or representative. The written contract shall contain all of the following:

(1) Any basis of compensation including, but not limited to, hourly rates, statutory fees or flat fees, and other standard rates, fees, and charges applicable to the case.

(2) The general nature of the legal services to be provided to the client.

(3) The respective responsibilities of the attorney and the client as to the performance of the contract.

(b) All bills rendered by an attorney to a client shall clearly state the basis thereof. Bills for the fee portion of the bill shall include the amount, rate, basis for calculation, or other method of determination of the attorney's fees and costs. Bills for the cost and expense portion of the bill shall clearly identify the costs and expenses incurred and the amount of the costs and expenses. Upon request by the client, the attorney shall provide a bill to the client no later than 10 days following the request unless the attorney has provided a bill to the client within 31 days prior to the request, in which case the attorney may provide a bill to the client no later than 31 days following the date the most recent bill was provided. The client is entitled to make similar requests at intervals of no less than 30 days following the initial request. In providing responses to client requests for billing information, the attorney may use billing data that is currently effective on the date of the request, or, if any fees or costs to that date cannot be accurately determined, they shall be described and estimated.

(c) Failure to comply with any provision of this section renders the agreement voidable at the option of the client, and the attorney shall, upon the agreement being voided, be entitled to collect a reasonable fee.

(d) This section shall not apply to any of the following:

(1) Services rendered in an emergency to avoid foreseeable prejudice to the rights or interests of the client or where a writing is otherwise impractical.

(2) An arrangement as to the fee implied by the fact that the attorney's services are of the same general kind as previously rendered to and paid for by the client.

(3) If the client knowingly states in writing, after full disclosure of this section, that a writing concerning fees is not required.

(4) If the client is a corporation.

(e) This section applies prospectively only to fee agreements following its operative date.

(f) This section shall become operative on January 1, 2000. (Added by Stats. 1993, ch. 982. Amended by Stats. 1994, ch. 479; Stats. 1996, ch. 1104, operative January 1, 2000.)

**§ 6149 Written Fee Contract Confidential Communication**

A written fee contract shall be deemed to be a confidential communication within the meaning of subdivision (e) of Section 6068 and of Section 952 of the Evidence Code. (Added by Stats. 1986, ch. 475.)

**§ 6149.5 Insurer Notification to Claimant of Settlement Payment Delivered to Claimant's Attorney**

(a) Upon the payment of one hundred dollars (\$100) or more in settlement of any third-party liability claim the insurer shall provide written notice to the claimant if both of the following apply:

(1) The claimant is a natural person.

(2) The payment is delivered to the claimant's lawyer or other representative by draft, check, or otherwise.

(b) For purposes of this section, "written notice" includes providing to the claimant a copy of the cover letter sent to the claimant's attorney or other representative that accompanied the settlement payment.

(c) This section shall not create any cause of action for any person against the insurer based upon the insurer's failure to provide the notice to a claimant required by this section. This section shall not create a defense for any party to any cause of action based upon the insurer's failure to provide this notice. (Added by Stats. 1994, ch. 479.)

**ARTICLE 9  
UNLAWFUL SOLICITATION**

**§ 6150 Relation of Article to Chapter**

This article is a part of Chapter 4 of this division of the Business and Professions Code, but the phrase "this chapter" as used in Chapter 4 does not apply to the provisions of this article unless expressly made applicable. (Added by Stats. 1939, ch. 34.)

**§ 6151 Runners and Cappers—Definitions**

As used in this article:

(a) A runner or capper is any person, firm, association or corporation acting for consideration in any manner or in any capacity as an agent for an attorney at law or law firm, whether the attorney or any member of the law firm is admitted in California or any other jurisdiction, in the solicitation or procurement of business for the attorney at law or law firm as provided in this article.

(b) An agent is one who represents another in dealings with one or more third persons. (Origin: Stats 1931, ch. 1043; Deering's Gen. Laws (1937), Act 592, § 5. Amended by Stats. 1963, ch. 206; Stats. 1991, ch. 116.)

**§ 6152 Prohibition of Solicitation**

(a) It is unlawful for:

(1) Any person, in an individual capacity or in a capacity as a public or private employee, or for any firm, corporation, partnership or association to act as a runner or capper for any attorneys or to solicit any business for any attorneys in and about the state prisons, county jails, city jails, city prisons, or other places of detention of persons, city receiving hospitals, city and county receiving hospitals, county hospitals, superior courts, or in any public institution or in any public place or upon any public street or highway or in and about private hospitals, sanitariums or in and about any private institution or upon private property of any character whatsoever.

(2) Any person to solicit another person to commit or join in the commission of a violation of subdivision (a).



(b) A general release from a liability claim obtained from any person during the period of the first physical confinement, whether as an inpatient or outpatient, in a clinic or health facility, as defined in Sections 1203 and 1250 of the Health and Safety Code, as a result of the injury alleged to have given rise to the claim and primarily for treatment of the injury, is presumed fraudulent if the release is executed within 15 days after the commencement of confinement or prior to release from confinement, whichever occurs first.

(c) Nothing in this section shall be construed to prevent the recommendation of professional employment where that recommendation is not prohibited by the Rules of Professional Conduct of the State Bar of California.

(d) Nothing in this section shall be construed to mean that a public defender or assigned counsel may not make known his or her services as a criminal defense attorney to persons unable to afford legal counsel whether those persons are in custody or otherwise. (Origin: Statutes of 1931, ch. 1043. Added by Stats. 1939, ch. 34. Amended by Stats. 1963, ch. 206; Stats. 1976, ch. 1016; Stats. 1977, ch. 799, effective September 14, 1977; Stats. 1998, ch. 931; Stats. 2002, ch. 784.)

**§ 6153 Violation as Misdemeanor; Forfeiture of Public Office or Employment**

Any person, firm, partnership, association, or corporation violating subdivision (a) of Section 6152 is punishable, upon a first conviction, by imprisonment in a county jail for not more than one year or by a fine not exceeding fifteen thousand dollars (\$15,000), or by both that imprisonment and fine. Upon a second or subsequent conviction, a person, firm, partnership, association, or corporation is punishable by imprisonment in a county jail for not more than one year, or by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, three, or four years, or by a fine not exceeding fifteen thousand dollars (\$15,000), or by both that imprisonment and fine.

Any person employed either as an officer, director, trustee, clerk, servant or agent of this state or of any county or other municipal corporation or subdivision thereof, who is found guilty of violating any of the provisions of this article, shall forfeit the right to his office and employment in addition to any other penalty provided in this article. (Origin: Statutes of 1931, ch. 1043. Amended by Stats. 1976, ch. 1016; Stats. 1976, ch.

1125; Stats. 1977, ch. 799, effective September 14, 1977; Stats. 1991, ch. 116; Stats. 2000, ch. 867; Stats. 2011, ch. 15, effective Apr. 4, 2011, operative Oct. 1, 2011.)

**§ 6154 Invalidity of Contract for Services**

(a) Any contract for professional services secured by any attorney at law or law firm in this state through the services of a runner or capper is void. In any action against any attorney or law firm under the Unfair Practices Act, Chapter 4 (commencing with section 17000) of Division 7, or Chapter 5 (commencing with section 17200) of Division 7, any judgment shall include an order divesting the attorney or law firm of any fees and other compensation received pursuant to any such void contract. Those fees and compensation shall be recoverable as additional civil penalties under Chapter 4 (commencing with section 17000) or Chapter 5 (commencing with section 17200) of Division 7.

(b) Notwithstanding Section 17206 or any other provision of law, any fees recovered pursuant to subdivision (a) in an action involving professional services related to the provision of workers' compensation shall be allocated as follows: if the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the State General Fund, and one-half of the penalty collected shall be paid to the Workers' Compensation Fraud Account in the Insurance Fund; if the action is brought by a district attorney, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half of the penalty collected shall be paid to the Workers' Compensation Fraud Account in the Insurance Fund; if the action is brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half of the penalty collected shall be paid to the Workers' Compensation Fraud Account in the Insurance Fund. Moneys deposited into the Workers' Compensation Fraud Account pursuant to this subdivision shall be used in the investigation and prosecution of workers' compensation fraud, as appropriated by the Legislature. (Added by Stats. 1939, ch. 34. Amended by Stats. 1991, ch. 116, Stats. 1993, ch. 120.)

**§ 6155 Lawyer Referral Service—Ownership, Operation; Formulation and Enforcement of Rules and Regulations; Fees**

(a) An individual, partnership, corporation, association, or any other entity shall not operate for the direct or indirect purpose, in whole or in part, of referring potential clients to attorneys, and no attorney shall accept a referral of such potential clients, unless all of the following requirements are met:

(1) The service is registered with the State Bar of California and (a) on July 1, 1988, is operated in conformity with minimum standards for a lawyer referral service established by the State Bar, or (b) upon approval by the Supreme Court of minimum standards for a lawyer referral service, is operated in conformity with those standards.

(2) The combined charges to the potential client by the referral service and the attorney to whom the potential client is referred do not exceed the total cost that the client would normally pay if no referral service were involved.

(b) A referral service shall not be owned or operated, in whole or in part, directly or indirectly, by those lawyers to whom, individually or collectively, more than 20 percent of referrals are made. For purposes of this subdivision, a referral service that is owned or operated by a bar association, as defined in the minimum standards, shall be deemed to be owned or operated by its governing committee so long as the governing committee is constituted and functions in the manner prescribed by the minimum standards.

(c) None of the following is a lawyer referral service:

(1) A plan of legal insurance as defined in Section 119.6 of the Insurance Code.

(2) A group or prepaid legal plan, whether operated by a union, trust, mutual benefit or aid association, public or private corporation, or other entity or person, that meets both of the following conditions:

(A) It recommends, furnishes, or pays for legal services to its members or beneficiaries.

(B) It provides telephone advice or personal consultation.

(3) A program having as its purpose the referral of clients to attorneys for representation on a pro bono basis.

(d) The following are in the public interest and do not constitute an unlawful restraint of trade or commerce:

(1) An agreement between a referral service and a participating attorney to eliminate or restrict the attorney's fee for an initial office consultation for each potential client or to provide free or reduced fee services.

(2) Requirements by a referral service that attorneys meet reasonable participation requirements, including experience, education, and training requirements.

(3) Provisions of the minimum standards as approved by the Supreme Court.

(4) Requirements that the application and renewal fees for certification as a lawyer referral service be determined, in whole or in part, by a consideration of any combination of the following factors: a referral service's gross annual revenues, number of panels, number of panel members, amount of fees charged to panel members, or for-profit or nonprofit status; provided that the application and renewal fees do not exceed ten thousand dollars (\$10,000) or 1 percent of the gross annual revenues, whichever is less.

(5) Requirements that, to increase access to the justice system for all Californians, lawyer referral services establish separate ongoing activities or arrangements that serve persons of limited means.

(e) A violation or threatened violation of this section may be enjoined by any person.

(f) With the approval of the Supreme Court, the State Bar shall formulate and enforce rules and regulations for carrying out this section, including rules and regulations that do the following:

(1) Establish minimum standards for lawyer referral services. The minimum standards shall include provisions ensuring that panel membership shall be open to all attorneys practicing in the geographical area served who are qualified by virtue of suitable experience, and limiting attorney registration and membership fees to reasonable

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sums that do not discourage widespread attorney membership.

(2) Require that an entity seeking to qualify as a lawyer referral service register with the State Bar and obtain from the State Bar a certificate of compliance with the minimum standards for lawyer referral services.

(3) Require that the certificate may be obtained, maintained, suspended, or revoked pursuant to procedures set forth in the rules and regulations.

(4) Require the lawyer referral service to pay an application and renewal fee for the certificate in such reasonable amounts as may be determined by the State Bar. The State Bar shall adopt rules authorizing the waiver or reduction of the fees upon a demonstration of financial necessity. The State Bar may require that the application and renewal fees for certification as a lawyer referral service be determined, in whole or in part, by a consideration of any combination of the following factors: a referral service's gross annual revenues, number of panels, number of panel members, amount of fees charged to panel members, or for-profit or nonprofit status; provided that the application and renewal fees do not exceed ten thousand dollars (\$10,000) or 1 percent of the gross annual revenues, whichever is less.

(5) Require that, to increase access to the justice system for all Californians, lawyer referral services establish separate ongoing activities or arrangements that serve persons of limited means.

(6) Require each lawyer who is a member of a certified lawyer referral service to comply with all applicable professional standards, rules, and regulations, and to possess a policy of errors and omissions insurance in an amount not less than one hundred thousand dollars (\$100,000) for each occurrence and three hundred thousand dollars (\$300,000) aggregate, per year. By rule, the State Bar may provide for alternative proof of financial responsibility to meet this requirement.

(g) Provide that cause for denial of certification or recertification or revocation of certification of a lawyer referral service shall include, but not be limited to:

(1) Noncompliance with the statutes or minimum standards governing lawyer referral services as adopted and from time to time amended.

(2) Sharing common or cross ownership, interests, or operations with any entity that engages in referrals to licensed or unlicensed health care providers.

(3) Direct or indirect consideration regarding referrals between an owner, operator, or member of a lawyer referral service and any licensed or unlicensed health care provider.

(4) Advertising on behalf of attorneys in violation of the Rules of Professional Conduct or the Business and Professions Code.

(h) This section shall not be construed to prohibit attorneys from jointly advertising their services.

(1) Permissible joint advertising, among other things, identifies by name the advertising attorneys or law firms whom the consumer of legal services may select and initiate contact with.

(2) Certifiable referral activity involves, among other things, some person or entity other than the consumer and advertising attorney or law firms which, in person, electronically, or otherwise, refers the consumer to an attorney or law firm not identified in the advertising.

(i) A lawyer referral service certified under this section and operating in full compliance with this section, and in full compliance with the minimum standards and the rules and regulations of the State Bar governing lawyer referral services, shall not be deemed to be in violation of Section 3215 of the Labor Code or Section 750 of the Insurance Code.

(j) The payment by an attorney or law firm member of a certified referral service of the normal fees of that service shall not be deemed to be in violation of Section 3215 of the Labor Code or Section 750 of the Insurance Code, provided that the attorney or law firm member is in full compliance with the minimum standards and the rules and regulations of the State Bar governing lawyer referral services.

(k) Certifications of lawyer referral services issued by the State Bar shall not be transferable. (Added by Stats. 1987, ch. 727; Amended by Stats. 1992, ch. 150; Stats. 1994, ch. 711.)

**§ 6156 Violation of Section 6155; Civil Penalty**

(a) Any individual, partnership, association, corporation, or other entity, including, but not limited to, any person or entity having an ownership interest in a lawyer referral service, that engages, has engaged, or proposes to engage in violations of Section 6155, shall be liable for a civil penalty as defined in Sections 17206, 17206.1, and 17536, respectively, which shall be assessed and recovered in a civil action brought:

- (1) In the manner specified in subdivision (a) of Section 17206 or Section 17536.
- (2) By the State Bar of California.

(b) If the action is brought pursuant to subdivision (a), the court shall determine the reasonable expenses, if any, incurred by the State Bar in its investigation and prosecution of the action. In these cases, before any penalty collected is paid out pursuant to subdivision (b) of Section 17206 or Section 17536, the amount of the reasonable expenses incurred by the State Bar shall be paid to the State Bar and shall be deposited and used as provided in subdivision (c).

(c) If the action is brought pursuant to paragraph (2) of subdivision (a), the civil penalty shall be paid to the State Bar and shall be deposited into a special fund to be used first for the investigation and prosecution of other such cases by the State Bar, with any excess to be used for the investigation and prosecution of attorney discipline cases. (Added by Stats. 1994, ch. 711. Amended by Stats. 2006, ch. 538.)

**ARTICLE 9.5  
LEGAL ADVERTISING**

**§ 6157 Definitions**

As used in this article, the following definitions apply:

- (a) "Licensee" means a licensee in good standing of the State Bar and includes any agent of the licensee and any law firm or law corporation doing business in the State of California.
- (b) "Lawyer" means a licensee of the State Bar 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.

(c) "Advertise" or "advertisement" means any communication, disseminated by television or radio, by any print medium, including, but not limited to, newspapers and billboards, or by means of a mailing directed generally to members of the public and not to a specific person, that solicits employment of legal services provided by a licensee, and is directed to the general public and is paid for by, or on the behalf of, an attorney.

(d) "Electronic medium" means television, radio, or computer networks. (Added by Stats. 1993, ch. 518. Amended by Stats. 1994, ch. 711; Stats. 2006, ch. 538; Stats. 2018, ch. 659.)

**§ 6157.1 Advertisements—False, Misleading or Deceptive**

No advertisement shall contain any false, misleading, or deceptive statement or omit to state any fact necessary to make the statements made, in light of circumstances under which they are made, not false, misleading, or deceptive. (Added by Stats. 1993, ch. 518.)

**§ 6157.2 Advertisements—Guarantees, Settlements, Impersonations, Dramatizations and Contingent Fee Basis**

No advertisement shall contain or refer to any of the following:

- (a) Any guarantee or warranty regarding the outcome of a legal matter as a result of representation by the licensee.
- (b) Statements or symbols stating that the licensee featured in the advertisement can generally obtain immediate cash or quick settlements.
- (c) (1) An impersonation of the name, voice, photograph, or electronic image of any person other than the lawyer, directly or implicitly purporting to be that of a lawyer.

(2) An impersonation of the name, voice, photograph, or electronic image of any person, directly or implicitly purporting to be a client of the licensee featured in the advertisement, or a dramatization of events, unless disclosure of the impersonation or dramatization is made in the advertisement.

(3) A spokesperson, including a celebrity spokesperson, unless there is disclosure of the spokesperson's title.

(d) A statement that a licensee offers representation on a contingent basis unless the statement also advises whether a client will be held responsible for any costs advanced by the licensee when no recovery is obtained on behalf of the client. If the client will not be held responsible for costs, no disclosure is required. (Added by Stats. 1993, ch. 518. Amended by Stats. 1994, ch. 711; Stats. 2018, ch. 659.)

**§ 6157.3 Advertisements—Disclosure of Payor Other Than Licensee**

Any advertisement made on behalf of a licensee, which is not paid for by the licensee, shall disclose any business relationship, past or present, between the licensee and the person paying for the advertisement. (Added by Stats. 1993, ch. 518. Amended by Stats. 2018, ch. 659.)

**§ 6157.4 Lawyer Referral Service Advertisements—Necessary Disclosures**

Any advertisement that is created or disseminated by a lawyer referral service shall disclose whether the attorneys on the organization's referral list, panel, or system, paid any consideration, other than a proportional share of actual cost, to be included on that list, panel, or system. (Added by Stats. 1993, ch. 518.)

**§ 6157.5 Advertisements—Immigration or Naturalization Legal Services; Disclosures**

(a) All advertisements published, distributed, or broadcasted by or on behalf of a licensee seeking professional employment for the licensee in providing services relating to immigration or naturalization shall include a statement that he or she is an active licensee of the State Bar, licensed to practice law in this state. If the advertisement seeks employment for a law firm or law corporation employing more than one attorney, the

advertisement shall include a statement that all the services relating to immigration and naturalization provided by the firm or corporation shall be provided by an active licensee of the State Bar or by a person under the supervision of an active licensee of the State Bar. This subdivision shall not apply to classified or "yellow pages" listings in a telephone or business directory of three lines or less that state only the name, address, and telephone number of the listed entity.

(b) If the advertisement is in a language other than English, the statement required by subdivision (a) shall be in the same language as the advertisement.

(c) This section shall not apply to licensees employed by public agencies or by nonprofit entities registered with the Secretary of State.

(d) A violation of this section by a licensee shall be cause for discipline by the State Bar. (Added by Stats. 2000, ch. 674. Amended by Stats. 2018, ch. 659.)

**§ 6158 Electronic Media Advertisements; Compliance with Sections 6157.1 and 6157.2; Message May Not Be False, Misleading or Deceptive; Message Must Be Factually Substantiated**

In advertising by electronic media, to comply with Sections 6157.1 and 6157.2, the message as a whole may not be false, misleading, or deceptive, and the message as a whole must be factually substantiated. The message means the effect in combination of the spoken word, sound, background, action, symbols, visual image, or any other technique employed to create the message. Factually substantiated means capable of verification by a credible source. (Added by Stats. 1994, ch. 711.)

**§ 6158.1 Rebuttable Presumptions; False, Misleading or Deceptive Message**

There shall be a rebuttable presumption affecting the burden of producing evidence that the following messages are false, misleading, or deceptive within the meaning of Section 6158:

(a) A message as to the ultimate result of a specific case or cases presented out of context without adequately providing information as to the facts or law giving rise to the result.

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(b) The depiction of an event through methods such as the use of displays of injuries, accident scenes, or portrayals of other injurious events which may or may not be accompanied by sound effects and which may give rise to a claim for compensation.

(c) A message referring to or implying money received by or for a client in a particular case or cases, or to potential monetary recovery for a prospective client. A reference to money or monetary recovery includes, but is not limited to, a specific dollar amount, characterization of a sum of money, monetary symbols, or the implication of wealth. (Added by Stats. 1994, ch. 711.)

### **§ 6158.2 Presumptions; Information Not False, Misleading or Deceptive**

The following information shall be presumed to be in compliance with this article for purposes of advertising by electronic media, provided the message as a whole is not false, misleading, or deceptive:

(a) Name, including name of law firm, names of professional associates, addresses, telephone numbers, and the designation "lawyer," "attorney," "law firm," or the like.

(b) Fields of practice, limitation of practice, or specialization.

(c) Fees for routine legal services, subject to the requirements of subdivision (d) of Section 6157.2 and the Rules of Professional Conduct.

(d) Date and place of birth.

(e) Date and place of admission to the bar of state and federal courts.

(f) Schools attended, with dates of graduation, degrees, and other scholastic distinctions.

(g) Public or quasi-public offices.

(h) Military service.

(i) Legal authorship.

(j) Legal teaching positions.

(k) Memberships, offices, and committee assignments in bar associations.

(l) Memberships and offices in legal fraternities and legal societies.

(m) Technical and professional licenses.

(n) Memberships in scientific, technical, and professional associations and societies.

(o) Foreign language ability of the advertising lawyer or a member of lawyer's firm. (Added by Stats. 1994, ch. 711)

### **§ 6158.3 Portrayal of Result in Particular Case or Cases; Additional Disclosures**

In addition to any disclosure required by Section 6157.2, Section 6157.3, and the Rules of Professional Conduct, the following disclosure shall appear in advertising by electronic media. Use of the following disclosure alone may not rebut any presumption created in Section 6158.1. If an advertisement in the electronic media conveys a message portraying a result in a particular case or cases, the advertisement must state, in either an oral or printed communication, either of the following disclosures: The advertisement must adequately disclose the factual and legal circumstances that justify the result portrayed in the message, including the basis for liability and the nature of injury or damage sustained, or the advertisement must state that the result portrayed in the advertisement was dependent on the facts of that case, and that the results will differ if based on different facts. (Added by Stats. 1994, ch. 711.)

### **§ 6158.4 Enforcement; Complaint Claiming Violation; State Bar Determination; Declaratory Relief; Civil Action for Recovery Paid into Client Security Fund; Award of Attorney's Fees; Records; Unfounded Complaints**

(a) Any person claiming a violation of Section 6158, 6158.1, or 6158.3 may file a complaint with the State Bar that states the name of the advertiser, a description of the advertisement claimed to violate these sections, and that specifically identifies the alleged violation. A copy of the complaint shall be served simultaneously upon the advertiser. The advertiser shall have nine days from the date of service of the complaint to voluntarily withdraw from broadcast the advertisement that is the subject of the complaint. If the advertiser elects to withdraw the advertisement, the advertiser shall notify the State Bar of that fact, and no further action may be taken by the complainant. The advertiser shall provide a copy of the

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complained of advertisement to the State Bar for review within seven days of service of the complaint. Within 21 days of the delivery of the complained of advertisement, the State Bar shall determine whether substantial evidence of a violation of these sections exists. The review shall be conducted by a State Bar attorney who has expertise in the area of lawyer advertising.

(b) (1) Upon a State Bar determination that substantial evidence of a violation exists, if the licensee or certified lawyer referral service withdraws that advertisement from broadcast within 72 hours, no further action may be taken by the complainant.

(2) Upon a State Bar determination that substantial evidence of a violation exists, if the licensee or certified lawyer referral service fails to withdraw the advertisement within 72 hours, a civil enforcement action brought pursuant to subdivision (e) may be commenced within one year of the State Bar decision. If the licensee or certified lawyer referral service withdraws an advertisement upon a State Bar determination that substantial evidence of a violation exists and subsequently rebroadcasts the same advertisement without a finding by the trier of fact in an action brought pursuant to subdivision (c) or (e) that the advertisement does not violate Section 6158, 6158.1 or 6158.3, a civil enforcement action may be commenced within one year of the rebroadcast.

(3) Upon a determination that substantial evidence of a violation does not exist, the complainant is barred from bringing a civil enforcement action pursuant to subdivision (e), but may bring an action for declaratory relief pursuant to subdivision (c).

(c) Any licensee or certified lawyer referral service who was the subject of a complaint and any complainant affected by the decision of the State Bar may bring an action for declaratory relief in the superior court to obtain a judicial declaration of whether Section 6158, 6158.1, or 6158.3 has been violated, and, if applicable, may also request injunctive relief. Any defense otherwise available at law may be raised for the first time in the declaratory relief action, including any constitutional challenge. Any civil enforcement action filed pursuant to subdivision (e) shall be stayed pending the resolution of the declaratory relief action. The action shall be defended by the real party in interest. The State Bar shall

not be considered a party to the action unless it elects to intervene in the action.

(1) Upon a State Bar determination that substantial evidence of a violation exists, if the complainant or the licensee or certified lawyer referral service brings an action for declaratory relief to obtain a judicial declaration of whether the advertisement violates Section 6158, 6158.1, or 6158.3, and the court declares that the advertisement violates one or more of the sections, a civil enforcement action pursuant to subdivision (e) may be filed or maintained if the licensee or certified lawyer referral service failed to withdraw the advertisement within 72 hours of the State Bar determination. The decision of the court that an advertisement violates Section 6158, 6158.1, or 6158.3 shall be binding on the issue of whether the advertisement is unlawful in any pending or prospective civil enforcement action brought pursuant to subdivision (e) if that binding effect is supported by the doctrine of collateral estoppel or res judicata.

If, in that declaratory relief action, the court declares that the advertisement does not violate Section 6158, 6158.1, or 6158.3, the licensee or lawyer referral service may broadcast the advertisement. The decision of the court that an advertisement does not violate Section 6158, 6158.1, or 6158.3 shall bar any pending or prospective civil enforcement action brought pursuant to subdivision (e) if that prohibitive effect is supported by the doctrine of collateral estoppel or res judicata.

(2) If, following a State Bar determination that does not find substantial evidence that an advertisement violates Section 6158, 6158.1, or 6158.3, the complainant or the licensee or certified lawyer referral service brings an action for declaratory relief to obtain a judicial declaration of whether the advertisement violates Section 6158, 6158.1, or 6158.3, and the court declares that the advertisement violates one or more of the sections, a civil enforcement action pursuant to subdivision (e) may be filed or maintained if the licensee or certified lawyer referral service broadcasts the same advertisement following the decision in the declaratory relief action. The decision of the court that an advertisement violates Section 6158, 6158.1, or 6158.3 shall be binding on the issue of whether the advertisement is unlawful in any

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pending or prospective civil enforcement action brought pursuant to subdivision (e) if that binding effect is supported by the doctrine of collateral estoppel or res judicata.

If, in that declaratory relief action, the court declares that the advertisement does not violate Section 6158, 6158.1, or 6158.3, the licensee or lawyer referral service may continue broadcast of the advertisement. The decision of the court that an advertisement does not violate Section 6158, 6158.1, or 6158.3 shall bar any pending or prospective civil enforcement action brought pursuant to subdivision (e) if that prohibitive effect is supported by the doctrine of collateral estoppel or res judicata.

(d) The State Bar review procedure shall apply only to licensees and certified referral services. A direct civil enforcement action for a violation of Section 6158, 6158.1, or 6158.3 may be maintained against any other advertiser after first giving 14 days' notice to the advertiser of the alleged violation. If the advertiser does not withdraw from broadcast the advertisement that is the subject of the notice within 14 days of service of the notice, a civil enforcement action pursuant to subdivision (e) may be commenced. The civil enforcement action shall be commenced within one year of the date of the last publication or broadcast of the advertisement that is the subject of the action.

(e) Subject to Section 6158.5, a violation of Section 6158, 6158.1, or 6158.3 shall be cause for a civil enforcement action brought by any person residing within the State of California for an amount up to five thousand dollars (\$5,000) for each individual broadcast that violates Section 6158, 6158.1, or 6158.3. Venue shall be in a county where the advertisement was broadcast.

(f) In any civil action brought pursuant to this section, the matter shall be determined according to the law and procedure relating to the trial of civil actions, including trial by jury, if demanded.

(g) The decision of the State Bar pursuant to subdivision (a) shall be admissible in the civil enforcement action brought pursuant to subdivision (e). However, the State Bar shall not be a party or a witness in either a declaratory relief proceeding brought pursuant to subdivision (c) or the civil enforcement action brought pursuant to subdivision (e). Additionally, no direct action may be filed against the State Bar

challenging the State Bar's decision pursuant to subdivision (a).

(h) Amounts recovered pursuant to this section shall be paid into the Client Security Fund maintained by the State Bar.

(i) In any civil action brought pursuant to this section, the court shall award attorney's fees pursuant to Section 1021.5 of the Code of Civil Procedure if the court finds that the action has resulted in the enforcement of an important public interest or that a significant benefit has been conferred on the public.

(j) The State Bar shall maintain records of all complainants and complaints filed pursuant to subdivision (a) for a period of seven years. If a complainant files five or more unfounded complaints within seven years, the complainant shall be considered a vexatious litigant for purposes of this section. The State Bar shall require any person deemed a vexatious litigant to post security in the minimum amount of twenty-five thousand dollars (\$25,000) prior to considering any complaint filed by that person and shall refrain from taking any action until the security is posted. In any civil action arising from this section brought by a person deemed a vexatious litigant, the defendant may advise the court and trier of fact that the plaintiff is deemed to be a vexatious litigant under the provisions of this section and disclose the basis for this determination.

(k) Nothing in this section shall restrict any other right available under existing law or otherwise available to a citizen seeking redress for false, misleading, or deceptive advertisements. (Added by Stats. 1994, ch. 711. Amended by Stats. 2018, ch. 659.)

### **§ 6158.5 Application of Article to Lawyers, Lawyer Referral Services and Others**

This article applies to all lawyers, licensees, law partnerships, law corporations, entities subject to regulation under Section 6155, advertising collectives, cooperatives, or other individuals, including nonlawyers, or groups advertising the availability of legal services. Subdivisions (a) to (k), inclusive, of Section 6158.4 do not apply to qualified legal services projects as defined in Article 14 (commencing with Section 6210) and nonprofit lawyer referral services certified under Section 6155. Sections 6157 to 6158.5, inclusive, do not apply to the media in which the advertising is displayed or to an advertising agency that prepares the contents of an



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advertisement and is not directly involved in the formation or operation of lawyer advertising collectives or cooperatives, referral services, or other groups existing primarily for the purpose of advertising the availability of legal services or making referrals to attorneys. (Added by Stats. 1994, ch. 711. Amended by Stats. 2018, ch. 659.)

### **§ 6158.7 Violation of Section 6158, 6158.1, or 6158.3—Cause for Discipline**

A violation of Section 6158, 6158.1, or 6158.3 by a licensee shall be cause for discipline by the State Bar. In addition to the existing grounds for initiating a disciplinary proceeding set forth in a statute or in the Rules of Professional Conduct, the State Bar may commence an investigation based upon a complaint filed by a person pursuant to Section 6158.4. The State Bar's decision pursuant to subdivision (a) of Section 6158.4 shall be admissible, but shall not be determinative, in any disciplinary proceeding brought as a result of that complaint. (Added by Stats. 1994, ch. 711. Amended by Stats. 2018, ch. 659.)

### **§ 6159 Court Reporting Requirements for Violations**

The court shall report the name, address, and professional license number of any person found in violation of this article to the appropriate professional licensing agency for review and possible disciplinary action. (Added by Stats. 1993, ch. 518. Amended by Stats. 1994, ch. 711 (previously § 6157.5).)

### **§ 6159.1 Retention of Advertisement**

A true and correct copy of any advertisement made by a person or licensee shall be retained for one year by the person or licensee who pays for an advertisement soliciting employment of legal services. (Added by Stats. 1993, ch. 518. Amended by Stats. 1994, ch. 711 (previously § 6157.6); Stats. 2018, ch. 659.)

### **§ 6159.2 Scope of Article—Provisions Not Exclusive**

(a) Nothing in this article shall be deemed to limit or preclude enforcement of any other provision of law, or

of any court rule, or of the State Bar Rules of Professional Conduct.

(b) Nothing in this article shall limit the right of advertising protected under the Constitution of the State of California, or of the United States. If any provision of this article is found to violate either Constitution, that provision is severable and the remaining provisions shall be enforceable without the severed provision. (Added by Stats. 1993, ch. 518. Amended by Stats. 1994, ch. 711 (previously § 6157.7).)

## **ARTICLE 9.6 LEGAL AID ORGANIZATIONS**

### **§ 6159.5 Legal Aid Organizations—Legislative Findings**

The Legislature hereby finds and declares all of the following:

(a) Legal aid programs provide a valuable service to the public by providing free legal services to the poor.

(b) Private, for-profit organizations that have no lawyers have been using the name "legal aid" in order to obtain business from people who believe they are obtaining services from a nonprofit legal aid organization.

(c) Public opinion research has shown that the term "legal aid" is commonly understood by the public to mean free legal assistance for the poor.

(d) Members of the public seeking free legal assistance are often referred by telephone and other directory assistance information providers to for-profit organizations that charge a fee for their services, and there are a large number of listings in many telephone directories for "legal aid" that are not nonprofit but are actually for-profit organizations.

(e) The Los Angeles Superior Court has held that there is a common law trademark on the name "legal aid," which means legal services for the poor provided by a nonprofit organization.

(f) The public will be benefited if for-profit organizations are prohibited from using the term "legal aid," in order to avoid confusion. (Added by Stats. 2009, ch. 457.)

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### § 6159.51 Legal Aid Organizations—Defined

For purposes of this article, “legal aid organization” means a nonprofit organization that provides civil legal services for the poor without charge. (Added by Stats. 2009, ch. 457.)

### § 6159.52 Legal Aid Organizations—Use of Terms; Prohibitions

It is unlawful for any person or organization to use the term “legal aid,” “legal aide,” or any confusingly similar name in any firm name, trade name, fictitious business name, or any other designation, or on any advertisement, letterhead, business card, or sign, unless the person or organization is a legal aid organization subject to fair use principles for nominative, descriptive, or noncommercial use. (Added by Stats. 2009, ch. 457.)

### § 6159.53 Legal Aid Organizations—Remedies for Violation of Section 6159.52

(a) Any consumer injured by a violation of Section 6159.52 may file a complaint and seek injunctive relief, restitution, and damages in the superior court of any county in which the defendant maintains an office, advertises, or is listed in a telephone directory.

(b) A person who violates Section 6159.52 shall be subject to an injunction against further violation of Section 6159.52 by any legal aid organization that maintains an office in any county in which the defendant maintains an office, advertises, or is listed in a telephone directory. In an action under this subdivision, it is not necessary to allege or prove actual damage to the plaintiff, and irreparable harm and interim harm to the plaintiff shall be presumed.

(c) Reasonable attorney’s fees shall be awarded to the prevailing plaintiff in any action under this section. (Added by Stats. 2009, ch. 457.)

## ARTICLE 10 LAW CORPORATIONS

### § 6160 Nature

A law corporation is a corporation which is registered with the State Bar of California and has a currently

effective certificate of registration from the State Bar pursuant to the Professional Corporation Act, as contained in Part 4 (commencing with section 13400) of Division 3 of Title 1 of the Corporations Code, and this article. Subject to all applicable statutes, rules and regulations, such law corporation is entitled to practice law. With respect to a law corporation the governmental agency referred to in the Professional Corporation Act is the State Bar. (Added by Stats. 1968, ch. 1375.)

### § 6161 Application for Registration

An applicant for registration as a law corporation shall supply to the State Bar all necessary and pertinent documents and information requested by the State Bar concerning the applicant’s plan of operation, including, but not limited to, a copy of its articles of incorporation, certified by the Secretary of State, a copy of its bylaws, certified by the secretary of the corporation, the name and address of the corporation, the names and addresses of its officers, directors, shareholders, members, if any, and employees who will render professional services, the address of each office, and any fictitious name or names which the corporation intends to use. The State Bar may provide forms of application. If the Board of Trustees or a committee authorized by it finds that the corporation is duly organized and existing or duly qualified for the transaction of intrastate business pursuant to the General Corporation Law, or pursuant to subdivision (b) of Section 13406 of the Corporations Code, that each officer (except as provided in Section 13403 of the Corporations Code), director, shareholder (except as provided in subdivision (b) of Section 13406 of the Corporations Code), and each employee who will render professional services is a licensed person as defined in the Professional Corporation Act, or a person licensed to render the same professional services in the jurisdiction or jurisdictions in which the person practices, and that from the application it appears that the affairs of the corporation will be conducted in compliance with law and the rules and regulations of the State Bar, the State Bar shall upon payment of the registration fee in such amount as it may determine issue a certificate of registration. The applicant shall include with the application, for each shareholder of the corporation licensed in a foreign country but not in this state or in any other state, territory, or possession of the United States, a certificate from the authority in the foreign country currently having final jurisdiction over the practice of law, which shall verify the shareholder’s admission to practice in the foreign

country, the date thereof, and the fact that the shareholder is currently in good standing as an attorney or counselor at law or the equivalent. If the certificate is not in English, there shall be included with the certificate a duly authenticated English translation thereof. The application shall be signed and verified by an officer of the corporation. (Added by Stats. 1968, ch. 1375. Amended by Stats. 1993, ch. 955; Stats. 1994, ch. 479; Stats. 2011, ch. 417.)

**§ 6161.1 Renewal of Registration**

Each law corporation shall renew its certificate of registration annually at a time to be fixed by the State Bar and shall pay a fee therefor which shall be fixed by the State Bar in accordance with subdivision (a) of section 6163. (Added by Stats. 1985, ch. 465.)

**§ 6161.2 Payment of Fees; Uses**

All fees for registration and renewal paid pursuant to Sections 6161 and 6161.1 shall be paid into the treasury of the State Bar and shall be used for its regulatory and disciplinary purposes. (Added by Stats. 2010, ch. 2, operative January 25, 2010.)

**§ 6162 Report of Changes of Personnel, Officers, etc.**

Within such time as the State Bar may by rule provide, the law corporation shall report in writing to the State Bar any change in directors, officers, employees performing professional services and share ownership, and amendments to its articles of incorporation and bylaws. (Added by Stats. 1968, ch. 1375.)

**§ 6163 Annual Report**

(a) Each law corporation shall file with the State Bar annually and at such other times as the State Bar may require a report containing such information pertaining to qualification and compliance with the statutes, rules, and regulations referred to in section 6127.5 as the State Bar may determine. The fee for filing such a report shall be fixed by the State Bar. All reports shall be signed and verified by an officer of the corporation. The State Bar may fix a penalty for the late filing of an annual report in an amount not to exceed double the amount of the applicable filing fee and may also fix the date upon which the penalty shall attach if the report

has not been filed and the fee paid prior to that date. The date upon which the penalty shall attach shall be not less than 31 days following the date fixed for filing the report. The filing of the annual report together with the filing fee and any penalty due for late filing constitutes the annual renewal of the certificate of registration. The fee fixed by the board for the filing of the annual report and any penalty due for late filing constitutes the fee required by Section 6161.1 for renewal of the certificate for the year in which the annual report is due to be filed.

(b) The certificate of registration of any law corporation failing to file the annual report, renew its certificate, and pay the fee therefor and any penalty due thereon for late filing, shall be suspended 60 days following written notice of delinquency. The written notice shall be mailed to the corporation at its current office or other address for State Bar purposes, as shown on the law corporation records of the State Bar. The suspension shall be ordered by the chief executive officer of the State Bar or his or her designee.

(c) A certificate of registration suspended pursuant to subdivision (b) may be reinstated upon the filing by the law corporation of all delinquent annual reports and payment of all accrued fees and penalties required by this section and Section 6161.1 which are due on the date of the suspension, and any such fees and penalties which become due on or before the date of the reinstatement. (Added by Stats. 1968, ch. 1375. Amended by Stats. 1985, ch. 465.)

**§ 6165 Licensed Personnel**

Except as provided in Section 13403 and 13406 of the Corporations Code, each director, shareholder, and each officer of a law corporation shall be a licensed person as defined in the Professional Corporation Act, or a person licensed to render the same professional services in the jurisdiction or jurisdictions in which the person practices. (Added by Stats. 1968, ch. 1375. Amended by Stats. 1993, ch. 955.)

**§ 6166 Disqualified Shareholder; Income**

The income of a law corporation attributable to professional services rendered while a shareholder is a disqualified person (as defined in the Professional Corporation Act) shall not in any manner accrue to the benefit of such shareholder or his shares in the law corporation. (Added by Stats. 1968, ch. 1375.)

**§ 6167 Misconduct**

A law corporation shall not do or fail to do any act the doing of which or the failure to do which would constitute a cause for discipline of a licensee of the State Bar, under any statute, rule, or regulation now or hereafter in effect. In the conduct of its business, it shall observe and be bound by such statutes, rules, and regulations to the same extent as if specifically designated therein as a licensee of the State Bar. (Added by Stats. 1968, ch. 1375. Amended by Stats. 2018, ch. 659.)

**§ 6168 Investigation of Conduct; Powers**

The State Bar may conduct an investigation of the conduct of the business of a law corporation.

Upon such investigation, the Board of Trustees, or a committee authorized by it, shall have power to issue subpoenas, administer oaths, examine witnesses and compel the production of records, in the same manner as upon an investigation or formal hearing in a disciplinary matter under the State Bar Act. Such investigation shall be private and confidential and shall not be disclosed pursuant to any state law, including, but not limited to, the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), except to the extent that disclosure of facts and information may be required if a cease and desist order is thereafter issued and subsequent proceedings are had. (Added by Stats. 1968, ch. 1375. Amended by Stats. 2011, ch. 417; Stats. 2015, ch. 537.)

**§ 6169 Notice to Show Cause; Hearing; Findings and Recommendations; Review**

(a) When there is reason to believe that a law corporation has violated or is about to violate any of the provisions of this article or the Professional Corporation Act or of any other pertinent statute, rule or regulation, the State Bar may issue a notice directing the corporation to show cause why it should not be ordered to cease and desist from specified acts or conduct or its certificate of registration should not be suspended or revoked. A copy of the notice shall be served upon the corporation in the manner provided for service of summons upon a California corporation.

(b) A hearing upon the notice to show cause shall be held before a standing or special committee appointed

by the board of trustees. Upon the hearing, the State Bar and the corporation shall be entitled to the issue of subpoenas, to be represented by counsel, to present evidence, and examine and cross-examine witnesses.

(c) The hearing committee shall make findings in writing and shall either recommend that the proceeding be dismissed or that a cease and desist order be issued or that the certificate of registration of the corporation be suspended or revoked. The determination may be reviewed by the board of trustees or by a committee authorized by the Board of Trustees to act in its stead, upon written petition for review, filed with the State Bar by the corporation or the State Bar within 20 days after service of the findings and recommendation. Upon review, the board of trustees or the committee may take additional evidence, may adopt new or amended findings, and make such order as may be just, as to the notice to show cause.

(d) Subdivisions (a), (b), and (c) shall not apply to the suspension or revocation of the certificate of registration of a corporation in either of the following cases:

- (1) The death of a sole shareholder, as provided in Section 6171.1.
- (2) Failure to file the annual report and renew the certificate of registration, as provided in Sections 6161.1 and 6163. (Added by Stats. 1968, ch. 1375. Amended by Stats. 1985, ch. 465; Stats. 2011, ch. 417.)

**§ 6170 Judicial Review**

Any action of the State Bar or the Board of Trustees or a committee of the State Bar, or the chief executive officer of the State Bar or the designee of the chief executive officer, provided for in this article, may be reviewed by the Supreme Court by petition for review pursuant to rules prescribed by the Supreme Court. (Added by Stats. 1968, ch. 1375. Amended by Stats. 1985, ch. 465; Stats. 2011, ch. 417.)

**§ 6171 Formation of Rules and Regulations**

With the approval of the Supreme Court, the State Bar may formulate and enforce rules and regulations to carry out the purposes and objectives of this article,

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including rules and regulations requiring all of the following:

(a) That the articles of incorporation or bylaws of a law corporation shall include a provision whereby the capital stock of the corporation owned by a disqualified person (as defined in the Professional Corporation Act) or a deceased person shall be sold to the corporation or to the remaining shareholders of the corporation within such time as the rules and regulations may provide.

(b) That a law corporation, as a condition of obtaining a certificate pursuant to the Professional Corporation Act and this article, shall provide and maintain security by insurance or otherwise for claims against it by its clients for errors and omissions arising out of the rendering of professional services.

(c) That the name of the law corporation and any name or names under which it renders legal services shall be in compliance with the rules and regulations.

(d) That the law corporation shall obtain from the State Bar, and maintain current, a fictitious name permit when required by the rules and regulations; that the permit may be obtained, maintained, suspended, and revoked pursuant to procedures set forth in the rules and regulations; and that the law corporation shall pay an application and renewal fee for the permit in such amounts as may be determined by the State Bar.

(e) This section shall become operative January 1, 1996. (Added by Stats. 1993, ch. 955.)

### **§ 6171.1 Death of Sole Shareholder**

Six months and one day following the death of a sole shareholder of a law corporation, the certificate of registration of the law corporation shall be deemed canceled by operation of this section. However, the certificate may be sooner canceled by receipt in the State Bar office of a written request for the cancellation from the personal representative or sole heir of the deceased shareholder or the person to whom the shares passed by will or operation of law following the death of the sole shareholder. (Added by Stats. 1985, ch. 465.)

### **§ 6172 Disciplinary Powers of Supreme Court**

Nothing in this article shall be construed as affecting or impairing the disciplinary powers and authority of the Supreme Court or of the State Bar in respect of conduct of licensees of the State Bar nor modifying the statutes and rules governing such conduct, except as expressly provided in this article and except that licensees of the State Bar may properly render legal services as officers or employees of a law corporation and may participate as shareholders, officers and directors thereof, under the terms and conditions provided by this article and the Professional Corporation Act. (Added by Stats. 1968, ch. 1375. Amended by Stats. 2018, ch. 659.)

## **ARTICLE 10.2 LIMITED LIABILITY PARTNERSHIPS**

### **§ 6174 Limited Liability Partnership— Administrative or Filing Requirements, Payment and Use of Fees**

Pursuant to subdivision (h) of Section 16953 of the Corporations Code, a limited liability partnership providing legal services shall comply with all administrative or filing requirements of the State Bar, including, but not limited to, the payment of fees, and all rules and regulations adopted by the board and approved by the Supreme Court. All fees shall be paid into the treasury of the State Bar and shall be used for its regulatory and disciplinary purposes. (Added by Stats. 2010, ch. 2, operative January 25, 2010.)

### **§ 6174.5 Limited Liability Partnership— Certificate of Registration; Filing Requirements**

At the time of filing an Application for Issuance of a Certificate of Registration as a Limited Liability Partnership pursuant to the Rules of the State Bar, an applicant for registration shall also file with the State Bar a separate form stating that the limited liability partnership has complied with the security requirements described in paragraph (2) of subdivision (a) of Section 16956 of the Corporations Code. (Added by Stats. 2010, ch. 2, operative January 25, 2010.)

**ARTICLE 10.5  
PROVISION OF FINANCIAL  
SERVICES BY LAWYERS**

**§ 6175 Definitions**

As used in this article, the following definitions apply:

(a) “Lawyer” means a licensee of the State Bar or a person who is admitted and 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 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 or law firm or law corporation doing business in the state.

(b) “Client” means a person who has, within the three years preceding the sale of financial products by a lawyer to that person, employed that lawyer for legal services. The settlor and trustee of a trust shall be considered one person.

(c) “Elder” and “dependent elder” shall have the meaning as defined in Chapter 11 (commencing with Section 15600) of Part 3 of Division 9 of the Welfare and Institutions Code.

(d) “Financial products” means long-term care insurance, life insurance, and annuities governed by the Insurance Code, or its successors.

(e) “Sell” means to act as a broker for a commission. (Added by Stats. 1999, ch. 454. Amended by Stats. 2018, ch. 659.)

**§ 6175.3 Selling Financial Products to Clients—  
Disclosure Requirements**

A lawyer, while acting as a fiduciary, may sell financial products to a client who is an elder or dependent adult with whom the lawyer has or has had, within the preceding three years, an attorney-client relationship, if the transaction or acquisition and its terms are fair and reasonable to the client, and if the lawyer provides that client with a disclosure that satisfies all of the following conditions:

(a) The disclosure is in writing and is clear and conspicuous. The disclosure shall be a separate document, appropriately entitled, in 12-point print with one inch of space on all borders.

(b) The disclosure, in a manner that should reasonably have been understood by that client, is signed by the client, or the client’s conservator, guardian, or agent under a valid durable power of attorney.

(c) The disclosure states that the lawyer shall receive a commission and sets forth the amount of the commission and the actual percentage rate of the commission, if any. If the actual amount of the commission cannot be ascertained at the outset of the transaction, the disclosure shall include the actual percentage rate of the commission or the alternate basis upon which the commission will be computed, including an example of how the commission would be calculated.

(d) The disclosure identifies the source of the commission and the relationship between the source of the commission and the person receiving the commission.

(e) The disclosure is presented to the client at or prior to the time the recommendation of the financial product is made.

(f) The disclosure advises the client that he or she may obtain independent advice regarding the purchase of the financial product and will be given a reasonable opportunity to seek that advice.

(g) The disclosure contains a statement that the financial product may be returned to the issuing company within 30 days of receipt by the client for a refund as set forth in Section 10127.10 of the Insurance Code.

(h) The disclosure contains a statement that if the purchase of the financial product is for the purposes of Medi-Cal planning, the client has been advised of other appropriate alternatives, including spend-down strategies, and of the possibility of obtaining a fair hearing or obtaining a court order. (Added by Stats. 1999, ch. 454.)

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### § 6175.4 Remedies for Damages

(a) A client who suffers any damage as the result of a violation of this article by any lawyer may bring an action against that person to recover or obtain one or more of the following remedies:

- (1) Actual damages, but in no case shall the total award of damages in a class action be less than five thousand dollars (\$5,000).
- (2) An order enjoining the violation.
- (3) Restitution of property.
- (4) Punitive damages.
- (5) Any other relief that the court deems proper.

(b) A client may seek and be awarded, in addition to the remedies specified in subdivision (a), an amount not to exceed ten thousand dollars (\$10,000) where the trier of fact (1) finds that the client has suffered substantial physical, emotional, or economic damage resulting from the defendant's conduct, (2) makes an affirmative finding in regard to one or more of the factors set forth in subdivision (b) of Section 3345 of the Civil Code, and (3) finds that an additional award is appropriate. Judgment in a class action may award each class member the additional award where the trier of fact has made the foregoing findings. (Added by Stats. 1999, ch. 454.)

### § 6175.5 Violation—Cause for Discipline

A violation of this article by a licensee shall be cause for discipline by the State Bar. (Added by Stats. 1999, ch. 454. Amended by Stats. 2018, ch. 659.)

### § 6175.6 Court Reporting Requirements for Violations

The court shall report the name, address, and professional license number of any person found in violation of this article to the appropriate professional licensing agencies for review and possible disciplinary action. (Added by Stats. 1999, ch. 454.)

### § 6176 Scope of Article—Provisions Not Exclusive

Nothing in this article shall be deemed to limit, reduce, or preclude enforcement of any obligation, statute, State Bar Rule of Professional Conduct, or court rule, including, but not limited to, those relating to the lawyer's fiduciary duties, that are otherwise applicable to any transaction in which a lawyer is involved. (Added by Stats. 1999, ch. 454.)

### § 6177 State Bar Report to the Legislature—Complaints Filed; Disciplinary Action Taken

The State Bar by April 30 of each year shall include in its Annual Discipline Report information on the number of complaints filed against California attorneys alleging a violation of this article. The report shall also include the type of charges made in each complaint, the number of resulting investigations initiated, and the number and nature of any disciplinary actions taken by the State Bar for violations of this article. (Added by Stats. 2000, ch. 442. Amended by Stats. 2018, ch. 659.)

## ARTICLE 11 CESSATION OF LAW PRACTICE— JURISDICTION OF COURTS

### § 6180 Notice of Cessation; Jurisdiction of Courts

When an attorney engaged in law practice in this state dies, resigns, becomes an inactive licensee of the State Bar, is disbarred, or is suspended from the active practice of law and is required by the order of suspension to give notice of the suspension, notice of cessation of law practice shall be given and the courts of this state shall have jurisdiction, as provided in this article. (Added by Stats. 1974, ch. 589. Amended by Stats. 1985, ch. 453; Stats. 2018, ch. 659.)

### § 6180.1 Notice; Form and Contents; Persons Notified

The notice shall contain any information that may be required by any order of disbarment, suspension, or of acceptance of the attorneys' resignation, by any rule of the Supreme Court, Judicial Council, or the State Bar, and

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by any order of a court of the state having jurisdiction pursuant to this article or Article 12 (commencing with Section 6190) of this chapter. It shall be mailed to all persons who are then clients, to opposing counsel, to courts and agencies in which the attorney then had pending matters with an identification of the matter, to any errors and omissions insurer, to the Office of the Chief Trial Counsel of the State Bar and to any other person or entity having reason to be informed of the death, change of status or discontinuance or interruption of law practice. In the event of the death or incompetency of the attorney, the notice shall be given by the personal representative or guardian or conservator of the attorney or, if none, by the person having custody or control of the files and records of the attorney. In other cases, the notice shall be given by the attorney or a person authorized by the attorney or by the person having custody and control of the files and records. (Added by Stats. 1974, ch. 589. Amended by Stats. 1975, ch. 387; Stats. 1989, ch. 582, effective September 21, 1989; Stats. 1992, ch. 156.)

### **§ 6180.2 Application for Assumption of Jurisdiction Over Law Practice; Venue**

Notwithstanding the giving of notice pursuant to Section 6180.1, the superior court on its own motion, or a client of the attorney, the State Bar, or an interested person or entity may make application to the superior court for the county where the attorney maintains or more recently has maintained his or her principal office for the practice of law or where he or she resides, for assumption by the court of jurisdiction over the law practice to the extent provided in this article. In any proceeding under this article, the State Bar shall be permitted to intervene and to assume primary responsibility for conducting the action. (Added by Stats. 1974, ch. 589. Amended by Stats. 1985, ch. 453; Stats. 1989, ch. 582, effective September 21, 1989.)

### **§ 6180.3 Contents and Verification of Application**

The application shall be verified, and shall state facts supporting the occurrence of one or more of the events stated in section 6180 and either of the following:

(a) Belief that supervision of the court is warranted because the attorney has left an unfinished client matter for which no other active licensee of the State Bar has,

with the consent of the client, agreed to assume responsibility.

(b) Belief that the interests of one or more clients of the attorney or of one or more other interested persons or entities will be prejudiced if the proceeding herein provided is not maintained. (Added by Stats. 1974, ch. 589. Amended by Stats. 1975, ch. 387; Stats. 1985, ch. 453; Stats. 2018, ch. 659.)

### **§ 6180.4 Hearing on Application; Issuance of Order to Show Cause; Service**

The application shall be set for hearing and an order to show cause shall be issued, directing the attorney, or his or her personal representative, or, if none, the person having custody and control of the files and records, to show cause why the court should not assume jurisdiction over the law practice as provided in this article. A copy of the application and order to show cause shall be served upon the person to whom it is directed by personal delivery or, as an alternate method of service, by certified or registered mail, return receipt requested, addressed to the attorney at the latest address shown on the official licensing records of the State Bar or to the personal representative at the latest address shown in the probate proceeding. Service is complete at the time of mailing, but any prescribed period of notice and any right or duty to do any act or make any response within that prescribed period or on a date certain after notice is served by mail shall be extended five days if the place of address is within the State of California, 10 days if the place of address is outside the State of California but within the United States, and 20 days if the place of address is outside the United States. If the attorney has a guardian or conservator, copies shall also be served upon such fiduciary in similar manner. If the State Bar is not the applicant, copies shall also be served upon the Office of the Chief Trial Counsel of the State Bar in similar manner at the time of service on the attorney. The court may prescribe additional or alternative methods of service of the application and order to show cause, and may prescribe methods of notifying and serving notices and process upon other persons and entities in cases not specifically provided for herein. (Added by Stats. 1974, ch. 589. Amended by Stats. 1988, ch. 1159; Stats. 1989, ch. 582, effective September 21, 1989; Stats. 2018, ch. 659.)



**§ 6180.5 Court Order Assuming Jurisdiction; Appointment and Duties of Attorneys**

If the court finds that one or more of the events stated in Section 6180 has occurred, and that supervision of the courts is warranted because the affected attorney has left an unfinished client matter for which no other active licensee of the State Bar has with consent of the client agreed to assume responsibility, or that the interest of one or more of the clients of the attorney or one or more other interested persons or entities will be prejudiced if the proceeding herein provided is not maintained, it may make an order assuming jurisdiction over the attorney's practice pursuant to this article. If the person to whom the order to show cause is directed does not appear the court may make its order upon the verified application or such proof as it may require. Thereupon the court shall appoint one or more active licensees of the State Bar to act under its direction to mail a notice of cessation of law practice pursuant to Section 6180.1 and may order such appointed attorneys to do one or more of the following:

- (a) Examine the files and records of the law practice, and obtain information as to any pending matters which may require attention.
- (b) Notify persons and entities who appear to be clients of the attorney of the occurrence of the event or events stated in Section 6180 and inform them that it may be to their best interest to obtain other legal counsel.
- (c) Apply for an extension of time pending employment of such other counsel by the client.
- (d) With the consent of the client, file notices, motions and pleadings on behalf of the client where jurisdictional time limits are involved and other legal counsel has not yet been obtained.
- (e) Give notice to the depositor and appropriate persons and entities who may be affected, other than clients, of the occurrence of such event or events.
- (f) Arrange for the surrender or delivery of clients' papers or property.
- (g) Arrange for the appointment of a receiver, where applicable, to take possession and control of any and all bank accounts relating to the affected attorney's practice of law, including the general or office account and the clients' trust account.

- (h) Do such other acts as the court may direct to carry out the purposes of this article.

The court shall have jurisdiction over the files and records and law practice of the affected attorney for the limited purposes of this section, and may make all orders necessary or appropriate to exercise this jurisdiction. The court shall provide a copy of any order issued pursuant to this article to the Office of the Chief Trial Counsel of the State Bar. (Added by Stats. 1974, ch. 589. Amended by Stats. 1975, ch. 387; Stats. 1985, ch. 453; Stats. 1988, ch. 1159; Stats. 1989, ch. 582, effective September 21, 1989; Stats. 1992, ch. 156; Stats. 2018, ch. 659.)

**§ 6180.6 Limitation on Conduct of Supervised Law Practice**

Nothing in this article shall authorize the court or an attorney appointed by it pursuant to this article to approve or disapprove of the employment of legal counsel, fix terms of legal employment, fix the compensation which may have been earned by the affected attorney, or supervise or in any way to undertake to conduct the law practice except to the limited extent provided by subdivisions (c) and (d) of Section 6180.5. (Added by Stats. 1974, ch. 589. Amended by Stats. 1988, ch. 1159; Stats. 1992, ch. 156.)

**§ 6180.7 Employment of Appointed Attorney or Associates by Client of Affected Attorney**

Unless court approval is first obtained, neither the attorney appointed pursuant to this article nor his corporation nor any partners or associates of the attorney shall accept employment as an attorney by any client of the affected attorney on any matter pending at the time of the appointment. Action taken pursuant to subdivisions (c) and (d) of Section 6180.5 shall not be deemed such employment. (Added by Stats. 1974, ch. 589; Stats. 1992, ch. 156.)

**§ 6180.8 Interim Orders; Service**

Upon a finding by the court that it is more likely than not that the application will be granted and that delay in making the orders described in section 6180.5 will result in substantial injury to clients, or to others, the court, without notice or upon such notice as it shall prescribe, may make interim orders containing such provisions as the court deems appropriate under the circumstances. Such order shall be served in the manner provided in

section 6180.4, and if the application and order to show cause have not yet been served, they shall be served at the time of serving the order made pursuant to this section. (Added by Stats. 1974, ch. 589.)

**§ 6180.9 Pending Proceedings in Probate, Guardianship, or Conservatorship; Subjection of Legal Representative to Orders of Court**

If there is a pending proceeding in probate, guardianship, or conservatorship relating to the affected attorney, the court having jurisdiction pursuant to this article may inquire into acts done by the legal representative of the attorney concerning the law practice. Upon reasonable notice to the legal representative, the court may determine that the acts of the legal representative relating to such law practice shall be subject to its orders pursuant to this article. (Added by Stats. 1974, ch. 589.)

**§ 6180.10 Application of Lawyer-Client Privilege to Appointed Attorney; Disclosures**

Persons examining the files and records of the law practice of the affected attorney pursuant to this article shall observe the lawyer-client privilege and shall make disclosure only to the extent necessary to carry out the purposes of this article. Such disclosure is a disclosure which is reasonably necessary for the accomplishment of the purpose for which the affected attorney was consulted. The appointment of such licensee of the State Bar shall not affect the lawyer-client privilege which privilege shall apply to communications by or to the appointed lawyers to the same extent as it would have applied to communications by or to the affected attorney. (Added by Stats. 1974, ch. 589. Amended by Stats. 2018, ch. 659.)

**§ 6180.11 Liabilities of Persons and Entities**

No person or entity shall incur any liability by reason of the institution or maintenance of the proceeding. No person shall incur any liability for any act done or omitted to be done pursuant to order of the court under this article. No person or entity shall be liable for failure to apply for court jurisdiction under this article. Nothing in this section shall affect any obligation otherwise existing between the affected attorney and any other person or entity. (Added by Stats. 1974, ch. 589. Amended by Stats. 1985, ch. 453.)

**§ 6180.12 Appointed Attorneys; Compensation; Reimbursement for Necessary Expenses**

A licensee of the State Bar appointed pursuant to section 6180.5 shall serve without compensation. However, the licensee may be paid reasonable compensation by the State Bar in cases where the State Bar has determined that the licensee has devoted extraordinary time and services which were necessary to the performance of the licensee's duties under this article. All payments of compensation for time and services shall be at the discretion of the State Bar. Any licensee shall be entitled to reimbursement from the State Bar for necessary expenses incurred in the performance of the licensee's duties under this article. Upon court approval of expenses or compensation for time and services, the State Bar shall be entitled to reimbursement therefor from the affected attorney or his or her estate. (Added by Stats. 1974, ch. 589. Amended by Stats. 1983, ch. 254; Stats. 2018, ch. 659.)

**§ 6180.13 Stay or Appeal of Order**

An order made pursuant to this article is nonappealable, and shall not be stayed by petition for a writ except as ordered by the superior court or the appellate court. (Added by Stats. 1974, ch. 589.)

**§ 6180.14 Attorney and Law Practice Defined**

As used in this article, "attorney" means a licensee or former licensee of the State Bar; "law practice" means (a) a law practice conducted by an individual; (b) a law practice conducted by a partnership, if Section 6180 applies to all partners; and (c) a law practice conducted by a law corporation, if Section 6180 applies to all shareholders of the corporation or if the corporation is described in subdivision (b) of Section 13406 of the Corporations Code. This article does not apply to legal services rendered as an employee, or under a contract which does not create the relationship of lawyer and client. (Added by Stats. 1974, ch. 589. Amended by Stats. 1981, ch. 714, Stats. 1993, ch. 955; Stats. 2018, ch. 659.)

**§ 6185 Power of Practice Administrator to Control Practice of Deceased or Disabled Licensee's Practice**

(a) Upon appointment by the superior court pursuant to Section 2468, 9764, or paragraph (22) or (23) of

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subdivision (b) of Section 17200 of the Probate Code, a practice administrator, who is an active licensee of the State Bar, may be granted, by order of the court appointing this person, one or more of the following powers to take control of the practice of a deceased or disabled licensee of the State Bar of California:

(1) Take control of all operating and client trust accounts, business assets, equipment, client directories, and premises that were used in the conduct of the deceased or disabled licensee's practice.

(2) Take control and review all client files of the deceased or disabled licensee.

(3) Contact each client of the deceased or disabled licensee who can be reasonably ascertained and located to inform the client of the condition of the licensee and of the appointment of a practice administrator. The practice administrator may discuss various options for the selection of successor counsel with the client.

(4) In each case that is pending before any court or administrative body, notify the appropriate court or administrative body and contact opposing counsel in the cases under the control of the deceased or disabled licensee and obtain additional time for new counsel to appear for the affected client.

(5) Determine the liabilities of the practice and pay them for the assets of the practice. If the assets of the practice are insufficient to pay these obligations or for the expenses incurred by the practice administrator to carry out the powers ordered pursuant to this section, the practice administrator shall apply to the personal representative to obtain the additional funds that may be required. If the personal representative and the practice administrator are unable to agree on the amount that is necessary for the practice administrator to undertake the duties ordered pursuant to this paragraph, either party may apply to the court having jurisdiction over the estate of the deceased or disabled licensee for an order requesting funds from the estate.

(6) Employ any person, including but not limited to the employees of the deceased or disabled licensee, who may be necessary to assist the practice administrator in the management, winding up, and disposal of the practice.

(7) Create a plan for disposition of the practice of the deceased or disabled licensee to protect its value as an asset of the estate of the licensee. Subject to the approval of the personal representative of the estate, agree to the sale of the practice and its goodwill.

(8) Subject to the approval of the personal representative of the estate, reach agreements with successor counsel for division of fees for work in process on the cases of the deceased or disabled licensee.

(9) Subject to the prohibitions against soliciting cases, the practice administrator may act as successor counsel for a client of the deceased or disabled licensee.

(b) If the practice administrator is uncertain as to how to proceed with the powers granted pursuant to this section, he or she may apply to the Superior Court that has jurisdiction over the estate of the deceased or disabled licensee for instructions. (Added by Stats. 1998, ch. 682. Amended by Stats. 2018, ch. 659.)

## ARTICLE 12

### INCAPACITY TO ATTEND TO LAW PRACTICE— JURISDICTION OF COURTS

#### § 6190 Authority of Courts; Attorney Incapable of Practice; Protection of Clients

The courts of the state shall have the jurisdiction as provided in this article when an attorney engaged in the practice of law in this state has, for any reason, including but not limited to excessive use of alcohol or drugs, physical or mental illness, or other infirmity or other cause, become incapable of devoting the time and attention to, and providing the quality of service for, his or her law practice which is necessary to protect the interest of a client if there is an unfinished client matter for which no other active licensee of the State Bar, with the consent of the client, has agreed to assume responsibility. (Added by Stats. 1975, ch. 387. Amended by Stats. 2018, ch. 659.)

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### **§ 6190.1 Application for Assumption by Court of Jurisdiction; Consent by Attorney**

(a) An application for assumption by the court of jurisdiction under this article shall be made to the superior court for the county where the attorney maintains or most recently has maintained his or her principal office for the practice of law or where such attorney resides. The court may assume jurisdiction over the law practice of an attorney to the extent provided in Article 11 (commencing with Section 6180) of Chapter 4 of Division 3.

(b) Where an attorney consents to the assumption by the court of jurisdiction under the article, the State Bar, a client, or an interested person or entity may apply to the court for assumption of jurisdiction over the law practice of the attorney. In any proceeding under this subdivision, the State Bar shall be permitted to intervene and to assume primary responsibility for conducting the action.

(c) Where an attorney does not consent to the assumption by the court of jurisdiction under this article, only the State Bar may apply to the court for assumption of jurisdiction over the law practice of the attorney.

(d) The chief trial counsel may appoint, pursuant to rules adopted by the board of trustees, an examiner or coexaminer from among the licensees of the State Bar in an investigation or formal proceeding under this article. (Added by Stats. 1975, ch. 387. Amended by Stats. 1989, ch. 582, effective September 21, 1989; Stats. 2011, ch. 417; Stats. 2018, ch. 659.)

### **§ 6190.2 Verification and Contents of Application**

The application shall be verified and shall state facts showing each of the following:

(a) Probable cause to believe that the facts set forth in Section 6190 have occurred.

(b) The interest of the applicant.

(c) Probable cause to believe that the interests of the client or of an interested person or entity will be prejudiced if the proceeding herein provided is not maintained. (Added by Stats. 1975, ch. 387. Amended by Stats. 1989, ch. 582, effective September 21, 1989.)

### **§ 6190.3 Hearing; Notice; Service of Copies of Application**

The application shall be set for hearing. A copy of the application and notice of the hearing shall be served upon the attorney by personal delivery or, as an alternate method of service, by certified or registered mail, return receipt requested, addressed to the attorney at the latest address shown on the official licensing records of the State Bar. Service is complete at the time of mailing, but any prescribed period of notice and any right or duty to do any act or make any response within that prescribed period or on a date certain after notice is served by mail shall be extended five days if the place of address is within the State of California, 10 days if the place of address is outside the State of California but within the United States, and 20 days if the place of address is outside the United States. If the attorney has a guardian or conservator, copies shall also be served upon such fiduciary in similar manner. If the State Bar is not an applicant, copies shall also be served upon the Office of the Chief Trial Counsel of the State Bar in similar manner at the time of service on the attorney. The court may prescribe additional or alternative methods of service of the application and notice, and may prescribe methods of notifying and serving notices and process upon other persons and entities in cases not specifically provided for herein. (Added by Stats. 1989, ch. 582, effective September 21, 1989. Amended by Stats. 2018, ch. 659.)

### **§ 6190.34 Findings; Orders**

If the court finds that (a) the facts set forth in Section 6190 have occurred and, (b) that the interests of the client, or an interested person or entity will be prejudiced if the proceeding provided herein is not maintained, the court shall order the applicant to mail a notice of cessation of law practice pursuant to Section 6180.1 and may make all orders provided for by the provisions of Article 11 (commencing with Section 6180) of Chapter 4 of Division 3. The court shall provide a copy of any order issued pursuant to this article to the Office of the Chief Trial Counsel of the State Bar. (Formerly 6190.3, added by Stats. 1975, ch. 387. Renumbered 6190.34 and amended by Stats. 1989, ch. 582, effective September 21, 1989; Stats. 1992, ch. 156.)

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### § 6190.4 Law Governing

The provisions of Article 11 (commencing with section 6180) of Chapter 4 of Division 3 of this code shall apply to the proceeding, whenever possible. (Added by Stats. 1975, ch. 387.)

### § 6190.5 Concurrent Proceedings

The proceeding may be maintained concurrently with a disciplinary investigation or proceeding provided for by this chapter. (Added by Stats. 1975, ch. 387.)

### § 6190.6 Termination of Proceedings

Upon motion duly made by any interested party, the court may terminate the proceedings. (Added by Stats. 1975, ch. 387.)

## ARTICLE 13

### ARBITRATION OF ATTORNEYS' FEES

#### § 6200 Establishment of System and Procedure; Jurisdiction; Local Bar Association Rules

(a) The board of trustees shall, by rule, establish, maintain, and administer a system and procedure for the arbitration, and may establish, maintain, and administer a system and procedure for mediation of disputes concerning fees, costs, or both, charged for professional services by licensees of the State Bar or by members of the bar of other jurisdictions. The rules may include provision for a filing fee in the amount as the board may, from time to time, determine.

(b) This article shall not apply to any of the following:

(1) Disputes where a licensee of the State Bar of California is also admitted to practice in another jurisdiction or where an attorney is only admitted to practice in another jurisdiction, and he or she maintains no office in the State of California, and no material portion of the services were rendered in the State of California.

(2) Claims for affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct,

except as provided in subdivision (a) of Section 6203.

(3) Disputes where the fee or cost to be paid by the client or on his or her behalf has been determined pursuant to statute or court order.

(c) Unless the client has agreed in writing to arbitration under this article of all disputes concerning fees, costs, or both, arbitration under this article shall be voluntary for a client and shall be mandatory for an attorney if commenced by a client. Mediation under this article shall be voluntary for an attorney and a client.

(d) The board of trustees shall adopt rules to allow arbitration and mediation of attorney fee and cost disputes under this article to proceed under arbitration and mediation systems sponsored by local bar associations in this state. Rules of procedure promulgated by local bar associations are subject to review by the board or a committee designated by the board to ensure that they provide for a fair, impartial, and speedy hearing and award.

(e) In adopting or reviewing rules of arbitration under this section, the board shall provide that the panel shall include one attorney member whose area of practice is either, at the option of the client, civil law, if the attorney's representation involved civil law, or criminal law, if the attorney's representation involved criminal law, as follows:

(1) If the panel is composed of three members the panel shall include one attorney member whose area of practice is either, at the option of the client, civil or criminal law, and shall include one lay member.

(2) If the panel is composed of one member, that member shall be an attorney whose area of practice is either, at the option of the client, civil or criminal law.

(f) In any arbitration or mediation conducted pursuant to this article by the State Bar or by a local bar association, pursuant to rules of procedure approved by the board of trustees, an arbitrator or mediator, as well as the arbitrating association and its directors, officers, and employees, shall have the same immunity which attaches in judicial proceedings.

(g) In the conduct of arbitrations under this article the arbitrator or arbitrators may do all of the following:

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(1) Take and hear evidence pertaining to the proceeding.

(2) Administer oaths and affirmations.

(3) Issue subpoenas for the attendance of witnesses and the production of books, papers, and documents pertaining to the proceeding.

(h) Participation in mediation is a voluntary consensual process, based on direct negotiations between the attorney and his or her client, and is an extension of the negotiated settlement process. All discussions and offers of settlement are confidential and shall not be disclosed pursuant to any state law, including, but not limited to, the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), and may not be disclosed in any subsequent arbitration or other proceedings. (Added by Stats. 1978, ch. 719. Amended by Stats. 1984, ch. 825; Stats. 1989, ch. 1416; Stats. 1990, ch. 483; Stats. 1990, ch. 1020; Stats. 1993, ch. 1262; Stats. 1994, ch. 479; Stats. 1996, ch. 1104; Stats. 2009, ch. 54; Stats. 2011, ch. 417; Stats. 2015, ch. 537; Stats. 2018, ch. 659.)

### **§ 6201 Notice to Client; Request for Arbitration; Client's Waiver of Right to Arbitration**

(a) The rules adopted by the board of trustees shall provide that an attorney shall forward a written notice to the client prior to or at the time of service of summons or claim in an action against the client, or prior to or at the commencement of any other proceeding against the client under a contract between attorney and client which provides for an alternative to arbitration under this article, for recovery of fees, costs, or both.

The written notice shall be in the form that the board of trustees prescribes, and shall include a statement of the client's right to arbitration under this article. Failure to give this notice shall be a ground for the dismissal of the action or other proceeding. The notice shall not be required, however, prior to initiating mediation of the dispute.

The rules adopted by the board of trustees shall provide that the client's failure to request arbitration within 30 days after receipt of notice from the attorney shall be deemed a waiver of the client's right to arbitration under the provisions of this article.

(b) If an attorney, or the attorney's assignee, commences an action in any court or any other proceeding and the client is entitled to maintain arbitration under this article, and the dispute is not one to which subdivision (b) of Section 6200 applies, the client may stay the action or other proceeding by serving and filing a request for arbitration in accordance with the rules established by the board of trustees pursuant to subdivision (a) of Section 6200. The request for arbitration shall be served and filed prior to the filing of an answer in the action or equivalent response in the other proceeding; failure to so request arbitration prior to the filing of an answer or equivalent response shall be deemed a waiver of the client's right to arbitration under the provisions of this article if notice of the client's right to arbitration was given pursuant to subdivision (a).

(c) Upon filing and service of the request for arbitration, the action or other proceeding shall be automatically stayed until the award of the arbitrators is issued or the arbitration is otherwise terminated. The stay may be vacated in whole or in part, after a hearing duly noticed by any party or the court, if and to the extent the court finds that the matter is not appropriate for arbitration under the provisions of this article. The action or other proceeding may thereafter proceed subject to the provisions of Section 6204.

(d) A client's right to request or maintain arbitration under the provisions of this article is waived by the client commencing an action or filing any pleading seeking either of the following:

(1) Judicial resolution of a fee dispute to which this article applies.

(2) Affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct.

(e) If the client waives the right to arbitration under this article, the parties may stipulate to set aside the waiver and to proceed with arbitration. (Added by Stats. 1978, ch. 719. Amended by Stats. 1979, ch. 878; Stats. 1982, ch. 979; Stats. 1984, ch. 825; Stats. 1989, ch. 1416; Stats. 1990, ch. 483; Stats. 1993, ch. 1262; Stats. 1994, ch. 479; Stats. 1996, ch. 1104; Stats. 2011, ch. 417.)

### **§ 6202 Disclosure of Attorney-Client Communication and Work Product; Limitation**

The provisions of Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code shall

not prohibit the disclosure of any relevant communication, nor shall the provisions of Chapter 4 (commencing with Section 2018.010) of Title 4 of Part 4 of the Code of Civil Procedure be construed to prohibit the disclosure of any relevant work product of the attorney in connection with: (a) an arbitration hearing or mediation pursuant to this article; (b) a trial after arbitration; or (c) judicial confirmation, correction, or vacation of an arbitration award. In no event shall such disclosure be deemed a waiver of the confidential character of such matters for any other purpose. (Added by Stats. 1978, ch. 719. Amended by Stats. 1982, ch. 979; Stats. 1984, ch. 825; Stats. 1996, ch. 1104; Stats. 2004, ch. 182.)

**§ 6203 Award; Contents; Finality; Petition to Court; Award of Fees and Costs**

(a) The award shall be in writing and signed by the arbitrators concurring therein. It shall include a determination of all the questions submitted to the arbitrators, the decision of which is necessary in order to determine the controversy. The award shall not include any award to either party for costs or attorney's fees incurred in preparation for or in the course of the fee arbitration proceeding, notwithstanding any contract between the parties providing for such an award or costs or attorney's fees. However, the filing fee paid may be allocated between the parties by the arbitrators. This section shall not preclude an award of costs or attorney's fees to either party by a court pursuant to subdivision (c) of this section or of subdivision (d) of Section 6204. The State Bar, or the local bar association delegated by the State Bar to conduct the arbitration, shall deliver to each of the parties with the award, an original declaration of service of the award.

Evidence relating to claims of malpractice and professional misconduct, shall be admissible only to the extent that those claims bear upon the fees, costs, or both, to which the attorney is entitled. The arbitrators shall not award affirmative relief, in the form of damages or offset or otherwise, for injuries underlying the claim. Nothing in this section shall be construed to prevent the arbitrators from awarding the client a refund of unearned fees, costs, or both previously paid to the attorney.

(b) Even if the parties to the arbitration have not agreed in writing to be bound, the arbitration award shall become binding upon the passage of 30 days after service of notice of the award, unless a party has, within

the 30 days, sought a trial after arbitration pursuant to Section 6204. If an action has previously been filed in any court, any petition to confirm, correct, or vacate the award shall be to the court in which the action is pending, and may be served by mail on any party who has appeared, as provided in Chapter 4 (commencing with Section 1003) of Title 14 of Part 2 of the Code of Civil Procedure; otherwise it shall be in the same manner as provided in Chapter 4 (commencing with Section 1285) of Title 9 of Part 3 of the Code of Civil Procedure. If no action is pending in any court, the award may be confirmed, corrected, or vacated by petition to the court having jurisdiction over the amount of the arbitration award, but otherwise in the same manner as provided in Chapter 4 (commencing with Section 1285) of Title 9 of Part 3 of the Code of Civil Procedure.

(c) Neither party to the arbitration may recover costs or attorney's fees incurred in preparation for or in the course of the fee arbitration proceeding with the exception of the filing fee paid pursuant to subdivision (a) of this section. However, a court confirming, correcting, or vacating an award under this section may award to the prevailing party reasonable fees and costs incurred in obtaining confirmation, correction, or vacation of the award including, if applicable, fees and costs on appeal. The party obtaining judgment confirming, correcting, or vacating the award shall be the prevailing party except that, without regard to consideration of who the prevailing party may be, if a party did not appear at the arbitration hearing in the manner provided by the rules adopted by the board of trustees, that party shall not be entitled to attorney's fees or costs upon confirmation, correction, or vacation of the award.

(d) (1) In any matter arbitrated under this article in which the award is binding or has become binding by operation of law or has become a judgment either after confirmation under subdivision (c) or after a trial after arbitration under Section 6204, or in any matter mediated under this article, if: (A) the award, judgment, or agreement reached after mediation includes a refund of fees or costs, or both, to the client and (B) the attorney has not complied with that award, judgment, or agreement the State Bar shall enforce the award, judgment, or agreement by placing the attorney on involuntary inactive status until the refund has been paid.

(2) The State Bar shall provide for an administrative procedure to determine whether an award, judgment, or agreement should be enforced

pursuant to this subdivision. An award, judgment, or agreement shall be so enforced if:

(A) The State Bar shows that the attorney has failed to comply with a binding fee arbitration award, judgment, or agreement rendered pursuant to this article.

(B) The attorney has not proposed a payment plan acceptable to the client or the State Bar.

However, the award, judgment, or agreement shall not be so enforced if the attorney has demonstrated that he or she (i) is not personally responsible for making or ensuring payment of the refund, or (ii) is unable to pay the refund.

(3) An attorney who has failed to comply with a binding award, judgment, or agreement shall pay administrative penalties or reasonable costs, or both, as directed by the State Bar. Penalties imposed shall not exceed 20 percent of the amount to be refunded to the client or one thousand dollars (\$1,000), whichever is greater. Any penalties or costs, or both, that are not paid shall be added to the license fee of the attorney for the next calendar year.

(4) The board shall terminate the inactive enrollment upon proof that the attorney has complied with the award, judgment, or agreement and upon payment of any costs or penalties, or both, assessed as a result of the attorney's failure to comply.

(5) A request for enforcement under this subdivision shall be made within four years from the date (A) the arbitration award was mailed, (B) the judgment was entered, or (C) the date the agreement was signed. In an arbitrated matter, however, in no event shall a request be made prior to 100 days from the date of the service of a signed copy of the award. In cases where the award is appealed, a request shall not be made prior to 100 days from the date the award has become final as set forth in this section. (Added by Stats. 1978, ch. 719. Amended by Stats. 1982, ch. 979; Stats. 1984, ch. 825; Stats. 1989, ch. 1416; Stats. 1990, ch. 483; Stats. 1992, ch. 1265; Stats. 1993, ch. 1262; Stats. 1996, ch. 1104; Stats. 2009, ch. 54; Stats. 2011, ch. 417; Stats. 2018, ch. 659.)

**§ 6204 Agreement to be Bound by Award of Arbitrator; Trial After Arbitration in Absence of Agreement; Prevailing Party; Effect of Award and Determination**

(a) The parties may agree in writing to be bound by the award of arbitrators appointed pursuant to this article at any time after the dispute over fees, costs, or both, has arisen. In the absence of such an agreement, either party shall be entitled to a trial after arbitration if sought within 30 days, pursuant to subdivisions (b) and (c), except that if either party willfully fails to appear at the arbitration hearing in the manner provided by the rules adopted by the board of trustees, that party shall not be entitled to a trial after arbitration. The determination of willfulness shall be made by the court. The party who failed to appear at the arbitration shall have the burden of proving that the failure to appear was not willful. In making its determination, the court may consider any findings made by the arbitrators on the subject of a party's failure to appear.

(b) If there is an action pending, the trial after arbitration shall be initiated by filing a rejection of arbitration award and request for trial after arbitration in that action within 30 days after service of notice of the award. If the rejection of arbitration award has been filed by the plaintiff in the pending action, all defendants shall file a responsive pleading within 30 days following service upon the defendant of the rejection of arbitration award and request for trial after arbitration. If the rejection of arbitration award has been filed by the defendant in the pending action, all defendants shall file a responsive pleading within 30 days after the filing of the rejection of arbitration award and request for trial after arbitration. Service may be made by mail on any party who has appeared; otherwise service shall be made in the manner provided in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure. Upon service and filing of the rejection of arbitration award, any stay entered pursuant to Section 6201 shall be vacated, without the necessity of a court order.

(c) If no action is pending, the trial after arbitration shall be initiated by the commencement of an action in the court having jurisdiction over the amount of money in controversy within 30 days after service of notice of the award. After the filing of such an action, the action shall proceed in accordance with the provisions of Part 2 (commencing with Section 307) of the Code of Civil Procedure, concerning civil actions generally.



(d) The party seeking a trial after arbitration shall be the prevailing party if that party obtains a judgment more favorable than that provided by the arbitration award, and in all other cases the other party shall be the prevailing party. The prevailing party may, in the discretion of the court, be entitled to an allowance for reasonable attorney's fees and costs incurred in the trial after arbitration, which allowance shall be fixed by the court. In fixing the attorney's fees, the court shall consider the award and determinations of the arbitrators, in addition to any other relevant evidence.

(e) Except as provided in this section, the award and determinations of the arbitrators shall not be admissible nor operate as collateral estoppel or res judicata in any action or proceeding. (Added by Stats. 1978, ch. 719. Amended by Stats. 1979, ch. 878; Stats. 1982, ch. 979; Stats. 1984, ch. 825; Stats. 1992, ch. 1265; Stats. 1996, ch. 1104; Stats. 1998, ch. 798; Stats. 2009, ch. 54; Stats. 2011, ch. 417.)

**§ 6204.5 Disqualification of Arbitrators; Post-Arbitration Notice**

(a) The State Bar shall provide by rule for an appropriate procedure to disqualify an arbitrator or mediator upon request of either party.

(b) The State Bar, or the local bar association delegated by the State Bar to conduct the arbitration, shall deliver a notice to the parties advising them of their rights to judicial relief subsequent to the arbitration proceeding. (Added by Stats. 1986, ch. 475; Stats. 1996, ch. 1104.)

**§ 6206 Arbitration Barred if Time for Commencing Civil Action Barred; Exception**

The time for filing a civil action seeking judicial resolution of a dispute subject to arbitration under this article shall be tolled from the time an arbitration is initiated in accordance with the rules adopted by the board of trustees until (a) 30 days after receipt of notice of the award of the arbitrators, or (b) receipt of notice that the arbitration is otherwise terminated, whichever comes first. Arbitration shall not be commenced under this article if a civil action requesting the same relief would be barred by Title 2 (commencing with Section 312) of Part 2 of the Code of Civil Procedure; provided that this limitation shall not apply to a request for arbitration by a client, pursuant to the provisions of subdivision (b) of Section 6201, following the commencement of an action in any court or any other proceeding by the attorney.

(Added by Stats. 1978, ch. 719. Amended by Stats. 1984, ch. 825; Stats. 2011, ch. 417; Stats. 2019, ch. 13.)

**ARTICLE 14  
FUNDS FOR THE PROVISION OF LEGAL  
SERVICES TO INDIGENT PERSONS**

**§ 6210 Legislative Findings; Purpose of Program**

The Legislature finds that, due to insufficient funding, existing programs providing free legal services in civil matters to indigent persons, especially underserved client groups, such as the elderly, the disabled, juveniles, and non-English-speaking persons, do not adequately meet the needs of these persons. It is the purpose of this article to expand the availability and improve the quality of existing free legal services in civil matters to indigent persons, and to initiate new programs that will provide services to them. The Legislature finds that the use of funds collected by the State Bar pursuant to this article for these purposes is in the public interest, is a proper use of the funds, and is consistent with essential public and governmental purposes in the judicial branch of government. The Legislature further finds that the expansion, improvement, and initiation of legal services to indigent persons will aid in the advancement of the science of jurisprudence and the improvement of the administration of justice. (Added by Stats. 1981, ch. 789.)

**§ 6210.5 Definition of Funds to be Deposited in Interest Bearing Demand Trust Account; Interest Earned Paid to State Bar; Other Accounts or Trust Investments; Rules of Professional Conduct; Disciplinary Authority of Supreme Court or State Bar**

(a) There shall be created, within the State Bar, a Legal Services Trust Fund Commission to administer IOLTA accounts, Equal Access Funds, or similar funds or grant moneys intended for the support of qualified legal services projects and qualified support centers, as those terms are defined in Section 6213.

(b) (1) The Legal Services Trust Fund Commission shall be comprised of 24 commissioners as follows:

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(A) Six commissioners shall be appointed by the State Bar Board of Trustees.

(B) Two commissioners shall be appointed by the Senate Committee on Rules.

(C) Two commissioners shall be appointed by the Speaker of the Assembly.

(D) Ten commissioners shall be appointed by the Chair of the Judicial Council, of which three shall be nonvoting judicial advisors. The three nonvoting judicial advisors shall be comprised of two superior court judges and one appellate justice.

(E) Four commissioners shall be appointed by the Legal Services Trust Fund Commission, of which at least two shall be, or have been within five years of appointment, indigent persons as defined by Section 6213.

(2) No employee or independent contractor acting as a consultant to a potential recipient of Legal Services Trust Fund grants shall be appointed to the Legal Services Trust Fund Commission. All commissioners shall be designated employees under the Conflict of Interest Code of the State Bar.

(3) Except as provided in paragraph (4), each commissioner shall serve for a term of four years that begins upon appointment. Upon completion of an initial term, a commissioner may be reappointed for a second four-year term. An initial or second term may be extended by one or two years, for a maximum of 10 years, to allow a commissioner to serve as chair or vice chair. A commissioner currently serving as of January 1, 2022, may be reappointed to two additional full terms following the completion of their current term pursuant to paragraph (5).

(4) A commissioner appointed by the chair of the Judicial Council shall have no term limits.

(5) Each commissioner shall serve at the pleasure of the appointing entity. Each appointing entity may stagger their appointments so one-half of the commissioners are appointed in 2022 and the other one-half are appointed in 2023. A commissioner serving as of January 1, 2022, may continue to serve until replaced by the appointing entity or January 1, 2024, whichever occurs first.

(6) Commissioners who are not currently and have never been attorneys licensed in California or another jurisdiction and who submit a form designated by the commission to request a per diem shall be entitled to receive fifty dollars (\$50) per day for each day that they attend a commission meeting of at least one hour in length.

(c) The chair and the vice chair of the Legal Services Trust Fund Commission shall be selected by the Chair of the Judicial Council. The chair of the Legal Services Trust Fund Commission shall preside over the commission's meetings. The Chair of the Judicial Council may select up to two chairs and two vice chairs to lead the commission.

(d) The Legal Services Trust Fund Commission shall be subject to the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code) and the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

(e) (1) The Legal Services Trust Fund Commission shall recommend to the Board of Trustees of the State Bar rules to determine an applicant's eligibility for grants under this article and for rules related to grant administration, including rules to monitor and evaluate a recipient's compliance with Legal Services Trust Fund requirements and grant terms based on criteria established by the Legal Services Trust Fund Commission.

(2) The Legal Services Trust Fund Commission shall recommend to the Board of Trustees of the State Bar the amount proposed to be made available for grant distribution from IOLTA funds, along with the amount to be maintained as a fiscally responsible reserve.

(3) The Board of Trustees of the State Bar shall approve each recommendation made pursuant to paragraphs (1) and (2) unless the Board of Trustees of the State Bar makes a finding in writing that a recommendation conflicts with a statutory, fiduciary, or legal obligation of the State Bar.

(4) The decisions of the Legal Services Trust Fund Commission regarding individual grant awards shall take effect without approval by the Board of Trustees of the State Bar. However, the board may reverse or modify an individual grant award if it makes a finding in writing that the award violates

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Legal Services Trust Fund rules or a statutory, fiduciary, or legal obligation of the State Bar.

(f) Except as provided by subdivision (a) of Section 6033 and by Section 6140.03, the State Bar's actual administrative costs to administer the Legal Services Trust Fund Program, including IOLTA, Equal Access Funds, and similar funds and grant moneys shall be fully funded through these grant programs. The State Bar shall not provide administrative services to the Legal Services Trust Fund Commission in excess of the administrative costs allocated to the State Bar by the Legislature, or by the Legal Services Trust Fund Commission as part of any request by the Legal Services Trust Fund Commission's request for administrative support.

(g) At the conclusion of each fiscal year, the Legal Services Trust Fund Commission shall include a report of receipts of funds under this article, expenditures for administrative costs, and disbursements of the funds on a county-by-county basis, in the annual report of the State Bar's receipts and expenditures required pursuant to Section 6145. To ensure that awards made by the Legal Services Trust Fund Commission are consistent with statute, rules, and other governing authority, the State Bar shall develop a program to audit a representative sample of grant awards each year. The results of the most recent audit shall be included with the report of receipt of funds described in this subdivision.

(h) This section supersedes any conflicting State Bar rules regarding the Legal Services Trust Fund Commission or its responsibilities or oversight by the State Bar's board of trustees. (Added by Stats. 2021, ch. 723. Amended by Stats. 2022, ch. 28.)

### **§ 6211 Definition of Funds to be Deposited in Interest Bearing Demand Trust Account; Interest Earned Paid to State Bar; Other Accounts or Trust Investments; Rules of Professional Conduct; Disciplinary Authority of Supreme Court or State Bar**

(a) An attorney or law firm that, in the course of the practice of law, receives or disburses trust funds shall establish and maintain an IOLTA account in which the attorney or law firm shall deposit or invest all client deposits or funds that are nominal in amount or are on deposit or invested for a short period of time. All such client funds may be deposited or invested in a single

unsegregated account. The interest and dividends earned on all those accounts shall be paid to the State Bar of California to be used for the purposes set forth in this article.

(b) Nothing in this article shall be construed to prohibit an attorney or law firm from establishing one or more interest bearing bank trust deposit accounts or dividend-paying trust investment accounts as may be permitted by the Supreme Court, with the interest or dividends earned on the accounts payable to clients for trust funds not deposited or invested in accordance with subdivision (a).

(c) With the approval of the Supreme Court, the State Bar may formulate and enforce rules of professional conduct pertaining to the use by attorneys or law firms of an IOLTA account for unsegregated client funds pursuant to this article.

(d) Nothing in this article shall be construed as affecting or impairing the disciplinary powers and authority of the Supreme Court or of the State Bar or as modifying the statutes and rules governing the conduct of licensees of the State Bar. (Added by Stats. 1981, ch. 789. Amended by Stats. 2007, ch. 422; Stats. 2018, ch. 659.)

### **§ 6212 Requirements in Establishing Client Trust Accounts; Amount of Interest; Remittance to State Bar; Statements and Reports**

An attorney who, or a law firm that, establishes an IOLTA account pursuant to subdivision (a) of Section 6211 shall comply with all of the following provisions:

(a) The IOLTA account shall be established and maintained with an eligible institution offering or making available an IOLTA account that meets the requirements of this article. The IOLTA account shall be established and maintained consistent with the attorney's or law firm's duties of professional responsibility. An eligible financial institution shall have no responsibility for selecting the deposit or investment product chosen for the IOLTA account.

(b) Except as provided in subdivision (f), the rate of interest or dividends payable on any IOLTA account shall not be less than the interest rate or dividends generally paid by the eligible institution to nonattorney customers on accounts of the same type meeting the same minimum balance and other eligibility requirements as the IOLTA account. In determining the interest rate or

dividend payable on any IOLTA account, an eligible institution may consider, in addition to the balance in the IOLTA account, risk or other factors customarily considered by the eligible institution when setting the interest rate or dividends for its non-IOLTA accounts, provided that the factors do not discriminate between IOLTA customers and non-IOLTA customers and that these factors do not include the fact that the account is an IOLTA account. The eligible institution shall calculate interest and dividends in accordance with its standard practice for non-IOLTA customers. Nothing in this article shall preclude an eligible institution from paying a higher interest rate or dividend on an IOLTA account or from electing to waive any fees and service charges on an IOLTA account.

(c) Reasonable fees may be deducted from the interest or dividends remitted on an IOLTA account only at the rates and in accordance with the customary practices of the eligible institution for non-IOLTA customers. No other fees or service charges may be deducted from the interest or dividends earned on an IOLTA account. Unless and until the State Bar enacts regulations exempting from compliance with subdivision (a) of Section 6211 those accounts for which maintenance fees exceed the interest or dividends paid, an eligible institution may deduct the fees and service charges in excess of the interest or dividends paid on an IOLTA account from the aggregate interest and dividends remitted to the State Bar. Fees and service charges other than reasonable fees shall be the sole responsibility of, and may only be charged to, the attorney or law firm maintaining the IOLTA account. Fees and charges shall not be assessed against or deducted from the principal of any IOLTA account. It is the intent of the Legislature that the State Bar develop policies so that eligible institutions do not incur uncompensated administrative costs in adapting their systems to comply with the provisions of Chapter 422 of the Statutes of 2007 or in making investment products available to IOLTA members.

(d) The attorney or law firm shall report IOLTA account compliance and all other IOLTA account information required by the State Bar in the manner specified by the State Bar.

(e) The eligible institution shall be directed to do all of the following:

- (1) To remit interest or dividends on the IOLTA account, less reasonable fees, to the State Bar, at least quarterly.

(2) To transmit to the State Bar with each remittance a statement showing the name of the attorney or law firm for which the remittance is sent, for each account the rate of interest applied or dividend paid, the amount and type of fees deducted, if any, and the average balance for each account for each month of the period for which the report is made.

(3) To transmit to the attorney or law firm customer at the same time a report showing the amount paid to the State Bar for that period, the rate of interest or dividend applied, the amount of fees and service charges deducted, if any, and the average daily account balance for each month of the period for which the report is made.

(f) An eligible institution has no affirmative duty to offer or make investment products available to IOLTA customers. However, if an eligible institution offers or makes investment products available to non-IOLTA customers, in order to remain an IOLTA-eligible institution, it shall make those products available to IOLTA customers or pay an interest rate on the IOLTA deposit account that is comparable to the rate of return or the dividends generally paid on that investment product for similar customers meeting the same minimum balance and other requirements applicable to the investment product. If the eligible institution elects to pay that higher interest rate, the eligible institution may subject the IOLTA deposit account to equivalent fees and charges assessable against the investment product. [See Appendix A for Supreme Court order pursuant to Statutes 1981, Chapter 789.] (Added by Stats. 1981, ch. 789. Amended by Stats. 2007, ch. 422; Stats. 2008, ch. 179; Stats. 2009, ch. 129.)

## § 6213 Definitions

As used in this article:

(a) "Qualified legal services project" means either of the following:

(1) A nonprofit project incorporated and operated exclusively in California that provides as its primary purpose and function legal services without charge to indigent persons and that has quality control procedures approved by the State Bar of California.

(2) A program operated exclusively in California by a nonprofit law school accredited by the State

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Bar of California that meets the requirements of subparagraphs (A) and (B).

(A) The program shall have operated for at least two years at a cost of at least twenty thousand dollars (\$20,000) per year as an identifiable law school unit with a primary purpose and function of providing civil legal services without charge to indigent persons.

(B) The program shall have quality control procedures approved by the State Bar of California.

(b) "Qualified support center" means an incorporated nonprofit legal services center that has as its primary purpose and function the provision of legal training, legal technical assistance, or advocacy support for civil legal services without charge and which actually provides through an office in California a significant level of legal training, legal technical assistance, or advocacy support without charge to qualified legal services projects on a statewide basis in California.

(c) "Recipient" means a qualified legal services project or support center receiving financial assistance under this article.

(d) "Indigent person" means a person whose income is (1) 200 percent or less of the current poverty threshold established by the United States Office of Management and Budget or (2) who is eligible for Supplemental Security Income or free services under the Older Americans Act or Developmentally Disabled Assistance Act. With regard to a project that provides free services of attorneys in private practice without compensation, "indigent person" also means a person whose income is 75 percent or less of the maximum levels of income for lower income households as defined in Section 50079.5 of the Health and Safety Code. For the purpose of this subdivision, the income of a person who is disabled shall be determined after deducting the costs of medical and other disability-related special expenses and (2) after deducting disability compensation from the United States Veterans Administration paid to a veteran with a service-related disability.

(e) "Fee generating case" means a case or matter that, if undertaken on behalf of an indigent person by an attorney in private practice, reasonably may be expected to result in payment of a fee for legal services from an award to a client, from public funds, or from the opposing party. A case shall not be considered fee

generating if adequate representation is unavailable and any of the following circumstances exist:

(1) The recipient has determined that free referral is not possible because of any of the following reasons:

(A) The case has been rejected by the local lawyer referral service, or if there is no such service, by two attorneys in private practice who have experience in the subject matter of the case.

(B) Neither the referral service nor any attorney will consider the case without payment of a consultation fee.

(C) The case is of the type that attorneys in private practice in the area ordinarily do not accept, or do not accept without prepayment of a fee.

(D) Emergency circumstances compel immediate action before referral can be made, but the client is advised that, if appropriate and consistent with professional responsibility, referral will be attempted at a later time.

(2) Recovery of damages is not the principal object of the case and a request for damages is merely ancillary to an action for equitable or other nonpecuniary relief, or inclusion of a counterclaim requesting damages is necessary for effective defense or because of applicable rules governing joinder of counterclaims.

(3) A court has appointed a recipient or an employee of a recipient pursuant to a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction.

(4) The case involves the rights of a claimant under a publicly supported benefit program for which entitlement to benefit is based on need.

(f) "Legal Services Corporation" means the Legal Services Corporation established under the Legal Services Corporation Act of 1974 (P.L. 93-355; 42 U.S.C. Sec. 2996 et seq.).

(g) "Older Americans Act" means the federal Older Americans Act of 1965, as amended (P.L. 89-73; 42 U.S.C. Sec. 3001 et seq.).

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(h) "Developmentally Disabled Assistance Act" means the federal Developmentally Disabled Assistance and Bill of Rights Act, as amended (P.L. 94-103; 42 U.S.C. Sec. 6001 et seq.).

(i) "Supplemental security income recipient" means an individual receiving or eligible to receive payments under Title XVI of the federal Social Security Act (42 U.S.C. Sec. 1381 et seq.) or payments under Chapter 3 (commencing with Section 12000) of Part 3 of Division 9 of the Welfare and Institutions Code.

(j) "IOLTA account" means an account or investment product established and maintained pursuant to subdivision (a) of Section 6211 that is any of the following:

- (1) An interest-bearing checking account.
- (2) An investment sweep product that is a daily (overnight) financial institution repurchase agreement or an open-end money market fund.
- (3) An investment product authorized by California Supreme Court rule or order.

A daily financial institution repurchase agreement shall be fully collateralized by United States Government Securities or other comparably conservative debt securities, and may be established only with any eligible institution that is "well-capitalized" or "adequately capitalized" as those terms are defined by applicable federal statutes and regulations. An open-end money market fund shall be invested solely in United States Government Securities or repurchase agreements fully collateralized by United States Government Securities or other comparably conservative debt securities, shall hold itself out as a "money market fund" as that term is defined by federal statutes and regulations under the federal Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.), and, at the time of the investment, shall have total assets of at least two hundred fifty million dollars (\$250,000,000).

(k) "Eligible institution" means either of the following:

- (1) A bank, savings and loan, or other financial institution regulated by a federal or state agency that pays interest or dividends on the IOLTA account and carries deposit insurance from an agency of the federal government.
- (2) Any other type of financial institution authorized by the California Supreme Court.

(l) "Civil legal services" includes, in addition to matters traditionally considered civil, legal services related to expungements, record sealing or clearance proceedings not requiring a finding of factual innocence, and infractions. (Added by Stats. 1981, ch. 789. Amended by Stats. 1984, ch. 784; Stats. 2007, ch. 422; Stats. 2008, ch. 179; Stats. 2009, ch. 129; Stats. 2010, ch. 328; Stats. 2021, ch. 688; Stats. 2021, ch. 723.)

### **§ 6214 Qualified Legal Service Projects**

(a) Projects meeting the requirements of subdivision (a) of section 6213 which are funded either in whole or part by the Legal Services Corporation or with Older Americans Act funds shall be presumed qualified legal services projects for the purpose of this article.

(b) Projects meeting the requirements of subdivision (a) of section 6213 but not qualifying under the presumption specified in subdivision (a) shall qualify for funds under this article if they meet all of the following additional criteria:

- (1) They receive cash funds from other sources in the amount of at least twenty thousand dollars (\$20,000) per year to support free legal representation to indigent persons.
- (2) They have demonstrated community support for the operation of a viable ongoing program.
- (3) They provide one or both of the following special services:

(A) The coordination of the recruitment of substantial numbers of attorneys in private practice to provide free legal representation to indigent persons or to qualified legal services projects in California.

(B) The provision of legal representation, training, or technical assistance on matters concerning special client groups, including the elderly, disabled persons, juveniles, disabled veterans, and non-English-speaking groups, or on matters of specialized substantive law important to the special client groups. (Added by Stats. 1981, ch. 789. Amended by Stats. 2021, ch. 688.)

### **§ 6214.5 Law School Program—Date of Eligibility for Funding**

A law school program that meets the definition of a “qualified legal services project” as defined in paragraph (2) of subdivision (a) of Section 6213, and that applied to the State Bar for funding under this article not later than February 17, 1984, shall be deemed eligible for all distributions of funds made under Section 6216. (Added by Stats. 1984, ch. 784.)

### **§ 6215 Qualified Support Centers**

(a) Support centers satisfying the qualifications specified in subdivisions (b) of section 6213 which were operating an office and providing services in California on December 31, 1980, shall be presumed to be qualified support centers for the purposes of this article.

(b) Support centers not qualifying under the presumption specified in subdivision (a) may qualify as a support center by meeting both of the following additional criteria:

- (1) Meeting quality control standards established by the State Bar.
- (2) Being deemed to be of special need by a majority of the qualified legal services projects. (Added by Stats. 1981, ch. 789.)

### **§ 6216 Distribution of Funds**

The State Bar shall distribute all moneys received under the program established by this article for the provision of civil legal services to indigent persons. The funds first shall be distributed 18 months from the effective date of this article, or upon such a date, as shall be determined by the State Bar, that adequate funds are available to initiate the program. Thereafter, the funds shall be distributed on an annual basis. All distributions of funds shall be made in the following order and in the following manner:

- (a) To pay the actual administrative costs of the program, including any costs incurred after the adoption of this article and a reasonable reserve therefor.
- (b) Eighty-five percent of the funds remaining after payment of administrative costs allocated pursuant to this article shall be distributed to qualified legal services projects. Distribution shall be by a pro rata county-by-

county formula based upon the number of persons whose income is 125 percent or less of the current poverty threshold per county. For the purposes of this section, the source of data identifying the number of persons per county shall be the latest available figures from the United States Department of Commerce, Bureau of the Census. Projects from more than one county may pool their funds to operate a joint, multicounty legal services project serving each of their respective counties.

- (1) (A) In any county which is served by more than one qualified legal services project, the State Bar shall distribute funds for the county to those projects which apply on a pro rata basis, based upon the amount of their total budget expended in the prior year for civil legal services without charge for indigent persons in that county as compared to the total expended in the prior year for civil legal services without charge for indigent persons by all qualified legal services projects applying therefor in the county.

(B) The State Bar shall reserve 10 percent of the funds allocated to the county for distribution to programs meeting the standards of subparagraph (A) of paragraph (3) and paragraphs (1) and (2) of subdivision (b) of Section 6214 and which perform the services described in subparagraph (A) of paragraph (3) of Section 6214 as their principal means of delivering legal services. The State Bar shall distribute the funds for that county to those programs which apply on a pro rata basis, based upon the amount of their total budget expended for free civil legal services for indigent persons in that county as compared to the total expended for free civil legal services for indigent persons by all programs meeting the standards of subparagraph (A) of paragraph (3) and paragraphs (1) and (2) of subdivision (b) of Section 6214 in that county. The State Bar shall distribute any funds for which no program has qualified pursuant hereto, in accordance with the provisions of subparagraph (A) of paragraph (1) of this subdivision.

(2) In any county in which there is no qualified legal services projects providing services, the State Bar shall reserve for the remainder of the fiscal year for distribution the pro rata share of funds as provided for by this article. Upon application of a qualified legal services project proposing to provide legal services to the indigent of the county, the State Bar shall distribute the funds to the project. Any funds not so distributed shall be added to the funds to be distributed the following year.

(c) Fifteen percent of the funds remaining after payment of administrative costs allocated for the purposes of this article shall be distributed equally by the State Bar to qualified support centers which apply for the funds. The funds provided to support centers shall be used only for the provision of civil legal services within California. Qualified support centers that receive funds to provide services to qualified legal services projects from sources other than this article, shall submit and shall have approved by the State Bar a plan assuring that the services funded under this article are in addition to those already funded for qualified legal services projects by other sources. (Added by Stats. 1981, ch. 789. Amended by Stats. 1984, ch. 784; Stats. 2021, ch. 723.)

**§ 6217 Maintenance of Quality Services, Professional Standards, Attorney-Client Privilege; Funds to be Expended in Accordance with Article; Interference with Attorney Prohibited**

With respect to the provision of legal assistance under this article, each recipient shall ensure all of the following:

- (a) The maintenance of quality service and professional standards.
- (b) The expenditure of funds received in accordance with the provisions of this article.
- (c) The preservation of the attorney-client privilege in any case, and the protection of the integrity of the adversary process from any impairment in furnishing legal assistance to indigent persons.
- (d) That no one shall interfere with any attorney funded in whole or in part by this article in carrying out his or her professional responsibility to his or her client as established by the rules of professional responsibility and this chapter. (Added by Stats. 1981, ch. 789.)

**§ 6218 Eligibility for Services; Establishment of Guidelines; Funds to be Expended in Accordance with Article**

All legal services projects and support centers receiving funds pursuant to this article shall adopt financial eligibility guidelines for indigent persons.

(a) Qualified legal services programs shall ensure that funds appropriated pursuant to this article shall be used solely to defray the costs of providing legal services to indigent persons or for such other purposes as set forth in this article.

(b) Funds received pursuant to this article by support centers shall only be used to provide services to qualified legal services projects as defined in subdivision (a) of section 6213 which are used pursuant to a plan as required by subdivision (c) of section 6216, or as permitted by section 6219. (Added by Stats. 1981, ch. 789.)

**§ 6219 Provisions of Work Opportunities and Scholarships for Disadvantaged Law Students**

Qualified legal services projects and support centers may use funds provided under this article to provide work opportunities with pay, and where feasible, scholarships for disadvantaged law students to help defray their law school expenses. (Added by Stats. 1981, ch. 789.)

**§ 6220 Private Attorneys Providing Legal Services Without Charge; Support Center Services**

Attorneys in private practice who are providing legal services without charge to indigent persons shall not be disqualified from receiving the services of the qualified support centers. (Added by Stats. 1981, ch. 789.)

**§ 6221 Services for Indigent Members of Disadvantaged and Underserved Groups**

Qualified legal services projects shall make significant efforts to utilize 20 percent of the funds allocated under this article for increasing the availability of services to the elderly, the disabled, juveniles, or other indigent persons who are members of disadvantaged and underserved groups within their service area. (Added by Stats. 1981, ch. 789.)



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### **§ 6222 Financial Statements; Submission to State Bar; State Bar Report**

A recipient of funds allocated pursuant to this article annually shall submit a financial statement to the State Bar, including an audit of the funds by a certified public accountant or a fiscal review approved by the State Bar, a report demonstrating the programs on which they were expended, a report on the recipient's compliance with the requirements of Section 6217, and progress in meeting the service expansion requirements of Section 6221.

The Board of Trustees of the State Bar shall include a report of receipts of funds under this article, expenditures for administrative costs, and disbursements of the funds, on a county-by-county basis, in the annual report of State Bar receipts and expenditures required pursuant to Section 6145. (Added by Stats. 1981, ch. 789. Amended by Stats. 2011, ch. 417.)

### **§ 6223 Expenditure of Funds; Prohibitions**

No funds allocated by the State Bar pursuant to this article shall be used for any of the following purposes:

- (a) The provision of legal assistance with respect to any fee generating case, except in accordance with guidelines which shall be promulgated by the State Bar.
- (b) The provision of legal assistance with respect to any criminal proceeding. For purposes of this article, "criminal proceeding" does not include expungements, record sealing or clearance proceedings not requiring a finding of factual innocence, or proceedings concerning infractions.
- (c) The provision of legal assistance, except to indigent persons or except to provide support services to qualified legal services projects as defined by this article. (Added by Stats. 1981, ch. 789. Amended by Stats. 2021, ch. 723.)

### **§ 6224 State Bar; Powers; Determination of Qualifications to Receive Funds; Denial of Funds; Termination; Procedures**

The State Bar shall have the power to determine that an applicant for funding is not qualified to receive funding, to deny future funding, or to terminate existing funding

because the recipient is not operating in compliance with the requirements or restrictions of this article.

A denial of an application for funding or for future funding or an action by the State Bar to terminate an existing grant of funds under this article shall not become final until the applicant or recipient has been afforded reasonable notice and an opportunity for a timely and fair hearing. Pending final determination of any hearing held with reference to termination of funding, financial assistance shall be continued at its existing level on a month-to-month basis. Hearings for denial shall be conducted by an impartial hearing officer whose decisions shall be final. The hearing officer shall render a decision no later than 30 days after the conclusion of the hearing. Specific procedures governing the conduct of the hearings of this section shall be determined by the State Bar pursuant to section 6225. (Added by Stats. 1981, ch. 789.)

### **§ 6225 Implementation of Article; Adoption of Rules and Regulations; Procedures**

The Board of Trustees of the State Bar shall adopt the regulations and procedures necessary to implement this article and to ensure that the funds allocated herein are utilized to provide civil legal services to indigent persons, especially underserved client groups such as but not limited to the elderly, the disabled, juveniles, and non-English-speaking persons.

In adopting the regulations the Board of Trustees shall comply with the following procedures:

- (a) The board shall publish a preliminary draft of the regulations and procedures, which shall be distributed, together with notice of the hearings required by subdivision (b), to commercial banking institutions, to licensees of the State Bar, and to potential recipients of funds.
- (b) The board shall hold at least two public hearings, one in southern California and one in northern California where affected and interested parties shall be afforded an opportunity to present oral and written testimony regarding the proposed regulations and procedures. (Added by Stats. 1981, ch. 789. Amended by Stats. 2011, ch. 417; Stats. 2018, ch. 659.)

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### **§ 6226 Implementation of Article; Resolution**

The program authorized by this article shall become operative only upon the adoption of a resolution by the Board of Trustees of the State Bar stating that regulations have been adopted pursuant to Section 6225 which conform the program to all applicable tax and banking statutes, regulations, and rulings. (Added by Stats. 1981, ch. 789. Amended by Stats. 2011, ch. 417.)

### **§ 6227 Credit of State Not Pledged**

Nothing in this article shall create an obligation or pledge of the credit of the State of California or of the State Bar of California. Claims arising by reason of acts done pursuant to this article shall be limited to the moneys generated hereunder. (Added by Stats. 1981, ch. 789.)

### **§ 6228 Severability**

If any provision of this article or the application thereof to any group or circumstances is held invalid, such invalidity shall not affect the other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable. (Added by Stats. 1981, ch. 789.)

## **ARTICLE 15**

### **ATTORNEY DIVERSION AND ASSISTANCE ACT**

### **§ 6230 Legislative Intent**

It is the intent of the Legislature that the State Bar of California seek ways and means to identify and rehabilitate attorneys with impairment due to substance use or a mental health disorder affecting competency so that attorneys so afflicted may be treated and returned to the practice of law in a manner that will not endanger the public health and safety. (Added by Stats. 2001, ch. 129. Amended by Stats. 2019, ch. 698.)

### **§ 6231 Attorney Diversion and Assistance Program Act**

(a) The board shall establish and administer an Attorney Diversion and Assistance Program, and shall establish a committee to oversee the operation of the

program. The committee shall be comprised of 12 members who shall be appointed as follows:

(1) Six members appointed by the Board of Trustees, including the following:

(A) Two members who are licensed mental health professionals with knowledge and expertise in the identification and treatment of substance abuse and mental illness.

(B) One member who is a physician with knowledge and expertise in the identification and treatment of alcoholism and substance abuse.

(C) One member of the board of directors of a statewide nonprofit organization established for the purpose of assisting lawyers with alcohol or substance abuse problems, which has been in continuous operation for a minimum of five years.

(D) Two members who are attorneys, at least one of which is in recovery and has at least five years of continuous sobriety.

(2) Four members appointed by the Governor, including the following:

(A) Two members who are attorneys.

(B) Two members of the public.

(3) One member of the public appointed by the Speaker of the Assembly.

(4) One member of the public appointed by the Senate Committee on Rules.

(b) Committee members shall serve terms of four years, and may be reappointed as many times as desired. The board shall stagger the terms of the initial members appointed.

(c) Subject to the approval of the board, the committee may adopt reasonable rules and regulations as may be necessary or advisable for the purpose of implementing and operating the program. (Added by Stats. 2001, ch. 129. Amended by Stats. 2011, ch. 417.)

**§ 6232 Practices and Procedures; Program Admission; Obligations**

(a) The committee shall establish practices and procedures for the acceptance, denial, completion, or termination of attorneys in the Attorney Diversion and Assistance Program, and may recommend rehabilitative criteria for adoption by the board for acceptance, denial, completion of, or termination from, the program.

(b) An attorney currently under investigation by the State Bar may enter the program in the following ways:

(1) By referral of the Office of the Chief Trial Counsel.

(2) By referral of the State Bar Court following the initiation of a disciplinary proceeding.

(3) Voluntarily, and in accordance with terms and conditions agreed upon by the attorney participant with the Office of the Chief Trial Counsel or upon approval by the State Bar Court, as long as the investigation is based primarily on the self-administration of drugs or alcohol or the illegal possession, prescription, or nonviolent procurement of drugs for self-administration, or on mental illness, and does not involve actual harm to the public or his or her clients. An attorney seeking entry under this paragraph may be required to execute an agreement that violations of this chapter, or other statutes that would otherwise be the basis for discipline, may nevertheless be prosecuted if the attorney is terminated from the program for failure to comply with program requirements.

(c) Neither acceptance into nor participation in the Attorney Diversion and Assistance Program shall relieve the attorney of any lawful duties and obligations otherwise required by any agreements or stipulations with the Office of the Chief Trial Counsel, court orders, or applicable statutes relating to attorney discipline.

(d) An attorney who is not the subject of a current investigation may voluntarily enter, whether by self-referral or referral by a third-party, the diversion and assistance program on a confidential basis and such information shall not be disclosed pursuant to any state law, including, but not limited to, the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). Confidentiality pursuant to this subdivision shall be absolute unless waived by the attorney.

(e) By rules subject to the approval of the board and consistent with the requirements of this article, applicants who are in law school or have applied for admission to the State Bar may enter the program. (Added by Stats. 2001, ch. 129. Amended by Stats. 2015, ch. 537; Stats. 2017, ch. 422.)

**§ 6233 Restrictions; Reinstatement**

An attorney entering the diversion and assistance program pursuant to subdivision (b) of Section 6232 may be enrolled as an inactive licensee of the State Bar and not be entitled to practice law, or may be required to agree to various practice restrictions, including, where appropriate, restrictions on scope of practice and monetary accounting procedures. Upon the successful completion of the program, attorney participants who were placed on inactive status by the State Bar Court as a condition of program participation and who have complied with any and all conditions of probation may receive credit for the period of inactive enrollment towards any period of actual suspension imposed by the Supreme Court, and shall be eligible for reinstatement to active status and a dismissal of the underlying allegations or a reduction in the recommended discipline. Those attorneys who participated in the program with practice restrictions shall be eligible to have those restrictions removed and to a dismissal of the underlying allegations or a reduction in the recommended discipline. (Added by Stats. 2001, ch. 129. Amended by Stats. 2005, ch. 273; Stats. 2018, ch. 659.)

**§ 6234 Information Provided to or Obtained by Program; Limitations on Disclosure, Admissibility and Confidentiality**

Any information provided to or obtained by the Attorney Diversion and Assistance Program, or any subcommittee or agent thereof, shall be as follows:

(a) Confidential and shall not be disclosed pursuant to any state law, including, but not limited to, the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). This confidentiality shall be absolute unless waived by the attorney.

(b) Exempt from the provisions of Section 6086.1.

(c) Not discoverable or admissible in any civil proceeding without the written consent of the attorney to whom the information pertains.

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(d) Not discoverable or admissible in any disciplinary proceeding without the written consent of the attorney to whom the information pertains.

(e) Except with respect to the provisions of subdivision (d) of Section 6232, the limitations on the disclosure and admissibility of information in this section shall not apply to information relating to an attorney's noncooperation with, or unsuccessful completion of, the Attorney Diversion and Assistance Program, or any subcommittee or agent thereof, or to information otherwise obtained by the Office of the Chief Trial Counsel, by independent means, or from any other lawful source. (Added by Stats. 2001, ch. 129. Amended by Stats. 2003, ch. 334; Stats. 2015, ch. 537.)

### **§ 6235 Expenses and Fees; Financial Assistance Program**

(a) (1) Except as provided in paragraph (2), participants in the Attorney Diversion and Assistance Program shall be responsible for all expenses relating to treatment and recovery.

(2) Consistent with subdivision (b), funds collected pursuant to Section 6140.9 for the Attorney Diversion and Assistance Program may be used for treatment and recovery services for participants who demonstrate an inability to pay. The State Bar shall develop rules or guidelines to implement this paragraph.

(3) In addition, the State Bar may charge a reasonable administrative fee to participants for the purpose of offsetting the costs of maintaining the program.

(b) (1) Notwithstanding paragraph (1) or (3) of subdivision (a), the State Bar shall establish a program to provide financial assistance to licensees and persons eligible for services who otherwise would be denied acceptance into the program solely due to the lack of ability to pay.

(2) The funding for financial assistance shall be drawn exclusively from the ten-dollar (\$10) fee paid by each active licensee under Section 6140.9 to support the Attorney Diversion and Assistance Program.

(3) Notwithstanding the goal of providing financial assistance pursuant to paragraph (1), the amount of funding allocated for the purpose of

providing financial assistance shall not be allowed to compromise the financial needs of effectively administering the Attorney Diversion and Assistance Program. (Added by Stats. 2001, ch. 129. Amended by Stats. 2018, ch. 659.)

### **§ 6236 Outreach Activities**

The State Bar shall actively engage in outreach activities to make licensees, the legal community, and the general public aware of the existence and availability of the Attorney Diversion and Assistance Program. Outreach shall include, but not be limited to, the development and certification of minimum continuing legal education courses relating to behavioral health issues and the prevention, detection, and treatment of substance abuse, including no-cost and low-cost programs and materials pursuant to subdivision (d) of Section 6070, informing all licensees of the State Bar of the program's existence and benefits through both direct communication and targeted advertising, working in coordination with the judicial branch to inform the state's judges of the program's existence and availability as a disciplinary option, and working in cooperation with organizations that provide services and support to attorneys with issues related to behavioral health or substance abuse. (Added by Stats. 2001, ch. 129. Amended by Stats. 2018, ch. 659; Stats. 2022, ch. 419.)

### **§ 6237 Effect on Disciplinary Authority**

It is the intent of the Legislature that the authorization of an Attorney Diversion and Assistance Program not be construed as limiting or altering the powers of the Supreme Court of this state to disbar or discipline licensees of the State Bar. (Added by Stats. 2001, ch. 129. Amended by Stats. 2018, ch. 659.)

### **§ 6238 Report to Board of Trustees**

The committee shall report to the Board of Trustees and to the Legislature not later than March 1, 2003, and annually thereafter, on the implementation and operation of the program. The report shall include, but is not limited to, information concerning the number of cases accepted, denied, or terminated with compliance or noncompliance, and annual expenditures related to the program. (Added by Stats. 2001, ch. 129. Amended by Stats. 2011, ch. 417.)

**ARTICLE 16**  
**ATTORNEYS PROVIDING IMMIGRATION**  
**REFORM ACT SERVICES**

**§ 6240 Definitions**

For purposes of this article, the following definitions apply:

(a) "Immigration reform act" means either of the following:

(1) Any pending or future act of Congress that is enacted after October 5, 2013, that authorizes an undocumented immigrant who entered the United States without inspection, who did not depart after the expiration of a nonimmigrant visa, or who stayed beyond an authorized period, to attain a lawful status under federal law or to otherwise remain in the country. The State Bar shall announce and post on its Internet Web site when an immigration reform act has been enacted.

(2) The President's executive actions on immigration announced on November 20, 2014, or any future executive action or order that authorizes an undocumented immigrant who entered the United States without inspection, who did not depart after the expiration of a nonimmigrant visa, or who stayed beyond an approved period pursuant to a visa, to attain a lawful status under federal law or to otherwise remain in the country. The State Bar shall announce and post on its Internet Web site when an executive action or order has been issued.

(b) (1) "Immigration reform act services" means services offered in connection with an immigration reform act that are exclusively for the purpose of preparing an application and other related initial processes in order for an undocumented immigrant, who entered the United States without inspection, who did not depart after the expiration of a nonimmigrant visa, or who stayed beyond an approved period pursuant to a visa, to attain a lawful status under federal law or to otherwise remain in the country

(2) Immigration reform act services do not include services that have an independent value apart from the preparation of an application pursuant to an immigration reform act and other related initial processes, including, but not limited

to, assisting a client in preventing removal from the United States, preventing any other adverse action related to the ability to remain in the United States, including pending legal action, and achieving postconviction relief from prior criminal convictions. (Added by Stats. 2013, ch. 574. Amended by Stats. 2015, ch. 6, effective June 17, 2015.)

**§ 6241 Applicability of Article**

This article shall apply to the following:

(a) An attorney who is an active licensee of the State Bar who provides immigration reform act services.

(b) An attorney who is not an active licensee of the State Bar, but who meets both of the following:

(1) The attorney is authorized by federal law to practice law and to represent persons before the Board of Immigration Appeals or the United States Citizenship and Immigration Services.

(2) The attorney is providing immigration reform act services in an office or business in California. (Added by Stats. 2013, ch. 574. Amended by Stats. 2018, ch. 659.)

**§ 6242 Immigration Reform Act Services;  
 Refunding of Advance Payment; Statement of  
 Accounting**

(a) It is unlawful for an attorney to demand or accept the advance payment of any funds from a person for immigration reform act services in connection with any of the following:

(1) An immigration reform act as defined in paragraph (1) of subdivision (a) of Section 6240, before the enactment of that act, when the relevant form or application is released or announced and is not subject to any pending legal action, or when the acceptance date of the relevant form or application has been announced, whichever is sooner.

(2) (A) Requests for expanded Deferred Action for Childhood Arrivals (DACA) under an immigration reform act as defined in paragraph (2) of subdivision (a) of Section 6240, before the date the United States

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Citizenship and Immigration Services begins accepting those requests.

(B) Requests for Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) under an immigration reform act as defined in paragraph (2) of subdivision (a) of Section 6240, before the date the United States Citizenship and Immigration Services begins accepting those requests.

(C) Any relief offered under any executive action announced or executive order issued, on or after the effective date of the act adding this subparagraph, that authorizes an undocumented immigrant who either entered the United States without inspection or who did not depart after the expiration of a nonimmigrant visa to attain a lawful status under federal law, before the executive action or order has been implemented and the relief is available.

(b) Any advance payment of funds for immigration reform act services that was received after October 5, 2013, but before the enactment or implementation of the immigration reform act for which the services were sought, shall be refunded to the client promptly, but no later than 30 days after the receipt of the funds or placed into a client trust account, which must be returned or utilized under the provisions of the act amending this subdivision no later than January 20, 2017.

(c) (1) If an attorney providing immigration reform act services accepted funds for immigration reform act services prior to the effective date of this amendment to this section, and the services to be performed in connection with payment of those funds were rendered, the attorney shall promptly, but no later than 30 days after the effective date of this amendment to this section, provide the client with a statement of accounting describing the services rendered.

(2) (A) Any funds received before the effective date of this amendment to this section for which immigration reform act services were not rendered prior to the effective date of this amendment to this section shall be either refunded to the client or deposited in a client trust account.

(B) If an attorney deposits funds in a client trust account pursuant to this paragraph, he or she shall provide a written notice, in both English and the client's native language, informing the client of the following:

(i) That there are no benefits or relief available, and that no application for such benefits or relief may be processed, until enactment or implementation of an immigration reform act and the related necessary federal regulations or forms, and that, commencing with the effective date of this amendment to this section, it is unlawful for an attorney to demand or accept the advance payment of any funds from a person for immigration reform act services before the enactment or implementation of an immigration reform act.

(ii) That he or she may report complaints to the Executive Office for Immigration Review of the United States Department of Justice, to the State Bar of California, or to the bar of the court of any state, possession, territory, or commonwealth of the United States or of the District of Columbia where the attorney is admitted to practice law. The notice shall include the toll-free telephone numbers and Internet Web sites of those entities. (Added by Stats. 2013, ch. 574. Amended by Stats. 2015, ch. 6, effective June 17, 2015.)

### **§ 6243 Written Contract for Legal Services; Reporting of Complaints; Languages for Form of Notice; Failure to Comply**

(a) (1) When a contract for legal services is required in writing pursuant to Section 6148, or is subject to Section 1632 of the Civil Code, an attorney providing immigration reform act services shall provide a written notice informing the client that he or she may report complaints to the Executive Office for Immigration Review of the United States Department of Justice, to the State Bar of California, or to the bar of the court of any state, possession, territory, or commonwealth of the United States or of the District of Columbia where the attorney is admitted to practice law. The notice

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shall include the toll-free telephone numbers and Internet Web sites of those entities.

(2) The notice shall be in English and in one of the languages of the forms translated by the State Bar pursuant to paragraph (1) of subdivision (b), if the contract for immigration reform act services was negotiated in one of those languages.

(3) The notice shall be attached or incorporated into any written contract for immigration reform act services. If the notice is attached to a written contract, it shall be signed by both the attorney and the client.

(b) (1) The State Bar shall provide the form of the notice required in subdivision (a) and shall post the form and translations on its Internet Web site. The State Bar shall translate the form into the following languages: Spanish, Chinese, Tagalog, Vietnamese, Korean, Armenian, Persian, Japanese, Russian, Hindi, Arabic, French, Punjabi, Portuguese, Mon-Khmer, Hmong, Thai, Gujarati. The State Bar, upon request, may translate the forms into other languages.

(2) Notwithstanding paragraph (1), an attorney providing immigration reform act services who meets the criteria of subdivision (b) of Section 6241 shall be responsible for adding and translating the name of, toll-free telephone number of, and information on the Internet Web site for, the bar of the court of any state, possession, territory, or commonwealth of the United States or the District of Columbia in which he or she is admitted to practice law.

(c) Failure to comply with any provision of this section renders the contract voidable at the option of the client, and the attorney shall, upon the contract being voided, be entitled to collect a reasonable fee.

(d) This section shall become operative when the State Bar posts on its Internet Web site the form and translations required by paragraph (1) of subdivision (b). The State Bar shall post the form and translations as soon as practicable, but no later than 45 days after the effective date of this section. (Added by Stats. 2013, ch. 574.)





# APPENDIX 1

## COMPREHENSIVE RULES CROSS-REFERENCE TABLE

<b>Current Rules of Professional Conduct</b> <i>Effective on November 1, 2018</i> (Rule Number and Title)	<b>"1992" Rules</b>	<b>"1989" Rules</b>	<b>"1975" Rules</b>
<b>1.0</b> Purpose and Function of the Rules of Professional Conduct	<b>1-100</b> , <i>pg. 181</i>	<b>1-100</b> , <i>pg. 213</i>	<b>1-100</b> , <i>pg. 231</i>
<b>1.0.1</b> Terminology	<b>1-100(B)</b> , <i>181</i>	<b>1-100</b> , <i>213</i>	<b>1-100</b> , <i>231</i>
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<b>1.2</b> Scope of Representation and Allocation of Authority	<b>No California Rule Counterpart</b>		
<b>1.2.1</b> Advising or Assisting the Violation of Law	<b>3-210</b> , <i>198</i>	<b>3-210</b> , <i>222</i>	<b>7-101</b> , <i>238</i>
<b>1.3</b> Diligence	<b>3-110(B)</b> <sup>1</sup> , <i>197</i>	<b>3-110</b> , <i>221</i>	<b>4-101</b> , <i>233</i> <b>5-102</b> , <i>237</i> <b>6-101</b> , <i>237</i>
<b>1.4</b> Communication with Clients	<b>3-500</b> , <i>202</i>	<b>3-500</b> , <i>223</i>	
<b>1.4.1</b> Communication of Settlement Offers	<b>3-510</b> , <i>202</i>	<b>3-510</b> , <i>224</i>	<b>5-105</b> , <i>237</i>
<b>1.4.2</b> Disclosure of Professional Liability Insurance	<b>3-410</b> , <i>201</i>		
<b>1.5</b> Fees for Legal Services	<b>4-200</b> , <i>206</i>	<b>4-200</b> , <i>227</i>	<b>2-107</b> , <i>233</i>
<b>1.5.1</b> Fee Divisions Among Lawyers	<b>2-200</b> , <i>191</i>	<b>2-200</b> , <i>219</i>	<b>2-108</b> , <i>233</i>
<b>1.6</b> Confidential Information of a Client	<b>3-100</b> , <i>193</i>		
<b>1.7</b> Conflict of Interest: Current Clients	<b>3-310(B), (C)</b> , <i>199</i> <b>3-320</b> , <i>200</i>	<b>3-110</b> , <i>221</i>	<b>5-102</b> , <i>237</i> <b>4-101</b> , <i>236</i>
<b>1.8.1</b> Business Transactions with a Client and Pecuniary Interests Adverse to the Client	<b>3-300</b> , <i>198</i>	<b>3-300</b> , <i>221</i>	<b>5-101</b> , <i>236</i>
<b>1.8.2</b> Use of Current Client's Information	<b>No California Rule Counterpart<sup>2</sup></b>		
<b>1.8.3</b> Gifts from Client	<b>4-400</b> , <i>207</i>	<b>4-400</b> , <i>228</i>	
<b>1.8.5</b> Payment of Personal or Business Expenses Incurred by or for a Client	<b>4-210</b> , <i>207</i>	<b>4-210</b> , <i>227</i>	<b>5-104</b> , <i>237</i>
<b>1.8.6</b> Compensation from One Other than Client	<b>3-310(F)</b> , <i>199</i>	<b>3-110</b> , <i>221</i>	<b>5-102</b> , <i>237</i> <b>4-101</b> , <i>236</i>
<b>1.8.7</b> Aggregate Settlements	<b>3-310(D)</b> , <i>199</i>	<b>3-110</b> , <i>221</i>	<b>5-102</b> , <i>237</i> <b>4-101</b> , <i>236</i>
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<b>1.8.9</b> Purchasing Property at a Foreclosure or a Sale Subject to Judicial Review	<b>4-300</b> , <i>207</i>	<b>4-300</b> , <i>228</i>	<b>5-103</b> , <i>237</i>
<b>1.8.10</b> Sexual Relations with Current Client	<b>3-120</b> , <i>197</i>		

<sup>1</sup> Rule 3-110(B) provides:

(B) For purposes of this rule, "competence" in any legal service shall mean to apply the 1) *diligence*, 2) learning and skill, and 3) mental, emotional, and physical ability reasonably necessary for the performance of such service. (Emphasis added.)

<sup>2</sup> But see Cal. Bus. & Prof. Code § 6068(e)(1).

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<b>Current Rules of Professional Conduct</b> <i>Effective on November 1, 2018</i> (Rule Number and Title)	<b>"1992" Rules</b>	<b>"1989" Rules</b>	<b>"1975" Rules</b>
<b>1.8.11</b> Imputation of Prohibitions Under Rules 1.8.1 to 1.8.9	<b>No California Rule Counterpart</b>		
<b>1.9</b> Duties To Former Clients	<b>3-310(E)</b> , <i>pg. 199</i>	<b>3-110</b> , <i>pg. 221</i>	<b>5-102</b> , <i>pg. 237</i> <b>4-101</b> , <i>pg. 236</i>
<b>1.10</b> Imputation of Conflicts of Interest: General Rule	<b>No California Rule Counterpart</b>		
<b>1.11</b> Special Conflicts of Interest for Former and Current Government Officials and Employees	<b>No California Rule Counterpart</b>		
<b>1.12</b> Former Judge, Arbitrator, Mediator or Other Third-Party Neutral	<b>No California Rule Counterpart</b>		
<b>1.13</b> Organization as Client	<b>3-600</b> , 2021	<b>3-600</b> , <i>pg. 224</i>	
<b>1.14</b> [Reserved] <sup>3</sup>			
<b>1.15</b> Safekeeping Funds and Property of Clients and Other Persons	<b>4-100</b> , 205	<b>4-100</b> , 226	<b>8-101</b> , 240
<b>1.16</b> Declining or Terminating Representation	<b>3-700</b> , 203	<b>3-700</b> , 225	<b>2-111</b> , 234
<b>1.17</b> Sale of a Law Practice	<b>2-300</b> , 191	<b>2-300</b> , 220	
<b>1.18</b> Duties to Prospective Client	<b>No California Rule Counterpart</b>		
<b>2.1</b> Advisor	<b>No California Rule Counterpart</b>		
<b>2.3</b> [Reserved] <sup>4</sup>			
<b>2.4</b> Lawyer as Third-Party Neutral	<b>No California Rule Counterpart</b>		
<b>2.4.1</b> Lawyer as Temporary Judge, Referee, or Court-Appointed Arbitrator	<b>1-710</b> , 189		
<b>3.1</b> Meritorious Claims and Contentions	<b>3-200</b> , 198	<b>3-200</b> , 221	<b>2-110</b> , 234
<b>3.2</b> Delay of Litigation	<b>No California Rule Counterpart</b>		
<b>3.3</b> Candor Toward the Tribunal	<b>5-200(A)-(D)</b> , 211	<b>5-200</b> , 229	<b>7-105</b> , 239
<b>3.4</b> Fairness to Opposing Party and Counsel	<b>5-200(E)</b> , 211 <b>5-220</b> , 211 <b>5-310</b> , 212	<b>5-200</b> , 229 <b>5-220</b> , 229 <b>5-310</b> , 230	<b>7-105</b> , 239 <b>7-107</b> , 239
<b>3.5</b> Contact with Judges, Officials, Employees, and Jurors	<b>5-300</b> , 211 <b>5-320</b> , 212	<b>5-300</b> , 229 <b>5-320</b> , 230	<b>7-108</b> , 240 <b>7-106</b> , 239
<b>3.6</b> Trial Publicity	<b>5-120</b> , 210		
<b>3.7</b> Lawyer as Witness	<b>5-210</b> , 211	<b>5-210</b> , 229	<b>2-111</b> , 234
<b>3.8</b> Special Responsibilities of a Prosecutor	<b>5-110</b> , 210	<b>5-110</b> , 229	<b>7-104</b> , 238
<b>3.9</b> Advocate in Non-adjudicative Proceedings	<b>No California Rule Counterpart</b>		
<b>3.10</b> Threatening Criminal, Administrative, or Disciplinary Charges	<b>5-100</b> , 207	<b>5-100</b> , 228	<b>7-104</b> , 238
<b>4.1</b> Truthfulness in Statements to Others	<b>No California Rule Counterpart</b>		
<b>4.2</b> Communication with a Represented Person	<b>2-100</b> , 190	<b>2-100</b> , 219	<b>7-103</b> , 238

<sup>3</sup> ABA Model Rule 1.14 ("Client With Diminished Capacity") has not been adopted in California.

<sup>4</sup> ABA Model Rule 2.3 ("Evaluation For Use By Third Persons") has not been adopted in California.

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<b>Current Rules of Professional Conduct</b> <i>Effective on November 1, 2018</i> (Rule Number and Title)	<b>"1992" Rules</b>	<b>"1989" Rules</b>	<b>"1975" Rules</b>
<b>4.3</b> Communicating with an Unrepresented Person	<b>No California Rule Counterpart</b>		
<b>4.4</b> Duties Concerning Inadvertently Transmitted Writings	<b>No California Rule Counterpart</b>		
<b>5.1</b> Responsibilities of Managerial and Supervisory Lawyers	<b>No California Rule Counterpart<sup>5</sup></b>		
<b>5.2</b> Responsibilities of a Subordinate Lawyer	<b>No California Rule Counterpart</b>		
<b>5.3</b> Responsibilities Regarding Nonlawyer Assistants	<b>No California Rule Counterpart<sup>6</sup></b>		
<b>5.3.1</b> Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Lawyer	<b>1-311, pg. 183</b>		
<b>5.4</b> Financial and Similar Arrangements with Nonlawyers	<b>1-310, 183</b> <b>1-320, 184</b> <b>1-600, 188</b>	<b>1-310, 214</b> <b>1-320, 215</b> <b>1-600, 216</b>	<b>3-103, 236</b> <b>3-102, 236</b> <b>2-102, 232</b>
<b>5.5</b> Unauthorized Practice of Law; Multijurisdictional Practice of Law	<b>1-300, 183</b>	<b>1-300, 214</b>	<b>3-101, 236</b>
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<b>6.3</b> Membership in Legal Services Organizations	<b>No California Rule Counterpart</b>		
<b>6.5</b> Limited Legal Services Programs	<b>1-650, 188</b>		
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<b>7.2</b> Advertising	<b>1-320(B)-(C) &amp; (A)(4), 183</b> <b>1-400, 185</b> <b>2-200, 191</b>	<b>1-320, 215</b> <b>1-400, 215</b> <b>2-200, 219</b>	<b>3-102, 236</b> <b>2-101, 231</b> <b>2-108, 233</b>
<b>7.3</b> Solicitation of Clients	<b>1-400, 185</b>	<b>1-400, 215</b>	<b>2-101, 231</b>
<b>7.4</b> Communication of Fields of Practice and Specialization	<b>1-400, 185</b>	<b>1-400, 215</b>	<b>2-101, 231</b>
<b>7.5</b> Firm Names and Trade Names	<b>1-400, 185</b>	<b>1-400, 215</b>	<b>2-101, 231</b>
<b>7.6</b> [Reserved] <sup>7</sup>			
<b>8.1</b> False Statement Regarding Application for Admission to Practice Law	<b>1-200, 182</b>	<b>1-200, 214</b>	<b>1-101, 231</b>
<b>8.1.1</b> Compliance with Conditions of Discipline and Agreements in Lieu of Discipline	<b>1-110, 182</b>	<b>1-110, 214</b>	<b>9-101, 240</b>
<b>8.2</b> Judicial Officials	<b>1-700, 189</b>		
<b>8.3</b> Reporting Professional Misconduct	<b>No California Rule Counterpart</b>		
<b>8.4</b> Misconduct	<b>1-120, 181</b>	<b>1-120, 214</b>	
<b>8.4.1</b> Prohibited Discrimination, Harassment and Retaliation	<b>2-400, 192</b>		
<b>8.5</b> Disciplinary Authority; Choice of Law	<b>1-100(D), 182</b>	<b>1-100, 213</b>	<b>1-100, 231</b>

<sup>5</sup> But see rule 3-110, Discussion ¶. 1.

<sup>6</sup> But see rule 3-110, Discussion ¶. 1.

<sup>7</sup> ABA Model Rule 7.6 ("Political Contributions To Obtain Legal Engagements Or Appointments By Judges") has not been adopted in California.



## APPENDIX 2

### **“1992” CALIFORNIA RULES OF PROFESSIONAL CONDUCT**

(Effective from September 14, 1992 to October 31, 2018)

#### **CHAPTER 1.**

#### **PROFESSIONAL INTEGRITY IN GENERAL**

#### **Rule 1-100 Rules of Professional Conduct, in General**

(A) Purpose and Function.

The following rules are intended to regulate professional conduct of members of the State Bar through discipline. They have been adopted by the Board of Governors of the State Bar of California and approved by the Supreme Court of California pursuant to Business and Professions Code sections 6076 and 6077 to protect the public and to promote respect and confidence in the legal profession. These rules together with any standards adopted by the Board of Governors pursuant to these rules shall be binding upon all members of the State Bar.

For a willful breach of any of these rules, the Board of Governors has the power to discipline members as provided by law.

The prohibition of certain conduct in these rules is not exclusive. Members are also bound by applicable law including the State Bar Act (Bus. & Prof. Code, §6000 et seq.) and opinions of California courts. Although not binding, opinions of ethics committees in California should be consulted by members for guidance on proper professional conduct. Ethics opinions and rules and standards promulgated by other jurisdictions and bar associations may also be considered.

These rules are not intended to create new civil causes of action. Nothing in these rules shall be deemed to create, augment, diminish, or eliminate any substantive legal duty of lawyers or the non-disciplinary consequences of violating such a duty.

(B) Definitions.

(1) “Law Firm” means:

(a) two or more lawyers whose activities constitute the practice of law, and who share its profits, expenses, and liabilities; or

(b) a law corporation which employs more than one lawyer; or

(c) a division, department, office, or group within a business entity, which includes more than one lawyer who performs legal services for the business entity; or

(d) a publicly funded entity which employs more than one lawyer to perform legal services.

(2) “Member” means a member of the State Bar of California.

(3) “Lawyer” means a member of the State Bar of California or a person who is admitted in good standing of 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.

(4) “Associate” means an employee or fellow employee who is employed as a lawyer.

(5) “Shareholder” means a shareholder in a professional corporation pursuant to Business and Professions Code section 6160 et seq.

(C) Purpose of Discussions.

Because it is a practical impossibility to convey in black letter form all of the nuances of these disciplinary rules, the comments contained in the Discussions of the rules, while they do not add independent basis for imposing discipline, are intended to provide guidance for interpreting the rules and practicing in compliance with them.

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### (D) Geographic Scope of Rules.

#### (1) As to members:

These rules shall govern the activities of members in and outside this state, except as members lawfully practicing outside this state may be specifically required by a jurisdiction in which they are practicing to follow rules of professional conduct different from these rules.

#### (2) As to lawyers from other jurisdictions who are not members:

These rules shall also govern the activities of lawyers while engaged in the performance of lawyer functions in this state; but nothing contained in these rules shall be deemed to authorize the performance of such functions by such persons in this state except as otherwise permitted by law.

### (E) These rules may be cited and referred to as “Rules of Professional Conduct of the State Bar of California.”

#### **Discussion:**

The Rules of Professional Conduct are intended to establish the standards for members for purposes of discipline. (See *Ames v. State Bar* (1973) 8 Cal.3d 910 [106 Cal.Rptr. 489].) The fact that a member has engaged in conduct that may be contrary to these rules does not automatically give rise to a civil cause of action. (See *Noble v. Sears, Roebuck & Co.* (1973) 33 Cal.App.3d 654 [109 Cal.Rptr. 269]; *Wilhelm v. Pray, Price, Williams & Russell* (1986) 186 Cal.App.3d 1324 [231 Cal.Rptr. 355].) These rules are not intended to supercede existing law relating to members in non-disciplinary contexts. (See, e.g., *Klemm v. Superior Court* (1977) 75 Cal.App.3d 893 [142 Cal.Rptr. 509] (motion for disqualification of counsel due to a conflict of interest); *Academy of California Optometrists, Inc. v. Superior Court* (1975) 51 Cal.App.3d 999 [124 Cal.Rptr. 668] (duty to return client files); *Chronometrics, Inc. v. Sysgen, Inc.* (1980) 110 Cal.App.3d 597 [168 Cal.Rptr. 196] (disqualification of member appropriate remedy for improper communication with adverse party).)

Law firm, as defined by subparagraph (B)(1), is not intended to include an association of lawyers who do not share profits, expenses, and liabilities. The subparagraph is not intended to imply that a law firm may include a person who is not a member in violation of the law

governing the unauthorized practice of law. (Amended by order of the Supreme Court, operative September 14, 1992.)

**[Publisher’s Note re Rule 1-100(A):** Operative January 1, 2012, Business and Professions Code section 6010, in part, provides that the State Bar is governed by a board known as the board of trustees of the State Bar and that any provision of law referring to the “board of governors” shall be deemed to refer to the “board of trustees.” In accordance with this law, references to the “board of governors” included in the current Rules of Professional Conduct are deemed to refer to the “board of trustees.”]

### **Rule 1-110 Disciplinary Authority of the State Bar**

A member shall comply with conditions attached to public or private reprimands or other discipline administered by the State Bar pursuant to Business and Professions Code sections 6077 and 6078 and rule 9.19, California Rules of Court. (Amended by order of the Supreme Court, operative July 11, 2008.)

### **Rule 1-120 Assisting, Soliciting, or Inducing Violations**

A member shall not knowingly assist in, solicit, or induce any violation of these rules or the State Bar Act.

### **Rule 1-200 False Statement Regarding Admission to the State Bar**

(A) A member shall not knowingly make a false statement regarding a material fact or knowingly fail to disclose a material fact in connection with an application for admission to the State Bar.

(B) A member shall not further an application for admission to the State Bar of a person whom the member knows to be unqualified in respect to character, education, or other relevant attributes.

(C) This rule shall not prevent a member from serving as counsel of record for an applicant for admission to practice in proceedings related to such admission.

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### ***Discussion:***

For purposes of rule 1-200 “admission” includes readmission.

### **Rule 1-300 Unauthorized Practice of Law**

(A) A member shall not aid any person or entity in the unauthorized practice of law.

(B) A member shall not practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction.

### **Rule 1-310 Forming a Partnership With a Non-Lawyer**

A member shall not form a partnership with a person who is not a lawyer if any of the activities of that partnership consist of the practice of law.

### ***Discussion:***

Rule 1-310 is not intended to govern members’ activities which cannot be considered to constitute the practice of law. It is intended solely to preclude a member from being involved in the practice of law with a person who is not a lawyer. (Amended by order of Supreme Court, operative September 14, 1992.)

### **Rule 1-311 Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Member**

(A) For purposes of this rule:

(1) “Employ” means to engage the services of another, including employees, agents, independent contractors and consultants, regardless of whether any compensation is paid;

(2) “Involuntarily inactive member” means a member who is ineligible to practice law as a result of action taken pursuant to Business and Professions Code sections 6007, 6203(c), or California Rule of Court 9.31; and

(3) “Resigned member” means a member who has resigned from the State Bar while disciplinary charges are pending.

(B) A member shall not employ, associate professionally with, or aid a person the member knows or reasonably should know is a disbarred, suspended, resigned, or involuntarily inactive member to perform the following on behalf of the member’s client:

(1) Render legal consultation or advice to the client;

(2) Appear on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer;

(3) Appear as a representative of the client at a deposition or other discovery matter;

(4) Negotiate or transact any matter for or on behalf of the client with third parties;

(5) Receive, disburse or otherwise handle the client’s funds; or

(6) Engage in activities which constitute the practice of law.

(C) A member may employ, associate professionally with, or aid a disbarred, suspended, resigned, or involuntarily inactive member to perform research, drafting or clerical activities, including but not limited to:

(1) Legal work of a preparatory nature, such as legal research, the assemblage of data and other necessary information, drafting of pleadings, briefs, and other similar documents;

(2) Direct communication with the client or third parties regarding matters such as scheduling, billing, updates, confirmation of receipt or sending of correspondence and messages; or

(3) Accompanying an active member in attending a deposition or other discovery matter for the limited purpose of providing clerical assistance to the active member who will appear as the representative of the client.

(D) Prior to or at the time of employing a person the member knows or reasonably should know is a disbarred, suspended, resigned, or involuntarily inactive member, the member shall serve upon the State Bar written notice of the employment, including a full description of such person’s current bar status. The

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written notice shall also list the activities prohibited in paragraph (B) and state that the disbarred, suspended, resigned, or involuntarily inactive member will not perform such activities. The member shall serve similar written notice upon each client on whose specific matter such person will work, prior to or at the time of employing such person to work on the client's specific matter. The member shall obtain proof of service of the client's written notice and shall retain such proof and a true and correct copy of the client's written notice for two years following termination of the member's employment with the client.

(E) A member may, without client or State Bar notification, employ a disbarred, suspended, resigned, or involuntarily inactive member whose sole function is to perform office physical plant or equipment maintenance, courier or delivery services, catering, reception, typing or transcription, or other similar support activities.

(F) Upon termination of the disbarred, suspended, resigned, or involuntarily inactive member, the member shall promptly serve upon the State Bar written notice of the termination.

### **Discussion:**

For discussion of the activities that constitute the practice of law, see *Farnham v. State Bar* (1976) 17 Cal.3d 605 [131 Cal.Rptr. 611]; *Bluestein v. State Bar* (1974) 13 Cal.3d 162 [118 Cal.Rptr. 175]; *Baron v. City of Los Angeles* (1970) 2 Cal.3d 535 [86 Cal.Rptr. 673]; *Crawford v. State Bar* (1960) 54 Cal.2d 659 [7 Cal.Rptr. 746]; *People v. Merchants Protective Corporation* (1922) 189 Cal. 531, 535 [209 P. 363]; *People v. Landlords Professional Services* (1989) 215 Cal.App.3d 1599 [264 Cal.Rptr. 548]; and *People v. Sipper* (1943) 61 Cal.App.2d Supp. 844 [142 P.2d 960].)

Paragraph (D) is not intended to prevent or discourage a member from fully discussing with the client the activities that will be performed by the disbarred, suspended, resigned, or involuntarily inactive member on the client's matter. If a member's client is an organization, then the written notice required by paragraph (D) shall be served upon the highest authorized officer, employee, or constituent overseeing the particular engagement. (See rule 3-600.)

Nothing in rule 1-311 shall be deemed to limit or preclude any activity engaged in pursuant to rules 9.40, 9.41, 9.42, and 9.44 of the California Rules of Court, or

any local rule of a federal district court concerning admission *pro hac vice*. (Added by Order of Supreme Court, operative August 1, 1996. Amended by order of the Supreme Court, operative July 11, 2008.)

### **Rule 1-320 Financial Arrangements With Non-Lawyers**

(A) Neither a member nor a law firm shall directly or indirectly share legal fees with a person who is not a lawyer, except that:

(1) An agreement between a member and a law firm, partner, or associate may provide for the payment of money after the member's death to the member's estate or to one or more specified persons over a reasonable period of time; or

(2) A member or law firm undertaking to complete unfinished legal business of a deceased member may pay to the estate of the deceased member or other person legally entitled thereto that proportion of the total compensation which fairly represents the services rendered by the deceased member; or

(3) A member or law firm may include non-member employees in a compensation, profit-sharing, or retirement plan even though the plan is based in whole or in part on a profit-sharing arrangement, if such plan does not circumvent these rules or Business and Professions Code section 6000 et seq.; or

(4) A member may pay a prescribed registration, referral, or participation fee to a lawyer referral service established, sponsored, and operated in accordance with the State Bar of California's Minimum Standards for a Lawyer Referral Service in California.

(B) A member shall not compensate, give, or promise anything of value to any person or entity for the purpose of recommending or securing employment of the member or the member's law firm by a client, or as a reward for having made a recommendation resulting in employment of the member or the member's law firm by a client. A member's offering of or giving a gift or gratuity to any person or entity having made a recommendation resulting in the employment of the member or the member's law firm shall not of itself violate this rule, provided that the gift or gratuity was not offered or given in consideration of any promise,



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agreement, or understanding that such a gift or gratuity would be forthcoming or that referrals would be made or encouraged in the future.

(C) A member shall not compensate, give, or promise anything of value to any representative of the press, radio, television, or other communication medium in anticipation of or in return for publicity of the member, the law firm, or any other member as such in a news item, but the incidental provision of food or beverage shall not of itself violate this rule.

### ***Discussion:***

Rule 1-320(C) is not intended to preclude compensation to the communications media in exchange for advertising the member's or law firm's availability for professional employment. (Amended by order of Supreme Court, operative September 14, 1992.)

### **Rule 1-400 Advertising and Solicitation**

(A) For purposes of this rule, "communication" means any message or offer made by or on behalf of a member concerning the availability for professional employment of a member or a law firm directed to any former, present, or prospective client, including but not limited to the following:

- (1) Any use of firm name, trade name, fictitious name, or other professional designation of such member or law firm; or
- (2) Any stationery, letterhead, business card, sign, brochure, or other comparable written material describing such member, law firm, or lawyers; or
- (3) Any advertisement (regardless of medium) of such member or law firm directed to the general public or any substantial portion thereof; or
- (4) Any unsolicited correspondence from a member or law firm directed to any person or entity.

(B) For purposes of this rule, a "solicitation" means any communication:

- (1) Concerning the availability for professional employment of a member or a law firm in which a significant motive is pecuniary gain; and

(2) Which is:

- (a) delivered in person or by telephone, or
- (b) directed by any means to a person known to the sender to be represented by counsel in a matter which is a subject of the communication.

(C) A solicitation shall not be made by or on behalf of a member or law firm to a prospective client with whom the member or law firm has no family or prior professional relationship, unless the solicitation is protected from abridgment by the Constitution of the United States or by the Constitution of the State of California. A solicitation to a former or present client in the discharge of a member's or law firm's professional duties is not prohibited.

(D) A communication or a solicitation (as defined herein) shall not:

- (1) Contain any untrue statement; or
- (2) Contain any matter, or present or arrange any matter in a manner or format which is false, deceptive, or which tends to confuse, deceive, or mislead the public; or
- (3) Omit to state any fact necessary to make the statements made, in the light of circumstances under which they are made, not misleading to the public; or
- (4) Fail to indicate clearly, expressly, or by context, that it is a communication or solicitation, as the case may be; or
- (5) Be transmitted in any manner which involves intrusion, coercion, duress, compulsion, intimidation, threats, or vexatious or harassing conduct.
- (6) State that a member is a "certified specialist" unless the member holds a current certificate as a specialist issued by the Board of Legal Specialization, or any other entity accredited by the State Bar to designate specialists pursuant to standards adopted by the Board of Governors, and states the complete name of the entity which granted certification.

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(E) The Board of Governors of the State Bar shall formulate and adopt standards as to communications which will be presumed to violate this rule 1-400. The standards shall only be used as presumptions affecting the burden of proof in disciplinary proceedings involving alleged violations of these rules. "Presumption affecting the burden of proof" means that presumption defined in Evidence Code sections 605 and 606. Such standards formulated and adopted by the Board, as from time to time amended, shall be effective and binding on all members.

(F) A member shall retain for two years a true and correct copy or recording of any communication made by written or electronic media. Upon written request, the member shall make any such copy or recording available to the State Bar, and, if requested, shall provide to the State Bar evidence to support any factual or objective claim contained in the communication.

**[Publisher's Note: Former rule 1-400(D)(6) repealed by order of the Supreme Court effective November 30, 1992. New rule 1-400(D)(6) added by order of the Supreme Court effective June 1, 1997.]**

### **Standards:**

Pursuant to rule 1-400(E) the Board has adopted the following standards, effective May 27, 1989, unless noted otherwise, as forms of "communication" defined in rule 1-400(A) which are presumed to be in violation of rule 1-400:

- (1) A "communication" which contains guarantees, warranties, or predictions regarding the result of the representation.
- (2) A "communication" which contains testimonials about or endorsements of a member unless such communication also contains an express disclaimer such as "this testimonial or endorsement does not constitute a guarantee, warranty, or prediction regarding the outcome of your legal matter."
- (3) A "communication" which is delivered to a potential client whom the member knows or should reasonably know is in such a physical, emotional, or mental state that he or she would not be expected to exercise reasonable judgment as to the retention of counsel.

(4) A "communication" which is transmitted at the scene of an accident or at or en route to a hospital, emergency care center, or other health care facility.

(5) A "communication," except professional announcements, seeking professional employment for pecuniary gain, which is transmitted by mail or equivalent means which does not bear the word "Advertisement," "Newsletter" or words of similar import in 12 point print on the first page. If such communication, including firm brochures, newsletters, recent legal development advisories, and similar materials, is transmitted in an envelope, the envelope shall bear the word "Advertisement," "Newsletter" or words of similar import on the outside thereof.

(6) A "communication" in the form of a firm name, trade name, fictitious name, or other professional designation which states or implies a relationship between any member in private practice and a government agency or instrumentality or a public or non-profit legal services organization.

(7) A "communication" in the form of a firm name, trade name, fictitious name, or other professional designation which states or implies that a member has a relationship to any other lawyer or a law firm as a partner or associate, or officer or shareholder pursuant to Business and Professions Code sections 6160-6172 unless such relationship in fact exists.

(8) A "communication" which states or implies that a member or law firm is "of counsel" to another lawyer or a law firm unless the former has a relationship with the latter (other than as a partner or associate, or officer or shareholder pursuant to Business and Professions Code sections 6160-6172) which is close, personal, continuous, and regular.

(9) A "communication" in the form of a firm name, trade name, fictitious name, or other professional designation used by a member or law firm in private practice which differs materially from any other such designation used by such member or law firm at the same time in the same community.

## APPENDIX 2

(10) A “communication” which implies that the member or law firm is participating in a lawyer referral service which has been certified by the State Bar of California or as having satisfied the Minimum Standards for Lawyer Referral Services in California, when that is not the case.

(11) (Repealed. See rule 1-400(D)(6) for the operative language on this subject.)

(12) A “communication,” except professional announcements, in the form of an advertisement primarily directed to seeking professional employment primarily for pecuniary gain transmitted to the general public or any substantial portion thereof by mail or equivalent means or by means of television, radio, newspaper, magazine or other form of commercial mass media which does not state the name of the member responsible for the communication. When the communication is made on behalf of a law firm, the communication shall state the name of at least one member responsible for it.

(13) A “communication” which contains a dramatization unless such communication contains a disclaimer which states “this is a dramatization” or words of similar import.

(14) A “communication” which states or implies “no fee without recovery” unless such communication also expressly discloses whether or not the client will be liable for costs.

(15) A “communication” which states or implies that a member is able to provide legal services in a language other than English unless the member can actually provide legal services in such language or the communication also states in the language of the communication (a) the employment title of the person who speaks such language and (b) that the person is not a member of the State Bar of California, if that is the case.

(16) An unsolicited “communication” transmitted to the general public or any substantial portion thereof primarily directed to seeking professional employment primarily for pecuniary gain which sets forth a specific fee or range of fees for a particular service where, in fact, the member charges a greater fee than advertised in such communication within a period of 90 days following dissemination of such communication, unless such

communication expressly specifies a shorter period of time regarding the advertised fee. Where the communication is published in the classified or “yellow pages” section of telephone, business or legal directories or in other media not published more frequently than once a year, the member shall conform to the advertised fee for a period of one year from initial publication, unless such communication expressly specifies a shorter period of time regarding the advertised fee. (Amended by order of Supreme Court, operative September 14, 1992. Standard (5) amended by the Board, effective May 11, 1994. Standards (12) - (16) added by the Board, effective May 11, 1994. Standard (11) repealed June 1, 1997.)

*[Publisher’s Note re Rule 1-400(D)(6) and (E): Operative January 1, 2012, Business and Professions Code section 6010, in part, provides that the State Bar is governed by a board known as the board of trustees of the State Bar and that any provision of law referring to the “board of governors” shall be deemed to refer to the “board of trustees.” In accordance with this law, references to the “board of governors” included in the current Rules of Professional Conduct are deemed to refer to the “board of trustees.”]*

### **Rule 1-500      Agreements Restricting a Member’s Practice**

(A) A member shall not be a party to or participate in offering or making an agreement, whether in connection with the settlement of a lawsuit or otherwise, if the agreement restricts the right of a member to practice law, except that this rule shall not prohibit such an agreement which:

- (1) Is a part of an employment, shareholders’, or partnership agreement among members provided the restrictive agreement does not survive the termination of the employment, shareholder, or partnership relationship; or
- (2) Requires payments to a member upon the member’s retirement from the practice of law; or
- (3) Is authorized by Business and Professions Code sections 6092.5 subdivision (i), or 6093.

(B) A member shall not be a party to or participate in offering or making an agreement which precludes the reporting of a violation of these rules.

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### **Discussion:**

Paragraph (A) makes it clear that the practice, in connection with settlement agreements, of proposing that a member refrain from representing other clients in similar litigation, is prohibited. Neither counsel may demand or suggest such provisions nor may opposing counsel accede or agree to such provisions.

Paragraph (A) permits a restrictive covenant in a law corporation, partnership, or employment agreement. The law corporation shareholder, partner, or associate may agree not to have a separate practice during the existence of the relationship; however, upon termination of the relationship (whether voluntary or involuntary), the member is free to practice law without any contractual restriction except in the case of retirement from the active practice of law. (Amended by order of Supreme Court, operative September 14, 1992.)

### **Rule 1-600 Legal Service Programs**

(A) A member shall not participate in a nongovernmental program, activity, or organization furnishing, recommending, or paying for legal services, which allows any third person or organization to interfere with the member's independence of professional judgment, or with the client-lawyer relationship, or allows unlicensed persons to practice law, or allows any third person or organization to receive directly or indirectly any part of the consideration paid to the member except as permitted by these rules, or otherwise violates the State Bar Act or these rules.

(B) The Board of Governors of the State Bar shall formulate and adopt Minimum Standards for Lawyer Referral Services, which, as from time to time amended, shall be binding on members.

### **Discussion:**

The participation of a member in a lawyer referral service established, sponsored, supervised, and operated in conformity with the Minimum Standards for a Lawyer Referral Service in California is encouraged and is not, of itself, a violation of these rules.

Rule 1-600 is not intended to override any contractual agreement or relationship between insurers and insureds regarding the provision of legal services.

Rule 1-600 is not intended to apply to the activities of a public agency responsible for providing legal services to a government or to the public.

For purposes of paragraph (A), "a nongovernmental program, activity, or organization" includes, but is not limited to group, prepaid, and voluntary legal service programs, activities, or organizations.

**[Publisher's Note re Rule 1-600(B):** *Operative January 1, 2012, Business and Professions Code section 6010, in part, provides that the State Bar is governed by a board known as the board of trustees of the State Bar and that any provision of law referring to the "board of governors" shall be deemed to refer to the "board of trustees."* In accordance with this law, references to the "board of governors" included in the current Rules of Professional Conduct are deemed to refer to the "board of trustees."]

### **Rule 1-650 Limited Legal Services Programs**

(A) A member who, under the auspices of a program sponsored by a court, government agency, bar association, law school, or nonprofit organization, provides short-term limited legal services to a client without expectation by either the member or the client that the member will provide continuing representation in the matter:

- (1) is subject to rule 3-310 only if the member knows that the representation of the client involves a conflict of interest; and
- (2) has an imputed conflict of interest only if the member knows that another lawyer associated with the member in a law firm would have a conflict of interest under rule 3-310 with respect to the matter.

(B) Except as provided in paragraph (A)(2), a conflict of interest that arises from a member's participation in a program under paragraph (A) will not be imputed to the member's law firm.

(C) The personal disqualification of a lawyer participating in the program will not be imputed to other lawyers participating in the program.

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### ***Discussion:***

[1] Courts, government agencies, bar associations, law schools and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services – such as advice or the completion of legal forms – that will assist persons in addressing their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, whenever a lawyer-client relationship is established, there is no expectation that the lawyer’s representation of the client will continue beyond that limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation.

[2] A member who provides short-term limited legal services pursuant to rule 1-650 must secure the client’s informed consent to the limited scope of the representation. If a short-term limited representation would not be reasonable under the circumstances, the member may offer advice to the client but must also advise the client of the need for further assistance of counsel. See rule 3-110. Except as provided in this rule 1-650, the Rules of Professional Conduct and the State Bar Act, including the member’s duty of confidentiality under Business and Professions Code § 6068(e)(1), are applicable to the limited representation.

[3] A member who is representing a client in the circumstances addressed by rule 1-650 ordinarily is not able to check systematically for conflicts of interest. Therefore, paragraph (A)(1) requires compliance with rule 3-310 only if the member knows that the representation presents a conflict of interest for the member. In addition, paragraph (A)(2) imputes conflicts of interest to the member only if the member knows that another lawyer in the member’s law firm would be disqualified under rule 3-310.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the member’s law firm, paragraph (B) provides that imputed conflicts of interest are inapplicable to a representation governed by this rule except as provided by paragraph (A)(2). Paragraph (A)(2) imputes conflicts of interest to the participating member when the member knows that any lawyer in

the member’s firm would be disqualified under rule 3-310. By virtue of paragraph (B), moreover, a member’s participation in a short-term limited legal services program will not be imputed to the member’s law firm or preclude the member’s law firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program’s auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with rule 1-650, a member undertakes to represent the client in the matter on an ongoing basis, rule 3-310 and all other rules become applicable. (Added by order of the Supreme Court, operative August 28, 2009.)

### **Rule 1-700 Member as Candidate for Judicial Office**

(A) A member who is a candidate for judicial office in California shall comply with Canon 5 of the Code of Judicial Ethics.

(B) For purposes of this rule, “candidate for judicial office” means a member seeking judicial office by election. The determination of when a member is a candidate for judicial office is defined in the terminology section of the California Code of Judicial Ethics. A member’s duty to comply with paragraph (A) shall end when the member announces withdrawal of the member’s candidacy or when the results of the election are final, whichever occurs first.

### ***Discussion:***

Nothing in rule 1-700 shall be deemed to limit the applicability of any other rule or law. (Added by order of the Supreme Court, operative November 21, 1997.)

### **Rule 1-710 Member as Temporary Judge, Referee, or Court-Appointed Arbitrator**

A member who is serving as a temporary judge, referee, or court-appointed arbitrator, and is subject under the Code of Judicial Ethics to Canon 6D, shall comply with the terms of that canon.

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### **Discussion:**

This rule is intended to permit the State Bar to discipline members who violate applicable portions of the Code of Judicial Ethics while acting in a judicial capacity pursuant to an order or appointment by a court.

Nothing in rule 1-710 shall be deemed to limit the applicability of any other rule or law. (Added by order of the Supreme Court, operative March 18, 1999.)

**[Publisher's Note:** *The California Code of Judicial Ethics is available on-line at the official website of the California Courts located at [www.courts.ca.gov](http://www.courts.ca.gov). Navigate to the "Forms & Rules" area of the website and select "California Code of Judicial Ethics" under the "Related Links" box.]*

### **CHAPTER 2. RELATIONSHIP AMONG MEMBERS**

#### **Rule 2-100      Communication With a Represented Party**

(A) While representing a client, a member shall not communicate directly or indirectly about the subject of the representation with a party the member knows to be represented by another lawyer in the matter, unless the member has the consent of the other lawyer.

(B) For purposes of this rule, a "party" includes:

- (1) An officer, director, or managing agent of a corporation or association, and a partner or managing agent of a partnership; or
- (2) An association member or an employee of an association, corporation, or partnership, if the subject of the communication is any act or omission of such person in connection with the matter which may be binding upon or imputed to the organization for purposes of civil or criminal liability or whose statement may constitute an admission on the part of the organization.

(C) This rule shall not prohibit:

- (1) Communications with a public officer, board, committee, or body; or

(2) Communications initiated by a party seeking advice or representation from an independent lawyer of the party's choice; or

(3) Communications otherwise authorized by law.

### **Discussion:**

Rule 2-100 is intended to control communications between a member and persons the member knows to be represented by counsel unless a statutory scheme or case law will override the rule. There are a number of express statutory schemes which authorize communications between a member and person who would otherwise be subject to this rule. These statutes protect a variety of other rights such as the right of employees to organize and to engage in collective bargaining, employee health and safety, or equal employment opportunity. Other applicable law also includes the authority of government prosecutors and investigators to conduct criminal investigations, as limited by the relevant decisional law.

Rule 2-100 is not intended to prevent the parties themselves from communicating with respect to the subject matter of the representation, and nothing in the rule prevents a member from advising the client that such communication can be made. Moreover, the rule does not prohibit a member who is also a party to a legal matter from directly or indirectly communicating on his or her own behalf with a represented party. Such a member has independent rights as a party which should not be abrogated because of his or her professional status. To prevent any possible abuse in such situations, the counsel for the opposing party may advise that party (1) about the risks and benefits of communications with a lawyer-party, and (2) not to accept or engage in communications with the lawyer-party.

Rule 2-100 also addresses the situation in which member A is contacted by an opposing party who is represented and, because of dissatisfaction with that party's counsel, seeks A's independent advice. Since A is employed by the opposition, the member cannot give independent advice.

As used in paragraph (A), "the subject of the representation," "matter," and "party" are not limited to a litigation context.

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Paragraph (B) is intended to apply only to persons employed at the time of the communication. (See *Triple A Machine Shop, Inc. v. State of California* (1989) 213 Cal.App.3d 131 [261 Cal.Rptr. 493].)

Subparagraph (C)(2) is intended to permit a member to communicate with a party seeking to hire new counsel or to obtain a second opinion. A member contacted by such a party continues to be bound by other Rules of Professional Conduct. (See, e.g., rules 1-400 and 3-310.) (Amended by order of Supreme Court, operative September 14, 1992.)

### **Rule 2-200 Financial Arrangements Among Lawyer**

(A) A member shall not divide a fee for legal services with a lawyer who is not a partner of, associate of, or shareholder with the member unless:

(1) The client has consented in writing thereto after a full disclosure has been made in writing that a division of fees will be made and the terms of such division; and

(2) The total fee charged by all lawyers is not increased solely by reason of the provision for division of fees and is not unconscionable as that term is defined in rule 4-200.

(B) Except as permitted in paragraph (A) of this rule or rule 2-300, a member shall not compensate, give, or promise anything of value to any lawyer for the purpose of recommending or securing employment of the member or the member's law firm by a client, or as a reward for having made a recommendation resulting in employment of the member or the member's law firm by a client. A member's offering of or giving a gift or gratuity to any lawyer who has made a recommendation resulting in the employment of the member or the member's law firm shall not of itself violate this rule, provided that the gift or gratuity was not offered in consideration of any promise, agreement, or understanding that such a gift or gratuity would be forthcoming or that referrals would be made or encouraged in the future.

### **Rule 2-300 Sale or Purchase of a Law Practice of a Member, Living or Deceased**

All or substantially all of the law practice of a member, living or deceased, including goodwill, may be sold to

another member or law firm subject to all the following conditions:

(A) Fees charged to clients shall not be increased solely by reason of such sale.

(B) If the sale contemplates the transfer of responsibility for work not yet completed or responsibility for client files or information protected by Business and Professions Code section 6068, subdivision (e), then;

(1) if the seller is deceased, or has a conservator or other person acting in a representative capacity, and no member has been appointed to act for the seller pursuant to Business and Professions Code section 6180.5, then prior to the transfer;

(a) the purchaser shall cause a written notice to be given to the client stating that the interest in the law practice is being transferred to the purchaser; that the client has the right to retain other counsel; that the client may take possession of any client papers and property, as required by rule 3-700(D); and that if no response is received to the notification within 90 days of the sending of such notice, or in the event the client's rights would be prejudiced by a failure to act during that time, the purchaser may act on behalf of the client until otherwise notified by the client. Such notice shall comply with the requirements as set forth in rule 1-400(D) and any provisions relating to attorney-client fee arrangements, and

(b) the purchaser shall obtain the written consent of the client provided that such consent shall be presumed until otherwise notified by the client if no response is received to the notification specified in subparagraph (a) within 90 days of the date of the sending of such notification to the client's last address as shown on the records of the seller, or the client's rights would be prejudiced by a failure to act during such 90-day period.

(2) in all other circumstances, not less than 90 days prior to the transfer;

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(a) the seller, or the member appointed to act for the seller pursuant to Business and Professions Code section 6180.5, shall cause a written notice to be given to the client stating that the interest in the law practice is being transferred to the purchaser; that the client has the right to retain other counsel; that the client may take possession of any client papers and property, as required by rule 3-700(D); and that if no response is received to the notification within 90 days of the sending of such notice, the purchaser may act on behalf of the client until otherwise notified by the client. Such notice shall comply with the requirements as set forth in rule 1-400(D) and any provisions relating to attorney-client fee arrangements, and

(b) the seller, or the member appointed to act for the seller pursuant to Business and Professions Code section 6180.5, shall obtain the written consent of the client prior to the transfer provided that such consent shall be presumed until otherwise notified by the client if no response is received to the notification specified in subparagraph (a) within 90 days of the date of the sending of such notification to the client's last address as shown on the records of the seller.

(C) If substitution is required by the rules of a tribunal in which a matter is pending, all steps necessary to substitute a member shall be taken.

(D) All activity of a purchaser or potential purchaser under this rule shall be subject to compliance with rules 3-300 and 3-310 where applicable.

(E) Confidential information shall not be disclosed to a non-member in connection with a sale under this rule.

(F) Admission to or retirement from a law partnership or law corporation, retirement plans and similar arrangements, or sale of tangible assets of a law practice shall not be deemed a sale or purchase under this rule.

### **Discussion:**

Paragraph (A) is intended to prohibit the purchaser from charging the former clients of the seller a higher fee than the purchaser is charging his or her existing clients.

"All or substantially all of the law practice of a member" means, for purposes of rule 2-300, that, for example, a member may retain one or two clients who have such a longstanding personal and professional relationship with the member that transfer of those clients' files is not feasible. Conversely, rule 2-300 is not intended to authorize the sale of a law practice in a piecemeal fashion except as may be required by subparagraph (B)(1)(a) or paragraph (D).

Transfer of individual client matters, where permitted, is governed by rule 2-200. Payment of a fee to a non-lawyer broker for arranging the sale or purchase of a law practice is governed by rule 1-320. (Amended by order of Supreme Court, operative September 14, 1992.)

### **Rule 2-400 Prohibited Discriminatory Conduct in a Law Practice**

(A) For purposes of this rule:

(1) "law practice" includes sole practices, law partnerships, law corporations, corporate and governmental legal departments, and other entities which employ members to practice law;

(2) "knowingly permit" means a failure to advocate corrective action where the member knows of a discriminatory policy or practice which results in the unlawful discrimination prohibited in paragraph (B); and

(3) "unlawfully" and "unlawful" shall be determined by reference to applicable state or federal statutes or decisions making unlawful discrimination in employment and in offering goods and services to the public.

(B) In the management or operation of a law practice, a member shall not unlawfully discriminate or knowingly permit unlawful discrimination on the basis of race, national origin, sex, sexual orientation, religion, age or disability in:



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(1) hiring, promoting, discharging, or otherwise determining the conditions of employment of any person; or

(2) accepting or terminating representation of any client.

(C) No disciplinary investigation or proceeding may be initiated by the State Bar against a member under this rule unless and until a tribunal of competent jurisdiction, other than a disciplinary tribunal, shall have first adjudicated a complaint of alleged discrimination and found that unlawful conduct occurred. Upon such adjudication, the tribunal finding or verdict shall then be admissible evidence of the occurrence or non-occurrence of the alleged discrimination in any disciplinary proceeding initiated under this rule. In order for discipline to be imposed under this rule, however, the finding of unlawfulness must be upheld and final after appeal, the time for filing an appeal must have expired, or the appeal must have been dismissed.

### ***Discussion:***

In order for discriminatory conduct to be actionable under this rule, it must first be found to be unlawful by an appropriate civil administrative or judicial tribunal under applicable state or federal law. Until there is a finding of civil unlawfulness, there is no basis for disciplinary action under this rule.

A complaint of misconduct based on this rule may be filed with the State Bar following a finding of unlawfulness in the first instance even though that finding is thereafter appealed.

A disciplinary investigation or proceeding for conduct coming within this rule may be initiated and maintained, however, if such conduct warrants discipline under California Business and Professions Code sections 6106 and 6068, the California Supreme Court's inherent authority to impose discipline, or other disciplinary standard. (Added by order of Supreme Court, effective March 1, 1994.)

## CHAPTER 3.

### PROFESSIONAL RELATIONSHIP WITH CLIENTS

#### **Rule 3-100 Confidential Information of a Client**

(A) A member shall not reveal information protected from disclosure by Business and Professions Code section 6068, subdivision (e)(1) without the informed consent of the client, or as provided in paragraph (B) of this rule.

(B) A member may, but is not required to, reveal confidential information relating to the representation of a client to the extent that the member reasonably believes the disclosure is necessary to prevent a criminal act that the member reasonably believes is likely to result in death of, or substantial bodily harm to, an individual.

(C) Before revealing confidential information to prevent a criminal act as provided in paragraph (B), a member shall, if reasonable under the circumstances:

(1) make a good faith effort to persuade the client: (i) not to commit or to continue the criminal act or (ii) to pursue a course of conduct that will prevent the threatened death or substantial bodily harm; or do both (i) and (ii); and

(2) inform the client, at an appropriate time, of the member's ability or decision to reveal information as provided in paragraph (B).

(D) In revealing confidential information as provided in paragraph (B), the member's disclosure must be no more than is necessary to prevent the criminal act, given the information known to the member at the time of the disclosure.

(E) A member who does not reveal information permitted by paragraph (B) does not violate this rule.

### ***Discussion:***

[1] *Duty of confidentiality.* Paragraph (A) relates to a member's obligations under Business and Professions Code section 6068, subdivision (e)(1), which provides it is a duty of a member: "To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client." A member's duty to preserve the confidentiality of client information involves public policies of paramount importance. (*In Re Jordan* (1974) 12 Cal.3d 575, 580 [116 Cal.Rptr. 371].) Preserving the confidentiality of

client information contributes to the trust that is the hallmark of the client-lawyer relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter. The lawyer needs this information to represent the client effectively and, if necessary, to advise the client to refrain from wrongful conduct. Almost without exception, clients come to lawyers in order to determine their rights and what is, in the complex of laws and regulations, deemed to be legal and correct. Based upon experience, lawyers know that almost all clients follow the advice given, and the law is upheld. Paragraph (A) thus recognizes a fundamental principle in the client-lawyer relationship that, in the absence of the client's informed consent, a member must not reveal information relating to the representation. (See, e.g., *Commercial Standard Title Co. v. Superior Court* (1979) 92 Cal.App.3d 934, 945 [155 Cal.Rptr. 393].)

[2] *Client-lawyer confidentiality encompasses the attorney-client privilege, the work-product doctrine and ethical standards of confidentiality.* The principle of client-lawyer confidentiality applies to information relating to the representation, whatever its source, and encompasses matters communicated in confidence by the client, and therefore protected by the attorney-client privilege, matters protected by the work product doctrine, and matters protected under ethical standards of confidentiality, all as established in law, rule and policy. (See *In the Matter of Johnson* (Rev. Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179; *Goldstein v. Lees* (1975) 46 Cal.App.3d 614 [120 Cal.Rptr. 253].) The attorney-client privilege and work-product doctrine apply in judicial and other proceedings in which a member may be called as a witness or be otherwise compelled to produce evidence concerning a client. A member's ethical duty of confidentiality is not so limited in its scope of protection for the client-lawyer relationship of trust and prevents a member from revealing the client's confidential information even when not confronted with such compulsion. Thus, a member may not reveal such information except with the consent of the client or as authorized or required by the State Bar Act, these rules, or other law.

[3] *Narrow exception to duty of confidentiality under this Rule.* Notwithstanding the important public policies promoted by lawyers adhering to the core duty of confidentiality, the overriding value of life permits disclosures otherwise prohibited under Business & Professions Code section 6068, subdivision (e)(1).

Paragraph (B), which restates Business and Professions Code section 6068, subdivision (e)(2), identifies a narrow confidentiality exception, absent the client's informed consent, when a member reasonably believes that disclosure is necessary to prevent a criminal act that the member reasonably believes is likely to result in the death of, or substantial bodily harm to an individual. Evidence Code section 956.5, which relates to the evidentiary attorney-client privilege, sets forth a similar express exception. Although a member is not permitted to reveal confidential information concerning a client's past, completed criminal acts, the policy favoring the preservation of human life that underlies this exception to the duty of confidentiality and the evidentiary privilege permits disclosure to prevent a future or ongoing criminal act.

[4] *Member not subject to discipline for revealing confidential information as permitted under this Rule.* Rule 3-100, which restates Business and Professions Code section 6068, subdivision (e)(2), reflects a balancing between the interests of preserving client confidentiality and of preventing a criminal act that a member reasonably believes is likely to result in death or substantial bodily harm to an individual. A member who reveals information as permitted under this rule is not subject to discipline.

[5] *No duty to reveal confidential information.* Neither Business and Professions Code section 6068, subdivision (e)(2) nor this rule imposes an affirmative obligation on a member to reveal information in order to prevent harm. (See rule 1-100(A).) A member may decide not to reveal confidential information. Whether a member chooses to reveal confidential information as permitted under this rule is a matter for the individual member to decide, based on all the facts and circumstances, such as those discussed in paragraph [6] of this discussion.

[6] *Deciding to reveal confidential information as permitted under paragraph (B).* Disclosure permitted under paragraph (B) is ordinarily a last resort, when no other available action is reasonably likely to prevent the criminal act. Prior to revealing information as permitted under paragraph (B), the member must, if reasonable under the circumstances, make a good faith effort to persuade the client to take steps to avoid the criminal act or threatened harm. Among the factors to be considered in determining whether to disclose confidential information are the following:

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- (1) the amount of time that the member has to make a decision about disclosure;
- (2) whether the client or a third-party has made similar threats before and whether they have ever acted or attempted to act upon them;
- (3) whether the member believes the member's efforts to persuade the client or a third person not to engage in the criminal conduct have or have not been successful;
- (4) the extent of adverse effect to the client's rights under the Fifth, Sixth and Fourteenth Amendments of the United States Constitution and analogous rights and privacy rights under Article 1 of the Constitution of the State of California that may result from disclosure contemplated by the member;
- (5) the extent of other adverse effects to the client that may result from disclosure contemplated by the member; and
- (6) the nature and extent of information that must be disclosed to prevent the criminal act or threatened harm.

A member may also consider whether the prospective harm to the victim or victims is imminent in deciding whether to disclose the confidential information. However, the imminence of the harm is not a prerequisite to disclosure and a member may disclose the information without waiting until immediately before the harm is likely to occur.

[7] *Counseling client or third person not to commit a criminal act reasonably likely to result in death of substantial bodily harm.* Subparagraph (C)(1) provides that before a member may reveal confidential information, the member must, if reasonable under the circumstances, make a good faith effort to persuade the client not to commit or to continue the criminal act, or to persuade the client to otherwise pursue a course of conduct that will prevent the threatened death or substantial bodily harm, or if necessary, do both. The interests protected by such counseling is the client's interest in limiting disclosure of confidential information and in taking responsible action to deal with situations attributable to the client. If a client, whether in response to the member's counseling or otherwise, takes corrective action – such as by ceasing the criminal act before harm is caused – the option for

permissive disclosure by the member would cease as the threat posed by the criminal act would no longer be present. When the actor is a nonclient or when the act is deliberate or malicious, the member who contemplates making adverse disclosure of confidential information may reasonably conclude that the compelling interests of the member or others in their own personal safety preclude personal contact with the actor. Before counseling an actor who is a nonclient, the member should, if reasonable under the circumstances, first advise the client of the member's intended course of action. If a client or another person has already acted but the intended harm has not yet occurred, the member should consider, if reasonable under the circumstances, efforts to persuade the client or third person to warn the victim or consider other appropriate action to prevent the harm. Even when the member has concluded that paragraph (B) does not permit the member to reveal confidential information, the member nevertheless is permitted to counsel the client as to why it may be in the client's best interest to consent to the attorney's disclosure of that information.

[8] *Disclosure of confidential information must be no more than is reasonably necessary to prevent the criminal act.* Under paragraph (D), disclosure of confidential information, when made, must be no more extensive than the member reasonably believes necessary to prevent the criminal act. Disclosure should allow access to the confidential information to only those persons who the member reasonably believes can act to prevent the harm. Under some circumstances, a member may determine that the best course to pursue is to make an anonymous disclosure to the potential victim or relevant law-enforcement authorities. What particular measures are reasonable depends on the circumstances known to the member. Relevant circumstances include the time available, whether the victim might be unaware of the threat, the member's prior course of dealings with the client, and the extent of the adverse effect on the client that may result from the disclosure contemplated by the member.

[9] *Informing client of member's ability or decision to reveal confidential information under subparagraph (C)(2).* A member is required to keep a client reasonably informed about significant developments regarding the employment or representation. Rule 3-500; Business and Professions Code, section 6068, subdivision (m). Paragraph (C)(2), however, recognizes

that under certain circumstances, informing a client of the member's ability or decision to reveal confidential information under paragraph (B) would likely increase the risk of death or substantial bodily harm, not only to the originally-intended victims of the criminal act, but also to the client or members of the client's family, or to the member or the member's family or associates. Therefore, paragraph (C)(2) requires a member to inform the client of the member's ability or decision to reveal confidential information as provided in paragraph (B) only if it is reasonable to do so under the circumstances. Paragraph (C)(2) further recognizes that the appropriate time for the member to inform the client may vary depending upon the circumstances. (See paragraph [10] of this discussion.) Among the factors to be considered in determining an appropriate time, if any, to inform a client are:

- (1) whether the client is an experienced user of legal services;
- (2) the frequency of the member's contact with the client;
- (3) the nature and length of the professional relationship with the client;
- (4) whether the member and client have discussed the member's duty of confidentiality or any exceptions to that duty;
- (5) the likelihood that the client's matter will involve information within paragraph (B);
- (6) the member's belief, if applicable, that so informing the client is likely to increase the likelihood that a criminal act likely to result in the death of, or substantial bodily harm to, an individual; and
- (7) the member's belief, if applicable, that good faith efforts to persuade a client not to act on a threat have failed.

[10] *Avoiding a chilling effect on the lawyer-client relationship.* The foregoing flexible approach to the member's informing a client of his or her ability or decision to reveal confidential information recognizes the concern that informing a client about limits on confidentiality may have a chilling effect on client communication. (See Discussion paragraph [1].) To avoid that chilling effect, one member may choose to inform the client of the member's ability to reveal

information as early as the outset of the representation, while another member may choose to inform a client only at a point when that client has imparted information that may fall under paragraph (B), or even choose not to inform a client until such time as the member attempts to counsel the client as contemplated in Discussion paragraph [7]. In each situation, the member will have discharged properly the requirement under subparagraph (C)(2), and will not be subject to discipline.

[11] *Informing client that disclosure has been made; termination of the lawyer-client relationship.* When a member has revealed confidential information under paragraph (B), in all but extraordinary cases the relationship between member and client will have deteriorated so as to make the member's representation of the client impossible. Therefore, the member is required to seek to withdraw from the representation (see rule 3-700(B)), unless the member is able to obtain the client's informed consent to the member's continued representation. The member must inform the client of the fact of the member's disclosure unless the member has a compelling interest in not informing the client, such as to protect the member, the member's family or a third person from the risk of death or substantial bodily harm.

[12] *Other consequences of the member's disclosure.* Depending upon the circumstances of a member's disclosure of confidential information, there may be other important issues that a member must address. For example, if a member will be called as a witness in the client's matter, then rule 5-210 should be considered. Similarly, the member should consider his or her duties of loyalty and competency (rule 3-110).

[13] *Other exceptions to confidentiality under California law.* Rule 3-100 is not intended to augment, diminish, or preclude reliance upon, any other exceptions to the duty to preserve the confidentiality of client information recognized under California law. (Added by order of the Supreme Court, operative July 1, 2004.)

#### **Rule 3-110 Failing to Act Competently**

(A) A member shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence.

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(B) For purposes of this rule, “competence” in any legal service shall mean to apply the 1) diligence, 2) learning and skill, and 3) mental, emotional, and physical ability reasonably necessary for the performance of such service.

(C) If a member does not have sufficient learning and skill when the legal service is undertaken, the member may nonetheless perform such services competently by 1) associating with or, where appropriate, professionally consulting another lawyer reasonably believed to be competent, or 2) by acquiring sufficient learning and skill before performance is required.

### **Discussion:**

The duties set forth in rule 3-110 include the duty to supervise the work of subordinate attorney and non-attorney employees or agents. (See, e.g., *Waysman v. State Bar* (1986) 41 Cal.3d 452; *Trousil v. State Bar* (1985) 38 Cal.3d 337, 342 [211 Cal.Rptr. 525]; *Palomo v. State Bar* (1984) 36 Cal.3d 785 [205 Cal.Rptr. 834]; *Crane v. State Bar* (1981) 30 Cal.3d 117, 122; *Black v. State Bar* (1972) 7 Cal.3d 676, 692 [103 Cal.Rptr. 288; 499 P.2d 968]; *Vaughn v. State Bar* (1972) 6 Cal.3d 847, 857-858 [100 Cal.Rptr. 713; 494 P.2d 1257]; *Moore v. State Bar* (1964) 62 Cal.2d 74, 81 [41 Cal.Rptr. 161; 396 P.2d 577].)

In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or consultation with another lawyer would be impractical. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances. (Amended by order of Supreme Court, operative September 14, 1992.)

### **Rule 3-120 Sexual Relations With Client**

(A) For purposes of this rule, “sexual relations” means sexual intercourse or the touching of an intimate part of another person for the purpose of sexual arousal, gratification, or abuse.

(B) A member shall not:

(1) Require or demand sexual relations with a client incident to or as a condition of any professional representation; or

(2) Employ coercion, intimidation, or undue influence in entering into sexual relations with a client; or

(3) Continue representation of a client with whom the member has sexual relations if such sexual relations cause the member to perform legal services incompetently in violation of rule 3-110.

(C) Paragraph (B) shall not apply to sexual relations between members and their spouses or to ongoing consensual sexual relationships which predate the initiation of the lawyer-client relationship.

(D) Where a lawyer in a firm has sexual relations with a client but does not participate in the representation of that client, the lawyers in the firm shall not be subject to discipline under this rule solely because of the occurrence of such sexual relations.

### **Discussion:**

Rule 3-120 is intended to prohibit sexual exploitation by a lawyer in the course of a professional representation. Often, based upon the nature of the underlying representation, a client exhibits great emotional vulnerability and dependence upon the advice and guidance of counsel. Attorneys owe the utmost duty of good faith and fidelity to clients. (See, e.g., *Greenbaum v. State Bar* (1976) 15 Cal.3d 893, 903 [126 Cal.Rptr. 785]; *Alkow v. State Bar* (1971) 3 Cal.3d 924, 935 [92 Cal.Rptr. 278]; *Cutler v. State Bar* (1969) 71 Cal.2d 241, 251 [78 Cal.Rptr. 172]; *Clancy v. State Bar* (1969) 71 Cal.2d 140, 146 [77 Cal.Rptr. 657].) The relationship between an attorney and client is a fiduciary relationship of the very highest character and all dealings between an attorney and client that are beneficial to the attorney will be closely scrutinized with the utmost strictness for unfairness. (See, e.g., *Giovanazzi v. State Bar* (1980) 28 Cal.3d 465, 472 [169 Cal.Rptr. 581]; *Benson v. State Bar* (1975) 13 Cal.3d 581, 586 [119 Cal.Rptr. 297]; *Lee v. State Bar* (1970) 2 Cal.3d 927, 939 [88 Cal.Rptr. 361]; *Clancy v. State Bar* (1969) 71 Cal.2d 140, 146 [77 Cal.Rptr. 657].) Where attorneys exercise undue influence over clients or take unfair advantage of clients, discipline is appropriate. (See, e.g., *Magee v. State Bar* (1962) 58 Cal.2d 423 [24 Cal.Rptr. 839]; *Lantz v. State Bar* (1931) 212 Cal. 213 [298 P. 497].) In all client matters, a member is advised to keep clients’ interests paramount in the course of the member’s representation.

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For purposes of this rule, if the client is an organization, any individual overseeing the representation shall be deemed to be the client. (See rule 3-600.)

Although paragraph (C) excludes representation of certain clients from the scope of rule 3-120, such exclusion is not intended to preclude the applicability of other Rules of Professional Conduct, including rule 3-110. (Added by order of Supreme Court, operative September 14, 1992.)

### **Rule 3-200 Prohibited Objectives of Employment**

A member shall not seek, accept, or continue employment if the member knows or should know that the objective of such employment is:

(A) To bring an action, conduct a defense, assert a position in litigation, or take an appeal, without probable cause and for the purpose of harassing or maliciously injuring any person; or

(B) To present a claim or defense in litigation that is not warranted under existing law, unless it can be supported by a good faith argument for an extension, modification, or reversal of such existing law.

### **Rule 3-210 Advising the Violation of Law**

A member shall not advise the violation of any law, rule, or ruling of a tribunal unless the member believes in good faith that such law, rule, or ruling is invalid. A member may take appropriate steps in good faith to test the validity of any law, rule, or ruling of a tribunal.

#### ***Discussion:***

Rule 3-210 is intended to apply not only to the prospective conduct of a client but also to the interaction between the member and client and to the specific legal service sought by the client from the member. An example of the former is the handling of physical evidence of a crime in the possession of the client and offered to the member. (See *People v. Meredith* (1981) 29 Cal.3d 682 [175 Cal.Rptr. 612].) An example of the latter is a request that the member negotiate the return of stolen property in exchange for the owner's agreement not to report the theft to the police or prosecutorial authorities. (See *People v. Pic'I* (1982) 31 Cal.3d 731 [183 Cal.Rptr. 685].)

### **Rule 3-300 Avoiding Interests Adverse to a Client**

A member shall not enter into a business transaction with a client; or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client, unless each of the following requirements has been satisfied:

(A) The transaction or acquisition and its terms are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which should reasonably have been understood by the client; and

(B) The client is advised in writing that the client may seek the advice of an independent lawyer of the client's choice and is given a reasonable opportunity to seek that advice; and

(C) The client thereafter consents in writing to the terms of the transaction or the terms of the acquisition.

#### ***Discussion:***

Rule 3-300 is not intended to apply to the agreement by which the member is retained by the client, unless the agreement confers on the member an ownership, possessory, security, or other pecuniary interest adverse to the client. Such an agreement is governed, in part, by rule 4-200.

Rule 3-300 is not intended to apply where the member and client each make an investment on terms offered to the general public or a significant portion thereof. For example, rule 3-300 is not intended to apply where A, a member, invests in a limited partnership syndicated by a third party. B, A's client, makes the same investment. Although A and B are each investing in the same business, A did not enter into the transaction "with" B for the purposes of the rule.

Rule 3-300 is intended to apply where the member wishes to obtain an interest in client's property in order to secure the amount of the member's past due or future fees. (Amended by order of Supreme Court, operative September 14, 1992.)

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### **Rule 3-310     Avoiding the Representation of Adverse Interests**

(A) For purposes of this rule:

(1) “Disclosure” means informing the client or former client of the relevant circumstances and of the actual and reasonably foreseeable adverse consequences to the client or former client;

(2) “Informed written consent” means the client’s or former client’s written agreement to the representation following written disclosure;

(3) “Written” means any writing as defined in Evidence Code section 250.

(B) A member shall not accept or continue representation of a client without providing written disclosure to the client where:

(1) The member has a legal, business, financial, professional, or personal relationship with a party or witness in the same matter; or

(2) The member knows or reasonably should know that:

(a) the member previously had a legal, business, financial, professional, or personal relationship with a party or witness in the same matter; and

(b) the previous relationship would substantially affect the member’s representation; or

(3) The member has or had a legal, business, financial, professional, or personal relationship with another person or entity the member knows or reasonably should know would be affected substantially by resolution of the matter; or

(4) The member has or had a legal, business, financial, or professional interest in the subject matter of the representation.

(C) A member shall not, without the informed written consent of each client:

(1) Accept representation of more than one client in a matter in which the interests of the clients potentially conflict; or

(2) Accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict; or

(3) Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter.

(D) A member who represents two or more clients shall not enter into an aggregate settlement of the claims of or against the clients without the informed written consent of each client.

(E) A member shall not, without the informed written consent of the client or former client, accept employment adverse to the client or former client where, by reason of the representation of the client or former client, the member has obtained confidential information material to the employment.

(F) A member shall not accept compensation for representing a client from one other than the client unless:

(1) There is no interference with the member’s independence of professional judgment or with the client-lawyer relationship; and

(2) Information relating to representation of the client is protected as required by Business and Professions Code section 6068, subdivision (e); and

(3) The member obtains the client’s informed written consent, provided that no disclosure or consent is required if:

(a) such nondisclosure is otherwise authorized by law; or

(b) the member is rendering legal services on behalf of any public agency which provides legal services to other public agencies or the public.

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### **Discussion:**

Rule 3-310 is not intended to prohibit a member from representing parties having antagonistic positions on the same legal question that has arisen in different cases, unless representation of either client would be adversely affected.

Other rules and laws may preclude making adequate disclosure under this rule. If such disclosure is precluded, informed written consent is likewise precluded. (See, e.g., Business and Professions Code section 6068, subdivision (e).)

Paragraph (B) is not intended to apply to the relationship of a member to another party's lawyer. Such relationships are governed by rule 3-320.

Paragraph (B) is not intended to require either the disclosure of the new engagement to a former client or the consent of the former client to the new engagement. However, both disclosure and consent are required if paragraph (E) applies.

While paragraph (B) deals with the issues of adequate disclosure to the present client or clients of the member's present or past relationships to other parties or witnesses or present interest in the subject matter of the representation, paragraph (E) is intended to protect the confidences of another present or former client. These two paragraphs are to apply as complementary provisions.

Paragraph (B) is intended to apply only to a member's own relationships or interests, unless the member knows that a partner or associate in the same firm as the member has or had a relationship with another party or witness or has or had an interest in the subject matter of the representation.

Subparagraphs (C)(1) and (C)(2) are intended to apply to all types of legal employment, including the concurrent representation of multiple parties in litigation or in a single transaction or in some other common enterprise or legal relationship. Examples of the latter include the formation of a partnership for several partners or a corporation for several shareholders, the preparation of an ante-nuptial agreement, or joint or reciprocal wills for a husband and wife, or the resolution of an "uncontested" marital dissolution. In such situations, for the sake of convenience or economy, the parties may well prefer to employ a single counsel, but a member must disclose

the potential adverse aspects of such multiple representation (e.g., Evid. Code, §962) and must obtain the informed written consent of the clients thereto pursuant to subparagraph (C)(1). Moreover, if the potential adversity should become actual, the member must obtain the further informed written consent of the clients pursuant to subparagraph (C)(2).

Subparagraph (C)(3) is intended to apply to representations of clients in both litigation and transactional matters.

In *State Farm Mutual Automobile Insurance Company v. Federal Insurance Company* (1999) 72 Cal.App.4th 1422 [86 Cal.Rptr.2d 20], the court held that subparagraph (C)(3) was violated when a member, retained by an insurer to defend one suit, and while that suit was still pending, filed a direct action against the same insurer in an unrelated action without securing the insurer's consent. Notwithstanding *State Farm*, subparagraph (C)(3) is not intended to apply with respect to the relationship between an insurer and a member when, in each matter, the insurer's interest is only as an indemnity provider and not as a direct party to the action.

There are some matters in which the conflicts are such that written consent may not suffice for non-disciplinary purposes. (See *Woods v. Superior Court* (1983) 149 Cal.App.3d 931 [197 Cal.Rptr. 185]; *Klemm v. Superior Court* (1977) 75 Cal.App.3d 893 [142 Cal.Rptr. 509]; *Ishmael v. Millington* (1966) 241 Cal.App.2d 520 [50 Cal.Rptr. 592].)

Paragraph (D) is not intended to apply to class action settlements subject to court approval.

Paragraph (F) is not intended to abrogate existing relationships between insurers and insureds whereby the insurer has the contractual right to unilaterally select counsel for the insured, where there is no conflict of interest. (See *San Diego Navy Federal Credit Union v. Cumis Insurance Society* (1984) 162 Cal.App.3d 358 [208 Cal.Rptr. 494].) (Amended by order of Supreme Court, operative September 14, 1992; operative March 3, 2003.)

### **Rule 3-320 Relationship With Other Party's Lawyer**

A member shall not represent a client in a matter in which another party's lawyer is a spouse, parent, child, or sibling of the member, lives with the member, is a



client of the member, or has an intimate personal relationship with the member, unless the member informs the client in writing of the relationship.

**Discussion:**

Rule 3-320 is not intended to apply to circumstances in which a member fails to advise the client of a relationship with another lawyer who is merely a partner or associate in the same law firm as the adverse party's counsel, and who has no direct involvement in the matter. (Amended by order of Supreme Court, operative September 14, 1992.)

**Rule 3-400 Limiting Liability to Client**

A member shall not:

(A) Contract with a client prospectively limiting the member's liability to the client for the member's professional malpractice; or

(B) Settle a claim or potential claim for the member's liability to the client for the member's professional malpractice, unless the client is informed in writing that the client may seek the advice of an independent lawyer of the client's choice regarding the settlement and is given a reasonable opportunity to seek that advice.

**Discussion:**

Rule 3-400 is not intended to apply to customary qualifications and limitations in legal opinions and memoranda, nor is it intended to prevent a member from reasonably limiting the scope of the member's employment or representation. (Amended by order of Supreme Court, operative September 14, 1992.)

**Rule 3-410 Disclosure of Professional Liability Insurance**

(A) A member who knows or should know that he or she does not have professional liability insurance shall inform a client in writing, at the time of the client's engagement of the member, that the member does not have professional liability insurance whenever it is reasonably foreseeable that the total amount of the member's legal representation of the client in the matter will exceed four hours.

(B) If a member does not provide the notice required under paragraph (A) at the time of a client's engagement of the member, and the member subsequently knows or should know that he or she no longer has professional liability insurance during the representation of the client, the member shall inform the client in writing within thirty days of the date that the member knows or should know that he or she no longer has professional liability insurance.

(C) This rule does not apply to a member who is employed as a government lawyer or in-house counsel when that member is representing or providing legal advice to a client in that capacity.

(D) This rule does not apply to legal services rendered in an emergency to avoid foreseeable prejudice to the rights or interests of the client.

(E) This rule does not apply where the member has previously advised the client under Paragraph (A) or (B) that the member does not have professional liability insurance.

**Discussion:**

[1] The disclosure obligation imposed by Paragraph (A) of this rule applies with respect to new clients and new engagements with returning clients.

[2] A member may use the following language in making the disclosure required by rule 3-410(A), and may include that language in a written fee agreement with the client or in a separate writing:

*"Pursuant to California Rule of Professional Conduct 3-410, I am informing you in writing that I do not have professional liability insurance."*

[3] A member may use the following language in making the disclosure required by rule 3-410(B):

*"Pursuant to California Rule of Professional Conduct 3-410, I am informing you in writing that I no longer have professional liability insurance."*

[4] Rule 3-410(C) provides an exemption for a "government lawyer or in-house counsel when that member is representing or providing legal advice to a client in that capacity." The basis of both exemptions is

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essentially the same. The purpose of this rule is to provide information directly to a client if a member is not covered by professional liability insurance. If a member is employed directly by and provides legal services directly for a private entity or a federal, state or local governmental entity, that entity presumably knows whether the member is or is not covered by professional liability insurance. The exemptions under this rule are limited to situations involving direct employment and representation, and do not, for example, apply to outside counsel for a private or governmental entity, or to counsel retained by an insurer to represent an insured. (Added by order of the Supreme Court, operative January 1, 2010.)

### **Rule 3-500      Communication**

A member shall keep a client reasonably informed about significant developments relating to the employment or representation, including promptly complying with reasonable requests for information and copies of significant documents when necessary to keep the client so informed.

#### ***Discussion:***

Rule 3-500 is not intended to change a member's duties to his or her clients. It is intended to make clear that, while a client must be informed of significant developments in the matter, a member will not be disciplined for failing to communicate insignificant or irrelevant information. (See Bus. & Prof. Code, § 6068, subd. (m).)

A member may contract with the client in their employment agreement that the client assumes responsibility for the cost of copying significant documents. This rule is not intended to prohibit a claim for the recovery of the member's expense in any subsequent legal proceeding.

Rule 3-500 is not intended to create, augment, diminish, or eliminate any application of the work product rule. The obligation of the member to provide work product to the client shall be governed by relevant statutory and decisional law. Additionally, this rule is not intended to apply to any document or correspondence that is subject to a protective order or non-disclosure agreement, or to override applicable statutory or decisional law requiring that certain information not be provided to criminal defendants

who are clients of the member. (Amended by order of the Supreme Court, operative June 5, 1997.)

### **Rule 3-510      Communication of Settlement Offer**

(A) A member shall promptly communicate to the member's client:

- (1) All terms and conditions of any offer made to the client in a criminal matter; and
- (2) All amounts, terms, and conditions of any written offer of settlement made to the client in all other matters.

(B) As used in this rule, "client" includes a person who possesses the authority to accept an offer of settlement or plea, or, in a class action, all the named representatives of the class.

#### ***Discussion:***

Rule 3-510 is intended to require that counsel in a criminal matter convey all offers, whether written or oral, to the client, as give and take negotiations are less common in criminal matters, and, even were they to occur, such negotiations should require the participation of the accused.

Any oral offers of settlement made to the client in a civil matter should also be communicated if they are "significant" for the purposes of rule 3-500.

### **Rule 3-600      Organization as Client**

(A) In representing an organization, a member shall conform his or her representation to the concept that the client is the organization itself, acting through its highest authorized officer, employee, body, or constituent overseeing the particular engagement.

(B) If a member acting on behalf of an organization knows that an actual or apparent agent of the organization acts or intends or refuses to act in a manner that is or may be a violation of law reasonably imputable to the organization, or in a manner which is likely to result in substantial injury to the organization, the member shall not violate his or her duty of protecting all confidential information as provided in Business and Professions Code section 6068, subdivision (e). Subject to Business and Professions

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Code section 6068, subdivision (e), the member may take such actions as appear to the member to be in the best lawful interest of the organization. Such actions may include among others:

- (1) Urging reconsideration of the matter while explaining its likely consequences to the organization; or
- (2) Referring the matter to the next higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest internal authority that can act on behalf of the organization.

(C) If, despite the member's actions in accordance with paragraph (B), the highest authority that can act on behalf of the organization insists upon action or a refusal to act that is a violation of law and is likely to result in substantial injury to the organization, the member's response is limited to the member's right, and, where appropriate, duty to resign in accordance with rule 3-700.

(D) In dealing with an organization's directors, officers, employees, members, shareholders, or other constituents, a member shall explain the identity of the client for whom the member acts, whenever it is or becomes apparent that the organization's interests are or may become adverse to those of the constituent(s) with whom the member is dealing. The member shall not mislead such a constituent into believing that the constituent may communicate confidential information to the member in a way that will not be used in the organization's interest if that is or becomes adverse to the constituent.

(E) A member representing an organization may also represent any of its directors, officers, employees, members, shareholders, or other constituents, subject to the provisions of rule 3-310. If the organization's consent to the dual representation is required by rule 3-310, the consent shall be given by an appropriate constituent of the organization other than the individual or constituent who is to be represented, or by the shareholder(s) or organization members.

### **Discussion:**

Rule 3-600 is not intended to enmesh members in the intricacies of the entity and aggregate theories of partnership.

Rule 3-600 is not intended to prohibit members from representing both an organization and other parties connected with it, as for instance (as simply one example) in establishing employee benefit packages for closely held corporations or professional partnerships.

Rule 3-600 is not intended to create or to validate artificial distinctions between entities and their officers, employees, or members, nor is it the purpose of the rule to deny the existence or importance of such formal distinctions. In dealing with a close corporation or small association, members commonly perform professional engagements for both the organization and its major constituents. When a change in control occurs or is threatened, members are faced with complex decisions involving personal and institutional relationships and loyalties and have frequently had difficulty in perceiving their correct duty. (See *People ex rel Deukmejian v. Brown* (1981) 29 Cal.3d 150 [172 Cal.Rptr. 478]; *Goldstein v. Lees* (1975) 46 Cal.App.3d 614 [120 Cal.Rptr. 253]; *Woods v. Superior Court* (1983) 149 Cal.App.3d 931 [197 Cal.Rptr. 185]; *In re Banks* (1978) 283 Ore. 459 [584 P.2d 284]; 1 A.L.R.4th 1105.) In resolving such multiple relationships, members must rely on case law.

### **Rule 3-700 Termination of Employment**

(A) In General.

(1) If permission for termination of employment is required by the rules of a tribunal, a member shall not withdraw from employment in a proceeding before that tribunal without its permission.

(2) A member shall not withdraw from employment until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, complying with rule 3-700(D), and complying with applicable laws and rules.

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### (B) Mandatory Withdrawal.

A member representing a client before a tribunal shall withdraw from employment with the permission of the tribunal, if required by its rules, and a member representing a client in other matters shall withdraw from employment, if:

- (1) The member knows or should know that the client is bringing an action, conducting a defense, asserting a position in litigation, or taking an appeal, without probable cause and for the purpose of harassing or maliciously injuring any person; or
- (2) The member knows or should know that continued employment will result in violation of these rules or of the State Bar Act; or
- (3) The member's mental or physical condition renders it unreasonably difficult to carry out the employment effectively.

### (C) Permissive Withdrawal.

If rule 3-700(B) is not applicable, a member may not request permission to withdraw in matters pending before a tribunal, and may not withdraw in other matters, unless such request or such withdrawal is because:

- (1) The client
  - (a) insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law, or
  - (b) seeks to pursue an illegal course of conduct, or
  - (c) insists that the member pursue a course of conduct that is illegal or that is prohibited under these rules or the State Bar Act, or
  - (d) by other conduct renders it unreasonably difficult for the member to carry out the employment effectively, or
  - (e) insists, in a matter not pending before a tribunal, that the member engage in conduct that is contrary to the judgment and advice

of the member but not prohibited under these rules or the State Bar Act, or

(f) breaches an agreement or obligation to the member as to expenses or fees.

- (2) The continued employment is likely to result in a violation of these rules or of the State Bar Act; or
- (3) The inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal; or
- (4) The member's mental or physical condition renders it difficult for the member to carry out the employment effectively; or
- (5) The client knowingly and freely assents to termination of the employment; or
- (6) The member believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal.

### (D) Papers, Property, and Fees.

A member whose employment has terminated shall:

- (1) Subject to any protective order or non-disclosure agreement, promptly release to the client, at the request of the client, all the client papers and property. "Client papers and property" includes correspondence, pleadings, deposition transcripts, exhibits, physical evidence, expert's reports, and other items reasonably necessary to the client's representation, whether the client has paid for them or not; and
- (2) Promptly refund any part of a fee paid in advance that has not been earned. This provision is not applicable to a true retainer fee which is paid solely for the purpose of ensuring the availability of the member for the matter.

#### ***Discussion:***

Subparagraph (A)(2) provides that "a member shall not withdraw from employment until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the clients." What such steps would include, of course, will vary according to the circumstances. Absent special circumstances,

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“reasonable steps” do not include providing additional services to the client once the successor counsel has been employed and rule 3-700(D) has been satisfied.

Paragraph (D) makes clear the member’s duties in the recurring situation in which new counsel seeks to obtain client files from a member discharged by the client. It codifies existing case law. (See *Academy of California Optometrists v. Superior Court* (1975) 51 Cal.App.3d 999 [124 Cal.Rptr. 668]; *Weiss v. Marcus* (1975) 51 Cal.App.3d 590 [124 Cal.Rptr. 297].) Paragraph (D) also requires that the member “promptly” return unearned fees paid in advance. If a client disputes the amount to be returned, the member shall comply with rule 4-100(A)(2).

Paragraph (D) is not intended to prohibit a member from making, at the member’s own expense, and retaining copies of papers released to the client, nor to prohibit a claim for the recovery of the member’s expense in any subsequent legal proceeding.

### CHAPTER 4.

#### FINANCIAL RELATIONSHIP WITH CLIENTS

##### **Rule 4-100 Preserving Identity of Funds and Property of a Client**

(A) All funds received or held for the benefit of clients by a member or law firm, including advances for costs and expenses, shall be deposited in one or more identifiable bank accounts labeled “Trust Account,” “Client’s Funds Account” or words of similar import, maintained in the State of California, or, with written consent of the client, in any other jurisdiction where there is a substantial relationship between the client or the client’s business and the other jurisdiction. No funds belonging to the member or the law firm shall be deposited therein or otherwise commingled therewith except as follows:

- (1) Funds reasonably sufficient to pay bank charges.
- (2) In the case of funds belonging in part to a client and in part presently or potentially to the member or the law firm, the portion belonging to the member or law firm must be withdrawn at the earliest reasonable time after the member’s interest in that portion becomes fixed. However,

when the right of the member or law firm to receive a portion of trust funds is disputed by the client, the disputed portion shall not be withdrawn until the dispute is finally resolved.

(B) A member shall:

- (1) Promptly notify a client of the receipt of the client’s funds, securities, or other properties.
- (2) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.
- (3) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the member or law firm and render appropriate accounts to the client regarding them; preserve such records for a period of no less than five years after final appropriate distribution of such funds or properties; and comply with any order for an audit of such records issued pursuant to the Rules of Procedure of the State Bar.
- (4) Promptly pay or deliver, as requested by the client, any funds, securities, or other properties in the possession of the member which the client is entitled to receive.

(C) The Board of Governors of the State Bar shall have the authority to formulate and adopt standards as to what “records” shall be maintained by members and law firms in accordance with subparagraph (B)(3). The standards formulated and adopted by the Board, as from time to time amended, shall be effective and binding on all members.

*[Publisher’s Note re Rule 4-100(C): Operative January 1, 2012, Business and Professions Code section 6010, in part, provides that the State Bar is governed by a board known as the board of trustees of the State Bar and that any provision of law referring to the “board of governors” shall be deemed to refer to the “board of trustees.” In accordance with this law, references to the “board of governors” included in the current Rules of Professional Conduct are deemed to refer to the “board of trustees.”]*

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### **Standards:**

Pursuant to rule 4-100(C) the Board adopted the following standards, effective January 1, 1993, as to what “records” shall be maintained by members and law firms in accordance with subparagraph (B)(3).

(1) A member shall, from the date of receipt of client funds through the period ending five years from the date of appropriate disbursement of such funds, maintain:

(a) a written ledger for each client on whose behalf funds are held that sets forth:

- (i) the name of such client,
- (ii) the date, amount and source of all funds received on behalf of such client,
- (iii) the date, amount, payee and purpose of each disbursement made on behalf of such client, and
- (iv) the current balance for such client;

(b) a written journal for each bank account that sets forth:

- (i) the name of such account,
- (ii) the date, amount and client affected by each debit and credit, and
- (iii) the current balance in such account;

(c) all bank statements and canceled checks for each bank account; and

(d) each monthly reconciliation (balancing) of (a), (b), and (c).

(2) A member shall, from the date of receipt of all securities and other properties held for the benefit of client through the period ending five years from the date of appropriate disbursement of such securities and other properties, maintain a written journal that specifies:

(a) each item of security and property held;

(b) the person on whose behalf the security or property is held;

(c) the date of receipt of the security or property;

(d) the date of distribution of the security or property; and

(e) person to whom the security or property was distributed.

*[Publisher’s Note: Trust Account Record Keeping Standards as adopted by the Board on July 11, 1992, effective January 1, 1993.]*

### **Rule 4-200 Fees for Legal Services**

(A) A member shall not enter into an agreement for, charge, or collect an illegal or unconscionable fee.

(B) Unconscionability of a fee shall be determined on the basis of all the facts and circumstances existing at the time the agreement is entered into except where the parties contemplate that the fee will be affected by later events. Among the factors to be considered, where appropriate, in determining the conscionability of a fee are the following:

(1) The amount of the fee in proportion to the value of the services performed.

(2) The relative sophistication of the member and the client.

(3) The novelty and difficulty of the questions involved and the skill requisite to perform the legal service properly.

(4) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the member.

(5) The amount involved and the results obtained.

(6) The time limitations imposed by the client or by the circumstances.

(7) The nature and length of the professional relationship with the client.

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(8) The experience, reputation, and ability of the member or members performing the services.

(9) Whether the fee is fixed or contingent.

(10) The time and labor required.

(11) The informed consent of the client to the fee.  
(Amended by order of Supreme Court, operative September 14, 1992.)

### **Rule 4-210 Payment of Personal or Business Expenses Incurred by or for a Client**

(A) A member shall not directly or indirectly pay or agree to pay, guarantee, represent, or sanction a representation that the member or member's law firm will pay the personal or business expenses of a prospective or existing client, except that this rule shall not prohibit a member:

(1) With the consent of the client, from paying or agreeing to pay such expenses to third persons from funds collected or to be collected for the client as a result of the representation; or

(2) After employment, from lending money to the client upon the client's promise in writing to repay such loan; or

(3) From advancing the costs of prosecuting or defending a claim or action or otherwise protecting or promoting the client's interests, the repayment of which may be contingent on the outcome of the matter. Such costs within the meaning of this subparagraph (3) shall be limited to all reasonable expenses of litigation or reasonable expenses in preparation for litigation or in providing any legal services to the client.

(B) Nothing in rule 4-210 shall be deemed to limit rules 3-300, 3-310, and 4-300.

### **Rule 4-300 Purchasing Property at a Foreclosure or a Sale Subject to Judicial Review**

(A) A member shall not directly or indirectly purchase property at a probate, foreclosure, receiver's, trustee's, or judicial sale in an action or proceeding in which such

member or any lawyer affiliated by reason of personal, business, or professional relationship with that member or with that member's law firm is acting as a lawyer for a party or as executor, receiver, trustee, administrator, guardian, or conservator.

(B) A member shall not represent the seller at a probate, foreclosure, receiver, trustee, or judicial sale in an action or proceeding in which the purchaser is a spouse or relative of the member or of another lawyer in the member's law firm or is an employee of the member or the member's law firm. (Amended by order of Supreme Court, operative September 14, 1992.)

### **Rule 4-400 Gifts From Client**

A member shall not induce a client to make a substantial gift, including a testamentary gift, to the member or to the member's parent, child, sibling, or spouse, except where the client is related to the member.

#### ***Discussion:***

A member may accept a gift from a member's client, subject to general standards of fairness and absence of undue influence. The member who participates in the preparation of an instrument memorializing a gift which is otherwise permissible ought not to be subject to professional discipline. On the other hand, where impermissible influence occurred, discipline is appropriate. (See *Magee v. State Bar* (1962) 58 Cal.2d 423 [24 Cal.Rptr. 839].)

## **CHAPTER 5. ADVOCACY AND REPRESENTATION**

### **Rule 5-100 Threatening Criminal, Administrative, or Disciplinary Charges**

(A) A member shall not threaten to present criminal, administrative, or disciplinary charges to obtain an advantage in a civil dispute.

(B) As used in paragraph (A) of this rule, the term "administrative charges" means the filing or lodging of a complaint with a federal, state, or local governmental

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entity which may order or recommend the loss or suspension of a license, or may impose or recommend the imposition of a fine, pecuniary sanction, or other sanction of a quasi-criminal nature but does not include filing charges with an administrative entity required by law as a condition precedent to maintaining a civil action.

(C) As used in paragraph (A) of this rule, the term “civil dispute” means a controversy or potential controversy over the rights and duties of two or more parties under civil law, whether or not an action has been commenced, and includes an administrative proceeding of a quasi-civil nature pending before a federal, state, or local governmental entity.

### ***Discussion:***

Rule 5-100 is not intended to apply to a member’s threatening to initiate contempt proceedings against a party for a failure to comply with a court order.

Paragraph (B) is intended to exempt the threat of filing an administrative charge which is a prerequisite to filing a civil complaint on the same transaction or occurrence.

For purposes of paragraph (C), the definition of “civil dispute” makes clear that the rule is applicable prior to the formal filing of a civil action.

### **Rule 5-110 Special Responsibilities of a Prosecutor**

The prosecutor in a criminal case shall:

(A) Not institute or continue to prosecute a charge that the prosecutor knows is not supported by probable cause;

(B) Make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(C) Not seek to obtain from an unrepresented accused a waiver of important pretrial rights unless the tribunal has approved the appearance of the accused in *propria persona*;

(D) Make timely disclosure to the defense of all evidence or information known to the prosecutor that the prosecutor knows or reasonably should know tends to negate the guilt of the accused, mitigate the offense, or mitigate the sentence, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal; and

(E) Exercise reasonable care to prevent persons under the supervision or direction of the prosecutor, including investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under rule 5-120.

(F) When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:

(1) Promptly disclose that evidence to an appropriate court or authority, and

(2) If the conviction was obtained in the prosecutor’s jurisdiction,

(a) Promptly disclose that evidence to the defendant unless a court authorizes delay, and

(b) Undertake further investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.

(G) When a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor’s jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.

### ***Discussion:***

[1] A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice, that guilt is decided upon the basis of sufficient evidence,



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and that special precautions are taken to prevent and to rectify the conviction of innocent persons. Rule 5-110 is intended to achieve those results. All lawyers in government service remain bound by rules 3-200 and 5-220.

[2] Paragraph (C) does not forbid the lawful questioning of an uncharged suspect who has knowingly waived the right to counsel and the right to remain silent. Paragraph (C) also does not forbid prosecutors from seeking from an unrepresented accused a reasonable waiver of time for initial appearance or preliminary hearing as a means of facilitating the accused's voluntary cooperation in an ongoing law enforcement investigation.

[3] The disclosure obligations in paragraph (D) are not limited to evidence or information that is material as defined by *Brady v. Maryland* (1963) 373 U.S. 83 [83 S. Ct. 1194] and its progeny. For example, these obligations include, at a minimum, the duty to disclose impeachment evidence or information that a prosecutor knows or reasonably should know casts significant doubt on the accuracy or admissibility of witness testimony on which the prosecution intends to rely. Paragraph (D) does not require disclosure of information protected from disclosure by federal or California laws and rules, as interpreted by case law or court orders. Nothing in this rule is intended to be applied in a manner inconsistent with statutory and constitutional provisions governing discovery in California courts. A disclosure's timeliness will vary with the circumstances, and paragraph (D) is not intended to impose timing requirements different from those established by statutes, procedural rules, court orders, and case law interpreting those authorities and the California and federal constitutions.

[4] The exception in paragraph (D) recognizes that a prosecutor may seek an appropriate protective order from the tribunal if disclosure of information to the defense could result in substantial harm to an individual or to the public interest.

[5] Paragraph (E) supplements rule 5-120, which prohibits extrajudicial statements that have a substantial likelihood of prejudicing an adjudicatory proceeding. Paragraph (E) is not intended to restrict the statements which a prosecutor may make which comply with rule 5-120(B) or 5-120(C).

[6] Prosecutors have a duty to supervise the work of subordinate lawyers and nonlawyer employees or

agents. (See rule 3-110, Discussion.) Ordinarily, the reasonable care standard of paragraph (E) will be satisfied if the prosecutor issues the appropriate cautions to law enforcement personnel and other relevant individuals.

[7] When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a person outside the prosecutor's jurisdiction was convicted of a crime that the person did not commit, paragraph (F) requires prompt disclosure to the court or other appropriate authority, such as the chief prosecutor of the jurisdiction where the conviction occurred. If the conviction was obtained in the prosecutor's jurisdiction, paragraph (F) requires the prosecutor to examine the evidence and undertake further investigation to determine whether the defendant is in fact innocent or make reasonable efforts to cause another appropriate authority to undertake the necessary investigation, and to promptly disclose the evidence to the court and, absent court authorized delay, to the defendant. Disclosure to a represented defendant must be made through the defendant's counsel, and, in the case of an unrepresented defendant, would ordinarily be accompanied by a request to a court for the appointment of counsel to assist the defendant in taking such legal measures as may be appropriate. (See rule 2-100.)

[8] Under paragraph (G), once the prosecutor knows of clear and convincing evidence that the defendant was convicted of an offense that the defendant did not commit, the prosecutor must seek to remedy the conviction. Depending upon the circumstances, steps to remedy the conviction could include disclosure of the evidence to the defendant, requesting that the court appoint counsel for an unrepresented indigent defendant and, where appropriate, notifying the court that the prosecutor has knowledge that the defendant did not commit the offense of which the defendant was convicted.

[9] A prosecutor's independent judgment, made in good faith, that the new evidence is not of such nature as to trigger the obligations of sections (F) and (G), though subsequently determined to have been erroneous, does not constitute a violation of rule 5-110.

***[Publisher's Note re Rule 5-110: This rule was amended by order of the California Supreme Court, case number S239387, operative May 1, 2017. See below for the***

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*former rule 5-110 which was operative until April 30, 2017.]*

### **Rule 5-110 Performing the Duty of Member in Government Service**

A member in government service shall not institute or cause to be instituted criminal charges when the member knows or should know that the charges are not supported by probable cause. If, after the institution of criminal charges, the member in government service having responsibility for prosecuting the charges becomes aware that those charges are not supported by probable cause, the member shall promptly so advise the court in which the criminal matter is pending.

### **Rule 5-120 Trial Publicity**

(A) A member who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the member knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

(B) Notwithstanding paragraph (A), a member may state:

- (1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;
- (2) the information contained in a public record;
- (3) that an investigation of the matter is in progress;
- (4) the scheduling or result of any step in litigation;
- (5) a request for assistance in obtaining evidence and information necessary thereto;
- (6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or the public interest; and

(7) in a criminal case, in addition to subparagraphs (1) through (6):

- (a) the identity, residence, occupation, and family status of the accused;
- (b) if the accused has not been apprehended, the information necessary to aid in apprehension of that person;
- (c) the fact, time, and place of arrest; and
- (d) the identity of investigating and arresting officers or agencies and the length of the investigation.

(C) Notwithstanding paragraph (A), a member may make a statement that a reasonable member would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the member or the member's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

#### ***Discussion:***

Rule 5-120 is intended to apply equally to prosecutors and criminal defense counsel.

Whether an extrajudicial statement violates rule 5-120 depends on many factors, including: (1) whether the extrajudicial statement presents information clearly inadmissible as evidence in the matter for the purpose of proving or disproving a material fact in issue; (2) whether the extrajudicial statement presents information the member knows is false, deceptive, or the use of which would violate Business and Professions Code section 6068(d); (3) whether the extrajudicial statement violates a lawful "gag" order, or protective order, statute, rule of court, or special rule of confidentiality (for example, in juvenile, domestic, mental disability, and certain criminal proceedings); and (4) the timing of the statement.

Paragraph (A) is intended to apply to statements made by or on behalf of the member.

Subparagraph (B)(6) is not intended to create, augment, diminish, or eliminate any application of the lawyer-client privilege or of Business and Professions Code section 6068(e) regarding the member's duty to

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maintain client confidence and secrets. (Added by order of the Supreme Court, operative October 1, 1995.)

### **Rule 5-200 Trial Conduct**

In presenting a matter to a tribunal, a member:

- (A) Shall employ, for the purpose of maintaining the causes confided to the member such means only as are consistent with truth;
- (B) Shall not seek to mislead the judge, judicial officer, or jury by an artifice or false statement of fact or law;
- (C) Shall not intentionally misquote to a tribunal the language of a book, statute, or decision;
- (D) Shall not, knowing its invalidity, cite as authority a decision that has been overruled or a statute that has been repealed or declared unconstitutional; and
- (E) Shall not assert personal knowledge of the facts at issue, except when testifying as a witness.

### **Rule 5-210 Member as Witness**

A member shall not act as an advocate before a jury which will hear testimony from the member unless:

- (A) The testimony relates to an uncontested matter; or
- (B) The testimony relates to the nature and value of legal services rendered in the case; or
- (C) The member has the informed, written consent of the client. If the member represents the People or a governmental entity, the consent shall be obtained from the head of the office or a designee of the head of the office by which the member is employed and shall be consistent with principles of recusal.

#### ***Discussion:***

Rule 5-210 is intended to apply to situations in which the member knows or should know that he or she ought to be called as a witness in litigation in which there is a jury. This rule is not intended to encompass situations in which the member is representing the client in an adversarial proceeding and is testifying before a judge. In non-adversarial proceedings, as where the member

testifies on behalf of the client in a hearing before a legislative body, rule 5-210 is not applicable.

Rule 5-210 is not intended to apply to circumstances in which a lawyer in an advocate's firm will be a witness. (Amended by order of Supreme Court, operative September 14, 1992.)

### **Rule 5-220 Suppression of Evidence**

A member shall not suppress evidence that the member or the member's client has a legal obligation to reveal or to produce.

#### ***Discussion:***

See rule 5-110 for special responsibilities of a prosecutor. (Amended by order of Supreme Court, effective May 1, 2017.)

***[Publisher's Note re Rule 5-220: This rule was amended by order of the California Supreme Court, case number S239387, operative May 1, 2017. See below for the former rule 5-220 which was operative until April 30, 2017.]***

### **Rule 5-220 Suppression of Evidence**

A member shall not suppress any evidence that the member or the member's client has a legal obligation to reveal or to produce.

### **Rule 5-300 Contact With Officials**

(A) A member shall not directly or indirectly give or lend anything of value to a judge, official, or employee of a tribunal unless the personal or family relationship between the member and the judge, official, or employee is such that gifts are customarily given and exchanged. Nothing contained in this rule shall prohibit a member from contributing to the campaign fund of a judge running for election or confirmation pursuant to applicable law pertaining to such contributions.

(B) A member shall not directly or indirectly communicate with or argue to a judge or judicial officer upon the merits of a contested matter pending before such judge or judicial officer, except:

- (1) In open court; or

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- (2) With the consent of all other counsel in such matter; or
- (3) In the presence of all other counsel in such matter; or
- (4) In writing with a copy thereof furnished to such other counsel; or
- (5) In ex parte matters.

(C) As used in this rule, “judge” and “judicial officer” shall include law clerks, research attorneys, or other court personnel who participate in the decision-making process. (Amended by order of Supreme Court, operative September 14, 1992.)

### **Rule 5-310 Prohibited Contact With Witnesses**

A member shall not:

- (A) Advise or directly or indirectly cause a person to secrete himself or herself or to leave the jurisdiction of a tribunal for the purpose of making that person unavailable as a witness therein.
- (B) Directly or indirectly pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of the witness’s testimony or the outcome of the case. Except where prohibited by law, a member may advance, guarantee, or acquiesce in the payment of:
  - (1) Expenses reasonably incurred by a witness in attending or testifying.
  - (2) Reasonable compensation to a witness for loss of time in attending or testifying.
  - (3) A reasonable fee for the professional services of an expert witness.

### **Rule 5-320 Contact With Jurors**

- (A) A member connected with a case shall not communicate directly or indirectly with anyone the member knows to be a member of the venire from which the jury will be selected for trial of that case.
- (B) During trial a member connected with the case shall not communicate directly or indirectly with any juror.

(C) During trial a member who is not connected with the case shall not communicate directly or indirectly concerning the case with anyone the member knows is a juror in the case.

(D) After discharge of the jury from further consideration of a case a member shall not ask questions of or make comments to a member of that jury that are intended to harass or embarrass the juror or to influence the juror’s actions in future jury service.

(E) A member shall not directly or indirectly conduct an out of court investigation of a person who is either a member of the venire or a juror in a manner likely to influence the state of mind of such person in connection with present or future jury service.

(F) All restrictions imposed by this rule also apply to communications with, or investigations of, members of the family of a person who is either a member of the venire or a juror.

(G) A member shall reveal promptly to the court improper conduct by a person who is either a member of a venire or a juror, or by another toward a person who is either a member of a venire or a juror or a member of his or her family, of which the member has knowledge.

(H) This rule does not prohibit a member from communicating with persons who are members of a venire or jurors as a part of the official proceedings.

(I) For purposes of this rule, “juror” means any empanelled, discharged, or excused juror. (Amended by order of Supreme Court, operative September 14, 1992.)

## APPENDIX 3

### “1989” CALIFORNIA RULES OF PROFESSIONAL CONDUCT

(Effective from May 27, 1989 to September 13, 1992)

#### CHAPTER 1. PROFESSIONAL INTEGRITY IN GENERAL

##### Rule 1-100 Rules of Professional Conduct, in General

###### (A) Purpose and Function.

The following rules are intended to regulate professional conduct of members of the State Bar through discipline. They have been adopted by the Board of Governors of the State Bar of California and approved by the Supreme Court of California pursuant to Business and Professions Code sections 6076 and 6077 to protect the public and to promote respect and confidence in the legal profession. These rules together with any standards adopted by the Board of Governors pursuant to these rules shall be binding upon all members of the State Bar.

For a willful breach of any of these rules, the Board of Governors has the power to discipline members as provided by law.

The prohibition of certain conduct in these rules is not exclusive. Members are also bound by applicable law including the State Bar Act (Bus. & Prof. Code, §6000 et seq.) and opinions of California courts. Although not binding, opinions of ethics committees in California should be consulted by members for guidance on proper professional conduct. Ethics opinions and rules and standards promulgated by other jurisdictions and bar associations may also be considered.

These rules are not intended to create new civil causes of action. Nothing in these rules shall be deemed to create, augment, diminish, or eliminate any substantive legal duty of lawyers or the non-disciplinary consequences of violating such a duty.

###### (B) Definitions.

###### (1) “Law Firm” means:

- (a) two or more lawyers whose activities constitute the practice of law, and who share its profits, expenses, and liabilities; or

- (b) a law corporation which employs more than one member; or

- (c) a division, department, office, or group within a business entity, which includes more than one lawyer who performs legal services for the business entity; or

- (d) a publicly funded entity which employs more than one lawyer to perform legal services.

- (2) “Member” means a member of the State Bar of California.

- (3) “Lawyer” means a member of the State Bar of California or a person who is admitted in good standing of 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.

- (4) “Associate” means an employee or fellow employee who is employed as a lawyer.

- (5) “Shareholder” means a shareholder in a professional corporation pursuant to Business and Professions Code section 6160 et seq.

###### (C) Purpose of Discussions.

Because it is a practical impossibility to convey in black letter form all of the nuances of these disciplinary rules, the comments contained in the Discussions of the rules, while they do not add independent basis for imposing discipline, are intended to provide guidance for interpreting the rules and practicing in compliance with them.

###### (D) Geographic Scope of Rules.

###### (1) As to members:

These rules shall govern the activities of members in and outside this state, except as members lawfully practicing outside this state may be specifically required by a jurisdiction in which

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they are practicing to follow rules of professional conduct different from these rules.

(2) As to lawyers from other jurisdictions:

These rules shall also govern the activities of lawyers while engaged in the performance of lawyer functions in this state; but nothing contained in these rules shall be deemed to authorize the performance of such functions by such persons in this state except as otherwise permitted by law.

(E) These rules may be cited and referred to as “Rules of Professional Conduct of the State Bar of California.”

### **Discussion:**

The Rules of Professional Conduct are intended to establish the standards for members for purposes of discipline. (See *Ames v. State Bar* (1973) 8 Cal.3d 910 [106 Cal.Rptr. 489].) The fact that a member has engaged in conduct that may be contrary to these rules does not automatically give rise to a civil cause of action. (See *Noble v. Sears, Roebuck & Co.* (1973) 33 Cal.App.3d 654 [109 Cal.Rptr. 269]; *Wilhelm v. Pray, Price, Williams & Russell* (1986) 186 Cal.App.3d 1324 [231 Cal.Rptr. 355].) These rules are not intended to supercede existing law relating to members in non-disciplinary contexts. (See, e.g., *Klemm v. Superior Court* (1977) 75 Cal.App.3d 893 [142 Cal.Rptr. 509] (motion for disqualification of counsel due to a conflict of interest); *Academy of California Optometrists, Inc. v. Superior Court* (1975) 51 Cal.App.3d 999 [124 Cal.Rptr. 668] (duty to return client files); *Chronometrics, Inc. v. Sysgen, Inc.* (1980) 110 Cal.App.3d 597 [168 Cal.Rptr. 196] (disqualification of member appropriate remedy for improper communication with adverse party).)

Law firm, as defined by subparagraph (B)(1), is not intended to include an association of members who do not share profits, expenses, and liabilities. The subparagraph is not intended to imply that a law firm may include a person who is not a member in violation of the law governing the unauthorized practice of law.

### **Rule 1-110 Disciplinary Authority of the State Bar**

A member shall comply with conditions attached to public or private reprovals or other discipline administered by the State Bar pursuant to Business and

Professions Code sections 6077 and 6078 and rule 956, California Rules of Court.

### **Rule 1-120 Assisting, Soliciting, or Inducing Violations**

A member shall not knowingly assist in, solicit, or induce any violation of these rules or the State Bar Act.

### **Rule 1-200 False Statement Regarding Admission to the State Bar**

(A) A member shall not knowingly make a false statement regarding a material fact or knowingly fail to disclose a material fact in connection with an application for admission to the State Bar.

(B) A member shall not further an application for admission to the State Bar of a person whom the member knows to be unqualified in respect to character, education, or other relevant attributes.

(C) This rule shall not prevent a member from serving as counsel of record for an applicant for admission to practice in proceedings related to such admission.

### **Discussion:**

For purposes of rule 1-200 “admission” includes readmission.

### **Rule 1-300 Unauthorized Practice of Law**

(A) A member shall not aid any person or entity in the unauthorized practice of law.

(B) A member shall not practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction.

### **Rule 1-310 Forming a Partnership With a Non-Lawyer**

A member shall not form a partnership with a person not licensed to practice law if any of the activities of that partnership consist of the practice of law.

### **Discussion:**

Rule 1-310 is not intended to govern members’ activities which cannot be considered to constitute the practice of law. It is intended solely to preclude a

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member from being involved in the practice of law with a person not licensed to practice law.

#### **Rule 1-320 Financial Arrangements With Non-Lawyers**

(A) Neither a member nor a law firm shall directly or indirectly share legal fees with a person or entity not licensed to practice law, except that:

(1) An agreement between a member and a law firm, partner, or associate may provide for the payment of money after the member's death to the member's estate or to one or more specified persons over a reasonable period of time; or

(2) A member or law firm undertaking to complete unfinished legal business of a deceased member may pay to the estate of the deceased member or other person legally entitled thereto that proportion of the total compensation which fairly represents the services rendered by the deceased member;

(3) A member or law firm may include non-member employees in a compensation, profit-sharing, or retirement plan even though the plan is based in whole or in part on a profit-sharing arrangement, if such plan does not circumvent these rules or Business and Professions Code section 6000 et seq.; or

(4) A member may pay a prescribed registration, referral, or participation fee to a lawyer referral service established, sponsored, and operated in accordance with the State Bar of California's Minimum Standards for a Lawyer Referral Service in California.

(B) A member shall not compensate, give, or promise anything of value to any person or entity for the purpose of recommending or securing employment of the member or the member's law firm by a client, or as a reward for having made a recommendation resulting in employment of the member or the member's law firm by a client. A member's offering of or giving a gift or gratuity to any person or entity having made a recommendation resulting in the employment of the member or the member's law firm shall not of itself violate this rule, provided that the gift or gratuity was not offered or given in consideration of any promise, agreement, or understanding that such a gift or gratuity

would be forthcoming or that referrals would be made or encouraged in the future.

(C) A member shall not compensate, give, or promise anything of value to any representative of the press, radio, television, or other communication medium in anticipation of or in return for publicity of the member, the law firm, or any other member as such in a news item, but the incidental provision of food or beverage shall not of itself violate this rule.

#### ***Discussion:***

Rule 1-320(C) is not intended to preclude compensation to the communications media in exchange for advertising the member's or law firm's availability for professional employment.

#### **Rule 1-400 Advertising and Solicitation**

(A) For purposes of this rule, "communication" means any message or offer made by or on behalf of a member concerning the availability for professional employment of a member or a law firm directed to any former, present, or prospective client, including but not limited to the following:

(1) Any use of firm name, trade name, fictitious name, or other professional designation of such member or law firm; or

(2) Any stationery, letterhead, business card, sign, brochure, or other comparable written material describing such member, law firm, or lawyers; or

(3) Any advertisement (regardless of medium) of such member or law firm directed to the general public or any substantial portion thereof; or

(4) Any unsolicited correspondence from a member or law firm directed to any person or entity.

(B) For purposes of this rule, a "solicitation" means any communication:

(1) Concerning the availability for professional employment of a member or a law firm in which a significant motive is pecuniary gain; and

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(2) Which is;

(a) delivered in person or by telephone, or

(b) directed by any means to a person known to the sender to be represented by counsel in a matter which is a subject of the communication.

(C) A solicitation shall not be made by or on behalf of a member or law firm to a prospective client with whom the member or law firm has no family or prior professional relationship, unless the solicitation is protected from abridgment by the Constitution of the United States or by the Constitution of the State of California. A solicitation to a former or present client in the discharge of a member's or law firm's professional duties is not prohibited.

(D) A communication or a solicitation (as defined herein) shall not:

(1) Contain any untrue statement; or

(2) Contain any matter, or present or arrange any matter in a manner or format which is false, deceptive, or which tends to confuse, deceive, or mislead the public; or

(3) Omit to state any fact necessary to make the statements made, in the light of circumstances under which they are made, not misleading to the public; or

(4) Fail to indicate clearly, expressly, or by context, that it is a communication or solicitation, as the case may be; or

(5) Be transmitted in any manner which involves intrusion, coercion, duress, compulsion, intimidation, threats, or vexatious or harassing conduct; or

(6) State that a member is a "certified specialist" unless the member holds a current certificate as a specialist issued by the California Board of Legal Specialization, or any other entity accredited by the State Bar to designate specialists pursuant to standards adopted by the Board of Governors, and states the complete name of the entity which granted certification.

(E) The Board of Governors of the State Bar shall formulate and adopt standards as to communications which will be presumed to violate this rule 1-400. The standards shall only be used as presumptions affecting the burden of proof in disciplinary proceedings involving alleged violations of these rules. "Presumption affecting the burden of proof" means that presumption defined in Evidence Code sections 605 and 606. Such standards formulated and adopted by the Board, as from time to time amended, shall be effective and binding on all members.

(F) A member shall retain for two years a true and correct copy or recording of any communication made by written or electronic media. Upon written request, the member shall make any such copy or recording available to the State Bar, and, if requested, shall provide to the State Bar evidence to support any factual or objective claim contained in the communication.

***[Publisher's Note: Former rule 1-400(D)(6) repealed by order of the Supreme Court effective November 30, 1992. New rule 1-400(D)(6) added by order of the Supreme Court, effective June 1, 1997.]***

### **Standards:**

Pursuant to rule 1-400(E) the Board of Governors of the State Bar has adopted the following standards, effective May 27, 1989 as forms of "communication" defined in rule 1-400(A) which are presumed to be in violation of rule 1-400:

(1) A "communication" which contains guarantees, warranties, or predictions regarding the result of the representation.

(2) A "communication" which contains testimonials about or endorsements of a member unless such communication also contains an express disclaimer such as "this testimonial or endorsement does not constitute a guarantee, warranty, or prediction regarding the outcome of your legal matter."

(3) A "communication" which is delivered to a potential client whom the member knows or should reasonably know is in such a physical, emotional, or mental state that he or she would not be expected to exercise reasonable judgment as to the retention of counsel.



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(4) A “communication” which is transmitted at the scene of an accident or at or en route to a hospital, emergency care center, or other health care facility.

(5) A “communication,” except professional announcements, seeking professional employment primarily for pecuniary gain which is transmitted by mail or equivalent means which does not clearly identify itself as an advertisement. If transmitted in an envelope, the envelope shall be identified as an advertisement on the outside thereof.

(6) A “communication” in the form of a firm name, trade name, fictitious name, or other professional designation which states or implies a relationship between any member in private practice and a government agency or instrumentality or a public or non-profit legal services organization.

(7) A “communication” in the form of a firm name, trade name, fictitious name, or other professional designation which states or implies that a member has a relationship to any other member or a law firm as a partner or associate, or officer or shareholder pursuant to Business and Professions Code sections 6160-6172 unless such relationship in fact exists.

(8) A “communication” which states or implies that a member or law firm is “of counsel” to another member or a law firm unless the former has a relationship with the latter (other than as a partner or associate, or officer or shareholder pursuant to Business and Professions Code sections 6160-6172) which is close, personal, continuous, and regular.

(9) A “communication” in the form of a firm name, trade name, fictitious name, or other professional designation used by a member or law firm in private practice which differs materially from any other such designation used by such member or law firm at the same time in the same community.

(10) A “communication” which implies that the member or member’s firm is participating in a lawyer referral service which has been certified by the State Bar of California or as having satisfied the Minimum Standards for Lawyer Referral Services in California, when that is not the case.

(11) A “communication” which states or implies that a member is a “certified specialist” unless such

communication also states the complete name of the entity which granted the certification as a specialist. (Repealed effective July 1, 1997. See rule 1-400(D)(6).)

(12) A “communication,” except professional announcements, in the form of an advertisement primarily directed to seeking professional employment primarily for pecuniary gain transmitted to the general public or any substantial portion thereof by mail or equivalent means or by means of television, radio, newspaper, magazine or other form of commercial mass media which does not state the name of the member responsible for the communication. When the communication is made on behalf of a law firm, the communication shall state the name of at least one member responsible for it.

(13) A “communication” which contains a dramatization unless such communication contains a disclaimer which states “this is a dramatization” or words of similar import.

(14) A “communication” which states or implies “no fee without recovery” unless such communication also expressly discloses whether or not the client will be liable for costs.

(15) A “communication” which states or implies that a member is able to provide legal services in a language other than English unless the member can actually provide legal services in such language or the communication also states in the language of the communication (a) the employment title of the person who speaks such language and (b) that the person is not a member of the State Bar of California, if that is the case.

(16) An unsolicited “communication” transmitted to the general public or any substantial portion thereof primarily directed to seeking professional employment primarily for pecuniary gain which sets forth a specific fee or range of fees for a particular service where, in fact, the member charges a greater fee than advertised in such communication within a period of 90 days following dissemination of such communication, unless such communication expressly specifies a shorter period of time regarding the advertised fee. Where the communication is published in the classified or “yellow pages” section of telephone, business or legal directories or in other media not published more frequently than once a

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year, the member shall conform to the advertised fee for a period of one year from initial publication, unless such communication expressly specifies a shorter period of time regarding the advertised fee. (Amended by order of Supreme Court, operative September 14, 1992. Standard (5) amended by the Board of Governors, effective May 11, 1994. Standards (12) - (16) added by the Board of Governors, effective May 11, 1994.)

### **Rule 1-500 Agreements Restricting a Member's Practice**

(A) A member shall not be a party to or participate in offering or making an agreement, whether in connection with the settlement of a lawsuit or otherwise, if the agreement restricts the right of a member to practice law.

(B) Nothing in paragraph (A) of this rule shall be construed as prohibiting such a restrictive agreement which:

(1) Is a part of an employment, shareholders', or partnership agreement among members provided the restrictive agreement does not survive the termination of the employment, shareholder, or partnership relationship; or

(2) Requires payments to a member upon the member's retirement from the practice of law.

(C) A member shall not be a party to or participate in offering or making an agreement which precludes the reporting of a violation of these rules.

#### ***Discussion:***

Paragraph (A) makes it clear that the practice, in connection with settlement agreements, of proposing that a member refrain from representing other clients in similar litigation, is prohibited. Neither counsel may demand or suggest such provisions nor may opposing counsel accede or agree to such provisions.

Paragraph (B) permits a restrictive covenant in a law corporation, partnership, or employment agreement. The law corporation shareholder, partner, or associate may agree not to have a separate practice during the existence of the relationship; however, upon

termination of the relationship (whether voluntary or involuntary), the member is free to practice law without any contractual restriction except in the case of retirement from the active practice of law.

### **Rule 1-600 Legal Service Programs**

(A) A member shall not participate in a nongovernmental program, activity, or organization furnishing, recommending, or paying for legal services, which allows any third person or organization to interfere with the member's independence of professional judgment, or with the client-lawyer relationship, or allows unlicensed persons to practice law, or allows any third person or organization to receive directly or indirectly any part of the consideration paid to the member except as permitted by these rules, or otherwise violates the State Bar Act or these rules.

(B) The Board of Governors of the State Bar shall formulate and adopt Minimum Standards for Lawyer Referral Services, which, as from time to time amended, shall be binding on members.

#### ***Discussion:***

The participation of a member in a lawyer referral service established, sponsored, supervised, and operated in conformity with the Minimum Standards for a Lawyer Referral Service in California is encouraged and is not, of itself, a violation of these rules.

Rule 1-600 is not intended to override any contractual agreement or relationship between insurers and insureds regarding the provision of legal services.

Rule 1-600 is not intended to apply to the activities of a public agency responsible for providing legal services to a government or to the public.

For purposes of paragraph (A), "a nongovernmental program, activity, or organization" includes, but is not limited to group, prepaid, and voluntary legal service programs, activities, or organizations.

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### CHAPTER 2. RELATIONSHIP AMONG MEMBERS

#### Rule 2-100 Communication With a Represented Party

(A) While representing a client, a member shall not communicate directly or indirectly about the subject of the representation with a party the member knows to be represented by another lawyer in the matter, unless the member has the consent of the other lawyer.

(B) For purposes of this rule, a “party” includes:

(1) An officer, director, or managing agent of a corporation or association, and a partner or managing agent of a partnership; or

(2) An association member or an employee of an association, corporation, or partnership, if the subject of the communication is any act or omission of such person in connection with the matter which may be binding upon or imputed to the organization for purposes of civil or criminal liability or whose statement may constitute an admission on the part of the organization.

(C) This rule shall not prohibit:

(1) Communications with a public officer, board, committee, or body;

(2) Communications initiated by a party seeking advice or representation from an independent lawyer of the party’s choice; or

(3) Communications otherwise authorized by law.

#### **Discussion:**

Rule 2-100 is intended to control communications between a member and persons the member knows to be represented by counsel unless a statutory scheme or case law will override the rule. There are a number of express statutory schemes which authorize communications between a member and person who would otherwise be subject to this rule. These statutes protect a variety of other rights such as the right of employees to organize and to engage in collective bargaining, employee health and safety, or equal employment opportunity. Other applicable law also includes the authority of government prosecutors and

investigators to conduct criminal investigations, as limited by the relevant decisional law.

Rule 2-100 is not intended to prevent the parties themselves from communicating with respect to the subject matter of the representation, and nothing in the rule prevents a member from advising the client that such communication can be made. Moreover, the rule does not prohibit a member who is also a party to a legal matter from directly or indirectly communicating on his or her own behalf with a represented party. Such a member has independent rights as a party which should not be abrogated because of his or her professional status. To prevent any possible abuse in such situations, the counsel for the opposing party may advise that party (1) about the risks and benefits of communications with a lawyer-party, and (2) not to accept or engage in communications with the lawyer-party.

Rule 2-100 also addresses the situation in which member A is contacted by an opposing party who is represented and, because of dissatisfaction with that party’s counsel, seeks A’s independent advice. Since A is employed by the opposition, the member cannot give independent advice.

As used in paragraph (A), “the subject of the representation,” “matter,” and “party” are not limited to a litigation context.

Paragraph (B) is intended to apply only to persons employed at the time of the communication.

Subparagraph (C)(2) is intended to permit a member to communicate with an individual seeking to hire new counsel or to obtain a second opinion. A member contacted by such an individual continues to be bound by other Rules of Professional Conduct. (See, e.g., rules 1-400 and 3-310.)

#### Rule 2-200 Financial Arrangements Among Lawyers

(A) A member shall not divide a fee for legal services with a lawyer who is not a partner of, associate of, or shareholder with the member unless:

(1) The client has consented in writing thereto after a full disclosure has been made in writing that a division of fees will be made and the terms of such division; and

(2) The total fee charged by all lawyers is not increased solely by reason of the provision for division of fees and is not unconscionable as that term is defined in rule 4-200.

(B) Except as permitted in paragraph (A) of this rule or rule 2-300, a member shall not compensate, give, or promise anything of value to any lawyer for the purpose of recommending or securing employment of the member or the member's law firm by a client, or as a reward for having made a recommendation resulting in employment of the member or the member's law firm by a client. A member's offering of or giving a gift or gratuity to any lawyer who has made a recommendation resulting in the employment of the member or the member's law firm shall not of itself violate this rule, provided that the gift or gratuity was not offered in consideration of any promise, agreement, or understanding that such a gift or gratuity would be forthcoming or that referrals would be made or encouraged in the future.

**Rule 2-300 Sale or Purchase of a Law Practice of a Member, Living or Deceased**

All or substantially all of the law practice of a member, living or deceased, including goodwill, may be sold to another member or law firm subject to all the following conditions:

(A) Fees charged to clients shall not be increased solely by reason of such sale.

(B) If the sale contemplates the transfer of responsibility for work not yet completed or responsibility for client files or information protected by Business and Professions Code section 6068, subdivision (e), then;

(1) if the seller is deceased, has a conservator or other person acting in a representative capacity, prior to the transfer;

(a) the purchaser shall cause a written notice to be given to the client stating that the interest in the law practice is being transferred to the purchaser; that the client has the right to retain other counsel; that the client may take possession of any client papers and property, as required by rule 3-700(D); and that if no response is received to the notification within 90 days of the sending

of such notice, or in the event the client's rights would be prejudiced by a failure to act during that time, the purchaser may act on behalf of the client until otherwise notified by the client. Such notice shall comply with the requirements as set forth in rule 1-400(D) and any provisions relating to attorney-client fee arrangements, and

(b) the purchaser shall obtain the written consent of the client provided that such consent shall be presumed until otherwise notified by the client if no response is received to the notification specified in subparagraph (a) within 90 days of the date of the sending of such notification to the client's last address as shown on the records of the seller, or the client's rights would be prejudiced by a failure to act during such 90-day period.

(2) in all other circumstances, not less than 90 days prior to the transfer;

(a) the seller shall cause a written notice to be given to the client stating that the interest in the law practice is being transferred to the purchaser; that the client has the right to retain other counsel; that the client may take possession of any client papers and property, as required by rule 3-700(D); and that if no response is received to the notification within 90 days of the sending of such notice, the purchaser may act on behalf of the client until otherwise notified by the client. Such notice shall comply with the requirements as set forth in rule 1-400(D) and any provisions relating to attorney-client fee arrangements, and

(b) the seller shall obtain the written consent of the client prior to the transfer provided that such consent shall be presumed until otherwise notified by the client if no response is received to the notification specified in subparagraph (a) within 90 days of the date of the sending of such notification to the client's last address as shown on the records of the seller.

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(C) If substitution is required by the rules of a tribunal in which a matter is pending, all steps necessary to substitute a member shall be taken.

(D) All activity of a purchaser or potential purchaser under this rule shall be subject to compliance with rules 3-300 and 3-310 where applicable.

(E) Confidential information shall not be disclosed to a non-member in connection with a sale under this rule.

(F) Admission to or retirement from a law partnership or law corporation, retirement plans and similar arrangements, or sale of tangible assets of a law practice shall not be deemed a sale or purchase under this rule.

### **Discussion:**

Paragraph (A) is intended to prohibit the purchaser from charging the former clients of the seller a higher fee than the purchaser is charging his or her existing clients.

“All or substantially all of the law practice of a member” means, for purposes of rule 2-300, that, for example, a member may retain one or two clients who have such a longstanding personal and professional relationship with the member that transfer of those clients’ files is not feasible. Conversely, rule 2-300 is not intended to authorize the sale of a law practice in a piecemeal fashion except as may be required by subparagraph (B)(1)(a) or paragraph (D).

Transfer of individual client matters, where permitted, is governed by rule 2-200. Payment of a fee to a non-lawyer broker for arranging the sale or purchase of a law practice is governed by rule 1-320.

## **CHAPTER 3. PROFESSIONAL RELATIONSHIP WITH CLIENT**

### **Rule 3-110 Failing to Act Competently**

(A) A member shall not intentionally, or with reckless disregard, or repeatedly fail to perform legal services competently.

(B) To perform legal services competently means diligently to apply the learning and skill necessary to perform the member’s duties arising from employment or representation. If the member does not have sufficient learning and skills when the employment or representation is undertaken, or during the course of the employment or representation, the member may nonetheless perform such duties competently by associating or, where appropriate, professionally consulting another member reasonably believed to be competent, or by acquiring sufficient learning and skill before performance is required, if the member has sufficient time, resources, and ability to do so.

(C) As used in this rule, the term “ability” means a quality or state of having sufficient learning and skill and being mentally, emotionally, and physically able to perform legal services.

### **Discussion:**

The duties set forth in rule 3-110 include the duty to supervise the work of subordinate attorney and non-attorney employees or agents. (See, e.g., *Waysman v. State Bar* (1986) 41 Cal.3d 452; *Trousil v. State Bar* (1985) 38 Cal.3d 337, 342 [211 Cal.Rptr. 525]; *Palomo v. State Bar* (1984) 36 Cal.3d 785 [205 Cal.Rptr. 834]; *Crane v. State Bar* (1981) 30 Cal.3d 117, 122; *Black v. State Bar* (1972) 7 Cal.3d 676, 692 [103 Cal.Rptr. 288; 499 P.2d 968]; *Vaughn v. State Bar* (1972) 6 Cal.3d 847, 857-858 [100 Cal.Rptr. 713; 494 P.2d 1257]; *Moore v. State Bar* (1964) 62 Cal.2d 74, 81 [41 Cal.Rptr. 161; 396 P.2d 577].)

### **Rule 3-200 Prohibited Objectives of Employment**

A member shall not seek, accept, or continue employment if the member knows or should know that the objective of such employment is:

(A) To bring an action, conduct a defense, assert a position in litigation, or take an appeal, without probable cause and for the purpose of harassing or maliciously injuring any person; or

(B) To present a claim or defense in litigation that is not warranted under existing law, unless it can be supported by a good faith argument for an extension, modification, or reversal of such existing law.

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### Rule 3-210 Advising the Violation of Law

A member shall not advise the violation of any law, rule, or ruling of a tribunal unless the member believes in good faith that such law, rule, or ruling is invalid. A member may take appropriate steps in good faith to test the validity of any law, rule, or ruling of a tribunal.

#### Discussion:

Rule 3-210 is intended to apply not only to the prospective conduct of a client but also to the interaction between the member and client and to the specific legal service sought by the client from the member. An example of the former is the handling of physical evidence of a crime in the possession of the client and offered to the member. (See *People v. Meredith* (1981) 29 Cal.3d 682 [175 Cal.Rptr. 612].) An example of the latter is a request that the member negotiate the return of stolen property in exchange for the owner's agreement not to report the theft to the police or prosecutorial authorities. (See *People v. Pic'l* (1982) 31 Cal.3d 731 [183 Cal.Rptr. 685].)

### Rule 3-300 Avoiding Adverse Interests

A member shall not enter into a business transaction with a client; or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client, unless each of the following requirements has been satisfied:

- (A) The transaction or acquisition and its terms are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which should reasonably have been understood by the client; and
- (B) The client is advised in writing that the client may seek the advice of an independent lawyer of the client's choice and is given a reasonable opportunity to seek that advice; and
- (C) The client thereafter consents in writing to the terms of the transaction or the terms of the acquisition.

#### Discussion:

Rule 3-300 is not intended to apply to the agreement by which the member is retained by the client, unless the agreement confers on the member an ownership, possessory, security, or other pecuniary interest

adverse to the client. Such an agreement is governed, in part, by rule 4-200.

Rule 3-300 is not intended to apply where the member and client each make an investment on terms offered to the general public or a significant portion thereof. For example, rule 3-300 is not intended to apply where A, a member, invests in a limited partnership syndicated by a third party. B, A's client, makes the same investment. Although A and B are each investing in the same business, A did not enter into the transaction "with" B for the purposes of the rule.

Rule 3-300 is intended to apply where the member wishes to obtain an interest in client's property in order to secure the amount of the member's past due or future fees.

### Rule 3-310 Avoiding the Representation of Adverse Interests

(A) If a member has or had a relationship with another party interested in the representation, or has an interest in its subject matter, the member shall not accept or continue such representation without all affected clients' informed written consent.

(B) A member shall not concurrently represent clients whose interests conflict, except with their informed written consent.

(C) A member who represents two or more clients shall not enter into an aggregate settlement of the claims of or against the clients, except with their informed written consent.

(D) A member shall not accept employment adverse to a client or former client where, by reason of the representation of the client or former client, the member has obtained confidential information material to the employment except with the informed written consent of the client or former client.

(E) A member shall not accept compensation for representing a client from one other than the client unless:

- (1) There is no interference with the member's independence of professional judgment or with the client-lawyer relationship; and
- (2) Information relating to representation of a client is protected as required by Business and

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Professions Code section 6068, subdivision (e); and

(3) The client consents after disclosure, provided that no disclosure is required if;

(a) such nondisclosure is otherwise authorized by law, or

(b) the member is rendering legal services on behalf of any public agency which provides legal services to other public agencies or members of the public.

(F) As used in this rule “informed” means full disclosure to the client of the circumstances and advice to the client of any actual or reasonably foreseeable adverse effects of those circumstances upon the representation.

### **Discussion:**

Rule 3-310 is not intended to prohibit a member from representing parties having antagonistic positions on the same legal question that has arisen in different cases, unless representation of either client would be adversely affected.

Paragraph (A) is intended to apply to all types of legal employment, including the representation of multiple parties in litigation or in a single transaction or other common enterprise or legal relationship. Examples of the latter include the formation of a partnership for several partners or a corporation for several shareholders, the preparation of an ante-nuptial agreement, or joint or reciprocal wills for a husband and wife, or the resolution of an “uncontested” marital dissolution. In such situations, for the sake of convenience or economy, the parties may well prefer to employ a single counsel, but a member must disclose the potential adverse aspects of such multiple representation (e.g., Evid. Code, §962) and must obtain the consent of the clients thereto. Moreover, if the potential adversity should become actual, the member must obtain the further consent of the clients pursuant to paragraph (B).

Paragraph (E) is not intended to abrogate existing relationships between insurers and insureds whereby the insurer has the contractual right to unilaterally select counsel for the insured, where there is no conflict of interest. (See *San Diego Navy Federal Credit*

*Union v. Cumis Insurance Society* (1984) 162 Cal.App.3d 358 [208 Cal.Rptr. 494].)

### **Rule 3-320 Relationship With Other Party’s Lawyer**

A member shall not represent a client in a matter in which another party’s lawyer is a spouse, parent, child, or sibling of the member, lives with the member, is a client of the member, or has an intimate personal relationship with the member, unless the member informs the client in writing of the relationship.

### **Discussion:**

Rule 3-320 is not intended to apply to circumstances in which a member fails to advise the client of a relationship with another member who is merely a partner or associate in the same law firm as the adverse party’s counsel, and who has no direct involvement in the matter.

### **Rule 3-400 Limiting Liability to Client**

A member shall not:

(A) Contract with a client prospectively limiting the member’s liability to the client for the member’s professional malpractice; or

(B) Settle a claim or potential claim for such liability unless the client is informed in writing that the client may seek the advice of an independent lawyer of the client’s choice regarding the settlement and is given a reasonable opportunity to seek that advice.

### **Discussion:**

Rule 3-400 is not intended to apply to customary qualifications and limitations in legal opinions and memoranda, nor is it intended to prevent a member from reasonably limiting the scope of the member’s employment or representation.

### **Rule 3-500 Communication**

A member shall keep a client reasonably informed about significant developments relating to the employment or representation and promptly comply with reasonable requests for information.

**Discussion:**

Rule 3-500 is not intended to change a member's duties to his or her clients. It is intended to make clear that, while a client must be informed of significant developments in the matter, a member will not be disciplined for failing to communicate insignificant or irrelevant information. (See Bus. & Prof. Code, § 6068, subd. (m).)

**Rule 3-510 Communication of Settlement Offer**

(A) A member shall promptly communicate to the member's client:

- (1) All terms and conditions of any offer made to the client in a criminal matter; and
- (2) All amounts, terms, and conditions of any written offer of settlement made to the client in all other matters.

(B) As used in this rule, "client" includes a person who possesses the authority to accept an offer of settlement or plea, or, in a class action, all the named representatives of the class.

**Discussion:**

Rule 3-510 is intended to require that counsel in a criminal matter convey all offers, whether written or oral, to the client, as give and take negotiations are less common in criminal matters, and, even were they to occur, such negotiations should require the participation of the accused.

Any oral offers of settlement made to the client in a civil matter should also be communicated if they are "significant" for the purposes of rule 3-500.

**Rule 3-600 Organization as Client**

(A) In representing an organization, a member shall conform his or her representation to the concept that the client is the organization itself, acting through its highest authorized officer, employee, body, or constituent overseeing the particular engagement.

(B) If a member acting on behalf of an organization knows that an actual or apparent agent of the organization acts or intends or refuses to act in a

manner that is or may be a violation of law reasonably imputable to the organization, or in a manner which is likely to result in substantial injury to the organization, the member shall not violate his or her duty of protecting all confidential information as provided in Business and Professions Code section 6068, subdivision (e). Subject to Business and Professions Code section 6068, subdivision (e), the member may take such actions as appear to the member to be in the best lawful interest of the organization. Such actions may include among others:

- (1) Urging reconsideration of the matter while explaining its likely consequences to the organization; or
- (2) Referring the matter to the next higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest internal authority that can act on behalf of the organization.

(C) If, despite the member's actions in accordance with paragraph (B), the highest authority that can act on behalf of the organization insists upon action or a refusal to act that is a violation of law and is likely to result in substantial injury to the organization, the member's response is limited to the member's right, and, where appropriate, duty to resign in accordance with rule 3-700.

(D) In dealing with an organization's directors, officers, employees, members, shareholders, or other constituents, a member shall explain the identity of the client for whom the member acts, whenever it is or becomes apparent that the organization's interests are or may become adverse to those of the constituent(s) with whom the member is dealing. The member shall not mislead such a constituent into believing that the constituent may communicate confidential information to the member in a way that will not be used in the organization's interest if that is or becomes adverse to the constituent.

(E) A member representing an organization may also represent any of its directors, officers, employees, members, shareholders, or other constituents, subject to the provisions of rule 3-310. If the organization's consent to the dual representation is required by rule 3-310, the consent shall be given by an appropriate constituent of the organization other than the



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individual or constituent who is to be represented, or by the shareholder(s) or organization members.

### **Discussion:**

Rule 3-600 is not intended to enmesh members in the intricacies of the entity and aggregate theories of partnership.

Rule 3-600 is not intended to prohibit members from representing both an organization and other parties connected with it, as for instance (as simply one example) in establishing employee benefit packages for closely held corporations or professional partnerships.

Rule 3-600 is not intended to create or to validate artificial distinctions between entities and their officers, employees, or members, nor is it the purpose of the rule to deny the existence or importance of such formal distinctions. In dealing with a close corporation or small association, members commonly perform professional engagements for both the organization and its major constituents. When a change in control occurs or is threatened, members are faced with complex decisions involving personal and institutional relationships and loyalties and have frequently had difficulty in perceiving their correct duty. (See *People ex rel Deukmejian v. Brown* (1981) 29 Cal.3d 150 [172 Cal.Rptr. 478]; *Goldstein v. Lees* (1975) 46 Cal.App.3d 614 [120 Cal.Rptr. 253]; *Woods v. Superior Court* (1983) 149 Cal.App.3d 931 [197 Cal.Rptr. 185]; *In re Banks* (1978) 283 Ore. 459 [584 P.2d 284]; 1 A.L.R.4th 1105.) In resolving such multiple relationships, members must rely on case law.

### **Rule 3-700 Termination of Employment**

#### **(A) In General.**

(1) If permission for termination of employment is required by the rules of a tribunal, a member shall not withdraw from employment in a proceeding before that tribunal without its permission.

(2) A member shall not withdraw from employment until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, complying with rule

3-700(D), and complying with applicable laws and rules.

#### **(B) Mandatory Withdrawal.**

A member representing a client before a tribunal shall withdraw from employment with the permission of the tribunal, if required by its rules, and a member representing a client in other matters shall withdraw from employment, if:

- (1) The member knows or should know that the client is bringing an action, conducting a defense, asserting a position in litigation, or taking an appeal, without probable cause and for the purpose of harassing or maliciously injuring any person; or
- (2) The member knows or should know that continued employment will result in violation of these rules or of the State Bar Act; or
- (3) The member's mental or physical condition renders it unreasonably difficult to carry out the employment effectively.

#### **(C) Permissive Withdrawal.**

If rule 3-700(B) is not applicable, a member may not request permission to withdraw in matters pending before a tribunal, and may not withdraw in other matters, unless such request or such withdrawal is because:

- (1) The client
  - (a) insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law, or
  - (b) seeks to pursue an illegal course of conduct, or
  - (c) insists that the member pursue a course of conduct that is illegal or that is prohibited under these rules or the State Bar Act, or

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(d) by other conduct renders it unreasonably difficult for the member to carry out the employment effectively, or

(e) insists, in a matter not pending before a tribunal, that the member engage in conduct that is contrary to the judgment and advice of the member but not prohibited under these rules or the State Bar Act, or

(f) breaches an agreement or obligation to the member as to expenses or fees.

(2) The continued employment is likely to result in a violation of these rules or of the State Bar Act; or

(3) The inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal; or

(4) The member's mental or physical condition renders it difficult for the member to carry out the employment effectively; or

(5) The client knowingly and freely assents to termination of the employment; or

(6) The member believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal.

### (D) Papers, Property, and Fees.

A member whose employment has terminated shall:

(1) Subject to any protective order or non-disclosure agreement, promptly release to the client, at the request of the client, all the client papers and property. "Client papers and property" includes correspondence, pleadings, deposition transcripts, exhibits, physical evidence, expert's reports, and other items reasonably necessary to the client's representation, whether the client has paid for them or not; and

(2) Promptly refund any part of a fee paid in advance that has not been earned. This provision is not applicable to a true retainer fee which is paid solely for the purpose of ensuring the availability of the member for the matter.

### **Discussion:**

Subparagraph (A)(2) provides that "a member shall not withdraw from employment until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the clients." What such steps would include, of course, will vary according to the circumstances. Absent special circumstances, "reasonable steps" do not include providing additional services to the client once the successor counsel has been employed and rule 3-700(D) has been satisfied.

Paragraph (D) makes clear the member's duties in the recurring situation in which new counsel seeks to obtain client files from a member discharged by the client. It codifies existing case law. (See *Academy of California Optometrists v. Superior Court* (1975) 51 Cal.App.3d 999 [124 Cal.Rptr. 668]; *Weiss v. Marcus* (1975) 51 Cal.App.3d 590 [124 Cal.Rptr. 297].) Paragraph (D) also requires that the member "promptly" return unearned fees paid in advance. If a client disputes the amount to be returned, the member shall comply with rule 4-100(A)(2).

Paragraph (D) is not intended to prohibit a member from making, at the member's own expense, and retaining copies of papers released to the client, nor to prohibit a claim for the recovery of the member's expense in any subsequent legal proceeding.

## CHAPTER 4.

### FINANCIAL RELATIONSHIP WITH CLIENTS

#### **Rule 4-100 Preserving Identity of Funds and Property of a Client**

(A) All funds received or held for the benefit of clients by a member or law firm, including advances for costs and expenses, shall be deposited in one or more identifiable bank accounts labeled "Trust Account," "Client's Funds Account" or words of similar import, maintained in the State of California, or, with written consent of the client, in any other jurisdiction where there is a substantial relationship between the client or the client's business and the other jurisdiction. No funds belonging to the member or the law firm shall be deposited therein or otherwise commingled therewith except as follows:

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(1) Funds reasonably sufficient to pay bank charges.

(2) In the case of funds belonging in part to a client and in part presently or potentially to the member or the law firm, the portion belonging to the member or law firm must be withdrawn at the earliest reasonable time after the member's interest in that portion becomes fixed. However, when the right of the member or law firm to receive a portion of trust funds is disputed by the client, the disputed portion shall not be withdrawn until the dispute is finally resolved.

(B) A member shall:

(1) Promptly notify a client of the receipt of the client's funds, securities, or other properties.

(2) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.

(3) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the member or law firm and render appropriate accounts to the client regarding them; preserve such records for a period of no less than five years after final appropriate distribution of such funds or properties; and comply with any order for an audit of such records issued pursuant to the Rules of Procedure of the State Bar.

(4) Promptly pay or deliver, as requested by the client, any funds, securities, or other properties in the possession of the member which the client is entitled to receive.

(C) The Board of Governors of the State Bar shall have the authority to formulate and adopt standards as to what "records" shall be maintained by members and law firms in accordance with subparagraph (B)(3). The standards formulated and adopted by the Board, as from time to time amended, shall be effective and binding on all members.

### Rule 4-200 Fees for Legal Services

(A) A member shall not enter into an agreement for, charge, or collect an illegal or unconscionable fee.

(B) Unconscionability of a fee agreement shall be determined on the basis of all the facts and circumstances existing at the time the agreement is entered into except where the parties contemplate that the fee will be affected by later events. Among the factors to be considered, where appropriate, in determining the conscionability of a fee are the following:

(1) The amount of the fee in proportion to the value of the services performed.

(2) The relative sophistication of the member and the client.

(3) The novelty and difficulty of the questions involved and the skill requisite to perform the legal service properly.

(4) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the member.

(5) The amount involved and the results obtained.

(6) The time limitations imposed by the client or by the circumstances.

(7) The nature and length of the professional relationship with the client.

(8) The experience, reputation, and ability of the member or members performing the services.

(9) Whether the fee is fixed or contingent.

(10) The time and labor required.

(11) The informed consent of the client to the fee agreement.

### Rule 4-210 Payment of Personal or Business Expenses Incurred by or for a Client

(A) A member shall not directly or indirectly pay or agree to pay, guarantee, represent, or sanction a representation that the member or member's law firm will pay the personal or business expenses of a prospective or existing client, except that this rule shall not prohibit a member:

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(1) With the consent of the client, from paying or agreeing to pay such expenses to third persons from funds collected or to be collected for the client as a result of the representation; or

(2) After employment, from lending money to the client upon the client's promise in writing to repay such loan; or

(3) From advancing the costs of prosecuting or defending a claim or action or otherwise protecting or promoting the client's interests, the repayment of which may be contingent on the outcome of the matter. Such costs within the meaning of this subparagraph (3) shall be limited to all reasonable expenses of litigation or reasonable expenses in preparation for litigation or in providing any legal services to the client.

(B) Nothing in rule 4-210 shall be deemed to limit rules 3-300, 3-310, and 4-300.

### **Rule 4-300 Purchasing Property at a Foreclosure or a Sale Subject to Judicial Review**

A member shall not directly or indirectly purchase property at a probate, foreclosure, receiver's, trustee's, or judicial sale in an action or proceeding in which such member or any member affiliated by reason of personal, business, or professional relationship with that member or with that member's law firm is an attorney for a party or is acting as executor, receiver, trustee, administrator, guardian, or conservator.

### **Rule 4-400 Gifts From Client**

A member shall not induce a client to make a substantial gift, including a testamentary gift, to the member or to the member's parent, child, sibling, or spouse, except where the client is related to the member.

#### ***Discussion:***

A member may accept a gift from a member's client, subject to general standards of fairness and absence of undue influence. The member who participates in the preparation of an instrument memorializing a gift which is otherwise permissible ought not to be subject to professional discipline. On the other hand, where impermissible influence occurred, discipline is

appropriate. (See *Magee v. State Bar* (1962) 58 Cal.2d 423 [24 Cal.Rptr. 839].)

## **CHAPTER 5. ADVOCACY AND REPRESENTATION**

### **Rule 5-100 Threatening Criminal, Administrative, or Disciplinary Charges**

(A) A member shall not threaten to present criminal, administrative, or disciplinary charges to obtain an advantage in a civil dispute.

(B) As used in paragraph (A) of this rule, the term "administrative charges" means the filing or lodging of a complaint with a federal, state, or local governmental entity which may order or recommend the loss or suspension of a license, or may impose or recommend the imposition of a fine, pecuniary sanction, or other sanction of a quasi-criminal nature but does not include filing charges with an administrative entity required by law as a condition precedent to maintaining a civil action.

(C) As used in paragraph (A) of this rule, the term "civil dispute" means a controversy or potential controversy over the rights and duties of two or more parties under civil law, whether or not an action has been commenced, and includes an administrative proceeding of a quasi-civil nature pending before a federal, state, or local governmental entity.

#### ***Discussion:***

Rule 5-100 is not intended to apply to a member's threatening to initiate contempt proceedings against a party for a failure to comply with a court order.

Paragraph (B) is intended to exempt the threat of filing an administrative charge which is a prerequisite to filing a civil complaint on the same transaction or occurrence.

For purposes of paragraph (C), the definition of "civil dispute" makes clear that the rule is applicable prior to the formal filing of a civil action.

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### **Rule 5-110 Performing the Duty of Member in Government Service**

A member in government service shall not institute or cause to be instituted criminal charges when the member knows or should know that the charges are not supported by probable cause. If, after the institution of criminal charges, the member in government service having responsibility for prosecuting the charges becomes aware that those charges are not supported by probable cause, the member shall promptly so advise the court in which the criminal matter is pending.

### **Rule 5-200 Trial Conduct**

In presenting a matter to a tribunal, a member:

- (A) Shall employ, for the purpose of maintaining the causes confided to the member such means only as are consistent with truth;
- (B) Shall not seek to mislead the judge, judicial officer, or jury by an artifice or false statement of fact or law;
- (C) Shall not intentionally misquote to a tribunal the language of a book, statute, or decision;
- (D) Shall not, knowing its invalidity, cite as authority a decision that has been overruled or a statute that has been repealed or declared unconstitutional; and
- (E) Shall not assert personal knowledge of the facts at issue, except when testifying as a witness.

### **Rule 5-210 Member as Witness**

A member shall not act as an advocate before a jury which will hear testimony from the member unless:

- (A) The testimony relates to an uncontested matter; or
- (B) The testimony relates to the nature and value of legal services rendered in the case; or
- (C) The member has the informed, written consent of the client. If the member represents the People or a governmental entity, the consent shall be obtained from the head of the office or a designee of the head of the office by which the member is employed and shall be consistent with principles of recusal.

### **Discussion:**

Rule 5-210 is intended to apply to situations in which the member knows or should know that he or she ought to be called as a witness in litigation in which there is a jury. This rule is not intended to encompass situations in which the member is representing the client in an adversarial proceeding and is testifying before a judge. In non-adversarial proceedings, as where the lawyer testifies on behalf of the client in a hearing before a legislative body, rule 5-210 is not applicable.

Rule 5-210 is not intended to apply to circumstances in which a partner or associate in an advocate's firm will be a witness.

### **Rule 5-220 Suppression of Evidence**

A member shall not suppress any evidence that the member or the member's client has a legal obligation to reveal or to produce.

### **Rule 5-300 Contact With Officials**

(A) A member shall not directly or indirectly give or lend anything of value to a judge, official, or employee of a tribunal unless the personal or family relationship between the member and the judge, official, or employee is such that gifts are customarily given and exchanged. Nothing contained in this rule shall prohibit a member from contributing to the campaign fund of a judge running for election or confirmation pursuant to applicable law pertaining to such contributions.

(B) A member shall not directly or indirectly communicate with or argue to a judge or judicial officer upon the merits of a contested matter pending before such judge or judicial officer, except:

- (1) In open court; or
- (2) With the consent of all other counsel in such matter; or
- (3) In the presence of all other counsel in such matter; or
- (4) In writing with a copy thereof furnished to such other counsel; or
- (5) In ex parte matters.

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(C) As used in this rule, the phrase “judge or judicial officer” shall include law clerks, research attorneys, or other court personnel who participate in the decision-making process.

### **Rule 5-310 Prohibited Contact With Witnesses**

A member shall not:

(A) Advise or directly or indirectly cause a person to secrete himself or herself or to leave the jurisdiction of a tribunal for the purpose of making that person unavailable as a witness therein.

(B) Directly or indirectly pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of the witness’s testimony or the outcome of the case. Except where prohibited by law, a member may advance, guarantee, or acquiesce in the payment of:

- (1) Expenses reasonably incurred by a witness in attending or testifying.
- (2) Reasonable compensation to a witness for loss of time in attending or testifying.
- (3) A reasonable fee for the professional services of an expert witness.

### **Rule 5-320 Contact With Jurors**

(A) A member connected with a case shall not communicate directly or indirectly with anyone the member knows to be a member of the venire from which the jury will be selected for trial of that case.

(B) During trial a member connected with the case shall not communicate directly or indirectly with any member of the jury.

(C) During trial a member who is not connected with the case shall not communicate directly or indirectly concerning the case with anyone a member knows is a juror in the case.

(D) After discharge of the jury from further consideration of a case a member shall not ask questions of or make comments to a member of that jury that are intended to harass or embarrass the juror or to influence the juror’s actions in future jury service.

(E) A member shall not conduct directly or indirectly an out of court investigation of either a venireman or a juror of a type likely to influence the state of mind of such venireman or juror in present or future jury service.

(F) All restrictions imposed by rule 5-320 upon a member also apply to communications with or investigations of members of the family of a venireman or a juror.

(G) A member shall reveal promptly to the court improper conduct by a venireman or a juror, or by another toward a venireman or a juror or a member of his or her family, of which the member has knowledge.

(H) Rule 5-320 does not prohibit a member from communicating with veniremen or jurors as a part of the official proceedings.

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### **“1975” CALIFORNIA RULES OF PROFESSIONAL CONDUCT**

(Effective from January 1, 1975 to May 26, 1989)

*Revised Rules Approved by Order of the Supreme Court Filed December 31, 1974 together with subsequent revisions.*

*The following revision constitutes the first complete revision of the Rules of Professional Conduct. The first set of Rules of Professional Conduct were approved by the Supreme Court effective May 24, 1928. For the last official printing of the former revision of the Rules, see (1969) 1 Cal.3d Rules amended 1972 and 1973.*

#### **Rule 1-100 Rules of Professional Conduct, In General**

These rules of professional conduct, adopted by the Board of Governors of the State Bar of California, pursuant to the provisions of the State Bar Act, shall become effective upon approval by the Supreme Court of California. When so approved, these rules shall be binding upon all members of the State Bar, and the wilful breach of any of these rules shall be punishable as provided by law. Nothing in these rules is intended to limit or supersede any provision of law relating to the duties and obligations of attorneys or the consequences of a violation thereof. The prohibition of certain conduct in these rules is not to be interpreted as an approval of conduct not specifically mentioned. These rules may be cited and referred to as “Rules of Professional Conduct of the State Bar of California.”

Wherever in these rules reference is made to a law firm or association, such reference shall also apply to a law corporation.

#### **Rule 1-101 Maintaining Integrity and Competence of the Legal Profession**

A member of the State Bar shall not further the application for admission to practice law of another person known by him to be unqualified in respect to character, education, or other relevant attribute. This rule shall not prevent a member from serving as counsel of record for an applicant for admission to practice in proceedings related to such admission.

#### **Rule 2-101 General Prohibition Against Solicitation of Professional Employment**

(Repealed by order of Supreme Court, effective April 1, 1979.)

#### **Rule 2-101 Professional Employment**

This rule is adopted to foster and encourage the free flow of truthful and responsible information to assist the public in recognizing legal problems and in making informed choices of legal counsel.

Accordingly, a member of the State Bar may seek professional employment from a former, present or potential client by any means consistent with these rules.

(A) A “communication” is a message concerning the availability for professional employment of a member or a member’s firm. A “communication” made by or on behalf of a member shall not:

- (1) Contain any untrue statement; or
- (2) Contain any matter, or present or arrange any matter in a manner or format which is false, deceptive, or which tends to confuse, deceive or mislead the public; or
- (3) Omit to state any fact necessary to make the statements made, in the light of the circumstances under which they are made, not misleading to the public; or
- (4) Fail to indicate clearly, expressly or by context, that it is a “communication”; or
- (5) State that a member is a certified specialist unless the member holds a current certificate as a specialist issued by the California Board of Legal Specialization pursuant to a plan for specialization approved by the Supreme Court; or
- (6) Be transmitted in any manner which involves intrusion, coercion, duress, compulsion,

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intimidation, threats or vexatious or harassing conduct.

(B) No solicitation or “communication” seeking professional employment from a potential client for pecuniary gain shall be delivered by a member or a member’s agent in person or by telephone to the potential client, nor shall a solicitation or “communication” specifically directed to a particular potential client regarding that potential client’s particular case or matter and seeking professional employment for pecuniary gain be delivered by any other means, unless the solicitation or “communication” is protected from abridgment by the Constitution of the United States or by the Constitution of the State of California. A potential client includes a former or present client.

Notwithstanding the foregoing, nothing in this subdivision (B) shall limit or negate the continuing professional duties of a member or a member’s firm to former or present clients, or a member’s right to respond to inquiries from potential clients.

(C) A member or member’s firm shall not solicit or accept professional employment offered or obtained through the acts of an agent, runner or capper, which acts would be in violation of law, or which, if performed by a member of the State Bar, would be in violation of subdivisions (A) or (B) of this rule 2-101.

(D) The Board of Governors of the State Bar shall formulate and adopt standards as to what “communications” will be presumed to violate subdivisions (A) or (B) of this rule 2-101. The standards shall have effect exclusively in disciplinary proceedings involving alleged violations of these rules as presumptions affecting the burden of proof. “Presumption affecting the burden of proof” means that presumption defined in Evidence Code sections 605 and 606. The standards formulated and adopted by the Board, as from time to time amended, shall be effective and binding on members of the State Bar.

(E) The member shall retain for one year a true and correct copy or recording of any “communication” made by written or electronic media pertaining to the

member or the member’s firm. Upon written request, the member or the member’s firm shall make any such copy or recording available to the State Bar, and, if requested, shall provide to the State Bar the evidence of the facts upon which any factual or objective claims contained in the “communication” are based. (Adopted by order of Supreme Court, effective April 1, 1979.)

### **Rule 2-102 Publicity in General**

(Repealed by order of Supreme Court, effective April 1, 1979.)

### **Rule 2-102 Legal Service Programs**

(A) The participation of a member or a member’s firm in a bona fide program, activity or organization that furnishes, recommends, or pays for legal services, including but not limited to group, prepaid and voluntary legal service organizations, programs or activities is encouraged, and is not, of itself, a violation of these rules. A program or activity is not bona fide if its organization or operation allows any third person, organization or group to interfere with or control the performance of the member’s duties to his or her clients; or allows unlicensed persons to practice law; or allows any third person, organization or group to receive directly or indirectly any part of the consideration paid to the member of the State Bar except as permitted by these rules; or would violate rule 2-101.

(B) The participation of a member of the State Bar in a lawyer referral service established, sponsored, supervised and operated in conformity with the Minimum Standards for a Lawyer Referral Service in California (hereinafter “Standards”) is encouraged, and is not, of itself, a violation of these rules. The Board of Governors of the State Bar shall formulate and adopt the Standards, which, as from time to time amended, shall be effective and binding on members of the State Bar. (Amended by order of Supreme Court, effective April 1, 1979.)



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### **Rule 2-103 Professional Notices, Letterheads, Offices and Law Lists**

(Repealed by order of Supreme Court, effective April 1, 1979.)

### **Rule 2-104 Recommendation of Professional Employment**

(Repealed by order of Supreme Court, effective April 1, 1979.)

### **Rule 2-105 Advising Inquirers Through the Media on Specific Legal Problems**

(Repealed by order of Supreme Court, effective February 20, 1985.)

### **Rule 2-106 Specialization**

(Repealed by order of Supreme Court, effective April 1, 1979.)

### **Rule 2-107 Fees for Legal Services**

(A) A member of the State Bar shall not enter into an agreement for, charge or collect an illegal or unconscionable fee.

(B) A fee is unconscionable when it is so exorbitant and wholly disproportionate to the services performed as to shock the conscience of lawyers of ordinary prudence practicing in the same community. Reasonableness shall be determined on the basis of circumstances existing at the time the agreement is entered into except where the parties contemplate that the fee will be affected by later events. Among the factors to be considered, where appropriate, in determining the reasonableness of a fee are the following:

- (1) The novelty and difficulty of the questions involved and the skill requisite to perform the legal service properly.
- (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.
- (3) The amount involved and the results obtained.

(4) The time limitations imposed by the client or by the circumstances.

(5) The nature and length of the professional relationship with the client.

(6) The experience, reputation, and ability of the lawyer or lawyers performing the services.

(7) Whether the fee is fixed or contingent.

(8) The time and labor required.

(9) The informed consent of the client to the fee agreement.

### **Rule 2-108 Financial Arrangements Among Lawyers**

(A) A member of the State Bar shall not divide a fee for legal services with another person licensed to practice law who is not a partner or associate in the member's law firm or law office, unless:

(1) The client consents in writing to employment of the other person licensed to practice law after a full disclosure has been made in writing that a division of fees will be made and the terms of such division; and

(2) The total fee charged by all persons licensed to practice law is not increased solely by reason of the provision for division of fees and does not exceed reasonable compensation for all services they render to the client.

(B) Except as permitted in subdivision (A), a member of the State Bar shall not compensate, give or promise anything of value to any person licensed to practice law for the purpose of recommending or securing employment of the member or the member's firm by a client, or as a reward for having made a recommendation resulting in employment of the member or the member's firm by a client. A member's offering of or giving a gift or gratuity to any person licensed to practice law, who has made a recommendation resulting in the employment of the member or the member's firm, shall not of itself violate this rule, provided that the gift or gratuity was not offered in consideration of any promise, agreement or understanding that such a gift or gratuity would be forthcoming or that referrals would be made or

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encouraged in the future. (Amended by order of Supreme Court, effective October 1, 1979.)

### **Rule 2-109 Agreements Restricting the Practice of a Member of the State Bar**

(A) A member of the State Bar shall not be a party to or participate in an agreement, whether in connection with the settlement of a lawsuit or otherwise, if the agreement restricts the right of a member of the State Bar to practice law.

(B) Nothing in subdivision (A) of this rule shall be construed as prohibiting such a restrictive agreement which:

(1) is a part of an employment or partnership agreement between members of the State Bar provided said restrictive agreement does not survive the term of said partnership or employment; or

(2) requires payments to a member of the State Bar upon his permanent retirement from the practice of law.

### **Rule 2-110 Acceptance of Employment**

A member of the State Bar shall not seek or accept employment to accomplish any of the following objectives, nor shall the member do so if he knows or should know that the person solicited for or offering the employment wishes to accomplish any of the following objectives:

(A) Bring a legal action, conduct a defense, or assert a position in litigation, or otherwise take steps, solely for the purpose of harassing or maliciously injuring any person or to prosecute or defend a case solely out of spite.

(B) Present a claim or defense in litigation that is not warranted under existing law, unless it can be supported by good faith argument for an extension, modification or reversal of existing law.

(C) Take or prosecute an appeal solely for delay, or for any other reason not in good faith. (Amended by order of Supreme Court, effective April 1, 1979.)

### **Rule 2-111 Withdrawal from Employment**

(A) In general.

(1) If permission for withdrawal from employment is required by the rules of a tribunal, a member of the State Bar shall not withdraw from employment in a proceeding before that tribunal without its permission.

(2) In any event, a member of the State Bar shall not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of his client, including giving due notice to his client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules.

(3) A member of the State Bar who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned. However, this rule shall not be applicable to a true retainer fee which is paid solely for the purpose of insuring the availability of the attorney for the matter.

(4) If upon or after undertaking employment, a member of the State Bar knows or should know that the member ought to be called as a witness on behalf of the member's client in litigation concerning the subject matter of such employment, the member may continue employment only with the written consent of the client given after the client has been fully advised regarding the possible implications of such dual role as to the outcome of the client's cause and has had a reasonable opportunity to seek the advice of independent counsel on the matter. In civil proceedings, the written consent of the client shall be filed with the court not later than the commencement of trial. In criminal proceedings, the written consent need not be filed with the court but the member has the duty, before testifying, of satisfying the court that such consent has been obtained from the client if representing the defendant. The member may continue employment and the client's consent need not be obtained in the following circumstances:

(a) If the member's testimony will relate solely to an uncontested matter; or

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(b) If the member's testimony will relate solely to a matter of formality and there is not reason to believe that substantial evidence will be offered in opposition to the testimony; or

(c) If the member's testimony will relate solely to the nature and value of legal services rendered in the case by the lawyer or his firm to the client; or

(d) If the member is representing the People, if the member obtains the consent of the head of the particular office representing the People, and if the member's continued representation is not inconsistent with the principles of recusal. (Amended by order of the Supreme Court, effective November 1, 1979.)

(5) If, after undertaking employment in contemplated or pending litigation, a member of the State Bar learns or it is obvious that he or a lawyer in his firm may be called as a witness other than on behalf of his client, he may continue the representation until it is apparent that his testimony is or may be prejudicial to his client.

### (B) Mandatory Withdrawal.

A member of the State Bar representing a client before a tribunal, with its permission if required by its rules, shall withdraw from employment, and a member of the State Bar representing a client in other matters shall withdraw from employment, if:

(1) He knows or should know that his client is bringing a legal action, conducting a defense, asserting a position in litigation, or otherwise having steps taken for him solely for the purpose of harassing or maliciously injuring any person or solely out of spite, or is taking or prosecuting an appeal merely for delay, or for any other reason not in good faith; or

(2) He knows or should know that his continued employment will result in violation of these Rules of Professional Conduct or of the State Bar Act; or

(3) His mental or physical condition renders it unreasonably difficult for him to carry out the employment effectively.

### (C) Permissive Withdrawal.

If Rule 2-111(B) is not applicable, a member of the State Bar may not request permission to withdraw in matters pending before a tribunal and may not withdraw in other matters, unless such request or such withdrawal is because:

#### (1) His client:

(a) Insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law; or

(b) Personally seeks to pursue an illegal course of conduct; or

(c) Insists that the member of the State Bar pursue a course of conduct that is illegal or that is prohibited under these Rules of Professional Conduct or the State Bar Act; or

(d) By other conduct renders it unreasonably difficult for the member of the State Bar to carry out his employment effectively; or

(e) Insists, in a matter not pending before a tribunal, that the member of the State Bar engage in conduct that is contrary to the judgment and advice of the member of the State Bar but not prohibited under these Rules of Professional Conduct or the State Bar Act; or

(f) Deliberately disregards an agreement or obligation to the member of the State Bar as to expenses or fees; or

(2) His continued employment is likely to result in a violation of these Rules of Professional Conduct or of the State Bar Act; or

(3) His inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal; or

(4) His mental or physical condition renders it difficult for him to carry out the employment effectively; or

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(5) His client knowingly and freely assents to termination of his employment; or

(6) He believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal.

### **Rule 3-101 Aiding Unauthorized Practice of Law**

(A) A member of the State Bar shall not aid any person, association, or corporation in the unauthorized practice of law.

(B) A member of the State Bar shall not practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction.

### **Rule 3-102 Financial Arrangements With Non-Lawyers**

(A) A member of the State Bar or the member's firm shall not directly or indirectly share legal fees except with a person licensed to practice law except that:

(1) An agreement by a member of the State Bar with member's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the member's death, to his or her estate or to one or more specified persons.

(2) A member of the State Bar who undertakes to complete unfinished legal business of a deceased member of the State Bar may pay to the estate of the deceased member of the State Bar or other person legally entitled thereto that proportion of the total compensation which fairly represents the services rendered by the deceased member of the State Bar.

(3) A member of the State Bar or the member's firm may include employees not members of the State Bar in a retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

(B) A member of the State Bar shall not compensate or give or promise anything of value to any person or entity for the purpose of recommending or securing employment of the member or the member's firm by a client, or as a reward for having made a

recommendation resulting in employment of the member or the member's firm by a client. A member's offering of or giving a gift or gratuity to any person or entity, which has made a recommendation resulting in the employment of the member or the member's firms, shall not of itself violate this rule, provided that the gift or gratuity was not offered in consideration of any promise, agreement or understanding that such a gift or gratuity would be forthcoming or that referrals would be made or encouraged in the future. (Amended by order of Supreme Court, effective October 1, 1979.)

(C) A member of the State Bar shall not compensate or give or promise anything of value to any representative of the press, radio, television or other communication medium in anticipation of or in return for publicity of the member, the member's firm, or any other attorney as such in a news item, but the incidental provision of food or beverages shall not of itself violate this subdivision. (Amended by order of Supreme Court, effective April 1, 1979.)

### **Rule 3-103 Forming a Partnership With a Non-Lawyer**

A member of the State Bar shall not form a partnership with a person not licensed to practice law if any of the activities of the partnership consist of the practice of law.

### **Rule 4-101 Accepting Employment Adverse to a Client**

A member of the State Bar shall not accept employment adverse to a client or former client, without the informed and written consent of the client or former client, relating to a matter in reference to which he has obtained confidential information by reason of or in the course of his employment by such client or former client.

### **Rule 5-101 Avoiding Adverse Interests**

A member of the State Bar shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless (1) the transaction and terms in which the member of the State Bar acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in manner and terms which should have reasonably been understood by the client, (2) the client is given a reasonable opportunity to seek the advice of

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independent counsel of the client's choice on the transaction, and (3) the client consents in writing thereto.

### **Rule 5-102 Avoiding the Representation of Adverse Interests**

(A) A member of the State Bar shall not accept professional employment without first disclosing his relation, if any, with the adverse party, and his interest, if any, in the subject matter of the employment. A member of the State Bar who accepts employment under this rule shall first obtain the client's written consent to such employment.

(B) A member of the State Bar shall not represent conflicting interests, except with the written consent of all parties concerned.

### **Rule 5-103 Purchasing Property at a Probate, Foreclosure or Judicial Sale**

A member of the State Bar shall not directly or indirectly purchase property at a probate, foreclosure or judicial sale in an action or proceeding in which such member or any partner or associate of such member appears as attorney for a party or is acting as executor, trustee, administrator, guardian or conservator.

As used in this rule, the term "associate" means an employee or fellow employee who is a member of the State Bar.

### **Rule 5-104 Payment of Personal or Business Expenses Incurred by or for a Client**

(A) A member of the State Bar shall not directly or indirectly pay or agree to pay, guarantee, or represent or sanction the representation that he will pay personal or business expenses incurred by or for a client, prospective or existing and shall not prior to his employment enter into any discussion or other communication with a prospective client regarding any such payments or agreements to pay; provided this rule shall not prohibit a member:

- (1) with the consent of the client, from paying or agreeing to pay to third persons such expenses from funds collected or to be collected for the client; or

(2) after he has been employed, from lending money to his client upon the client's promise in writing to repay such loan; or

(3) from advancing the costs of prosecuting or defending a claim or action or otherwise protecting or promoting the client's interests. Such costs within the meaning of this subparagraph (3) shall be limited to all reasonable expenses of litigation or reasonable expenses in preparation for litigation or in providing any legal services to the client.

(B) Nothing in Rule 5-104 shall be deemed to abrogate any of the provisions set forth in Rules 5-101 through 5-103.

(C) Nothing in this Rule 5-104 shall prohibit a member of the State Bar from reading or showing this Rule to a prospective client and describing the nature and extent of the conduct prohibited by this rule.

### **Rule 5-105 Communication of Written Settlement Offer**

A member of the State Bar shall promptly communicate to the member's client all amounts, terms and conditions of any written offer of settlement made by or on behalf of an opposing party. As used in this rule, "client" includes a person employing the member of the State Bar who possesses the authority to accept an offer of settlement, or, in a class action, who is a representative of the class. (Added by order of Supreme Court, effective March 15, 1979.)

### **Rule 6-101 Failing to Act Competently**

(A) (1) Attorney competence means the application of sufficient learning, skill, and diligence necessary to discharge the member's duties arising from the employment or representation.

(2) A member of the State Bar shall not intentionally or with reckless disregard or repeatedly fail to perform legal services competently.

(B) Unless the member associates or, where appropriate, professionally consults another lawyer who the member reasonably believes is competent, a member of the State Bar shall not

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(1) Accept employment or continue representation in a legal matter when the member knows that the member does not have, or will not acquire before performance is required, sufficient time, resources and ability to, perform the matter with competence, or

(2) Repeatedly accept employment or continue representation in legal matters when the member reasonably should know that the member does not have, or will not acquire before performance is required, sufficient time, resources and ability to, perform the matter with competence.

(C) As used in this rule, the term “ability” means a quality or state of having sufficient learning and skill and being mentally, emotionally and physically able to perform legal services. (Amended by order of Supreme Court, effective October 21, 1983.)

**[Publisher’s Note: The text of former rule 6-101, which was in effect from January 1, 1975 to October 23, 1983 is reprinted below for your convenience.]**

A member of the State Bar shall not willfully or habitually

(1) Perform legal services for a client or clients if he knows or reasonably should know that he does not possess the learning and skill ordinarily possessed by lawyers in good standing who perform, but do not specialize in, similar services practicing in the same or similar locality and under similar circumstances unless he associates or, where appropriate, professionally consults another lawyer who he reasonably believes does possess the requisite learning and skill;

(2) Fail to use reasonable diligence and his best judgment in the exercise of his skill and in the application of his learning in an effort to accomplish, with reasonable speed, the purpose for which he is employed.

The good faith of an attorney is a matter to be considered in determining whether acts done through ignorance or mistake warrant imposition of discipline under Rule 6-101.

### **Rule 6-102 Limiting Liability to Client**

A member of the State Bar shall not attempt to exonerate himself from or limit his liability to his client for his personal malpractice. This rule shall not prevent a member of the State Bar from settling or defending a malpractice claim.

### **Rule 7-101 Advising the Violation of Law**

A member of the State Bar shall not advise the violation of any law, rule or ruling of a tribunal unless he believes in good faith that such law, rule or ruling is invalid. A member of the State Bar may take appropriate steps in good faith to test the validity of any law, rule or ruling of a tribunal.

### **Rule 7-102 Performing the Duty of Member of the State Bar in Government Service**

A member of the State Bar in government service shall not institute or cause to be instituted criminal charges when he knows or should know that the charges are not supported by probable cause. If, after the institution of criminal charges, a member of the State Bar in government service having responsibility for prosecuting the charges becomes aware that those charges are not supported by probable cause, he shall promptly so advise the court in which the criminal matter is pending.

### **Rule 7-103 Communicating With an Adverse Party Represented by Counsel**

A member of the State Bar shall not communicate directly or indirectly with a party whom he knows to be represented by counsel upon a subject of controversy, without the express consent of such counsel. This rule shall not apply to communications with a public officer, board, committee or body.

### **Rule 7-104 Threatening Criminal Prosecution**

A member of the State Bar shall not threaten to present criminal, administrative or disciplinary charges to obtain an advantage in a civil action nor shall he present or participate in presenting criminal, administrative or disciplinary charges solely to obtain an advantage in a civil matter.

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### Rule 7-105 Trial Conduct

In presenting a matter to a tribunal, a member of the State Bar shall:

(1) Employ, for the purpose of maintaining the causes confided to him such means only as are consistent with truth, and shall not seek to mislead the judge, judicial officer or jury by an artifice or false statement of fact or law. A member of the State Bar shall not intentionally misquote to a judge or judicial officer the language of a book, statute or decision; nor shall he, with knowledge of its invalidity and without disclosing such knowledge, cite as authority a decision that has been overruled or a statute that has been repealed or declared unconstitutional. A member of the State Bar shall refrain from asserting his personal knowledge of the facts at issue, except when testifying as a witness.

(2) Disclose, unless privileged or irrelevant, the identities of the clients he represents.

### Rule 7-106 Communication With or Investigation of Jurors

(A) Before the trial of a case, a member of the State Bar connected therewith shall not communicate directly or indirectly with anyone he knows to be a member of the venire from which the jury will be selected for the trial of the case.

(B) During the trial of a case:

(1) A member of the State Bar connected therewith shall not communicate directly or indirectly with any member of the jury.

(2) A member of the State Bar who is not connected therewith shall not communicate directly or indirectly with a juror concerning the case.

(C) Rule 7-106(A) and (B) do not prohibit a member of the State Bar from communicating with veniremen or jurors as a part of the official proceedings.

(D) After discharge of the jury from further consideration of a case with which the member of the State Bar was connected, the member of the State Bar shall not ask questions of or make comments to a

member of that jury that are intended to harass or embarrass the juror or to influence the juror's actions in future jury service.

(E) A member of the State Bar shall not conduct directly or indirectly an out of court investigation of either a venireman or a juror of a type likely to influence the state of mind of such venireman or juror in present or future jury service.

(F) All restrictions imposed by Rule 7-106 upon a member of the State Bar also apply to communications with or investigations of members of a family of a venireman or a juror.

(G) A member of the State Bar shall reveal promptly to the court improper conduct by a venireman or a juror, or by another toward a venireman or a juror or a member of his family of which the member of the State Bar has knowledge.

### Rule 7-107 Contact With Witnesses

A member of the State Bar shall not:

(A) Suppress any evidence that he or his client has a legal obligation to reveal or produce.

(B) Advise or directly or indirectly cause a person to secrete himself or to leave the jurisdiction of a tribunal for the purpose of making him unavailable as a witness therein.

(C) Directly or indirectly pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of his testimony or the outcome of his case. Except where prohibited by law, a member of the State Bar may advance, guarantee or acquiesce in the payment of:

(1) Expenses reasonably incurred by a witness in attending or testifying.

(2) Reasonable compensation to a witness for his loss of time in attending or testifying.

(3) A reasonable fee for the professional services of an expert witness.

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### Rule 7-108 Contact With Officials

(A) A member of the State Bar shall not directly or indirectly give or lend anything of value to a judge, official, or employee of a tribunal unless the personal or family relationship between the member and the judge, official or employee is such that gifts are customarily given and exchanged.

(B) A member of the State Bar shall not directly or indirectly, in the absence of opposing counsel, communicate with or argue to a judge or judicial officer, upon the merits of a contested matter pending before such judge or judicial officer, except in open court; nor shall he, without furnishing opposing counsel with a copy thereof, address a written communication to a judge or judicial officer concerning the merits of a contested matter pending before such judge or judicial officer. The rule shall not apply to ex parte matters.

### Rule 8-101 Preserving Identity of Funds and Property of a Client

(A) All funds received or held for the benefit of clients by a member of the State Bar or firm of which he is a member, including advances for costs and expenses, shall be deposited in one or more identifiable bank accounts labeled "Trust Account", "Client's Funds Account" or words of similar import, maintained in the State of California, or, with written consent of the client, in such other jurisdiction where there is a substantial relationship between his client or his client's business and the other jurisdiction and no funds belonging to the member of the State Bar or firm of which he is a member shall be deposited therein or otherwise commingled therewith except as follows:

(1) Funds reasonably sufficient to pay bank charges may be deposited therein.

(2) Funds belonging in part to a client and in part presently or potentially to the member of the State Bar or firm of which he is a member must be deposited therein and the portion belonging to the member of the State Bar or firm of which he is a member must be withdrawn at the earliest reasonable time after the member's interest in that portion becomes fixed. However, when the right of the member of the State Bar or firm of which he is a member to receive a portion of trust funds is disputed by the client, the disputed

portion shall not be withdrawn until the dispute is finally resolved.

(B) A member of the State Bar shall:

(1) Promptly notify a client of the receipt of his funds, securities, or other properties.

(2) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.

(3) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the member of the State Bar and render appropriate accounts to his client regarding them; preserve such records for a period of no less than five years after final appropriate distribution of such funds or properties; and comply with any order for an audit of such records issued pursuant to the Rules of Procedure of the State Bar.

(4) Promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the member of the State Bar which the client is entitled to receive. [See appendix A for Supreme Court order pursuant to Statutes 1981, Chapter 789.] (Amended by order of Supreme Court, effective October 21, 1983.)

### Rule 9-101 Disciplinary Authority of the State Bar

A member of the State Bar shall comply with conditions attached to public or private reprimands administered by the State Bar pursuant to Business and Professions Code sections 6077 and 6078 and rule 956, California Rules of Court. (Added by order of Supreme Court, effective November 18, 1983.)