



*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 2**



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## SELECTED CALIFORNIA RULES OF COURT

[*Publisher's Note: Current rules as of January 1. This section contains only selected rules. For a complete set of the California Rules of Court, go to: <http://www.courts.ca.gov/rules>.*]

### TITLE 3. CIVIL RULES

#### DIVISION 1. GENERAL PROVISIONS

#### CHAPTER 3. ATTORNEYS

##### **Rule 3.35 Definition of limited scope representation; application of rules**

###### **(a) Definition**

"Limited scope representation" is a relationship between an attorney and a person seeking legal services in which they have agreed that the scope of the legal services will be limited to specific tasks that the attorney will perform for the person.

###### **(b) Application**

Rules 3.35 through 3.37 apply to limited scope representation in civil cases, except in family law cases. Rule 5.425 applies to limited scope representation in family law cases.

*(Subd (b) amended effective January 1, 2016.)*

###### **(c) Types of limited scope representation**

These rules recognize two types of limited scope representation:

###### **(1) Noticed representation**

Rule 3.36 provides procedures for cases in which an attorney and a party notify the court and other parties of the limited scope representation.

###### **(2) Undisclosed representation**

Rule 3.37 applies to cases in which the limited scope representation is not disclosed.

*Rule 3.35 amended effective January 1, 2016; adopted effective January 1, 2007.*

##### **Rule 3.36 Notice of limited scope representation and application to be relieved as attorney**

###### **(a) Notice of limited scope representation**

A party and an attorney may provide notice of their agreement to limited scope representation by serving and filing a *Notice of Limited Scope Representation* (form CIV-150).

*(Subd (a) amended effective September 1, 2018.)*

###### **(b) Notice and service of papers**

After the notice in (a) is received and until either a substitution of attorney or an order to be relieved as attorney is filed and served, papers in the case must be served on both the attorney providing the limited scope representation and the client.

###### **(c) Procedures to be relieved as counsel on completion of representation**

Notwithstanding rule 3.1362, an attorney who has completed the tasks specified in the *Notice of Limited Scope Representation* (form CIV-150) may use the procedures in this rule to request that he or she be relieved as attorney in cases in which the attorney has appeared before the court as an attorney of record and the client has not signed a *Substitution of Attorney-Civil* (form MC-050).

*(Subd (c) amended effective September 1, 2018.)*

###### **(d) Application**

An application to be relieved as attorney on completion of limited scope representation under Code of Civil Procedure section 284(2) must be directed to the client and made on the *Application to Be Relieved as Attorney on Completion of Limited Scope Representation* (form CIV-151).

*(Subd (d) amended effective September 1, 2018.)*

###### **(e) Filing and service of application**

The application to be relieved as attorney must be filed with the court and served on the client and on all other parties or attorneys for parties in the case. The client must also be served with a blank *Objection to Application to Be Relieved as Attorney on Completion of Limited Scope Representation* (form CIV-152).

*(Subd (e) amended effective September 1, 2018.)*

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### (f) No objection

If no objection is served and filed with the court within 15 days from the date that the *Application to Be Relieved as Attorney on Completion of Limited Scope Representation* (form CIV-151) is served on the client, the attorney making the application must file an updated form CIV-151 indicating the lack of objection, along with a proposed *Order on Application to Be Relieved as Attorney on Completion of Limited Scope Representation* (form CIV-153). The clerk must then forward the order for judicial signature.

*(Subd (f) amended effective September 1, 2018.)*

### (g) Objection

If an objection to the application is served and filed within 15 days, the clerk must set a hearing date on the *Objection to Application to Be Relieved as Attorney on Completion of Limited Scope Representation* (form CIV-152). The hearing must be scheduled no later than 25 days from the date the objection is filed. The clerk must send the notice of the hearing to the parties and the attorney.

*(Subd (g) amended effective September 1, 2018.)*

### (h) Service of the order

If no objection is served and filed and the proposed order is signed under (f), the attorney who filed the *Application to Be Relieved as Attorney on Completion of Limited Scope Representation* (form CIV-151) must serve a copy of the signed order on the client and on all parties or the attorneys for all parties who have appeared in the case. The court may delay the effective date of the order relieving the attorney until proof of service of a copy of the signed order on the client has been filed with the court.

*(Subd (h) amended effective September 1, 2018.)*

*Rule 3.36 amended effective September 1, 2018; adopted effective January 1, 2007.*

## **Rule 3.37 Nondisclosure of attorney assistance in preparation of court documents**

### (a) Nondisclosure

In a civil proceeding, an attorney who contracts with a client to draft or assist in drafting legal documents, but

not to make an appearance in the case, is not required to disclose within the text of the documents that he or she was involved in preparing the documents.

### (b) Attorney's fees

If a litigant seeks a court order for attorney's fees incurred as a result of document preparation, the litigant must disclose to the court information required for a proper determination of the attorney's fees, including:

- (1) The name of the attorney who assisted in the preparation of the documents;
- (2) The time involved or other basis for billing;
- (3) The tasks performed; and
- (4) The amount billed.

### (c) Application of rule

This rule does not apply to an attorney who has made a general appearance in a case.

*Rule 3.37 adopted effective January 1, 2007.*

## **DIVISION 7. CIVIL CASE MANAGEMENT**

## **CHAPTER 6. MANAGEMENT OF CLASS ACTIONS**

### **Rule 3.769 Settlement of class actions**

#### (a) Court approval after hearing

A settlement or compromise of an entire class action, or of a cause of action in a class action, or as to a party, requires the approval of the court after hearing.

*(Subd (a) amended effective January 1, 2007.)*

#### (b) Attorney's fees

Any agreement, express or implied, that has been entered into with respect to the payment of attorney's fees or the submission of an application for the approval of attorney's fees must be set forth in full in any

## SELECTED CALIFORNIA RULES OF COURT

application for approval of the dismissal or settlement of an action that has been certified as a class action.

*(Subd (b) amended effective January 1, 2007.)*

### **(c) Preliminary approval of settlement**

Any party to a settlement agreement may serve and file a written notice of motion for preliminary approval of the settlement. The settlement agreement and proposed notice to class members must be filed with the motion, and the proposed order must be lodged with the motion.

*(Subd (c) amended effective January 1, 2007.)*

### **(d) Order certifying provisional settlement class**

The court may make an order approving or denying certification of a provisional settlement class after the preliminary settlement hearing.

### **(e) Order for final approval hearing**

If the court grants preliminary approval, its order must include the time, date, and place of the final approval hearing; the notice to be given to the class; and any other matters deemed necessary for the proper conduct of a settlement hearing.

### **(f) Notice to class of final approval hearing**

If the court has certified the action as a class action, notice of the final approval hearing must be given to the class members in the manner specified by the court. The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement.

*(Subd (f) amended effective January 1, 2007.)*

### **(g) Conduct of final approval hearing**

Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement.

### **(h) Judgment and retention of jurisdiction to enforce**

If the court approves the settlement agreement after the final approval hearing, the court must make and enter judgment. The judgment must include a provision for the retention of the court's jurisdiction over the parties to enforce the terms of the judgment. The court may not enter an order dismissing the action at the same time as, or after, entry of judgment.

*(Subd (h) amended effective January 1, 2009.)*

*Rule 3.769 amended effective January 1, 2009; adopted as rule 1859 effective January 1, 2002; previously amended and renumbered effective January 1, 2007.*

## **DIVISION 8. ALTERNATIVE DISPUTE RESOLUTION**

### **CHAPTER 3. GENERAL RULES RELATING TO MEDIATION OF CIVIL CASES**

### **ARTICLE 2. RULES OF CONDUCT FOR MEDIATORS IN COURT-CONNECTED MEDIATION PROGRAMS FOR CIVIL CASES**

#### **Rule 3.850 Purpose and function**

#### **(a) Standards of conduct**

The rules in this article establish the minimum standards of conduct for mediators in court-connected mediation programs for general civil cases. These rules are intended to guide the conduct of mediators in these programs, to inform and protect participants in these mediation programs, and to promote public confidence in the mediation process and the courts. For mediation to be effective there must be broad public confidence in the integrity and fairness of the process. Mediators in court-connected programs are responsible to the parties, the public, and the courts for conducting themselves in a manner that merits that confidence.

*(Subd (a) amended effective January 1, 2007.)*

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### **(b) Scope and limitations**

These rules are not intended to:

- (1) Establish a ceiling on what is considered good practice in mediation or discourage efforts by courts, mediators, or others to educate mediators about best practices;
- (2) Create a basis for challenging a settlement agreement reached in connection with mediation; or
- (3) Create a basis for a civil cause of action against a mediator.

*(Subd (b) amended effective January 1, 2007.)*

*Rule 3.850 amended and renumbered effective January 1, 2007; adopted as rule 1620 effective January 1 2003.*

### **Rule 3.851 Application**

#### **(a) Circumstances applicable**

The rules in this article apply to mediations in which a mediator:

- (1) Has agreed to be included on a superior court's list or panel of mediators for general civil cases and is notified by the court or the parties that he or she has been selected to mediate a case within that court's mediation program; or
- (2) Has agreed to mediate a general civil case pending in a superior court after being notified by the court or the parties that he or she was recommended, selected, or appointed by that court or will be compensated by that court to mediate a case within that court's mediation program. A mediator who is not on a superior court list or panel and who is selected by the parties is not "recommended, selected, or appointed" by the court within the meaning of this subdivision simply because the court approves the parties' agreement to use this mediator or memorializes the parties' selection in a court order.

*(Subd (a) amended effective January 1, 2010; previously amended effective January 1, 2007, and January 1, 2009.)*

### **(b) Application to listed firms**

If a court's panel or list includes firms that provide mediation services, all mediators affiliated with a listed firm are required to comply with the rules in this article when they are notified by the court or the parties that the firm was selected from the court list to mediate a general civil case within that court's mediation program.

*(Subd (b) amended effective July 1, 2007; previously amended effective January 1, 2007.)*

### **(c) Time of applicability**

Except as otherwise provided in these rules, the rules in this article apply from the time the mediator agrees to mediate a case until the end of the mediation in that case.

*(Subd (c) amended effective January 1, 2007.)*

### **(d) Inapplicability to judges**

The rules in this article do not apply to judges or other judicial officers while they are serving in a capacity in which they are governed by the Code of Judicial Ethics.

*(Subd (d) amended effective January 1, 2007.)*

### **(e) Inapplicability to settlement conferences**

The rules in this article do not apply to settlement conferences conducted under rule 3.1380.

*(Subd (e) amended effective January 1, 2007.)*

*Rule 3.851 amended effective January 1, 2010; adopted as rule 1620.1 effective January 1, 2003; previously amended and renumbered effective January 1, 2007; previously amended effective July 1, 2007, and January 1, 2009.*

### **Rule 3.852 Definitions**

As used in this article, unless the context or subject matter requires otherwise:

- (1) "Mediation" means a process in which a neutral person or persons facilitate communication between the disputants to assist them in reaching a mutually acceptable agreement.

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(2) “Mediator” means a neutral person who conducts a mediation.

(3) “Participant” means any individual, entity, or group, other than the mediator taking part in a mediation, including but not limited to attorneys for the parties.

(4) “Party” means any individual, entity, or group taking part in a mediation that is a plaintiff, a defendant, a cross-complainant, a cross-defendant, a petitioner, a respondent, or an intervenor in the case.

*Rule 3.852 amended and renumbered effective January 1, 2007; adopted as rule 1620.2 effective January 1, 2003.*

### **Advisory Committee Comment**

The definition of “mediator” in this rule departs from the definition in Evidence Code section 1115(b) in that it does not include persons designated by the mediator to assist in the mediation or to communicate with a participant in preparation for the mediation. However, these definitions are applicable only to these rules of conduct and do not limit or expand mediation confidentiality under the Evidence Code or other law.

The definition of “participant” includes insurance adjusters, experts, and consultants as well as the parties and their attorneys.

### **Rule 3.853 Voluntary participation and self-determination**

A mediator must conduct the mediation in a manner that supports the principles of voluntary participation and self-determination by the parties. For this purpose a mediator must:

- (1) Inform the parties, at or before the outset of the first mediation session, that any resolution of the dispute in mediation requires a voluntary agreement of the parties;
- (2) Respect the right of each participant to decide the extent of his or her participation in the mediation, including the right to withdraw from the mediation at any time; and
- (3) Refrain from coercing any party to make a decision or to continue to participate in the mediation.

*Rule 3.853 amended and renumbered effective January 1, 2007; adopted as rule 1620.3 effective January 1, 2003.*

### **Advisory Committee Comment**

Voluntary participation and self-determination are fundamental principles of mediation that apply both to mediations in which the parties voluntarily elect to mediate and to those in which the parties are required to go to mediation in a mandatory court mediation program or by court order. Although the court may order participants to attend mediation, a mediator may not mandate the extent of their participation in the mediation process or coerce any party to settle the case.

After informing the parties of their choices and the consequences of those choices, a mediator can invoke a broad range of approaches to assist the parties in reaching an agreement without offending the principles of voluntary participation and self-determination, including (1) encouraging the parties to continue participating in the mediation when it reasonably appears to the mediator that the possibility of reaching an uncoerced, consensual agreement has not been exhausted and (2) suggesting that a party consider obtaining professional advice (for example, informing an unrepresented party that he or she may consider obtaining legal advice). Conversely, examples of conduct that violate the principles of voluntary participation and self-determination include coercing a party to continue participating in the mediation after the party has told the mediator that he or she wishes to terminate the mediation, providing an opinion or evaluation of the dispute in a coercive manner or over the objection of the parties, using abusive language, and threatening to make a report to the court about a party’s conduct at the mediation.

### **Rule 3.854 Confidentiality**

#### **(a) Compliance with confidentiality law**

A mediator must, at all times, comply with the applicable law concerning confidentiality.

#### **(b) Informing participants of confidentiality**

At or before the outset of the first mediation session, a mediator must provide the participants with a general explanation of the confidentiality of mediation proceedings.

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### **(c) Confidentiality of separate communications; caucuses**

If, after all the parties have agreed to participate in the mediation process and the mediator has agreed to mediate the case, a mediator speaks separately with one or more participants out of the presence of the other participants, the mediator must first discuss with all participants the mediator's practice regarding confidentiality for separate communications with the participants. Except as required by law, a mediator must not disclose information revealed in confidence during such separate communications unless authorized to do so by the participant or participants who revealed the information.

### **(d) Use of Confidential Information**

A mediator must not use information that is acquired in confidence in the course of a mediation outside the mediation or for personal gain.

*Rule 3.854 renumbered effective January 1, 2007; adopted as rule 1620.4 effective January 1, 2003.*

#### **Advisory Committee Comment**

**Subdivision (a).** The general law concerning mediation confidentiality is found in Evidence Code sections 703.5 and 1115-1128 and in cases interpreting those sections. (See, e.g., *Foxgate Homeowners' Association, Inc. v. Bramalea California, Inc.* (2001) 26 Cal.4th 1; *Rinaker v. Superior Court* (1998) 62 Cal.App.4th 155; and *Gilbert v. National Corp. for Housing Partnerships* (1999) 71 Cal.App.4th 1240.)

### **Rule 3.855 Impartiality, conflicts of interest, disclosure, and withdrawal**

#### **(a) Impartiality**

A mediator must maintain impartiality toward all participants in the mediation process at all times.

#### **(b) Disclosure of Matters Potentially Affecting Impartiality**

(1) A mediator must make reasonable efforts to keep informed about matters that reasonably could raise a question about his or her ability to conduct the proceedings impartially, and must disclose these matters to the parties. These matters include:

(A) Past, present, and currently expected interests, relationships, and affiliations of a personal, professional, or financial nature; and

(B) The existence of any grounds for disqualification of a judge specified in Code of Civil Procedure section 170.1.

(2) A mediator's duty to disclose is a continuing obligation, from the inception of the mediation process through its completion. Disclosures required by this rule must be made as soon as practicable after a mediator becomes aware of a matter that must be disclosed. To the extent possible, such disclosures should be made before the first mediation session, but in any event they must be made within the time required by applicable court rules or statutes.

*(Subd (b) amended effective January 1, 2007.)*

#### **(c) Proceeding if there are no objections or questions concerning impartiality**

Except as provided in (f), if, after a mediator makes disclosures, no party objects to the mediator and no participant raises any question or concern about the mediator's ability to conduct the mediation impartially, the mediator may proceed.

*(Subd (c) amended effective January 1, 2007.)*

#### **(d) Responding to questions or concerns concerning impartiality**

If, after a mediator makes disclosures or at any other point in the mediation process, a participant raises a question or concern about the mediator's ability to conduct the mediation impartially, the mediator must address the question or concern with the participants. Except as provided in (f), if, after the question or concern is addressed, no party objects to the mediator, the mediator may proceed.

*(Subd (d) amended effective January 1, 2007.)*

#### **(e) Withdrawal or continuation upon party objection concerning impartiality**

In a two-party mediation, if any party objects to the mediator after the mediator makes disclosures or discusses a participant's question or concern regarding the mediator's ability to conduct the mediation impartially, the mediator must withdraw.

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In a mediation in which there are more than two parties, the mediator may continue the mediation with the nonobjecting parties, provided that doing so would not violate any other provision of these rules, any law, or any local court rule or program guideline.

### **(f) Circumstances requiring mediator recusal despite party consent**

Regardless of the consent of the parties, a mediator either must decline to serve as mediator or, if already serving, must withdraw from the mediation if:

- (1) The mediator cannot maintain impartiality toward all participants in the mediation process; or
- (2) Proceeding with the mediation would jeopardize the integrity of the court or of the mediation process.

*Rule 3.855 amended and renumbered effective January 1, 2007; adopted as rule 1620.5 effective January 1, 2003.*

### **Advisory Committee Comment**

**Subdivision (b).** This subdivision is intended to provide parties with information they need to help them determine whether a mediator can conduct the mediation impartially. A mediator's overarching duty under this subdivision is to make a "reasonable effort" to identify matters that, in the eyes of a reasonable person, could raise a question about the mediator's ability to conduct the mediation impartially, and to inform the parties about those matters. What constitutes a "reasonable effort" to identify such matters varies depending on the circumstances, including whether the case is scheduled in advance or received on the spot, and the information about the participants and the subject matter that is provided to the mediator by the court and the parties.

The interests, relationships, and affiliations that a mediator may need to disclose under (b)(1)(A) include: (1) prior, current, or currently expected service as a mediator in another mediation involving any of the participants in the present mediation; (2) prior, current, or currently expected business relationships or transactions between the mediator and any of the participants; and (3) the mediator's ownership of stock or any other significant financial interest involving any participant in the mediation. Currently expected

interests, relationships, and affiliations may include, for example, an intention to form a partnership or to enter into a future business relationship with one of the participants in the mediation.

Although (b)(1) specifies interests, relationships, affiliations, and matters that are grounds for disqualification of a judge under Code of Civil Procedure section 170.1, these are only examples of common matters that reasonably could raise a question about a mediator's ability to conduct the mediation impartially and thus, must be disclosed. The absence of particular interests, relationships, affiliations, and section 170.1 matters does not necessarily mean that there is no matter that could reasonably raise a question about the mediator's ability to conduct the mediation impartially. A mediator must make determinations concerning disclosure on a case-by-case basis, applying the general criteria for disclosure under (b)(1).

Attorney mediators should be aware that under the section 170.1 standard, they may need to make disclosures when an attorney in their firm is serving or has served as a lawyer for any of the parties in the mediation. Section 170.1 does not specifically address whether a mediator must disclose when another member of the mediator's dispute resolution services firm is providing or has provided services to any of the parties in the mediation. Therefore, a mediator must evaluate such circumstances under the general criteria for disclosure under (b)(1)-that is, is it a matter that, in the eyes of a reasonable person, could raise a question about the mediator's ability to conduct the mediation impartially?

If there is a conflict between the mediator's obligation to maintain confidentiality and the mediator's obligation to make a disclosure, the mediator must determine whether he or she can make a general disclosure of the circumstance without revealing any confidential information, or must decline to serve.

### **Rule 3.856 Competence**

#### **(a) Compliance with court qualifications**

A mediator must comply with experience, training, educational, and other requirements established by the court for appointment and retention.

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### **(b) Truthful representation of background**

A mediator has a continuing obligation to truthfully represent his or her background to the court and participants. Upon a request by any party, a mediator must provide truthful information regarding his or her experience, training, and education.

### **(c) Informing court of public discipline and other matters**

A mediator must also inform the court if:

- (1) Public discipline has been imposed on the mediator by any public disciplinary or professional licensing agency;
- (2) The mediator has resigned his or her membership in the State Bar or another professional licensing agency while disciplinary or criminal charges were pending;
- (3) A felony charge is pending against the mediator;
- (4) The mediator has been convicted of a felony or of a misdemeanor involving moral turpitude; or
- (5) There has been an entry of judgment against the mediator in any civil action for actual fraud or punitive damages.

### **(d) Assessment of skills; withdrawal**

A mediator has a continuing obligation to assess whether or not his or her level of skill, knowledge, and ability is sufficient to conduct the mediation effectively. A mediator must decline to serve or withdraw from the mediation if the mediator determines that he or she does not have the level of skill, knowledge, or ability necessary to conduct the mediation effectively.

*Rule 3.856 renumbered effective January 1, 2007; adopted as rule 1620.6 effective January 1, 2003.*

#### **Advisory Committee Comment**

**Subdivision (d).** No particular advanced academic degree or technical or professional experience is a prerequisite for competence as a mediator. Core mediation skills include communicating clearly, listening effectively, facilitating communication among all participants, promoting exploration of

mutually acceptable settlement options, and conducting oneself in a neutral manner.

A mediator must consider and weigh a variety of issues in order to assess whether his or her level of skill, knowledge, and ability is sufficient to make him or her effective in a particular mediation. Issues include whether the parties (1) were involved or had input in the selection of the mediator; (2) had access to information about the mediator's background or level of skill, knowledge, and ability; (3) have a specific expectation or perception regarding the mediator's level of skill, knowledge, and ability; (4) have expressed a preference regarding the style of mediation they would like or expect; or (5) have expressed a desire to discuss legal or other professional information, to hear a personal evaluation of or opinion on a set of facts as presented, or to be made aware of the interests of persons who are not represented in mediation.

### **Rule 3.857 Quality of mediation process**

#### **(a) Diligence**

A mediator must make reasonable efforts to advance the mediation in a timely manner. If a mediator schedules a mediation for a specific time period, he or she must keep that time period free of other commitments.

#### **(b) Procedural fairness**

A mediator must conduct the mediation proceedings in a procedurally fair manner. "Procedural fairness" means a balanced process in which each party is given an opportunity to participate and make uncoerced decisions. A mediator is not obligated to ensure the substantive fairness of an agreement reached by the parties.

#### **(c) Explanation of process**

In addition to the requirements of rule 3.853 (voluntary participation and self-determination), rule 3.854(a) (confidentiality), and (d) of this rule (representation and other professional services), at or before the outset of the mediation the mediator must provide all participants with a general explanation of:

- (1) The nature of the mediation process;
- (2) The procedures to be used; and



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- (3) The roles of the mediator, the parties, and the other participants.

*(Subd (c) amended effective January 1, 2007.)*

### **(d) Representation and other professional services**

A mediator must inform all participants, at or before the outset of the first mediation session, that during the mediation he or she will not represent any participant as a lawyer or perform professional services in any capacity other than as an impartial mediator. Subject to the principles of impartiality and self-determination, a mediator may provide information or opinions that he or she is qualified by training or experience to provide.

### **(e) Recommending other services**

A mediator may recommend the use of other services in connection with a mediation and may recommend particular providers of other services. However, a mediator must disclose any related personal or financial interests if recommending the services of specific individuals or organizations.

### **(f) Nonparticipants' interests**

A mediator may bring to the attention of the parties the interests of others who are not participating in the mediation but who may be affected by agreements reached as a result of the mediation.

### **(g) Combining mediation with other ADR processes**

A mediator must exercise caution in combining mediation with other alternative dispute resolution (ADR) processes and may do so only with the informed consent of the parties and in a manner consistent with any applicable law or court order. The mediator must inform the parties of the general natures of the different processes and the consequences of revealing information during any one process that might be used for decision making in another process, and must give the parties the opportunity to select another neutral for the subsequent process. If the parties consent to a combination of processes, the mediator must clearly inform the participants when the transition from one process to another is occurring.

### **(h) Settlement agreements**

Consistent with (d), a mediator may present possible settlement options and terms for discussion. A mediator may also assist the parties in preparing a written settlement agreement, provided that in doing so the mediator confines

the assistance to stating the settlement as determined by the parties.

*(Subd (h) amended effective January 1, 2007.)*

### **(i) Discretionary termination and withdrawal**

A mediator may suspend or terminate the mediation or withdraw as mediator when he or she reasonably believes the circumstances require it, including when he or she suspects that:

- (1) The mediation is being used to further illegal conduct;
- (2) A participant is unable to participate meaningfully in negotiations; or
- (3) Continuation of the process would cause significant harm to any participant or a third party.

### **(j) Manner of withdrawal**

When a mediator determines that it is necessary to suspend or terminate a mediation or to withdraw, the mediator must do so without violating the obligation of confidentiality and in a manner that will cause the least possible harm to the participants.

*Rule 3.857 amended and renumbered effective January 1, 2007; adopted as rule 1620.7 effective January 1, 2003.*

### **Advisory Committee Comment**

**Subdivision (c).** The explanation of the mediation process should include a description of the mediator's style of mediation.

**Subdivision (d).** Subject to the principles of impartiality and self-determination, and if qualified to do so, a mediator may (1) discuss a party's options, including a range of possible outcomes in an adjudicative process; (2) offer a personal evaluation of or opinion on a set of facts as presented, which should be clearly identified as a personal evaluation or opinion; or (3) communicate the mediator's opinion or view of what the law is or how it applies to the subject of the mediation, provided that the mediator does not also advise any participant about how to adhere to the law or on what position the participant should take in light of that opinion.

One question that frequently arises is whether a mediator's assessment of claims, defenses, or possible litigation outcomes constitutes legal advice or the practice of law. Similar questions may arise when

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accounting, architecture, construction, counseling, medicine, real estate, or other licensed professions are relevant to a mediation. This rule does not determine what constitutes the practice of law or any other licensed profession. A mediator should be cautious when providing any information or opinion related to any field for which a professional license is required, in order to avoid doing so in a manner that may constitute the practice of a profession for which the mediator is not licensed, or in a manner that may violate the regulations of a profession that the mediator is licensed to practice. A mediator should exercise particular caution when discussing the law with unrepresented parties and should inform such parties that they may seek independent advice from a lawyer.

**Subdivision (i).** Subdivision (i)(2) is not intended to establish any new responsibility or diminish any existing responsibilities that a mediator may have under, the Americans With Disabilities Act or other similar law, to attempt to accommodate physical or mental disabilities of a participant in mediation.

### **Rule 3.858 Marketing**

#### **(a) Truthfulness**

A mediator must be truthful and accurate in marketing his or her mediation services. A mediator is responsible for ensuring that both his or her own marketing activities and any marketing activities carried out on his or her behalf by others comply with this rule.

#### **(b) Representations concerning court approval**

A mediator may indicate in his or her marketing materials that he or she is a member of a particular court's panel or list but, unless specifically permitted by the court, must not indicate that he or she is approved, endorsed, certified, or licensed by the court.

#### **(c) Promises, guarantees, and implications of favoritism**

In marketing his or her mediation services, a mediator must not:

- (1) Promise or guarantee results; or
- (2) Make any statement that directly or indirectly implies bias in favor of one party or participant over another.

#### **(d) Solicitation of business**

A mediator must not solicit business from a participant in a mediation proceeding while that mediation is pending.

*Rule 3.858 renumbered effective January 1, 2007; adopted as rule 1620.8 effective January 1, 2003.*

### **Advisory Committee Comment**

**Subdivision (d).** This rule is not intended to prohibit a mediator from accepting other employment from a participant while a mediation is pending, provided that there was no express solicitation of this business by the mediator and that accepting that employment does not contravene any other provision of these rules, including the obligations to maintain impartiality, confidentiality, and the integrity of the process. If other employment is accepted from a participant while a mediation is pending, however, the mediator may be required to disclose this to the parties under rule 3.855.

This rule also is not intended to prohibit a mediator from engaging in general marketing activities. General marketing activities include, but are not limited to, running an advertisement in a newspaper and sending out a general mailing (either of which may be directed to a particular industry or market).

### **Rule 3.859 Compensation and gifts**

#### **(a) Compliance with law**

A mediator must comply with any applicable requirements concerning compensation established by statute or the court.

#### **(b) Disclosure of and compliance with compensation terms**

Before commencing the mediation, the mediator must disclose to the parties in writing any fees, costs, or charges to be paid to the mediator by the parties. A mediator must abide by any agreement that is reached concerning compensation.

#### **(c) Contingent fees**

The amount or nature of a mediator's fee must not be made contingent on the outcome of the mediation.

*(Subd (c) amended effective January 1, 2007.)*

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### **(d) Gifts and favors**

A mediator must not at any time solicit or accept from or give to any participant or affiliate of a participant any gift, bequest, or favor that might reasonably raise a question concerning the mediator's impartiality.

*Rule 3.859 amended and renumbered effective January 1, 2007; adopted as rule 1620.9 effective January 1, 2003.*

#### **Advisory Committee Comment**

**Subdivision (b).** It is good practice to put mediation fee agreements in writing, and mediators are strongly encouraged to do so; however, nothing in this rule is intended to preclude enforcement of a compensation agreement for mediation services that is not in writing.

**Subdivision (d).** Whether a gift, bequest, or favor "might reasonably raise a question concerning the mediator's impartiality" must be determined on a case-by-case basis. This subdivision is not intended to prohibit a mediator from accepting other employment from any of the participants, consistent with rule 3.858(d).

### **Rule 3.860 Attendance sheet and agreement to disclosure**

#### **(a) Attendance sheet**

In each mediation to which these rules apply under rule 3.851(a), the mediator must request that all participants in the mediation complete an attendance sheet stating their names, mailing addresses, and telephone numbers; retain the attendance sheet for at least two years; and submit it to the court on request.

*(Subd. (a) amended effective January 1, 2007.)*

#### **(b) Agreement to disclosure**

The mediator must agree, in each mediation to which these rules apply under rule 3.851(a), that if an inquiry or a complaint is made about the conduct of the mediator, mediation communications may be disclosed solely for purposes of a complaint procedure conducted pursuant to rule 3.865 to address that complaint or inquiry.

*(Subd. (b) amended effective January 1, 2011; previously amended effective January 1, 2007.)*

*Rule 3.860 amended effective January 1, 2011; adopted as rule 1621 effective January 1, 2006; previously amended and renumbered effective January 1, 2007.*

## **ARTICLE 3. REQUIREMENTS FOR ADDRESSING COMPLAINTS ABOUT COURT-PROGRAM MEDIATORS**

### **Rule 3.865 Application and Purpose**

#### **(a) Application**

The rules in this article apply to each superior court that makes a list of mediators available to litigants in general civil cases or that recommends, selects, appoints, or compensates a mediator to mediate any general civil case pending in that court. A court that approves the parties' agreement to use a mediator who is selected by the parties and who is not on the court's list of mediators or that memorializes the parties' agreement in a court order has not thereby recommended, selected, or appointed that mediator within the meaning of this rule.

*(Subd (a) amended and lettered effective January 1, 2010; previously adopted as part of unlettered subd effective July 1, 2009; effective date extended to January 1, 2010.)*

#### **(b) Purpose**

These rules are intended to promote the resolution of complaints that mediators in court-connected mediation programs for civil cases may have violated a provision of the rules of conduct for such mediators in article 2. They are intended to help courts promptly resolve any such complaints in a manner that is respectful and fair to the complainant and the mediator and consistent with the California mediation confidentiality statutes.

*(Subd (b) lettered effective January 1, 2010; previously adopted as part of unlettered subd effective July 1, 2009; effective date extended to January 1, 2010.)*

*Rule 3.865 amended effective January 1, 2010; adopted effective July 1, 2009, effective date extended to January 1, 2010.*

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### Advisory Committee Comment

As used in this article, complaint means a written communication presented to a court's complaint coordinator indicating that a mediator may have violated a provision of the rules of conduct for mediators in article 2.

Complaints about mediators are relatively rare. To ensure the quality of court mediation panels and public confidence in the mediation process and the courts, it is, nevertheless, important to ensure that any complaints that do arise are resolved through procedures that are consistent with California mediation confidentiality statutes (Evid. Code, §§ 703.5 and 1115 et seq.), as well as fair and respectful to the interested parties.

The requirements and procedures in this article do not abrogate or limit a court's inherent or other authority, in its sole and absolute discretion, to determine who may be included on or removed from a court list of mediators; to approve or revoke a mediator's eligibility to be recommended, selected, appointed, or compensated by the court; or to follow other procedures or take other actions to ensure the quality of mediators who serve in the court's mediation program in contexts other than when addressing a complaint. The failure to follow a requirement or procedure in this article will not invalidate any action taken by the court in addressing a complaint.

### Rule 3.866 Definitions

As used in this article, unless the context or subject matter requires otherwise:

- (1) "The rules of conduct" means rules 3.850–3.860 of the California Rules of Court in article 2.
- (2) "Court-program mediator" means a person subject to the rules of conduct under rule 3.851.
- (3) "Inquiry" means an unwritten communication presented to the court's complaint coordinator indicating that a mediator may have violated a provision of the rules of conduct.
- (4) "Complaint" means a written communication presented to the court's complaint coordinator indicating that a mediator may have violated a provision of the rules of conduct.
- (5) "Complainant" means the person who makes or presents a complaint.

(6) "Complaint coordinator" means the person designated by the presiding judge under rule 3.867(a) to receive complaints and inquiries about the conduct of mediators.

(7) "Complaint committee" means a committee designated or appointed to investigate and make recommendations concerning complaints under rule 3.869(d)(2).

(8) "Complaint procedure" means a procedure for presenting, receiving, reviewing, responding to, investigating, and acting on any inquiry or complaint.

(9) "Complaint proceeding" means all of the proceedings that take place as part of a complaint procedure concerning a specific inquiry or complaint.

(10) "Mediation communication" means any statement that is made or any writing that is prepared for the purpose of, in the course of, or pursuant to a mediation or a mediation consultation, as defined in Evidence Code section 1115, and includes any communications, negotiations, and settlement discussions between participants in the course of a mediation or a mediation consultation.

*Rule 3.866 adopted effective July 1, 2009, effective date extended to January 1, 2010.*

### Advisory Committee Comment

**Paragraph (2).** Under rule 3.851, the rules of conduct apply when a mediator, or a firm with which a mediator is affiliated, has agreed to be included on a superior court's list or panel of mediators for general civil cases and is notified by the court or the parties that he or she has been selected to mediate a case within that court's mediation program or when a mediator has agreed to mediate a general civil case after being notified that he or she was recommended, selected, or appointed by a court, or will be compensated by a court, to mediate a case within a court's mediation program.

**Paragraphs (3) and (4).** The distinction between "inquiries" and "complaints" is significant because some provisions of this article apply only to complaints (i.e., written communications presented to the court's complaint coordinator indicating that a mediator may have violated a provision of the rules of conduct) and not to inquiries.

**Rule 3.867 Complaint coordinator**

**(a) Designation of the complaint coordinator**

The presiding judge must designate a person who is knowledgeable about mediation to serve as the complaint coordinator.

*(Subd (a) amended and lettered effective July 1, 2009, effective date extended to January 1, 2010; adopted as unlettered subd effective January 1, 2006.)*

**(b) Identification of the complaint coordinator**

The court must make the complaint coordinator's identity and contact information readily accessible to litigants and the public.

*(Subd (b) adopted effective July 1, 2009, effective date extended to January 1, 2010.)*

*Rule 3.867 amended and renumbered effective July 1, 2009, effective date extended to January 1, 2010; adopted as rule 1622.1 effective January 1, 2006; previously amended and renumbered as rule 3.866 effective January 1, 2007.*

**Rule 3.868 Complaint procedure required**

Each court to which this article applies under rule 3.865 must establish a complaint procedure by local rule of court that is consistent with this article.

*Rule 3.868 amended and renumbered effective July 1, 2009, effective date extended to January 1, 2010; adopted as rule 1622 effective January 1, 2003; previously amended effective January 1, 2006; previously amended and renumbered as rule 3.865 effective January 1, 2007.*

**Rule 3.869 General requirements for complaint procedures and complaint proceedings**

**(a) Submission and referral of inquiries and complaints to the complaint coordinator**

All inquiries and complaints should be submitted or referred to the complaint coordinator.

**(b) Acknowledgment of complaint**

The complaint coordinator must send the complainant a written acknowledgment that the court has received the complaint.

**(c) Preliminary review and disposition of complaints**

The complaint coordinator must conduct a preliminary review of all complaints to determine whether the complaint can be informally resolved or closed, or whether the complaint warrants investigation.

**(d) Procedure for complaints not resolved through the preliminary review**

The following procedures are required only if a complaint is not resolved or closed through the preliminary review.

**(1) Mediator's notice and opportunity to respond**

The mediator must be given notice of the complaint and an opportunity to respond.

**(2) Investigation and recommendation**

(A) Except as provided in (B), the complaint must be investigated and a recommendation concerning court action on the complaint must be made by either an individual who has experience as a mediator and who is familiar with the rules of conduct stated in article 2 or a complaint committee that has at least one such individual as a member.

(B) A court with eight or fewer authorized judges may waive the requirement in (A) for participation by an individual who has experience as a mediator in conducting the investigation and making the recommendation if the court cannot find a suitable qualified individual to perform the functions described in (A) or for other grounds of hardship.

**(3) Final decision**

The final decision on the complaint must be made by the presiding judge or his or her designee, who must not be the complaint coordinator or an individual who investigated the complaint before its submission for final decision.

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### (e) Notice of final action

(1) The court must send the complainant notice of the final action taken by the court on the complaint.

(2) If the complaint was not closed during the preliminary review, the court must send notice of the final action to the mediator.

### (f) Promptness

The court must process complaints promptly at all stages.

### (g) Records of complaints

The court should maintain sufficient information about each complaint and its disposition to identify any history or patterns of complaints submitted under these rules.

*Rule 3.869 adopted effective July 1, 2009, effective date extended to January 1, 2010.*

#### Advisory Committee Comment

Judicial Council staff have developed model local rules that satisfy the requirements of this rule. These model local rules were developed with input from judicial officers, court administrators, alternative dispute resolution (ADR) program administrators, court-program mediators, and public commentators and are designed so that they can be readily adapted to the circumstances of individual courts and specific complaints. Courts are encouraged to adopt rules that follow the model rules, to the extent feasible. Courts can obtain copies of these model rules from the Judicial Council's civil ADR program staff.

**Subdivision (a).** Coordination of inquiries and complaints by a person knowledgeable about mediation is important to help ensure that the requirements of this article are followed and that mediation confidentiality is preserved.

**Subdivision (c).** Courts are encouraged to resolve inquiries and complaints about mediators using the simplest, least formal procedures that are appropriate under the circumstances, provided that they meet the requirements stated in this article.

Most complaints can be appropriately resolved during the preliminary review stage of the complaint process,

through informal discussions between or among the complaint coordinator, the complainant, and the mediator. Although complaint coordinators are not required to communicate with the mediator during the preliminary review, they are encouraged to consider doing so. For example, some complaints may arise from a misunderstanding of the mediator's role or from behavior that would not violate the standards of conduct. These types of complaints might appropriately be addressed by providing the complainant with additional information or by informing the mediator that certain behavior was upsetting to a mediation participant.

The circumstances under which a complaint coordinator might informally resolve or close a complaint include, for example, when (1) the complaint is withdrawn; (2) no violation of the rules of conduct appears to have occurred; (3) the alleged violation of the rules of conduct is very minor and the mediator has provided an acceptable explanation or response; and (4) the complainant, the mediator, and the complaint coordinator have agreed on a resolution. In determining whether to close a complaint, the complaint coordinator might also consider whether there are or have been other complaints about the mediator.

**Subdivision (d).** At the investigation and recommendation stage, all courts are encouraged to consider using a complaint committee comprised of members with a variety of backgrounds, including at least one person with experience as a mediator, to investigate and make recommendations concerning those rare complaints that are not resolved during the preliminary review.

Courts are also encouraged to have a judicial officer who is knowledgeable about mediation, or a committee that includes another person who is knowledgeable about mediation, make the final decision on complaints that are not resolved through the preliminary review.

### Rule 3.870 Permissible court actions on complaints

After an investigation has been conducted, the presiding judge or his or her designee may do one or more of the following:

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- (1) Direct that no action be taken on the complaint;
- (2) Counsel, admonish, or reprimand the mediator;
- (3) Impose additional training requirements as a condition of the mediator remaining on the court's panel or list;
- (4) Suspend the mediator from the court's panel or list or otherwise temporarily prohibit the mediator from receiving future mediation referrals from the court; or
- (5) Remove the mediator from the court's panel or list or otherwise prohibit the mediator from receiving future mediation referrals from the court.

*Rule 3.870 adopted effective July 1, 2009, effective date extended to January 1, 2010.*

### **Advisory Committee Comment**

This rule does not abrogate or limit any existing legal right or duty of the court to take other actions, including interim suspension of a mediator pending final action by the court on a complaint.

### **Rule 3.871 Confidentiality of complaint procedures, information, and records**

#### **(a) Intent**

This rule is intended to:

- (1) Preserve the confidentiality of mediation communications as required by Evidence Code sections 1115–1128;
- (2) Promote cooperation in the reporting, investigation, and resolution of complaints about court-program mediators; and
- (3) Protect mediators against damage to their reputations that might result from the disclosure of unfounded complaints against them.

*(Subd (a) amended effective July 1, 2009, effective date extended to January 1, 2010; previously amended effective January 1, 2007.)*

#### **(b) Preserving the confidentiality of mediation communications**

All complaint procedures and complaint proceedings must be designed and conducted in a manner that preserves the confidentiality of mediation communications, including but not limited to the confidentiality of any communications between the mediator and individual mediation participants or subgroups of mediation participants.

*(Subd (b) amended effective July 1, 2009, effective date extended to January 1, 2010.)*

#### **(c) Confidentiality of complaint proceedings**

All complaint proceedings must occur in private and must be kept confidential. No information or records concerning the receipt, investigation, or resolution of an inquiry or a complaint may be open to the public or disclosed outside the course of the complaint proceeding except as provided in (d) or as otherwise required by law.

*(Subd (c) amended effective July 1, 2009, effective date extended to January 1, 2010; previously amended effective January 1, 2007.)*

#### **(d) Authorized disclosures**

After the decision on a complaint, the presiding judge, or a person whom the presiding judge designates to do so, may authorize the public disclosure of information or records concerning the complaint proceeding that do not reveal any mediation communications. The disclosures that may be authorized under this subdivision include the name of a mediator against whom action has been taken under rule 3.870, the action taken, and the general basis on which the action was taken. In determining whether to authorize the disclosure of information or records under this subdivision, the presiding judge or the designee should consider the purposes of the confidentiality of complaint proceedings stated in (a)(2) and (a)(3).

*(Subd (d) amended effective July 1, 2009, effective date extended to January 1, 2010; previously amended effective January 1, 2007.)*

#### **(e) Disclosures required by law**

In determining whether the disclosure of information or records concerning a complaint proceeding is required by law, courts should consider the purposes of the confidentiality of complaint proceedings stated in (a). If it appears that the disclosure of information or records

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concerning a complaint proceeding that would reveal mediation communications is required by law, before the information or records are disclosed, notice should be given to any person whose mediation communications may thereby be revealed.

*(Subd (e) amended effective July 1, 2009, effective date extended to January 1, 2010; previously amended effective January 1, 2007.)*

*Rule 3.871 amended and renumbered effective July 1, 2009, effective date extended to January 1, 2010; adopted as rule 1622.2 effective January 1, 2006; previously amended and renumbered as rule 3.867 effective January 1, 2007.*

### Advisory Committee Comment

Under rule 3.866(9), the complaint proceedings covered by this rule include proceedings to address inquiries as well as complaints (i.e., to unwritten as well as written communications indicating that a mediator may have violated a provision of the rules of conduct).

**Subdivision (a).** See Evidence Code sections 1115 and 1119 concerning the scope and types of mediation communications protected by mediation confidentiality. Rule 3.871 is intended to supplement the confidentiality of mediation communications established by the Evidence Code by ensuring that disclosure of information or records about a complaint proceeding does not reveal confidential mediation communications. Rule 3.871 is not intended to supersede or abrogate the confidentiality of mediation communications established by the Evidence Code.

**Subdivision (b).** Private meetings, or “caucuses,” between a mediator and subgroups of participants are common in court-connected mediations, and it is frequently understood that these communications will not be disclosed to other participants in the mediation. (See Cal. Rules of Court, rule 3.854(c).) It is important to protect the confidentiality of these communications in complaint proceedings so that one participant in the mediation does not learn what another participant discussed in confidence with the mediator without the consent of the participants in the caucus communication.

**Subdivisions (c)–(e).** The provisions of (c)–(e) that authorize the disclosure of information and records related to complaint proceedings do not create any new exceptions to mediation confidentiality. Although public disclosure of information and records about complaint proceedings that do not reveal mediation communications may be authorized under (d),

information and records that would reveal mediation communications may be publicly disclosed only as required by law (e.g., in response to a subpoena or court order) and consistent with the statutes and case law governing mediation confidentiality. A person who is knowledgeable about California’s mediation confidentiality laws should determine whether the disclosure of mediation communications is required by law.

Evidence Code sections 915 and 1040 establish procedures and criteria for deciding whether information acquired in confidence by a public employee in the course of his or her duty is subject to disclosure. These sections may be applicable or helpful in determining whether the disclosure of information or records acquired by judicial officers, court staff, and other persons in the course of a complaint proceeding is required by law or should be authorized in the discretion of the presiding judge.

### Rule 3.872 Disqualification from subsequently serving as an adjudicator

A person who has participated in a complaint proceeding or otherwise received information about the substance of a complaint, other than information that is publicly disclosed under rule 3.871(d), must not subsequently hear or determine any contested issue of law, fact, or procedure concerning the dispute that was the subject of the underlying mediation or any other dispute that arises from the mediation as a judge, an arbitrator, a referee, or a juror, or in any other adjudicative capacity, in any court action or proceeding.

*Rule 3.872 amended and renumbered effective July 1, 2009, effective date extended to January 1, 2010; adopted as rule 1622.3 effective January 1, 2006; previously amended and renumbered as rule 3.868 effective January 1, 2007.*

### Advisory Committee Comment

Persons who participated in a complaint proceeding are prohibited from subsequently adjudicating the dispute that was the subject of the underlying mediation or any other dispute that arises from the mediation because they may have learned of confidential mediation communications that were disclosed in the complaint proceeding or may have been influenced by what transpired in that proceeding. Because the information that can be disclosed publicly under rule 3.871(d) is limited and excludes mediation communications, it is unnecessary to disqualify persons who received only



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publicly disclosed information from subsequently adjudicating the dispute.

### DIVISION 11. LAW AND MOTION

#### CHAPTER 2. FORMAT OF MOTION PAPERS

##### Rule 3.1115 Declarations

The caption of a declaration must state the name of the declarant and must specifically identify the motion or other proceeding that it supports or opposes.

*Rule 3.1115 amended and renumbered effective January 1, 2007; adopted as rule 315 effective January 1, 1984.*

#### CHAPTER 6. PARTICULAR MOTIONS

##### ARTICLE 5. MISCELLANEOUS MOTIONS

##### Rule 3.1362 Motion to be relieved as counsel

###### (a) Notice

A notice of motion and motion to be relieved as counsel under Code of Civil Procedure section 284(2) must be directed to the client and must be made on the Notice of Motion and Motion to Be Relieved as Counsel-Civil (form MC-051).

*(Subd (a) amended effective January 1, 2007; previously amended effective July 1, 2000.)*

###### (b) Memorandum

Notwithstanding any other rule of court, no memorandum is required to be filed or served with a motion to be relieved as counsel.

*(Subd (b) amended effective January 1, 2007; adopted effective July 1, 2000.)*

###### (c) Declaration

The motion to be relieved as counsel must be accompanied by a declaration on the Declaration in

Support of Attorney's Motion to Be Relieved as Counsel-Civil form (MC-052). The declaration must state in general terms and without compromising the confidentiality of the attorney-client relationship why a motion under Code of Civil Procedure section 284(2) is brought instead of filing a consent under Code of Civil Procedure section 284(1).

*(Subd (c) amended effective January 1, 2007; adopted as subd (b); previously relettered and amended effective July 1, 2000.)*

###### (d) Service

The notice of motion and motion, the declaration, and the proposed order must be served on the client and on all other parties who have appeared in the case. The notice may be by personal service, electronic service or mail.

(1) If the notice is served on the client by mail under Code of Civil Procedure section 1013, it must be accompanied by a declaration stating facts showing that either:

(A) The service address is the current residence or business address of the client; or

(B) The service address is the last known residence or business address of the client and the attorney has been unable to locate a more current address after making reasonable efforts to do so within 30 days before the filing of the motion to be relieved.

(2) If the notice is served on the client by electronic service under Code of Civil Procedure section 1010.6 and rule 2.251, it must be accompanied by a declaration stating that the electronic service address is the client's current electronic service address.

As used in this rule, "current" means that the address was confirmed within 30 days before the filing of the motion to be relieved. Merely demonstrating that the notice was sent to the client's last known address and was not returned or no electronic delivery failure message was received is not, by itself, sufficient to demonstrate that the address is current. If the service is by mail, Code of Civil Procedure section 1011(b) applies.

*(Subd (d) amended effective March 1, 2020; adopted as subd (c); previously amended effective July 1, 1991, January 1, 1996, and January 1, 2007; previously*

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*relettered and amended effective July 1, 2000; previously amended effective January 1, 2009.)*

### **(e) Order**

The proposed order relieving counsel must be prepared on the Order Granting Attorney's Motion to Be Relieved as Counsel-Civil (form MC-053) and must be lodged with the court with the moving papers. The order must specify all hearing dates scheduled in the action or proceeding, including the date of trial, if known. If no hearing date is presently scheduled, the court may set one and specify the date in the order. After the order is signed, a copy of the signed order must be served on the client and on all parties that have appeared in the case. The court may delay the effective date of the order relieving counsel until proof of service of a copy of the signed order on the client has been filed with the court.

*(Subd (e) amended effective January 1, 2009; adopted as subd (d); previously amended effective January 1, 1996, and January 1, 2007; previously amended and relettered effective July 1, 2000.)*

*Rule 3.1362 amended effective March 1, 2020; adopted as rule 376 effective July 1, 1984; previously amended effective July 1, 1991, January 1, 1996, and July 1, 2000; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2009.*

## **TITLE 8. APPELLATE RULES**

### **DIVISION 1. RULES RELATING TO THE SUPREME COURT AND COURT OF APPEALS**

#### **CHAPTER 2. CIVIL APPEALS**

#### **ARTICLE 4. HEARING AND DECISION IN THE COURT OF APPEAL**

### **Rule 8.276 Sanctions**

#### **(a) Grounds for sanctions**

On motion of a party or its own motion, a Court of Appeal may impose sanctions, including the award or denial of costs under rule 8.278, on a party or an attorney for:

- (1) Taking a frivolous appeal or appealing solely to cause delay;
- (2) Including in the record any matter not reasonably material to the appeal's determination;
- (3) Filing a frivolous motion; or
- (4) Committing any other unreasonable violation of these rules.

*(Subd (a) amended and relettered effective January 1, 2008; adopted as subd (e) effective January 1, 2003; previously amended effective January 1, 2007.)*

#### **(b) Motions for sanctions**

- (1) A party's motion under (a) must include a declaration supporting the amount of any monetary sanction sought and must be served and filed before any order dismissing the appeal but no later than 10 days after the appellant's reply brief is due.
- (2) If a party files a motion for sanctions with a motion to dismiss the appeal and the motion to dismiss is not granted, the party may file a new motion for sanctions within 10 days after the appellant's reply brief is due.

*(Subd (b) amended and lettered effective January 1, 2008; adopted as part of subd (e) effective January 1, 2003; previously amended effective January 1, 2007.)*

#### **(c) Notice**

The court must give notice in writing if it is considering imposing sanctions.

*(Subd (c) amended and lettered effective January 1, 2008; adopted as part of subd (e) effective January 1, 2003; previously amended effective January 1, 2007.)*

#### **(d) Opposition**

Within 10 days after the court sends such notice, a party or attorney may serve and file an opposition, but failure to do so will not be deemed consent. An opposition may not be filed unless the court sends such notice.

*(Subd (d) amended and lettered effective January 1, 2008; adopted as part of subd (e) effective January 1, 2003; previously amended effective January 1, 2007.)*

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### (e) Oral argument

Unless otherwise ordered, oral argument on the issue of sanctions must be combined with oral argument on the merits of the appeal.

*(Subd (e) amended and lettered effective January 1, 2008; adopted as part of subd (e) effective January 1, 2003; previously amended effective January 1, 2007.)*

*Rule 8.276 amended effective January 1, 2008; repealed and adopted as rule 27 effective January 1, 2003; previously amended and renumbered effective January 1, 2007.*

## TITLE 8. APPELLATE RULES

### DIVISION 5. PUBLICATION OF APPELLATE OPINIONS

#### Rule 8.1115 Citation of opinions

##### (a) Unpublished opinion

Except as provided in (b), an opinion of a California Court of Appeal or superior court appellate division that is not certified for publication or ordered published must not be cited or relied on by a court or a party in any other action.

##### (b) Exceptions

An unpublished opinion may be cited or relied on:

- (1) When the opinion is relevant under the doctrines of law of the case, res judicata, or collateral estoppel; or
- (2) When the opinion is relevant to a criminal or disciplinary action because it states reasons for a decision affecting the same defendant or respondent in another such action.

*(Subd (b) amended effective January 1, 2007.)*

##### (c) Citation procedure

On request of the court or a party, a copy of an opinion citable under (b) must be promptly furnished to the court or the requesting party.

*(Subd (c) amended effective April 21, 2021.)*

### (d) When a published opinion may be cited

A published California opinion may be cited or relied on as soon as it is certified for publication or ordered published.

### (e) When a published opinion may be cited

#### (1) While review is pending

Pending review and filing of the Supreme Court's opinion, unless otherwise ordered by the Supreme Court under (3), a published opinion of a Court of Appeal in the matter has no binding or precedential effect, and may be cited for potentially persuasive value only. Any citation to the Court of Appeal opinion must also note the grant of review and any subsequent action by the Supreme Court.

#### (2) After decision on review

After decision on review by the Supreme Court, unless otherwise ordered by the Supreme Court under (3), a published opinion of a Court of Appeal in the matter, and any published opinion of a Court of Appeal in a matter in which the Supreme Court has ordered review and deferred action pending the decision, is citable and has binding or precedential effect, except to the extent it is inconsistent with the decision of the Supreme Court or is disapproved by that court.

#### (3) Supreme Court order

At any time after granting review or after decision on review, the Supreme Court may order that all or part of an opinion covered by (1) or (2) is not citable or has a binding or precedential effect different from that specified in (1) or (2).

*(Subd (e) added effective April 21, 2021.)*

*Rule 8.1115 amended effective April 21, 2021; repealed and adopted as rule 977 effective January 1, 2005; previously amended and renumbered effective January 1, 2007; previously amended effective July 1, 2016.*

#### Advisory Committee Comment

**Subdivision (e)(1).** The practice and rule in effect before July 1, 2016, automatically depublished the Court of Appeal decision under review, rendering it uncitable. Under subdivision (e)(1) of this rule, if the Supreme Court grants review of a published Court of Appeal decision, that decision now remains published and citable for its potentially persuasive value while review is pending unless the Supreme Court orders otherwise.

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Under the authority recognized by subdivision (e)(3) of this rule, and as explained in the second paragraph of the comment to that subdivision, by standing administrative order of the Supreme Court, superior courts may choose to be bound by parts of a published Court of Appeal decision under review when those parts conflict with another published appellate court decision. (See *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 456 (*Auto Equity*) [“where there is more than one appellate court decision, and such appellate decisions are in conflict[,] . . . the court exercising inferior jurisdiction can and must make a choice between the conflicting decisions”].)

Finally, it has long been the rule that no published Court of Appeal decision has *binding* effect on any other Court of Appeal (e.g., *In re Marriage of Hayden* (1981) 124 Cal.App.3d 72, 77, fn. 1; *Froyd v. Cook* (E.D.Cal. 1988) 681 F.Supp. 669, 672, fn. 9, and cases cited) or on the Supreme Court. Under prior practice and the former rule, a grant of review automatically depublished the decision under review. For this reason, the Court of Appeal was not allowed to cite or quote that review-granted decision concerning any substantive point. Under this subdivision, a published Court of Appeal decision as to which review has been granted remains published and is citable, while review is pending, for any potentially persuasive value.

**Subdivision (e)(2).** The fact that a Supreme Court decision does not discuss an issue addressed in the prior Court of Appeal decision does not constitute an expression of the Supreme Court’s opinion concerning the correctness of the decision on that issue or of any law stated in the Court of Appeal decision with respect to any such issue.

**Subdivision (e)(3).** This subdivision specifically provides that the Supreme Court can order that an opinion under review by that court, or after decision on review by that court, have an effect other than the effect otherwise specified under this rule. For example, the court could order that, while review is pending, specified parts of the published Court of Appeal opinion have binding or precedential effect, rather than only potentially persuasive value. For purposes of subdivision (e)(2) and (3), a “decision on review” includes any order by the Supreme Court dismissing review. (See rules 8.528(b) [addressing an “order dismissing review”] & 8.532(b)(2)(B) [listing, among “decisions final on filing,” an order filed under rule 8.528(b)].) Accordingly, upon dismissal of review, any

published Court of Appeal opinion regains binding or precedential effect under rule 8.1115(e)(2) unless the court orders otherwise under that rule’s subdivision (e)(3).

As provided in *Standing Order Exercising Authority Under California Rules of Court, Rule 8.1115(e)(3), Upon Grant of Review or Transfer of a Matter with an Underlying Published Court of Appeal Opinion*, Administrative Order 2021-04-21, under this subdivision, when the Supreme Court grants review of a published Court of Appeal opinion, the opinion may be cited, not only for its persuasive value, but also for the limited purpose of establishing the existence of a conflict in authority that would in turn allow *superior courts* to exercise discretion under *Auto Equity, supra*, 57 Cal.2d at page 456, to choose between sides of any such conflict. Superior courts may, in the exercise of their discretion, choose to follow a published review-granted Court of Appeal opinion, even if that opinion conflicts with a published, precedential Court of Appeal opinion. Such a review-granted Court of Appeal opinion has only this limited and potential precedential effect, however; superior courts are not *required* to follow that opinion’s holding on the issue in conflict. Nor does such a Court of Appeal opinion, during the time when review is pending, have *any* precedential effect regarding any aspect or holding of the Court of Appeal opinion outside the part(s) or holding(s) in conflict. Instead it remains, in all other respects, “potentially persuasive only.” This means, for example, that if a published Court of Appeal opinion as to which review has been granted addresses “conflict issue A,” as well as another issue as to which there is no present conflict—“issue B”—the Court of Appeal’s discussion of “issue B” remains “potentially persuasive” only, unless and until a published Court of Appeal opinion creates a conflict as to that issue. This paragraph of this comment applies with respect to all published Court of Appeal opinions giving rise to a grant of review by the Supreme Court on or after April 21, 2021.

Finally, as also provided in the administrative order, *supra*, under this subdivision, unless the Supreme Court specifies otherwise, an order transferring a matter to the Court of Appeal with directions to vacate its published opinion and reconsider the matter has the following effect: (1) If the Court of Appeal opinion has not yet been published in the bound volumes of the Official Appellate Reports, the opinion is deemed to be depublished (that is, the Reporter of Decisions is directed not to publish it in the

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Official Appellate Reports); or (2) If the underlying Court of Appeal opinion has already been published in the bound volumes of the Official Appellate Reports (or publication is imminent and hence as a practical matter the volume cannot be revised to eliminate the opinion), the underlying Court of Appeal opinion is deemed to be “not citable”—meaning it has neither precedential nor even potentially persuasive value, even though it will not be removed from the Official Appellate Reports. This paragraph of this comment applies only to such transfers occurring on and after April 21, 2021.

### **TITLE 9. RULES ON LAW PRACTICE, ATTORNEYS AND JUDGES**

#### **DIVISION 1. GENERAL PROVISIONS**

##### **Rule 9.0 Title and source**

###### **(a) Title**

The rules in this title may be referred to as the Rules on Law Practice, Attorneys, and Judges.

###### **(b) Source**

The rules in this title were adopted by the Supreme Court under its inherent authority over the admission and discipline of attorneys and under subdivisions (d) and (f) of section 18 of article VI of the Constitution of the State of California.

*Rule 9.0 amended and renumbered January 1, 2018; adopted as rule 9.1 effective January 1, 2007.*

#### **DIVISION 2. ATTORNEY ADMISSION AND DISCIPLINARY PROCEEDINGS AND REVIEW OF STATE BAR PROCEEDINGS**

##### **CHAPTER 1. GENERAL PROVISIONS**

*(Adopted by Supreme Court of the State of California, effective March 19, 1956, pursuant to the provisions of Business and Professions Code section 6102.)*

##### **Rule 9.1 Definitions**

As used in this division, unless the context otherwise requires:

- (1) “Licensee” means a person licensed by the State Bar to practice law in this state.
- (2) “State Bar Court” means the Hearing Department or the Review Department established under Business and Professions Code sections 6079.1 and 6086.65.
- (3) “Review Department” means the Review Department of the State Bar Court established under Business and Professions Code section 6086.65.
- (4) “General Counsel” means the general counsel of the State Bar of California.
- (5) “Chief Trial Counsel” means the chief trial counsel of the State Bar of California appointed under Business and Professions Code section 6079.5.

*Rule 9.1 amended effective January 1, 2019; adopted as rule 950 effective December 1, 1990; previously amended and renumbered as rule 9.5 effective January 1, 2007; previously renumbered as 9.1 effective January 1, 2018.*

##### **Rule 9.2 Interim special regulatory assessment for attorney discipline**

(a) This rule is adopted by the Supreme Court solely as an emergency interim measure to protect the public, the courts, and the legal profession from the harm that may be caused by the absence of an adequately functioning attorney disciplinary system. The Supreme Court contemplates that the rule may be modified or repealed once legislation designed to fund an adequate attorney disciplinary system is enacted and becomes effective.

- (b) (1) Each active licensee shall pay a mandatory regulatory assessment of two hundred ninety-seven dollars (\$297) to the State Bar of California. This assessment is calculated as the sum of the following amounts:

- (A) Two hundred eighty-three dollars (\$283) to support the following departments and activities:

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Office of Chief Trial Counsel  
Office of Probation  
State Bar Court  
Mandatory Fee Arbitration program  
Office of Professional Competence  
Office of General Counsel  
Office of Licensee Records and Compliance  
Licensee Billing  
Office of Communications (support of discipline only)  
California Young Lawyers Association  
(discipline-related only).

(B) Nine dollars (\$9) to fund implementation of the workforce plan recommendations from the National Center for State Courts.

(C) Five dollars (\$5) to make up for revenue the State Bar will forgo because of assessment scaling and assessment waivers, as provided for under this rule.

(2) The \$297 assessment specifically excludes any funding for the State Bar's legislative lobbying, elimination of bias, and Bar relations programs.

(3) Payment of this assessment is due by March 1, 2017. Late payment or nonpayment of the assessment shall subject a licensee to the same penalties and/or sanctions applicable to mandatory fees authorized by statute.

(4) The provisions regarding fee scaling, fee waivers, and penalty waivers contained in Business and Professions Code section 6141.1 and rules 2.15 and 2.16 of the Rules of the State Bar of California shall apply to requests for relief from payment of the assessment or any penalty under this rule. Applications for relief from payment shall be made to the State Bar, which may grant or deny waivers in conformance with its existing rules and regulations. The State Bar shall keep a record of all fee scaling and fee waivers approved and the amount of fees affected.

*(Subd (b) amended effective January 1, 2019.)*

(c) A special master appointed by the Supreme Court shall establish the Special Master's Attorney Discipline Fund, into which all money collected pursuant to this rule shall be deposited. The special master shall oversee the disbursement and allocation of funds from the

Special Master's Attorney Discipline Fund for the limited purpose of maintaining, operating, and supporting an attorney disciplinary system, including payment of the reasonable costs and expenses of the special master as ordered by the Supreme Court. The special master shall exercise authority pursuant to the charge of the Supreme Court and shall submit quarterly reports and recommendations to the Supreme Court regarding the supervision and use of these funds. The State Bar shall respond in timely and accurate fashion to the special master's requests for information and reports.

Should any funds collected pursuant to this rule not be used for the limited purpose set forth in the rule, the Supreme Court may order the refund of an appropriate amount to licensees or take any other action that it deems appropriate.

*(Subd (c) amended effective January 1, 2019.)*

*Rule 9.2 amended effective January 1, 2019; adopted as rule 9.9 effective November 16, 2016; previously renumbered effective January 1, 2018.*

## CHAPTER 2. ATTORNEY ADMISSIONS

### Rule 9.3 Inherent power of Supreme Court

#### (a) Inherent power over admissions

The Supreme Court has the inherent power to admit persons to practice law in California. The State Bar serves as the administrative arm of the Supreme Court for admissions matters and in that capacity acts under the authority and at the direction of the Supreme Court. The Committee of Bar Examiners, acting under authority delegated to it by the State Bar Board of Trustees, is authorized to administer the requirements for admission to practice law, to examine all applicants for admission, and to certify to the Supreme Court for admission those applicants who fulfill the admission requirements.

#### (b) Inherent jurisdiction over practice of law

Nothing in this chapter may be construed as affecting the power of the Supreme Court to exercise its inherent jurisdiction over the practice of law in this state.

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*Rule 9.3 amended effective January 1, 2019; adopted effective January 1, 2018.*

### **Rule 9.4 Nomination and appointment of Members to the Committee of Bar Examiners**

#### **(a) Appointments**

The Supreme Court is responsible for appointing ten examiners to the Committee of Bar Examiners, each for a four-year term. At least one of the ten examiners must be a judicial officer in this state, and the balance must be licensees of the State Bar. At least one of the attorney examiners shall have been admitted to practice law in California within three years from the date of his or her appointment. The court may reappoint an attorney or judicial officer examiner to serve no more than three additional full terms, and may fill any vacancy in the term of any appointed attorney or judicial officer examiner.

*(Subd (a) amended effective January 1, 2019.)*

#### **(b) Nominations**

The Supreme Court must make its appointments from a list of candidates nominated by the Board of Trustees of the State Bar pursuant to a procedure approved by the court.

*Rule 9.4 amended effective January 1, 2019; adopted effective January 1, 2018.*

### **Rule 9.5 Supreme Court approval of admissions rules**

All State Bar rules adopted by the State Bar Committee of Bar Examiners pertaining to the admission to practice law must be approved by the Board of Trustees and then submitted to the Supreme Court for its review and approval.

*Rule 9.5 amended effective January 1, 2019; adopted effective January 1, 2018.*

### **Rule 9.6 Supreme Court approval of bar examination**

#### **(a) Bar examination**

The Committee of Bar Examiners, pursuant to the authority delegated to it by the Board of Trustees, is responsible for determining the bar examination's

format, scope, topics, content, questions, and grading process, subject to review and approval by the Supreme Court. The Supreme Court must set the passing score of the examination.

*(Subd (a) amended effective January 1, 2019.)*

#### **(b) Analysis of validity**

The State Bar must conduct an analysis of the validity of the bar examination at least once every seven years, or whenever directed by the Supreme Court. The State Bar must prepare and submit a report summarizing its findings and recommendations, if any, to the Supreme Court. Any recommendations proposing significant changes to the bar examination, and any recommended change to the passing score, must be submitted to the Supreme Court for its review and approval.

*(Subd (b) amended effective January 1, 2019.)*

#### **(c) Report on examination**

The State Bar must provide the Supreme Court a report on each administration of the bar examination in a timely manner.

*Rule 9.6 amended effective January 1, 2019; adopted effective January 1, 2018.*

### **Rule 9.7 Oath required when admitted to practice law**

In addition to the language required by Business and Professions Code section 6067, the oath to be taken by every person on admission to practice law is to conclude with the following: "As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy and integrity."

*Rule 9.7 renumbered effective January 1, 2018; adopted as rule 9.4 effective May 27, 2014.*

### **Rule 9.8 Roll of attorneys admitted to practice**

#### **(a) State Bar to maintain the roll of attorneys**

The State Bar must maintain, as part of the official records of the State Bar, a roll of attorneys, which is a list of all persons admitted to practice in this state. Such records must include the information specified in

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Business and Professions Code section 6002.1 and 6064 and other information as directed by the Supreme Court.

*(Subd (a) amended effective January 1, 2019; adopted as unlettered subdivision effective May 1, 1996; previously amended effective January 1, 2007; previously lettered effective June 1, 2007.)*

### **(b) Annual State Bar recommendation for one-time expungement of suspension for nonpayment of license fees**

The State Bar is authorized to transmit to the Supreme Court on an annual basis the names of those licensees who meet all of the following criteria, along with a recommendation that their public record of suspension for nonpayment of license fees be expunged:

- (1) The licensee has not on any previous occasion obtained an expungement under the terms of this rule or rule 9.31;
- (2) The suspension was for 90 days or less;
- (3) The suspension ended at least seven years before the date of the submission of the licensee's name to the Supreme Court;
- (4) The licensee has no other record of suspension or involuntary inactive enrollment for discipline or otherwise.

*(Subd (b) amended effective March 1, 2020; adopted effective June 1, 2007; previously amended effective August 1, 2017; previously amended effective January 1, 2019.)*

### **(c) Records to be maintained by State Bar**

Upon order of the Supreme Court of expungement of a licensee's record under (b) of this rule, the State Bar will remove or delete the record of such suspension from the licensee's public record. Notwithstanding any other provision of this rule, the State Bar must maintain such internal records as are necessary to apply the terms of (b) of this rule and to report to the Commission on Judicial Nominees Evaluation or appropriate governmental entities involved in judicial elections the licensee's eligibility for a judgeship under the California Constitution, article VI, section 15.

*(Subd (c) amended effective January 1, 2019; adopted effective June 1, 2007.)*

### **(d) Duty of disclosure by licensee**

Expungement of a licensee's suspension under (b) of this rule will not relieve the licensee of his or her duty to disclose the suspension for purpose of determining the licensee's eligibility for a judgeship under the California Constitution, article VI, section 15. For all other purposes the suspension expunged under (b) of this rule is deemed not to have occurred and the licensee may answer accordingly any question relating to his or her record.

*(Subd (d) amended effective January 1, 2019; adopted effective June 1, 2007.)*

### **(e) Authorization for the Board of Trustees of the State Bar to adopt rules and regulations**

The Board of Trustees of the State Bar is authorized to adopt such rules and regulations as it deems necessary and appropriate in order to comply with this rule.

*(Subd (e) amended effective August 1, 2017; adopted effective June 1, 2007.)*

### **(f) Inherent power of Supreme Court**

Nothing in this rule may be construed as affecting the power of the Supreme Court to exercise its inherent power to direct the State Bar to expunge its records.

*(Subd (f) adopted effective June 1, 2007.)*

*Rule 9.8 amended effective March 1, 2020; adopted as rule 950.5 by the Supreme Court effective May 1, 1996; previously amended and renumbered as rule 9.6 effective January 1, 2007; previously amended effective June 1, 2007, and August 1, 2017; previously renumbered effective January 1, 2018; previously amended effective January 1, 2019.*

## **Rule 9.8.5 State Bar Client Trust Account Protection Program**

### **(a) Client trust account protection program requirements**

The State Bar of California must establish and administer a Client Trust Account Protection Program for the protection of client funds held in trust by a licensee that facilitates the State Bar's detection and deterrence of client trust accounting misconduct.



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(1) The State Bar must impose the following requirements under this program:

(A) Annual Trust Account Certification—All licensees must annually (1) report whether or not, at any time during the prior year, they were responsible for client funds and funds entrusted by others under the provisions of rule 1.15 of the Rules of Professional Conduct and (2) if they were responsible, certify that they are knowledgeable about, and in compliance with, applicable rules and statutes governing client trust accounts and the safekeeping of funds entrusted by clients and others; and

(B) Annual Trust Account Registration—All licensees who were responsible for client funds and funds entrusted by others under the provisions of rule 1.15 of the Rules of Professional Conduct must, annually, register each and every trust account in which the licensee held such funds at any time during the prior year by identifying account numbers and financial institutions in a manner prescribed by the State Bar for such reporting that will securely maintain the information submitted.

(2) Among the other requirements the State Bar may impose under this program are the following:

(A) Annual Self-Assessment—All licensees who were responsible, at any time during the prior year, for a client trust account under the provisions of rule 1.15 of the Rules of Professional Conduct must complete an annual self assessment on client trust accounting duties and practices;

(B) Compliance Review—If selected by the State Bar, a licensee must complete and submit to the State Bar a client trust accounting compliance review to be conducted by a certified public accountant at the licensee's expense; and

(C) Additional Actions—If selected by the State Bar, an additional action or actions based on the results of a compliance review may include an investigative audit, a notice of mandatory corrective action, and a referral for disciplinary action.

### **(b) Authorization for the Board of Trustees of the State Bar to adopt rules and regulations**

The Board of Trustees of the State Bar is authorized to formulate and adopt such rules and regulations as it deems necessary and appropriate to comply with this rule, including a rule or regulation that defines a licensee who is responsible for client funds and funds entrusted by others under the provisions of rule 1.15 of the Rules of Professional Conduct.

### **(c) Failure to comply with program**

A licensee who fails to satisfy the requirements of this program must be enrolled as an inactive licensee of the State Bar under the rules to be adopted by the Board of Trustees of the State Bar. Inactive enrollment imposed for noncompliance with the requirements of this program is cumulative and does not preclude a disciplinary proceeding or other actions for violations of the State Bar Act, the Rules of Professional Conduct, or other applicable laws.

### **(d) Fees and penalties**

The State Bar has the authority to set and collect appropriate fees and penalties.

*(Rule 9.8.5 adopted effective January 1, 2023.)*

## **Rule 9.9 Online reporting by attorneys**

### **(a) Required information**

To maintain the roll of attorneys required by rule 9.8 and to facilitate communications by the State Bar with its licensees, each licensee must use an online account on a secure system provided by the State Bar to report a current:

(1) Office address and telephone number, or if none, an alternative address; and

(2) An e-mail address not to be disclosed on the State Bar's website or otherwise to the public without the licensee's consent.

*(Subd (a) amended effective January 1, 2019.)*

### **(b) Optional information**

A licensee may also use an online attorney records account to:

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- (1) Provide an e-mail address for disclosure to the public on the State Bar Web site; and
- (2) Provide additional information as authorized by statute, rule or Supreme Court directive, or as requested by the State Bar.

*(Subd (b) amended effective January 1, 2019.)*

### **(c) Exclusions**

Unless otherwise permitted by law or the Supreme Court, the State Bar may not use e-mail as substitute means of providing a notice required to initiate a State Bar disciplinary or regulatory proceeding or to otherwise change a licensee's status involuntarily.

*(Subd (c) amended effective January 1, 2019.)*

### **(d) Exemption**

A licensee who does not have online access or an e-mail address may claim an exemption from the reporting requirements of this rule. The exemption must be requested in the manner prescribed by the State Bar.

*(Subd (d) amended effective January 1, 2019.)*

*Rule 9.9 amended effective January 1, 2019; adopted as rule 9.7 effective February 1, 2010; previously renumbered effective January 1, 2018.*

## **Rule 9.9.5 Attorney fingerprinting**

### **(e) Subsequent arrest notification**

To maintain the roll of attorneys required by rule 9.8 and to facilitate communications by the State Bar with its licensees, each licensee must use an online account on a secure system provided by the State Bar to report a current:

- (1) The State Bar must enter into a contract with the California Department of Justice for subsequent arrest notification services for attorneys whose license is on active status with the State Bar ("active licensed attorneys") and attorneys permitted to practice in the State of California pursuant to rules 9.44, 9.45, and 9.46 of the California Rules of Court ("special admissions attorneys").
- (2) The State Bar must consider those active licensed attorneys and special admissions

attorneys for whom it is already receiving subsequent arrest notification services as having satisfied the fingerprinting requirement of this rule and thereby exempt. The State Bar must adopt a procedure for notification of all attorneys as to whether they have been deemed to have already satisfied the requirement.

### **(f) Active licensed attorneys**

Each active licensed attorney, with the exception of those attorneys specifically exempt under (a)(2) of this rule, must, pursuant to the procedure identified by the State Bar, be fingerprinted for the purpose of obtaining criminal offender record information regarding state and federal level convictions and arrests from the Department of Justice and the Federal Bureau of Investigation. These fingerprints will be retained by the Department of Justice for the limited purpose of subsequent arrest notification.

### **(g) Inactive licensed attorneys**

An attorney whose license is on inactive status with the State Bar ("inactive licensed attorneys"), with the exception of those attorneys specifically exempt under (a)(2) of this rule, must, pursuant to the procedure identified by the State Bar, be fingerprinted prior to being placed on active status for the purposes described in (b) of this rule.

### **(h) Active licensed attorneys**

Active licensed attorneys who are residing outside the United States and required to submit fingerprints under this rule should have their fingerprints taken by a licensed fingerprinting service agency and submit the hard copy fingerprint card to the State Bar. If fingerprinting services are not provided in the jurisdiction where the attorney is physically located, or the attorney is able to provide evidence that he/she is unable to access or afford such services, the attorney must notify the State Bar pursuant to the procedure identified by the State Bar. The attorney will be exempt from providing fingerprints until he or she returns to the United States for a period of not less than 60 days.

### **(i) Special admissions attorneys**

Attorneys permitted to practice in the State of California pursuant to rules 9.44, 9.45, and 9.46 of the California Rules of Court, with the exception of those attorneys specifically exempt under (a)(2) of this rule,

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must, pursuant to the procedure identified by the State Bar, be fingerprinted for the purpose of obtaining criminal offender record information regarding state and federal level convictions and arrests from the Department of Justice and the Federal Bureau of Investigation. These fingerprints will be retained by the Department of Justice for the limited purpose of subsequent arrest notification.

### **(j) Implementation schedule and penalty for noncompliance**

(1) The State Bar must develop a schedule for implementation that requires all attorneys subject to fingerprinting under (b) of this rule to be fingerprinted by December 1, 2019. The State Bar must develop a schedule for implementation that requires all special admissions attorneys subject to fingerprinting under (e) of this rule to be fingerprinted by the renewal of their application to practice law in the State of California.

(2) The State Bar has ongoing authority to require submission of fingerprints after December 1, 2019 for attorneys for whom it is not receiving subsequent arrest notification services and for attorneys transferring to active status. Failure to be fingerprinted if required by this rule may result in involuntary inactive enrollment pursuant to Business and Professions Code section 6054(d).

(3) The State Bar has ongoing authority to require submission of fingerprints after December 1, 2019, for special admissions attorneys for whom it is not receiving subsequent arrest notification services. Failure to be fingerprinted if required may result in a State Bar determination that the attorney cease providing legal services in California.

### **(k) Information obtained by fingerprint submission; disclosure limitations**

Any information obtained by the State Bar as a result of fingerprint submission under this rule must be kept confidential and used solely for State Bar licensing and regulatory purposes.

### **(l) Fingerprint submission and processing costs**

(1) Except as described in (h)(2), all costs incurred for the processing of fingerprints for the State Bar, including print furnishing and encoding, as required by Business and Professions Code section 6054, must be borne by the licensed attorney or special admissions attorney.

(2) The State Bar must develop procedures for granting waivers of the processing costs of running Department of Justice and Federal Bureau of Investigation background checks for licensed attorneys with demonstrable financial hardship.

### **(m) Attorneys who are physically unable to be fingerprinted**

(1) If the Department of Justice makes a determination pursuant to Penal Code section 11105.7 that any attorney required to be fingerprinted under this rule is presently unable to provide legible fingerprints, the attorney will be deemed to have complied with the fingerprinting requirements of this rule.

(2) Attorneys required to be fingerprinted under this rule may also submit notification to the State Bar that they are unable to submit fingerprints due to disability, illness, accident, or other circumstances beyond their control. The State Bar must evaluate the notification and may require additional evidence. If the State Bar determines that the attorney is unable to submit fingerprints based on the information provided, the attorney will be deemed to have complied with the fingerprinting requirements of this rule.

(3) A determination of deemed compliance under (i)(1) and (i)(2) will apply only to those attorneys who are unable to supply legible fingerprints due to disability, illness, accident, or other circumstances beyond their control and will not apply to attorneys who are unable to provide fingerprints because of actions they have taken to avoid submitting their fingerprints.

*Rule 9.9.5 adopted effective June 1, 2018.*

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### CHAPTER 3. ATTORNEY DISCIPLINARY PROCEEDINGS

#### Rule 9.10 Authority of the State Bar Court

##### (a) Conviction proceedings

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

*(Subd (a) amended effective January 1, 2007.)*

##### (b) Professional responsibility examination

The State Bar Court may:

- (1) Extend the time within which a licensee of the State Bar must take and pass a professional responsibility examination;
- (2) Suspend a licensee for failing to take and pass such examination; and
- (3) Vacate a licensee's suspension for failing to take and pass such examination.

*(Subd (b) amended effective January 1, 2019; previously amended effective January 1, 2007.)*

##### (c) Probation

The State Bar Court for good cause, may:

- (1) Approve stipulations between the licensee and the Chief Trial Counsel for modification of the terms of a licensee's probation; and

- (2) Make corrections and minor modifications to the terms of a licensee's disciplinary probation.

The order of the State Bar Court must be filed promptly with the Clerk of the Supreme Court.

*(Subd (c) amended effective January 1, 2019; previously amended effective January 1, 2007.)*

##### (d) Rule 9.20 compliance

The State Bar Court for good cause, may extend the time within which a licensee must comply with the provisions of rule 9.20 of the California Rules of Court.

*(Subd (d) amended effective January 1, 2019; previously amended effective January 1, 2007.)*

##### (e) Commencement of suspension

The State Bar Court for good cause, may delay temporarily the effective date of, or temporarily stay the effect of, an order for a licensee's disciplinary suspension from practice.

*(Subd (e) amended effective January 1, 2019; previously amended effective January 1, 2007.)*

##### (f) Readmission and reinstatement

Applications for readmission or reinstatement must, in the first instance, be filed and heard by the State Bar Court, except that no applicant who has been disbarred by the Supreme Court on two previous occasions may apply for readmission or reinstatement. Applicants for readmission or reinstatement must:

- (1) Pass a professional responsibility examination;
- (2) Establish their rehabilitation and present moral qualifications for readmission; and
- (3) Establish present ability and learning in the general law. Applicants who resigned without charges pending more than five years before filing an application for reinstatement or readmission must establish present ability and learning in the general law by providing proof, at the time of filing the application, that they have taken and passed the Attorneys' Examination administered by the Committee of Bar Examiners pursuant to the authority delegated to it by the Board of Trustees within five years prior to the filing of the application for readmission or reinstatement.

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Applicants who resigned with charges pending or who were disbarred must establish present ability and learning in the general law by providing proof, at the time of filing the application for readmission or reinstatement, that they have taken and passed the Attorneys' Examination by State Bar within three years prior to the filing of the application for readmission or reinstatement.

*(Subd (f) amended effective January 1, 2019; previously amended effective January 1, 2007, and January 1, 2010.)*

### **(g) Inherent power of Supreme Court**

Nothing in these rules may be construed as affecting the power of the Supreme Court to exercise its inherent jurisdiction over the lawyer discipline and admissions system.

*(Subd (g) amended effective January 1, 2007.)*

*Rule 9.10 amended effective January 1, 2019; adopted as rule 951 effective December 1, 1990; previously amended by the Supreme Court effective April 1, 1996, January 1, 2007, and January 1, 2010.*

## **Rule 9.11 State Bar Court Judges**

### **(a) Applicant Evaluation and Nomination Committee**

(1) In order to ensure that individuals appointed by the Supreme Court or by the executive or legislative branches have been evaluated objectively, the Supreme Court has established an independent Applicant Evaluation and Nomination Committee to solicit, receive, screen, and evaluate all applications for appointment or reappointment to any position of judge of the State Bar Court (hearing judge, presiding judge, and review department judge). The role of the committee is to determine whether appointees possess not only the statutorily enumerated qualifications, but also any qualifications that may be required by the Supreme Court to assist in the exercise of its ultimate authority over the discipline and admission of attorneys (See *Obrien v. Jones* (2000) 23 Cal.4th 40; *In re Attorney Discipline System* (1998) 19 Cal.4th 582; Cal. Const., art VI, sec. 9).

(2) The committee serves at the pleasure of the Supreme Court. It shall consist of seven members appointed by the court of whom no more than

four may be licensees of the State Bar in good standing, two must be retired or active judicial officers, and no more than three may be public members who have never been licensees of the State Bar or admitted to practice before any court in the United States. Two members of the committee must be present members of the Board of Trustees of the State Bar.

(3) The committee must adopt, and implement upon approval by the Supreme Court, procedures for:

(A) Timely notice to potential applicants of vacancies;

(B) Receipt of applications for appointments to those positions from both incumbents and other qualified persons;

(C) Solicitation and receipt of public comment;

(D) Evaluation and rating of applicants; and

(E) Transmittal of the materials specified in (b) of this rule to the Supreme Court and, as applicable, other appointing authorities.

The procedures adopted by the committee must include provisions to ensure confidentiality comparable to those followed by the Judicial Nominees Evaluation Commission established under Government Code section 12011.5.

(4) The Board of Trustees of the State Bar, in consultation with the Supreme Court if necessary, must provide facilities and support staff needed by the committee to carry out its obligations under this rule.

*(Subd (a) amended effective July 1, 2022; previously amended effective February 15, 1995, July 1, 2000, January 1, 2007, January 1, 2009, and January 1, 2019.)*

### **(b) Evaluations**

(1) The committee must evaluate the qualifications of and rate all applicants for positions appointed by the Supreme Court and must submit to the Supreme Court the nominations of at least two candidates for each vacancy. Candidates shall be rated as "not recommended," "recommended," or "highly recommended." A rating of "not recommended"

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relates only to the position under consideration and does not indicate any lack of ability or expertise of the applicant generally. The committee must report in confidence to the Supreme Court its evaluation, rating and recommendation for applicants for appointment and the reasons therefore, including a succinct summary of their qualifications, at a time to be designated by the Supreme Court. The report must include written comments received by the committee, which must be transmitted to the Supreme Court together with the nominations.

(2) The committee must evaluate the qualifications of and rate all applicants for positions appointed by the Governor, the Senate Committee on Rules, or the Speaker of the Assembly, and must submit in confidence to the Supreme Court and, as applicable, to other appointing authorities, all applications for such positions together with the committee's evaluation, rating and recommendation for these applicants, including any written comments received by the committee, at a time to be designated by the Supreme Court.

(3) In determining the qualifications of an applicant for appointment or reappointment the committee must consider, among other appropriate factors, the following: industry, legal and judicial experience (including prior service as a judge of the State Bar Court), judicial temperament, honesty, objectivity, community respect, integrity, and ability. The committee must consider legal work experience broadly, including, but not limited to, litigation and non-litigation experience, legal work for a business or nonprofit entity, experience as a law professor or other academic position, legal work in any of the three branches of government, and legal work in dispute resolution

The committee shall consider whether an applicant has demonstrated the ability to write cogently and to analyze legal provisions and principles. Among the issues the committee may also consider are (1) the applicant's demonstrated capacity to work independently and to set and meet performance goals, (2) the applicant's knowledge and experience relevant to issues that give rise to the majority of State Bar Court proceedings, including professional ethics and fiduciary obligations, (3) knowledge of practice

and demeanor in the courtroom, and (4) whether the applicant has been in practice for 10 or more years. The committee shall accord weight to all experience that has provided the applicant with legal experience and exposure during which the individual has demonstrated the underlying skills necessary to serve as an effective State Bar Court judge. The committee shall apply the same criteria to candidates seeking appointment from all of the appointing authorities. Any evaluation or rating of an applicant and any recommendation for appointment or reappointment by the committee must be made in conformity with Business and Professions Code section 6079.1(b) and in light of the factors specified in Government Code section 12011.5 (d), and those specified in this paragraph.

(4) Upon transmittal of its report to the Supreme Court, the committee must notify any incumbent who has applied for reappointment by the Supreme Court if he or she is or is not among the applicants recommended for appointment to the new term by the committee. The applicable appointing authority must notify as soon as possible an incumbent who has applied for reappointment but is not selected.

*(Subd (b) amended effective July 1, 2022; adopted effective February 15, 1995; previously amended effective July 1, 2000; January 1, 2007; and January 1, 2009.)*

### **(c) Appointments**

Only applicants who are rated as recommended or highly recommended by the committee or by the Supreme Court may be appointed. At the request of the Governor, the Senate Committee on Rules, or the Speaker of the Assembly, the Supreme Court will reconsider a finding by the committee that a particular applicant is not recommended. The Supreme Court may make such orders as to the appointment of applicants as it deems appropriate, including extending the term of incumbent judges pending such order or providing for staggered terms.

*(Subd (c) amended effective January 1, 2009; adopted effective February 15, 1995; previously amended effective July 1, 2000, and January 1, 2007.)*

### **(d) Discipline for misconduct or disability**

A judge of the State Bar Court is subject to discipline or retirement on the same grounds as a judge of a

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court of this state. Complaints concerning the conduct of a judge of the State Bar Court must be addressed to the Executive Director-Chief Counsel of the Commission on Judicial Performance, who is the Supreme Court's investigator for the purpose of evaluating those complaints, conducting any necessary further investigation, and determining whether formal proceedings should be instituted. If there is reasonable cause to institute formal proceedings, the investigator must notify the Supreme Court of that fact and must serve as or appoint the examiner and make other appointments and arrangements necessary for the hearing. The Supreme Court will then appoint one or more active or retired judges of superior courts or Courts of Appeal as its special master or masters to hear the complaint and the results of the investigation, and to report to the Supreme Court on the resulting findings, conclusions, and recommendations as to discipline. The procedures of the Commission on Judicial Performance must be followed by the investigator and special masters, to the extent feasible. The procedures in the Supreme Court after a discipline recommendation is filed will, to the extent feasible, be the same as the procedures followed when a determination of the Commission on Judicial Performance is filed.

*(Subd (d) amended effective January 1, 2007; adopted as subd (b) effective December 1, 1990; relettered effective February 15, 1995; previously amended effective July 1, 2000.)*

*Rule 9.11 amended effective July 1, 2022; adopted as rule 961 effective December 1, 1990; previously amended February 15, 1995, July 1, 2000, and January 1, 2009; previously amended and renumbered effective January 1, 2007, and January 1, 2019.*

### **Rule 9.12 Standard of Review for State Bar Court Review Department**

In reviewing the decisions, orders, or rulings of a hearing judge under rule 301 of the Rules of Procedure of the State Bar of California or such other rule as may be adopted governing the review of any decisions, orders, or rulings by a hearing judge that fully disposes of an entire proceeding, the Review Department of the State Bar Court must independently review the record and may adopt findings, conclusions, and a decision or recommendation different from those of the hearing judge.

*Rule 9.12 amended and renumbered effective January 1, 2007; adopted as rule 951.5 by the Supreme Court effective February 23, 2000.*

### **Rule 9.13 Review of State Bar Court Decisions**

#### **(a) Review of recommendation of disbarment or suspension**

A petition to the Supreme Court by a member to review a decision of the State Bar Court recommending his or her disbarment or suspension from practice must be served and filed within 60 days after a certified copy of the decision complained of is filed with the Clerk of the Supreme Court. The State Bar may serve and file an answer to the petition within 15 days after filing of the petition. Within 5 days after filing of the answer, the petitioner may serve and file a reply. If review is ordered by the Supreme Court, the State Bar must serve and file a supplemental brief within 45 days after the order is filed. Within 15 days after filing of the supplemental brief, the petitioner may serve and file a reply brief.

*(Subd (a) amended effective January 1, 2019; previously relettered and amended effective October 1, 1973; previously amended effective July 1, 1968, December 1, 1990, and January 1, 2007.)*

#### **(b) Review of recommendation to set aside stay of suspension or modify probation**

A petition to the Supreme Court by a licensee to review a recommendation of the State Bar Court that a stay of an order of suspension be set aside or that the duration or conditions of probation be modified on account of a violation of probation must be served and filed within 15 days after a certified copy of the recommendation complained of is filed with the Clerk of the Supreme Court. Within 15 days after filing of the petition, the State Bar may serve and file an answer. Within 5 days after filing of the answer, the petitioner may serve and file a reply.

*(Subd (b) amended effective January 1, 2019; adopted effective October 1, 1973; previously amended effective December 1, 1990; and January 1, 2007.)*

#### **(c) Review of interim decisions**

A petition to the Supreme Court by a licensee to review a decision of the State Bar Court regarding interim suspension, the exercise of powers delegated by rule

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9.10(b)–(e), or another interlocutory matter must be served and filed within 15 days after written notice of the adverse decision of the State Bar Court is mailed by the State Bar to the petitioner and to his or her counsel of record, if any, at their respective addresses under section 6002.1. Within 15 days after filing of the petition, the State Bar may serve and file an answer. Within 5 days after filing of the answer, the petitioner may serve and file a reply.

*(Subd (c) amended effective January 1, 2019; adopted effective December 1, 1990; previously amended effective January 1, 2007.)*

### **(d) Review of other decisions**

A petition to the Supreme Court to review any other decision of the State Bar Court or action of the Board of Trustees of the State Bar, or of any board or committee appointed by it and authorized to make a determination under the provisions of the State Bar Act, or of the chief executive officer of the State Bar or the designee of the chief executive officer authorized to make a determination under article 10 of the State Bar Act or these rules of court, must be served and filed within 60 days after written notice of the action complained of is mailed to the petitioner and to his or her counsel of record, if any, at their respective addresses under Business and Professions Code section 6002.1. Within 15 days after filing of the petition, the State Bar may serve and file an answer and brief. Within 5 days after filing of the answer and brief, the petitioner may serve and file a reply. If review is ordered by the Supreme Court, the State Bar, within 45 days after filing of the order, may serve and file a supplemental brief. Within 15 days after filing of the supplemental brief, the petitioner may serve and file a reply brief.

*(Subd (d) amended effective January 1, 2019; previously amended effective July 1, 1968, May 1, 1986, April 2, 1987 and January 1, 2007; previously relettered and amended effective October 1, 1973, and December 1, 1990.)*

### **(e) Contents of petition**

(1) A petition to the Supreme Court filed under (a) or (b) of this rule must be verified, must specify the grounds relied upon, must show that review within the State Bar Court has been exhausted, must address why review is appropriate under one or more of the grounds specified in rule 9.16,

and must have attached a copy of the State Bar Court decision from which relief is sought.

(2) When review is sought under (c) or (d) of this rule, the petition must also be accompanied by a record adequate to permit review of the ruling, including:

(A) Legible copies of all documents and exhibits submitted to the State Bar Court or the State Bar supporting and opposing petitioner's position;

(B) Legible copies of all other documents submitted to the State Bar Court or the State Bar that are necessary for a complete understanding of the case and the ruling; and

(C) A transcript of the proceedings in the State Bar Court leading to the decision or, if a transcript is unavailable, a declaration by counsel explaining why a transcript is unavailable and fairly summarizing the proceedings, including arguments by counsel and the basis of the State Bar Court's decision, if stated; or a declaration by counsel stating that the transcript has been ordered, the date it was ordered, and the date it is expected to be filed, which must be a date before any action is requested from the Supreme Court other than issuance of a stay supported by other parts of the record.

(3) A petitioner who requests an immediate stay must explain in the petition the reasons for the urgency and set forth all relevant time constraints.

(4) If a petitioner does not submit the required record, the court may summarily deny the stay request, the petition, or both.

*(Subd (e) amended effective January 1, 2019; previously repealed and adopted by the Supreme Court effective December 1, 1990, and February 1, 1991; previously repealed and adopted effective March 15, 1991; previously amended effective January 1, 2007.)*

### **(f) Service**

All petitions, briefs, reply briefs, and other pleadings filed by a petitioner under this rule must be accompanied by proof of service of three copies on the General Counsel of the State Bar at the San Francisco



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office of the State Bar, and of one copy on the Clerk of the State Bar Court at the Los Angeles office of the State Bar Court. The State Bar must serve the licensee at his or her address under Business and Professions Code section 6002.1, and his or her counsel of record, if any.

*(Subd (f) amended effective January 1, 2019; adopted by the Supreme Court effective December 1, 1990; previously amended by the Supreme Court effective February 1, 1991; previously amended effective March 15, 1991, and January 1, 2007.)*

*Rule 9.13 amended effective January 1, 2019; adopted as rule 59 by the Supreme Court effective April 20, 1943, and by the Judicial Council effective July 1, 1943; previously amended and renumbered as rule 952 effective October 1, 1973; and as 9.13 effective January 1, 2007; previously amended effective July 1, 1976, May 1, 1986, April 2, 1987, December 1, 1990, February 1, 1991, and March 15, 1991.*

### **Rule 9.14    Petitions for Review by the Chief Trial Counsel**

#### **(a)    Time for filing**

The Chief Trial Counsel may petition for review of recommendations and decisions of the State Bar Court as follows:

- (1) From recommendations that a licensee be suspended, within 60 days of the date the recommendation is filed with the Supreme Court.
- (2) From recommendations that the duration or conditions of probation be modified, or a reinstatement application be granted, within 15 days of the date the recommendation is filed with the Supreme Court.
- (3) From decisions not to place an eligible licensee on interim suspension, or vacating interim suspension, or a denial of a petition brought under Business and Professions Code section 6007(c), within 15 days of notice under the rules adopted by the State Bar.
- (4) From decisions dismissing disciplinary proceedings or recommending approval, within 60 days of notice under the rules adopted by the State Bar.

*(Subd (a) amended effective January 1, 2019; adopted effective March 15, 1991; previously adopted by the Supreme Court effective December 10, 1990; previously amended effective January 1, 2007.)*

#### **(b)    Procedures**

Proceedings under this rule with regard to briefing, service of process, and applicable time periods therefor must correspond to proceedings brought under rule 9.13, except that the rights and duties of the licensee and the State Bar under that rule are reversed.

*(Subd (b) amended effective January 1, 2019; adopted as part of subd (d) effective March 15, 1991; previously adopted by the Supreme Court effective December 10, 1991; previously amended and relettered effective January 1, 2007.)*

*Rule 9.14 amended effective January 1, 2019; adopted as rule 952.5 effective March 15, 1991; previously amended and renumbered effective January 1, 2007.*

### **Rule 9.15    Petitions for Review by the State Bar; Grounds for Review; Confidentiality**

#### **(a)    Petition for review by the State Bar**

The State Bar may petition for review of the decision of the Review Department of the State Bar Court in moral character proceedings. All petitions under this rule must be served and filed with the Clerk of the Supreme Court within 60 days after the State Bar Court decision is filed and served on the General Counsel of the State Bar at the San Francisco office of the State Bar. The applicant may file and serve an answer within 15 days after filing of the petition. Within 5 days after filing of the answer the State Bar may serve and file a reply. If review is ordered by the Supreme Court, within 45 days after filing and service of the order, the applicant may serve and file a supplemental brief. Within 15 days after filing of the supplemental brief, the petitioner may serve and file a reply brief.

*(Subd (a) amended effective January 1, 2019; previously amended effective January 1, 2007.)*

#### **(b)    Contents of petition**

A petition to the Supreme Court filed under this rule must show that review within the State Bar Court has been exhausted, must address why review is appropriate under one or more of the grounds specified in rule 9.16,

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and must have attached a copy of the State Bar Court decision for which review is sought.

*(Subd (b) amended effective January 1, 2007.)*

### **(c) Service**

All petitions, briefs, reply briefs, and other pleadings filed by the State Bar must include a proof of service by mail to the applicant's last address provided to the State Bar or the applicant's attorney of record, if any. Filings by the applicant must include a proof of service of three copies on the General Counsel of the State Bar at the San Francisco office of the State Bar and one copy on the Clerk of the State Bar Court at the Los Angeles office of the State Bar Court.

*(Subd (c) amended effective January 1, 2019; previously amended effective April 20, 1998, and January 1, 2007.)*

### **(d) Confidentiality**

All filings under this rule are confidential unless: (1) the applicant waives confidentiality in writing; or (2) the Supreme Court grants review. Once the Supreme Court grants review, filings under this rule are open to the public; however, if good cause exists, the Supreme Court may order portions of the record or the identity of witnesses or other third parties to the proceedings to remain confidential.

*(Subd (d) amended effective January 1, 2007; adopted effective April 20, 1998.)*

*Rule 9.15 amended effective January 1, 2019; adopted as rule 952.6 by the Supreme Court effective July 1, 1993, and by the Judicial Council May 6, 1998; previously amended by the Supreme Court effective April 20, 1998; previously amended and renumbered effective January 1, 2007.*

## **Rule 9.16 Grounds for Review of State Bar Court Decisions in the Supreme Court**

### **(a) Grounds**

The Supreme Court will order review of a decision of the State Bar Court recommending disbarment or suspension from practice when it appears:

- (1) Necessary to settle important questions of law;

- (2) The State Bar Court has acted without or in excess of jurisdiction;

- (3) Petitioner did not receive a fair hearing;

- (4) The decision is not supported by the weight of the evidence; or

- (5) The recommended discipline is not appropriate in light of the record as a whole.

*(Subd (a) amended effective January 1, 2007; adopted by the Supreme Court effective February 1, 1991.)*

### **(b) Denial of review**

Denial of review of a decision of the State Bar Court is a final judicial determination on the merits and the recommendation of the State Bar Court will be filed as an order of the Supreme Court.

*(Subd (b) amended effective January 1, 2007; adopted by the Supreme Court effective February 1, 1991.)*

*Rule 9.16 amended and renumbered effective January 1, 2007; adopted as rule 954 effective February 1, 1991.*

## **Rule 9.17 Remand with Instructions**

The Supreme Court may at any time remand a matter filed under this chapter to the State Bar Court or the State Bar with instructions to take such further actions or conduct such further proceedings as the Supreme Court deems necessary.

*Rule 9.17 amended effective January 1, 2019; adopted as rule 953.5 effective February 1, 1991; previously amended and renumbered effective January 1, 2007.*

## **Rule 9.18 Effective Date of Disciplinary Orders and Decisions**

### **(a) Effective date of Supreme Court orders**

Unless otherwise ordered, all orders of the Supreme Court imposing discipline or opinions deciding causes involving the State Bar become final 30 days after filing. The Supreme Court may grant a rehearing at any time before the decision or order becomes final. Petitions for rehearing must be served and filed within 15 days after the date the decision or order was filed. Unless otherwise ordered, when petitions for review under

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rules 9.13(c) and 9.14(a)(3) are acted upon summarily, the orders of the Supreme Court are final forthwith and do not have law-of-the-case effect in subsequent proceedings in the Supreme Court.

*(Subd (a) amended effective January 1, 2019; adopted effective March 15, 1991; previously adopted by the Supreme Court effective December 1, 1990; previously amended effective January 1, 2007.)*

### **(b) Effect of State Bar Court orders when no review sought**

Unless otherwise ordered, if no petition for review is filed within the time allowed by rule 9.13 (a), (b), and (d), or rule 9.14 (a)(1) and (2), as to a recommendation of the State Bar Court for the disbarment, suspension, or reinstatement of a licensee, the vacation of a stay, or modification of the duration or conditions of a probation, the recommendation of the State Bar Court will be filed as an order of the Supreme Court following the expiration of the time for filing a timely petition. The Clerk of the Supreme Court will mail notice of this effect to the licensee and his or her attorney of record, if any, at their respective addresses under Business and Professions Code section 6002.1 and to the State Bar.

*(Subd (b) amended effective January 1, 2019; adopted effective March 15, 1991; previously adopted by the Supreme Court effective December 1, 1990; previously amended effective January 1, 2007.)*

### **(c) Effect of State Bar Court orders in moral character proceedings when no review sought**

Unless otherwise ordered, if no petition for review is filed within the time allowed by rule 9.15(a), as to a recommendation of the State Bar Court in moral character proceedings, the recommendation of the State Bar Court will be filed as an order of the Supreme Court following the expiration of the time for filing a timely petition. The Clerk of the Supreme Court will mail notice of this effect to the applicant's last address provided to the State Bar or to the applicant's attorney of record, if any, and to the State Bar.

*(Subd (c) amended effective January 1, 2007.)*

*Rule 9.18 amended effective January 1, 2019; adopted as rule 953 effective March 15, 1991; previously amended effective February 1, 1996; previously amended and renumbered effective January 1, 2007.*

## **Rule 9.19 Conditions Attached to Reprovals**

### **(a) Attachment of conditions to reprovals**

The State Bar may attach conditions, effective for a reasonable time, to a public or private reproof administered upon a licensee of the State Bar. Conditions so attached must be based on a finding by the State Bar that protection of the public and the interests of the licensee will be served thereby. The State Bar when administering the reproof must give notice to the licensee that failure to comply with the conditions may be punishable.

*(Subd (a) amended effective January 1, 2019; previously amended effective January 1, 2007.)*

### **(b) Sanctions for failure to comply**

A licensee's failure to comply with conditions attached to a public or private reproof may be cause for a separate proceeding for willful breach of 8.1.11 of the Rules of Professional Conduct.

*(Subd (b) amended effective January 1, 2019; previously amended effective January 1, 2007.)*

*Rule 9.19 amended effective January 1, 2019; previously amended and renumbered effective January 1, 2007; adopted as rule 956 effective November 18, 1983.*

## **Rule 9.20 Duties of Disbarred, Resigned, or Suspended Attorneys**

### **(a) Disbarment, suspension, and resignation orders**

The Supreme Court may include in an order disbarring or suspending a licensee of the State Bar, or accepting his or her resignation, a direction that the licensee must, within such time limits as the Supreme Court may prescribe:

- (1) Notify all clients being represented in pending matters and any co-counsel of his or her disbarment, suspension, or resignation and his or her consequent disqualification to act as an attorney after the effective date of the disbarment, suspension, or resignation, and, in the absence of co-counsel, also notify the clients to seek legal advice elsewhere, calling attention to any urgency in seeking the substitution of another attorney or attorneys;

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(2) Deliver to all clients being represented in pending matters any papers or other property to which the clients are entitled, or notify the clients and any co-counsel of a suitable time and place where the papers and other property may be obtained, calling attention to any urgency for obtaining the papers or other property;

(3) Refund any part of fees paid that have not been earned; and

(4) Notify opposing counsel in pending litigation or, in the absence of counsel, the adverse parties of the disbarment, suspension, or resignation and consequent disqualification to act as an attorney after the effective date of the disbarment, suspension, or resignation, and file a copy of the notice with the court, agency, or tribunal before which the litigation is pending for inclusion in the respective file or files.

*(Subd (a) amended effective January 1, 2019; previously amended effective December 1, 1990, and January 1, 2007.)*

### **(b) Notices to clients, co-counsel, opposing counsel, and adverse parties**

All notices required by an order of the Supreme Court or the State Bar Court under this rule must be given by registered or certified mail, return receipt requested, and must contain an address where communications may be directed to the disbarred, suspended, or resigned licensee.

*(Subd (b) amended effective January 1, 2019; previously amended effective December 1, 1990, and January 1, 2007.)*

### **(c) Filing proof of compliance**

Within such time as the order may prescribe after the effective date of the licensee's disbarment, suspension, or resignation, the licensee must file with the Clerk of the State Bar Court an affidavit showing that he or she has fully complied with those provisions of the order entered under this rule. The affidavit must also specify an address where communications may be directed to the disbarred, suspended, or resigned licensee.

*(Subd (c) amended effective January 1, 2019; previously amended effective December 1, 1990, and January 1, 2007.)*

### **(d) Sanctions for failure to comply**

A disbarred or resigned licensee's willful failure to comply with the provisions of this rule is a ground for denying his or her application for reinstatement or readmission. A suspended licensee's willful failure to comply with the provisions of this rule is a cause for disbarment or suspension and for revocation of any pending probation. Additionally, such failure may be punished as a contempt or a crime.

*(Subd (d) amended effective January 1, 2019; previously amended effective January 1, 2007; previously relettered and amended effective December 1, 1990.)*

*Rule 9.20 amended effective January 1, 2019; previously amended and renumbered effective January 1, 2007; adopted as rule 955 effective April 4, 1973; previously amended effective December 1, 1990.*

## **Rule 9.21 Resignations of Licensees of the State Bar With Disciplinary Charges Pending**

### **(a) General provisions**

A licensee of the State Bar against whom disciplinary charges are pending may tender a written resignation from the State Bar and relinquishment of the right to practice law. The written resignation must be signed and dated by the licensee at the time it is tendered and must be tendered to the Office of the Clerk, State Bar Court, 845 S. Figueroa Street, Los Angeles, California 90017. The resignation must be substantially in the form specified in (b) of this rule. In submitting a resignation under this rule, a licensee of the State Bar agrees to be transferred to inactive status in the State Bar effective on the filing of the resignation by the State Bar. Within 30 days after filing of the resignation, the licensee must perform the acts specified in rule 9.20(a)(1)-(4) and (b) and within 40 days after filing of the resignation, the licensee must file with the Office of the Clerk, State Bar Court, at the above address, the proof of compliance specified in rule 9.20(c). No resignation is effective unless and until it is accepted by the Supreme Court after consideration and recommendation by the State Bar Court.

*(Subd (a) amended effective January 1, 2021; previously amended effective January 1, 2007, January 1, 2010, and January 1, 2019.)*

**(b) Form of resignation**

The licensee's written resignation must be in substantially the following form:

"I, [name of licensee], against whom charges are pending, hereby resign from the State Bar of California and relinquish all right to practice law in the State of California. I agree that, in the event that this resignation is accepted and I later file a petition for reinstatement, the State Bar will consider in connection therewith all disciplinary matters and proceedings against me at the time this resignation is accepted, in addition to other appropriate matters, I also agree that the Supreme Court may decline to accept my resignation unless I reach agreement with the Chief Trial Counsel on a written stipulation as to facts and conclusions of law regarding the disciplinary matters and proceedings that were pending against me at the time of my resignation. I further agree that, on the filing of this resignation by the Office of the Clerk, State Bar Court, I will be transferred to inactive status with the State Bar. On such transfer, I acknowledge that I will be ineligible to practice law or to advertise or hold myself out as practicing or as entitled to practice law. I further acknowledge that in the event the Supreme Court does not accept my resignation, I will remain an inactive licensee of the State Bar, pending any further order of the Supreme Court or the State Bar Court. I further agree that, within 30 days of the filing of the resignation by the Office of the Clerk, State Bar Court, I will perform the acts specified in rule 9.20(a)–(b) of the California Rules of Court, and within 40 days of the date of filing of this resignation by the Office of the Clerk, State Bar Court, I will notify that office as specified in rule 9.20(c) of the California Rules of Court."

*(Subd (b) amended effective January 1, 2021; previously amended effective January 1, 2007, January 1, 2010, and January 1, 2019.)*

**(c) Consideration of resignation by State Bar Court and Supreme Court**

When the Office of the Clerk of the State Bar Court receives a licensee's resignation tendered in conformity with this rule, it must promptly file the resignation. The State Bar Court must thereafter consider the licensee's resignation and the stipulated facts and conclusions of law, if any, agreed upon between the licensee and the Chief Trial Counsel, and must recommend to the Supreme Court whether the resignation should be accepted. The State Bars Court's recommendation must

be made in light of the grounds set forth in (d) of this rule and, if the State Bar Court recommends acceptance of the resignation notwithstanding the existence of one or more of the grounds set forth in subsection (d), the State Bar Court's recommendation must include an explanation of the reasons for the recommendation that the resignation be accepted. The Office of the Clerk of the State Bar Court must transmit to the Clerk of the Supreme Court, three certified copies of the State Bar Court's recommendation together with the licensee's resignation, when, by the terms of the State Bar Court's recommendation, the resignation should be transmitted to the Supreme Court.

*(Subd (c) amended effective January 1, 2019; previously amended effective January 1, 2007, and January 1, 2010.)*

**(d) Grounds for rejection of resignation by the Supreme Court**

The Supreme Court will make such orders concerning the licensee's resignation as it deems appropriate. The Supreme Court may decline to accept the resignation based on a report by the State Bar Court that:

- (1) Preservation of necessary testimony is not complete;
- (2) After transfer to inactive status, the licensee has practiced law or has advertised or held himself or herself out as entitled to practice law;
- (3) The licensee has failed to perform the acts specified by rule 9.20(a)–(b);
- (4) The licensee has failed to provide proof of compliance as specified in rule 9.20(c);
- (5) The Supreme Court has filed an order of disbarment as to the licensee;
- (6) The State Bar Court has filed a decision or opinion recommending the licensee's disbarment;
- (7) The licensee has previously resigned or has been disbarred and reinstated to the practice of law;
- (8) The licensee and the Chief Trial Counsel have not reached agreement on a written stipulation as to facts and conclusions of law regarding the disciplinary matters and proceedings that were pending against the licensee at the time the resignation was tendered; or

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(9) Acceptance of the resignation of the licensee will reasonably be inconsistent with the need to protect the public, the courts, or the legal profession.

*(Subd (d) amended effective January 1, 2019; previously amended and relettered effective January 1, 2007; adopted as part of subd (c) effective December 14, 1984; previously amended effective January 1, 2010.)*

### **(e) Rejection of resignation by the Supreme Court**

A licensee whose resignation with charges pending is not accepted by the Supreme Court will remain an inactive licensee of the State Bar. The licensee may move the Review Department of the State Bar Court to be restored to active status, at which time the Office of the Chief Trial Counsel may demonstrate any basis for the licensee's continued ineligibility to practice law. The Review Department will expedite a motion to be restored to active status. Any return to active status will be conditioned on the licensee's payment of any due, penalty payments, and restitution owed by the licensee.

*(Subd (e) amended effective January 1, 2019; adopted effective January 1, 2014.)*

*Rule 9.21 amended effective January 1, 2021; adopted as rule 960 by the Supreme Court effective December 14, 1984; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2010, January 1, 2014, and January 1, 2019.*

### **Rule 9.22 Suspension of Licensees of the State Bar for Failure to Comply with Judgment or Order for Child or Family Support**

#### **(a) Annual State Bar recommendation for suspension of delinquent licensees**

Under Family Code section 17520, the State Bar is authorized to transmit to the Supreme Court on an annual basis the names of those licensees listed by the State Department of Social Services as delinquent in their payments of court-ordered child or family support with a recommendation for their suspension from the practice of law.

*(Subd (a) amended effective January 1, 2019; previously amended effective January 1, 2007, and January 17, 2014.)*

#### **(b) Condition for reinstatement of suspended licensees**

A licensee suspended under this rule may be reinstated only after receipt by the Supreme Court of notification from the State Bar that the licensee's name has been removed from the State Department of Social Services list.

*(Subd (b) amended effective January 1, 2019; adopted as part of subd (a) effective January 31, 1993; previously amended and lettered effective January 1, 2007.)*

#### **(c) Additional recommendation for suspension by the State Bar**

Under Family Code section 17520(l), the State Bar is further authorized to promptly transmit to the Supreme Court with a recommendation for their suspension from the practice of law the names of those licensees previously listed by the State Department of Social Services as delinquent in their payments of court-ordered child or family support, who obtained releases under Family Code section 17520(h), and who have subsequently been identified by the Department of Social Services as again being delinquent.

*(Subd (c) amended effective January 1, 2019; adopted as part of subd (a) effective January 31, 1993; previously amended and lettered effective January 1, 2007.)*

#### **(d) Authorization for the Board of Trustees of the State Bar to adopt rules and regulations**

The Board of Trustees of the State Bar is authorized to adopt such rules and regulations as it deems necessary and appropriate in order to comply with this rule. The rules and regulations of the State Bar must contain procedures governing the notification, suspension, and reinstatement of licensees of the State Bar in a manner not inconsistent with Family Code section 17520.

*(Subd (d) amended effective January 1, 2019; adopted as subd (b) effective January 31, 1993; previously amended and relettered effective January 1, 2007.)*

*Rule 9.22 amended effective January 1, 2019; adopted as rule 962 effective January 31, 1993; previously amended by the Supreme Court effective April 1, 1996; previously amended and renumbered effective January 1, 2007.*

**Rule 9.23 Enforcement as Money Judgment  
Disciplinary Orders Directing the Payment of  
Costs and Disciplinary Orders Requiring  
Reimbursement of the Client Security Fund**

**(a) Authority to obtain money judgment**

Under Business and Professions Code section 6086.10(a) the State Bar is authorized to enforce as a money judgment any disciplinary order assessing costs. Under Business and Professions Code section 6140.5(d) the State Bar is authorized to enforce as a money judgment any disciplinary order requiring reimbursement of the State Bar Client Security Fund.

**(b) Duty of clerk of the superior court**

The State Bar may file a certified copy of a final disciplinary order assessing costs or requiring reimbursement to the Client Security Fund, along with a certified copy of the certificate of costs and any record of Client Security Fund payments and costs, with the clerk of the superior court of any county. The clerk must immediately enter judgment in conformity with the order.

*(Subd (b) amended effective January 1, 2019.)*

**(c) Compromise of judgment**

Motions for the compromise of any judgment entered under this rule must, in the first instance, be filed and heard by the State Bar Court.

**(d) Power of the Supreme Court**

Nothing in this rule may be construed as affecting the power of the Supreme Court to alter the amounts owed.

*Rule 9.23 amended effective January 1, 2019; adopted by the Supreme Court effective April 1, 2007.*

**CHAPTER 4.  
LEGAL EDUCATION**

**Rule 9.30 Law School Study in Schools Other Than  
Those Accredited by the Examining Committee**

**(a) Receipt of credit**

A person who seeks to be certified to the Supreme Court for admission in and licensed to practice law

under section 6060(e)(2) of the Business and Professions Code may receive credit for:

(1) Study in a law school in the United States other than one accredited by the examining committee established by the Board of Trustees of the State Bar under Business and Professions Code section 6046 only if the law school satisfies the requirements of (b) or (c) of this rule; or

(2) Instruction in law from a correspondence school only if the correspondence school requires 864 hours of preparation and study per year for four years and satisfies the requirements of (d) of this rule; or

(3) Study in a law school outside the United States other than one accredited by the examining committee established by the Board of Trustees of the State Bar under Business and Professions Code section 6046 only if the examining committee is satisfied that the academic program of such law school is substantially equivalent to that of a law school qualified under (b) of this rule.

*(Subd (a) amended effective January 1, 2019; previously amended effective April 2, 1984, and January 1, 2007.)*

**(b) Requirements for unaccredited law schools in state**

A law school in this state that is not accredited by the examining committee must:

(1) Be authorized to confer professional degrees by the laws of this state;

(2) Maintain a regular course of instruction in law, with a specified curriculum and regularly scheduled class sessions;

(3) Require classroom attendance of its students for a minimum of 270 hours a year for at least four years, and further require regular attendance of each student at not less than 80 percent of the regularly scheduled class hours in each course in which such student was enrolled and maintain attendance records adequate to determine each student's compliance with these requirements;

(4) Maintain, in a fixed location, physical facilities capable of accommodating the classes scheduled for that location;

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(5) Have an adequate faculty of instructors in law. The faculty will prima facie be deemed adequate if at least 80 percent of the instruction in each academic period is by persons who possess one or more of the following qualifications:

(A) Admission to the general practice of the law in any jurisdiction in the United States;

(B) Judge of a United States court or a court of record in any jurisdiction in the United States; or

(C) Graduation from a law school accredited by the examining committee.

(6) Own and maintain a library consisting of not less than the following sets of books, all of which must be current and complete:

(A) The published reports of the decisions of California courts, with advance sheets and citator;

(B) A digest or encyclopedia of California law;

(C) An annotated set of the California codes; and

(D) A current, standard text or treatise for each course or subject in the curriculum of the school for which such a text or treatise is available.

(7) Establish and maintain standards for academic achievement, advancement in good standing and graduation, and provide for periodic testing of all students to determine the quality of their performance in relation to such standards; and

(8) Register with the examining committee, and maintain such records (available for inspection by the examining committee) and file with the examining committee such reports, notices, and certifications as may be required by the rules of the examining committee.

*(Subd (b) amended effective January 1, 2007; previously amended effective April 2, 1984.)*

### **(c) Requirements for unaccredited law schools outside the state**

A law school in the United States that is outside the state of California and is not accredited by the examining committee must:

(1) Be authorized to confer professional degrees by the law of the state in which it is located;

(2) Comply with (b)(2), (3), (4), (5), (7), and (8) of this rule; and

(3) Own and maintain a library that is comparable in content to that specified in (b)(6) of this rule.

*(Subd (c) amended effective January 1, 2007; previously amended effective April 2, 1984.)*

### **(d) Registration and reports**

A correspondence law school must register with the examining committee and file such reports, notices, and certifications as may be required by the rules of the examining committee concerning any person whose mailing address is in the state of California or whose application to, contract with, or correspondence with or from the law school indicates that the instruction by correspondence is for the purpose or with the intent of qualifying that person for admission to practice law in California.

*(Subd (d) amended effective January 1, 2007.)*

### **(e) Inspections**

The examining committee may make such inspection of law schools not accredited by the committee or correspondence schools as may be necessary or proper to give effect to the provisions of Business and Professions Code section 6060, this rule, and the rules of the examining committee.

*(Subd (e) amended effective January 1, 2007.)*

### **(f) Application**

This rule does not apply to any person who, on the effective date of the rule, had commenced the study of law in a manner authorized by Business and Professions Code section 6060(e) and registered as a law student before January 1, 1976 (as provided in Business and Professions Code section 6060(d) and otherwise



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satisfies the requirements of Business and Professions Code section 6060(e), provided that after January 1, 1976, credit will be given such person for any study in an unaccredited law school or by correspondence only if the school complies with the requirements of (b)(8) or (d) of this rule, whichever is applicable, and permits inspection under (e) of this rule.

*(Subd (f) amended effective January 1, 2007.)*

*Rule 9.30 amended effective January 1, 2019; adopted as rule 957 by the Supreme Court effective October 8, 1975; previously amended effective April 2, 1984; previously amended and renumbered effective January 1, 2007.*

### **Rule 9.31 Minimum Continuing Legal Education**

#### **(a) Statutory authorization**

This rule is adopted under Business and Professions Code section 6070.

*(Subd (a) amended effective January 1, 2007.)*

#### **(b) State Bar minimum continuing legal education program**

The State Bar must establish and administer a minimum continuing legal education program under rules adopted by the Board of Trustees of the State Bar. These rules may provide for carryforward of excess credit hours, staggering of the education requirement for implementation purposes, and retroactive credit for legal education.

*(Subd (b) amended effective August 1, 2017; previously amended effective September 27, 2000, and January 1, 2007.)*

#### **(c) Minimum continuing legal education requirements**

Each active licensee of the State Bar (1) not exempt under Business and Professions Code section 6070, (2) not a full-time employee of the United States Government, its departments, agencies, and public corporations, acting within the scope of his or her employment, and (3) not otherwise exempt under rules adopted by the Board of Trustees of the State Bar, must, within 36-month periods designated by the State Bar, complete at least 25 hours of legal education

approved by the State Bar or offered by a State Bar-approved provider. Four of those hours must address legal ethics. Licensees may be required to complete legal education in other specified areas within the 25-hour requirement under rules adopted by the State Bar. Each active licensee must report his or her compliance to the State Bar under rules adopted by the Board of Trustees of the State Bar.

*(Subd (c) amended effective August 1, 2019; previously amended effective September 27, 2000, January 1, 2007, and August 1, 2017.)*

#### **(d) Failure to comply with program**

A licensee of the State Bar who fails to satisfy the requirements of the State Bar's minimum continuing legal education program must be enrolled as an inactive licensee of the State Bar under rules adopted by the Board of Trustees of the State Bar.

*(Subd (d) amended effective January 1, 2019; previously amended effective January 1, 2007, and August 1, 2017.)*

#### **(e) Fees and penalties**

The State Bar has the authority to set and collect appropriate fees and penalties.

*(Subd (e) amended effective January 1, 2007.)*

#### **(f) One-time expungement of a record of inactive enrollment for failure to comply with program**

The State Bar is authorized to expunge a public record of a period of inactive enrollment for failure to comply with the minimum continuing legal education program for those licensees who meet all of the following criteria;

- (1) The licensee has not on any previous occasion obtained an expungement under the terms of this rule or rule 9.6;
- (2) The period of inactive enrollment was for 90 days or less;
- (3) The period of inactive enrollment ended at least seven years before the date of expungement;

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- (4) The licensee has no other record of suspension or involuntary inactive enrollment for discipline or otherwise.

*(Subd (f) amended effective January 1, 2019; adopted effective August 1, 2017.)*

### **(g) Records to be maintained by the State Bar**

Under (f) of this rule, the State Bar will remove or delete the record of such period of inactive enrollment from the licensee's record. Notwithstanding any other provision of this rule, the State Bar must maintain such internal records as are necessary to apply the terms of (f) of this rule and to report to the Commission on Judicial Nominees Evaluation or appropriate governmental entities involved in judicial elections the licensee's eligibility for a judgeship under the California Constitution, article VI, section 15.

*(Subd (g) amended effective January 1, 2019; adopted effective August 1, 2017.)*

### **(h) Duty of disclosure by member**

Expungement of the record of a licensee's period of inactive enrollment under (f) of this rule will not relieve the licensee of his or her duty to disclose the period of inactive enrollment for purpose of determining the licensee's eligibility for a judgeship under the California Constitution, article VI, section 15. For all other purposes, the record of inactive enrollment expunged under (f) of this rule is deemed not to have occurred and the licensee may answer accordingly any question relating to his or her record.

*(Subd (h) amended effective January 1, 2019; adopted effective August 1, 2017.)*

*Rule 9.31 amended effective January 1, 2019; adopted as rule 958 effective December 6, 1990; previously amended effective December 25, 1992; previously amended by the Supreme Court effective September 27, 2000; previously amended and renumbered as rule 9.31 effective January 1, 2007; previously amended effective August 1, 2017.*

**[Publisher's Note:** See Appendix C for MCLE Rules and additional information regarding MCLE requirement.]

## **DIVISION 3. LEGAL SPECIALISTS**

### **Rule 9.35 Certified Legal Specialists**

#### **(a) Definition**

A "certified specialist" is a California attorney who holds a current certificate as a specialist issued by the State Bar of California Board of Legal Specialization or any other entity approved by the State Bar to designate specialists.

#### **(b) State Bar Legal Specialization Program**

The State Bar must establish and administer a program for certifying legal specialists and may establish a program for certifying entities that certify legal specialists under rules adopted by the Board of Trustees of the State Bar.

*(Subd (b) amended effective January 1, 2019; previously amended effective January 1, 2007.)*

#### **(c) Authority to practice law**

No attorney may be required to obtain certification as a certified specialist as a prerequisite to practicing law in this state. Any attorney, alone or in association with any other attorney, has the right to practice in any field of law in this state and to act as counsel in every type of case, even though he or she is not certified as a specialist.

*(Subd (c) amended effective January 1, 2007.)*

#### **(d) Failure to comply with program**

A certified specialist who fails to comply with the requirements of the Legal Specialization Program of the State Bar will have her or his certification suspended or revoked under rules adopted by the Board of Trustees of the State Bar.

*(Subd (d) amended effective January 1, 2019; previously amended effective January 1, 2007.)*

#### **(e) Fee and penalty**

The State Bar has the authority to set and collect appropriate fees and penalties for this program.

*(Subd (e) amended effective January 1, 2007.)*

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### (f) Inherent power of Supreme Court

Nothing in these rules may be construed as affecting the power of the Supreme Court to exercise its inherent jurisdiction over the practice of law in California.

*(Subd (f) amended effective January 1, 2007.)*

*Rule 9.35 amended effective January 1, 2019; adopted as rule 983.5 effective January 1, 1996; amended and renumbered effective January 1, 2007.*

## DIVISION 4. APPEARANCES AND PRACTICE BY INDIVIDUALS WHO ARE NOT MEMBERS OF THE STATE BAR OF CALIFORNIA

### Rule 9.40 Counsel Pro Hac Vice

#### (a) Eligibility

A person who is not a licensee of the State Bar of California but who is an attorney in good standing of and eligible to practice before the bar of any United States court or the highest court in any state, territory, or insular possession of the United States, and who has been retained to appear in a particular cause pending in a court of this state, may in the discretion of such court be permitted upon written application to appear as counsel *pro hac vice*, provided that an active licensee of the State Bar of California is associated as attorney of record. No person is eligible to appear as counsel *pro hac vice* under this rule if the person is:

- (1) A resident of the State of California;
- (2) Regularly employed in the State of California; or
- (3) Regularly engaged in substantial business, professional, or other activities in the State of California.

*(Subd (a) amended effective January 1, 2019; previously amended effective January 1, 2007.)*

#### (b) Repeated appearances as a cause for denial

Absent special circumstances, repeated appearances by any person under this rule is a cause for denial of an application.

*(Subd (b) lettered effective January 1, 2007; adopted as part of subd (a) effective September 13, 1972.)*

#### (c) Application

- (1) Application in superior court

A person desiring to appear as counsel *pro hac vice* in a superior court must file with the court a verified application together with proof of service by mail in accordance with Code of Civil Procedure section 1013a of a copy of the application and of the notice of hearing of the application on all parties who have appeared in the cause and on the State Bar of California at its San Francisco office. The notice of hearing must be given at the time prescribed in Code of Civil Procedure section 1005 unless the court has prescribed a shorter period.

- (2) Application in Supreme Court or Court of Appeal

An application to appear as counsel *pro hac vice* in the Supreme Court or a Court of Appeal must be made as provided in rule 8.54, with proof of service on all parties who have appeared in the cause and on the State Bar of California at its San Francisco office.

*(Subd (c) amended and relettered effective January 1, 2007; adopted as part of subd (b) effective September 13, 1972; subd (b) previously amended effective October 3, 1973, September 3, 1986, January 17, 1991, and March 15, 1991.)*

#### (d) Contents of application

The application must state:

- (1) The applicant's residence and office address;
- (2) The courts to which the applicant has been admitted to practice and the dates of admission;
- (3) That the applicant is a licensee in good standing in those courts;
- (4) That the applicant is not currently suspended or disbarred in any court;
- (5) The title of each court and cause in which the applicant has filed an application to appear as counsel *pro hac vice* in this state in the preceding

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two years, the date of each application, and whether or not it was granted; and

(6) The name, address, and telephone number of the active licensee of the State Bar of California who is attorney of record.

*(Subd (d) amended effective January 1, 2019; adopted as part of subd (b) effective September 13, 1972; subd (b) previously amended effective October 3, 1973, September 3, 1986, January 17, 1991, and March 15, 1991; previously amended and lettered effective January 1, 2007.)*

### **(e) Fee for application**

An applicant for permission to appear as counsel *pro hac vice* under this rule must pay a reasonable fee not exceeding \$50 to the State Bar of California with the copy of the application and the notice of hearing that is served on the State Bar. The Board of Trustees of the State Bar of California will fix the amount of the fee:

(1) To defray the expenses of administering the provisions of this rule that are applicable to the State Bar and the incidental consequences resulting from such provisions; and

(2) Partially to defray the expenses of administering the Board's other responsibilities to enforce the provisions of the State Bar Act relating to the competent delivery of legal services and the incidental consequences resulting therefrom.

*(Subd (e) amended effective January 1, 2019; adopted as subd (c) effective September 3, 1986; previously amended and relettered effective January 1, 2007.)*

### **(f) Counsel *pro hac vice* subject to jurisdiction of courts and State Bar**

A person permitted to appear as counsel *pro hac vice* under this rule is subject to the jurisdiction of the courts of this state with respect to the law of this state governing the conduct of attorneys to the same extent as a licensee of the State Bar of California. The counsel *pro hac vice* must familiarize himself or herself and comply with the standards of professional conduct required of licensees of the State Bar of California and will be subject to the disciplinary jurisdiction of the State Bar with respect to any of his or her acts occurring in the course of such appearance. Article 5, of chapter 4, division 3 of the Business and Professions Code and the Rules of Procedure of the State Bar

govern in any investigation or proceeding conducted by the State Bar under this rule.

*(Subd (f) amended effective January 1, 2019; previously relettered as subd (d) effective September 3, 1986; previously amended and relettered effective January 1, 2007.)*

### **(g) Representation in cases governed by the Indian Child Welfare Act (25 U.S.C. § 1903 et seq.)**

(1) The requirement in (a) that the applicant associate with an active licensee of the State Bar of California does not apply to an applicant seeking to appear in a California court to represent an Indian tribe in a child custody proceeding governed by the Indian Child Welfare Act; and

(2) An applicant seeking to appear in a California court to represent an Indian tribe in a child custody proceeding governed by the Indian Child Welfare Act constitutes a special circumstance for the purposes of the restriction in (b) that an application may be denied because of repeated appearances.

*(Subd (g) adopted effective January 1, 2019.)*

### **(h) Supreme Court and Court of Appeal not precluded from permitting argument in a particular case**

This rule does not preclude the Supreme Court or a Court of Appeal from permitting argument in a particular case from a person who is not a licensee of the State Bar, but who is licensed to practice in another jurisdiction and who possesses special expertise in the particular field affected by the proceeding.

*(Subd (h) amended and relettered effective January 1, 2007; previously relettered as subd (e) effective September 3, 1986; previously amended and relettered as subd (g) effective January 1, 2007.)*

*Rule 9.40 amended effective January 1, 2019; adopted as rule 983 by the Supreme Court effective September 13, 1972; previously amended and renumbered effective January 1, 2007; previously amended effective October 3, 1973, September 3, 1986, January 17, 1991, and March 15, 1991.*

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### **Rule 9.41 Appearances by Military Counsel**

#### **(a) Permission to appear**

A judge advocate (as that term is defined at 10 U.S.C. § 801(13)) who is not a licensee of the State Bar of California but who is an attorney in good standing of and eligible to practice before the bar of any United States court or of the highest court in any state, territory, or insular possession of the United States may, in the discretion of a court of this state, be permitted to appear in that court to represent a person in the military service in a particular cause pending before that court, under the Servicemembers Civil Relief Act, 50 United States Code Appendix section 501 et seq., if:

- (1) The judge advocate has been made available by the cognizant Judge Advocate General (as that term is defined at 10 United States Code section 801(1)) or a duly designated representative; and
- (2) The court finds that retaining civilian counsel likely would cause substantial hardship for the person in military service or that person's family; and
- (3) The court appoints a judge advocate as attorney to represent the person in military service under the Servicemembers Civil Relief Act.

Under no circumstances is the determination of availability of a judge advocate to be made by any court within this state, or reviewed by any court of this state. In determining the likelihood of substantial hardship as a result of the retention of civilian counsel, the court may take judicial notice of the prevailing pay scales for persons in the military service.

*(Subd (a) amended effective January 1, 2019; previously amended effective January 1, 2007.)*

#### **(b) Notice to parties**

The clerk of the court considering appointment of a judge advocate under this rule must provide written notice of that fact to all parties who have appeared in the cause. A copy of the notice, together with proof of service by mail in accordance with Code of Civil Procedure section 1013a, must be filed by the clerk of the court. Any party who has appeared in the matter may file a written objection to the appointment within 10 days of the date on which notice was given unless the court has prescribed a shorter period. If the court determines to hold a hearing in relation to the

appointment, notice of the hearing must be given at least 10 days before the date designated for the hearing unless the court has prescribed a shorter period.

*(Subd (b) amended effective January 1, 2007.)*

#### **(c) Appearing judge advocate subject to court and State Bar jurisdiction**

A judge advocate permitted to appear under this rule is subject to the jurisdiction of the courts of this state with respect to the law of this state governing the conduct of attorneys to the same extent as a licensee of the State Bar of California. The judge advocate must become familiar with and comply with the standards of professional conduct required of licensees of the State Bar of California and is subject to the disciplinary jurisdiction of the State Bar of California. Division 3, chapter 4, article 5 of the Business and Professions Code and the Rules of Procedure of the State Bar of California govern any investigation or proceeding conducted by the State Bar under this rule.

*(Subd (c) amended effective January 1, 2019; previously amended effective January 1, 2007.)*

#### **(d) Appearing judge advocate subject to rights and obligations of State Bar licensees concerning professional privileges**

A judge advocate permitted to appear under this rule is subject to the rights and obligations with respect to attorney-client privilege, work-product privilege, and other professional privileges to the same extent as a licensee of the State Bar of California.

*(Subd (d) amended effective January 1, 2019; previously amended effective January 1, 2007.)*

*Rule 9.41 amended effective January 1, 2019; adopted as rule 983.1 by the Supreme Court effective February 19, 1992; adopted by the Judicial Council effective February 21, 1992; amended and renumbered effective January 1, 2007.*

### **Rule 9.41.1 Registered Military Spouse Attorney**

#### **(a) Definitions**

- (1) "Military Spouse Attorney" means an active licensee in good standing of the bar of a United States state, jurisdiction, possession, territory, or dependency and who is married to, in a civil union

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with, or a registered domestic partner of, a Service Member.

(2) “Service Member” means an active duty member of the United States Uniformed Services who has been ordered stationed within California.

(3) “Active licensee in good standing of the bar of a United States state, jurisdiction, possession, territory, or dependency” means an attorney who:

(A) Is a licensee in good standing of the entity governing the practice of law in each jurisdiction in which the attorney is licensed to practice law, who has not been disbarred, has not resigned with charges pending, or is not suspended from practicing law for disciplinary misconduct in any other jurisdiction; and;

(B) Remains an active licensee in good standing of the entity governing the practice of law in at least one United States state, jurisdiction, possession, territory, or dependency other than California while practicing law as a registered military spouse attorney in California.

### (b) Scope of Practice

Subject to all applicable rules, regulations, and statutes, an attorney practicing law under this rule is permitted to practice law in California, under supervision, in all forms of legal practice that are permissible for a licensed attorney of the State Bar of California, including pro bono legal services.

### (c) Requirements

For an attorney to qualify to practice law under this rule, the attorney must:

(1) Be an active licensee in good standing of the bar of a United States state, jurisdiction, possession, territory, or dependency;

(2) Be married to, be in a civil union with, or be a registered domestic partner of, a Service Member, except that the attorney may continue to practice as a registered military spouse attorney for one year after the termination of the marriage, civil union, or domestic partnership as provided in (i)(1)(G);

(3) Reside in California;

(4) Meet all of the requirements for admission to the State Bar of California, except that the attorney:

(A) Need not take the California bar examination or the Multistate Professional Responsibility Examination; and

(B) May practice law while awaiting the result of his or her Application for Determination of Moral Character from the State Bar of California.

(5) Comply with the rules adopted by the Board of Trustees relating to the State Bar Registered Military Spouse Attorney Program;

(6) Practice law under the supervision of an attorney who is an active licensee in good standing of the State Bar of California who has been admitted to the practice of law for two years or more;

(7) Abide by all of the laws and rules that govern licensees of the State Bar of California, including the Minimum Continuing Legal Education (“MCLE”) requirements;

(8) Satisfy in his or her first year of practice under this rule all of the MCLE requirements, including ethics education, that licensees of the State Bar of California must complete every three years and, thereafter, satisfy the MCLE requirements for the registered military spouse attorney’s compliance group as set forth in State Bar Rules 2.70 and 2.71. If the registered military spouse attorney’s compliance group is required to report in less than thirty-six months, the MCLE requirements will be reduced proportionally; and

(9) Not have taken and failed the California bar examination within five years immediately preceding initial application to register under this rule.

### (d) Application

The attorney must comply with the following registration requirements:

(1) Register as an attorney applicant, file an Application for Determination of Moral Character with the Committee of Bar Examiners, and comply with Rules of Court, rule 9.9.5, governing attorney fingerprinting;

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(2) Submit to the State Bar of California a declaration signed by the attorney agreeing that he or she will be subject to the disciplinary authority of the Supreme Court of California and the State Bar of California and attesting that he or she will not practice law in California other than under supervision of a California attorney during the time he or she practices law as a military spouse attorney in California; and

(3) Submit to the State Bar of California a declaration signed by a qualifying supervising attorney. The declaration must attest:

(A) that the applicant will be supervised as specified in this rule; and

(B) that the supervising attorney assumes professional responsibility for any work performed by the registered military spouse attorney under this rule.

### **(e) Application and Registration Fees**

The State Bar of California may set appropriate application fees and initial and annual registration fees to be paid by registered military spouse attorney.

### **(f) State Bar Registered Military Spouse Attorney Program**

The State Bar may establish and administer a program for registering registered military spouse attorneys under rules adopted by the Board of Trustees of the State Bar.

### **(g) Supervision**

To meet the requirements of this rule, an attorney supervising a registered military spouse attorney:

(1) Must have practiced law as a full-time occupation for at least four years in any United States jurisdiction;

(2) Must have actively practiced law in California for at least two years immediately preceding the time of supervision and be a licensee in good standing of the State Bar of California;

(3) Must assume professional responsibility for any work that the registered military spouse attorney performs under the supervising attorney's supervision;

(4) Must assist, counsel, and provide direct supervision of the registered military spouse attorney in the activities authorized by this rule, approve in writing any appearance in court, deposition, arbitration or any proceeding by the registered military spouse attorney, and review such activities with the supervised military spouse attorney, to the extent required for the protection of the client or customer;

(5) Must read, approve, and personally sign any pleadings, briefs, or other similar documents prepared by the registered military spouse attorney before their filing, and must read and approve any documents prepared by the registered military spouse attorney before their submission to any other party;

(6) Must agree to assume control of the work of the registered military spouse attorney in the event the registration of the military spouse attorney is terminated, in accordance with applicable laws; and

(7) May, in his or her absence, designate another attorney meeting the requirements of (g)(1) through (g)(6) to provide the supervision required under this rule.

### **(h) Duration of Practice**

A registered military spouse attorney must renew his or her registration annually and may practice for no more than a total of five years under this rule.

### **(i) Termination of Military Spouse Attorney Registration**

(1) Registration as a registered military spouse attorney is terminated

(A) upon receipt of a determination by the Committee of Bar Examiners that the registered military spouse attorney is not of good moral character;

(B) for failure to annually register as a registered military spouse attorney and submit any related fee set by the State Bar;

(C) for failure to comply with the Minimum Continuing Legal Education requirements and to pay any related fee set by the State Bar;

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(D) if the registered military spouse attorney no longer meets the requirements under (a)(3) of this section;

(E) upon the imposition of any discipline by the State Bar of California or any other professional or occupational licensing authority, including administrative or stayed suspension;

(F) for failure to otherwise comply with these rules or with the laws or standards of professional conduct applicable to a licensee of the State Bar of California;

(G) if the Service Member is no longer an active member of the United States Uniformed Services or is transferred to another state, jurisdiction, territory outside of California, except that if the Service Member has been assigned to an unaccompanied or remote assignment with no dependents authorized, the military spouse attorney may continue to practice pursuant to the provisions of this rule until the Service Member is assigned to a location with dependents authorized; or

(H) one year after the date of termination of the registered military spouse attorney's marriage, civil union, or registered domestic partnership.

(2) The supervising attorney of registered military spouse attorney suspended by these rules will assume the work of the registered military spouse attorney in accordance with applicable laws.

### **(j) Inherent Power of Supreme Court**

Nothing in this rule may be construed as affecting the power of the Supreme Court of California to exercise its inherent jurisdiction over the practice of law in California.

### **(k) Effect of Rule on Multijurisdictional Practice**

Nothing in this rule limits the scope of activities permissible under existing law by attorneys who are not licensees of the State Bar of California.

*Rule 9.41.1 adopted by the Supreme Court effective March 1, 2019.*

## **Rule 9.42 Certified Law Students**

### **(a) Definitions**

(1) A "certified law student" is a law student who has a currently effective certificate of registration as a certified law student from the State Bar.

(2) A "supervising attorney" is a licensee of the State Bar who agrees to supervise a certified law student under rules established by the State Bar and whose name appears on the application for certification.

*(Subd (a) amended effective January 1, 2019; previously amended effective January 1, 2007.)*

### **(b) State Bar Certified Law Student Program**

The State Bar must establish and administer a program for registering law students under rules adopted by the Board of Trustees of the State Bar.

*(Subd (b) amended effective January 1, 2019; previously amended effective January 1, 2007.)*

### **(c) Eligibility for certification**

To be eligible to become a certified law student, an applicant must:

(1) Have successfully completed one full year of studies (minimum of 270 hours) at a law school accredited by the American Bar Association or the State Bar of California, or both, or have passed the first year law students' examination;

(2) Have been accepted into, and be enrolled in, the second, third, or fourth year of law school in good academic standing or have graduated from law school, subject to the time period limitations specified in the rules adopted by the Board of Trustees of the State Bar; and

(3) Have either successfully completed or be currently enrolled in and attending academic courses in evidence and civil procedure.

*(Subd (c) amended effective January 1, 2019.)*

### **(d) Permitted activities**

Subject to all applicable rules, regulations, and statutes, a certified law student may:



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(1) Negotiate for and on behalf of the client subject to final approval thereof by the supervising attorney or give legal advice to the client, provided that the certified law student:

(A) Obtains the approval of the supervising attorney to engage in the activities;

(B) Obtains the approval of the supervising attorney regarding the legal advice to be given or plan of negotiation to be undertaken by the certified law student; and

(C) Performs the activities under the general supervision of the supervising attorney;

(2) Appear on behalf of the client in depositions, provided that the certified law student:

(A) Obtains the approval of the supervising attorney to engage in the activity;

(B) Performs the activity under the direct and immediate supervision and in the personal presence of the supervising attorney (or, exclusively in the case of government agencies, any deputy, assistant, or other staff attorney authorized and designated by the supervising attorney); and

(C) Obtains a signed consent form from the client on whose behalf the certified law student acts (or, exclusively in the case of government agencies, from the chief counsel or prosecuting attorney) approving the performance of such acts by such certified law student or generally by any certified law student;

(3) Appear on behalf of the client in any public trial, hearing, arbitration, or proceeding, or before any arbitrator, court, public agency, referee, magistrate, commissioner, or hearing officer, to the extent approved by such arbitrator, court, public agency, referee, magistrate, commissioner, or hearing officer, provided that the certified law student:

(A) Obtains the approval of the supervising attorney to engage in the activity;

(B) Performs the activity under the direct and immediate supervision and in the personal presence of the supervising

attorney (or, exclusively in the case of government agencies, any deputy, assistant, or other staff attorney authorized and designated by the supervising attorney);

(C) Obtains a signed consent form from the client on whose behalf the certified law student acts (or, exclusively in the case of government agencies, from the chief counsel or prosecuting attorney) approving the performance of such acts by such certified law student or generally by any certified law student; and

(D) As a condition to such appearance, either presents a copy of the consent form to the arbitrator, court, public agency, referee, magistrate, commissioner, or hearing officer, or files a copy of the consent form in the court case file; and

(4) Appear on behalf of a government agency in the prosecution of criminal actions classified as infractions or other such minor criminal offenses with a maximum penalty or a fine equal to the maximum fine for infractions in California, including any public trial:

(A) Subject to approval by the court, commissioner, referee, hearing officer, or magistrate presiding at such public trial; and

(B) Without the personal appearance of the supervising attorney or any deputy, assistant, or other staff attorney authorized and designated by the supervising attorney, but only if the supervising attorney or the designated attorney has approved in writing the performance of such acts by the certified law student and is immediately available to attend the proceeding.

*(Subd (d) amended effective January 1, 2007.)*

### **(e) Failure to comply with program**

A certified law student who fails to comply with the requirements of the State Bar Certified Law Student Program must have his or her certification withdrawn under rules adopted by the Board of Trustees of the State Bar.

*(Subd (e) amended effective January 1, 2019; previously amended effective January 1, 2007.)*

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### **(f) Fee and penalty**

The State Bar has the authority to set and collect appropriate fees and penalties for this program.

*(Subd (f) amended effective January 1, 2007.)*

### **(g) Inherent power of Supreme Court**

Nothing in these rules may be construed as affecting the power of the Supreme Court to exercise its inherent jurisdiction over the practice of law in California.

*(Subd (g) amended effective January 1, 2007.)*

*Rule 9.42 amended effective January 1, 2019; adopted as rule 983.2 by the Supreme Court effective December 29, 1993; previously amended and renumbered effective January 1, 2007.*

## **Rule 9.43 Out-of-State Attorney Arbitration Counsel Program**

### **(a) Definition**

An “out-of-state attorney arbitration counsel” is an attorney who is:

(1) Not a licensee of the State Bar of California but who is an attorney in good standing of and eligible to practice before the bar of any United States court or the highest court in any state, territory, or insular possession of the United States, and who has been retained to appear in the course of, or in connection with, an arbitration proceeding in this state;

(2) Has served a certificate in accordance with the requirements of Code of Civil Procedure section 1282.4 on the arbitrator, the arbitrators, or the arbitral forum, the State Bar of California, and all other parties and counsel in the arbitration whose addresses are known to the attorney; and

(3) Whose appearance has been approved by the arbitrator, the arbitrators, or the arbitral forum.

*(Subd (a) amended effective January 1, 2019; previously amended effective January 1, 2007.)*

### **(b) State Bar Out-of-State Attorney Arbitration Counsel Program**

The State Bar of California must establish and administer a program to implement the State Bar of California’s responsibilities under Code of Civil Procedure section 1282.4. The State Bar of California’s program may be operative only as long as the applicable provisions of Code of Civil Procedure section 1282.4 remain in effect.

*(Subd (b) amended effective January 1, 2007.)*

### **(c) Eligibility to appear as an out-of-state attorney arbitration counsel**

To be eligible to appear as an out-of-state attorney arbitration counsel, an attorney must comply with all of the applicable provisions of Code of Civil Procedure section 1282.4 and the requirements of this rule and the related rules and regulations adopted by the State Bar of California.

*(Subd (c) amended effective January 1, 2007.)*

### **(d) Discipline**

An out-of-state attorney arbitration counsel who files a certificate containing false information or who otherwise fails to comply with the standards of professional conduct required of licensees of the State Bar of California is subject to the disciplinary jurisdiction of the State Bar with respect to any of his or her acts occurring in the course of the arbitration.

*(Subd (d) amended effective January 1, 2019; previously amended effective January 1, 2007.)*

### **(e) Disqualification**

Failure to timely file and serve a certificate or, absent special circumstances, appearances in multiple separate arbitration matters are grounds for disqualification from serving in the arbitration in which the certificate was filed.

*(Subd (e) amended effective January 1, 2007.)*

### **(f) Fee**

Out-of-state attorney arbitration counsel must pay a reasonable fee not exceeding \$50 to the State Bar of California with the copy of the certificate that is served on the State Bar.

*(Subd (f) amended effective January 1, 2007.)*

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### **(g) Inherent power of Supreme Court**

Nothing in these rules may be construed as affecting the power of the Supreme Court to exercise its inherent jurisdiction over the practice of law in California.

*(Subd (g) amended effective January 1, 2007.)*

*Rule 9.43 amended effective January 1, 2019; adopted as rule 983.4 by the Supreme Court effective July 1, 1999; previously amended and renumbered effective January 1, 2007.*

### **Rule 9.44 Registered Foreign Legal Consultant**

#### **(a) Definition**

A “registered foreign legal consultant” is a person who:

- (1) Is admitted to practice and is in good standing as an attorney or counselor-at-law or the equivalent in a foreign country; and
- (2) Has a currently effective certificate of registration as a registered foreign legal consultant from the State Bar.

*(Subd (a) amended effective January 1, 2007.)*

#### **(b) State Bar registered foreign legal consultant program**

The State Bar must establish and administer a program for registering foreign attorneys or counselors-at-law or the equivalent under rules adopted by the Board of Trustees of the State Bar.

*(Subd (b) amended effective January 1, 2019; previously amended effective January 1, 2007.)*

#### **(c) Eligibility for certification**

To be eligible to become a registered foreign legal consultant, an applicant must:

- (1) Present satisfactory proof that the applicant has been admitted to practice and has been in good standing as an attorney or counselor-at-law or the equivalent in a foreign country for at least four of the six years immediately preceding the application and, while so admitted, has actually practiced the law of that country;

(2) Present satisfactory proof that the applicant possesses the good moral character requisite for a person to be licensed as a licensee of the State Bar of California and proof of compliance with California Rules of Court, rule 9.9.5, governing attorney fingerprinting;

(3) Agree to comply with the provisions of the rules adopted by the Board of Trustees of the State Bar relating to security for claims against a foreign legal consultant by his or her clients;

(4) Agree to comply with the provisions of the rules adopted by the Board of Trustees of the State Bar relating to maintaining an address of record for State Bar purposes;

(5) Agree to notify the State Bar of any change in his or her status in any jurisdiction where he or she is admitted to practice or of any discipline with respect to such admission;

(6) Agree to be subject to the jurisdiction of the courts of this state with respect to the laws of the State of California governing the conduct of attorneys, to the same extent as a licensee of the State Bar of California;

(7) Agree to become familiar with and comply with the standards of professional conduct required of licensees of the State Bar of California;

(8) Agree to be subject to the disciplinary jurisdiction of the State Bar of California;

(9) Agree to be subject to the rights and obligations with respect to attorney client privilege, work-product privilege, and other professional privileges, to the same extent as attorneys admitted to practice law in California; and

(10) Agree to comply with the laws of the State of California, the rules and regulations of the State Bar of California, and these rules.

*(Subd (c) amended effective January 1, 2019; previously amended effective January 1, 2007.)*

#### **(d) Authority to practice law**

Subject to all applicable rules, regulations, and statutes, a registered foreign legal consultant may render legal services in California, except that he or she may not:

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(1) Appear for a person other than himself or herself as attorney in any court, or before any magistrate or other judicial officer, in this state or prepare pleadings or any other papers or issue subpoenas in any action or proceeding brought in any court or before any judicial officer;

(2) Prepare any deed, mortgage, assignment, discharge, lease, or any other instrument affecting title to real estate located in the United States;

(3) Prepare any will or trust instrument affecting the disposition on death of any property located in the United States and owned by a resident or any instrument relating to the administration of a decedent's estate in the United States;

(4) Prepare any instrument in respect of the marital relations, rights, or duties of a resident of the United States, or the custody or care of the children of a resident; or

(5) Otherwise render professional legal advice on the law of the State of California, any other state of the United States, the District of Columbia, the United States, or of any jurisdiction other than the jurisdiction named in satisfying the requirements of (c) of this rule, whether rendered incident to preparation of legal instruments or otherwise.

*(Subd (d) amended effective January 1, 2019; previously amended effective January 1, 2007.)*

### **(e) Failure to comply with program**

A registered foreign legal consultant who fails to comply with the requirements of the State Bar Registered Foreign Legal Consultant Program will have her or his certification suspended or revoked under rules adopted by the Board of Trustees of the State Bar.

*(Subd (e) amended effective January 1, 2019; previously amended effective January 1, 2007.)*

### **(f) Fee and penalty**

The State Bar has the authority to set and collect appropriate fees and penalties for this program.

*(Subd (f) amended effective January 1, 2007.)*

### **(g) Inherent power of Supreme Court**

Nothing in these rules may be construed as affecting the power of the Supreme Court to exercise its inherent jurisdiction over the practice of law in California.

*(Subd (g) amended effective January 1, 2007.)*

*Rule 9.44 amended effective January 1, 2019; adopted as rule 988 effective December 1, 1993; previously amended and renumbered effective January 1, 2007.*

## **Rule 9.45 Registered Legal Aid Attorneys**

### **(a) Definitions**

The following definitions apply in this rule:

(1) "Eligible legal aid organization" means any of the following:

(A) A nonprofit entity in good standing in California and in the state in which it is incorporated, if other than California, that provides legal aid in civil matters, including family law and immigration law, to indigent and disenfranchised persons, especially underserved client groups, such as the elderly, persons with disabilities, people of color, juveniles, and limited English proficient persons; or

(B) A nonprofit law school approved by the American Bar Association located in California or accredited by the State Bar of California that provides legal aid as described above in subdivision (A).

(C) Entities that receive IOLTA funds pursuant to Business and Professions Code, section 6210, et seq., are deemed to be eligible legal aid organizations.

(2) "Active licensee in good standing of the bar of a United States state, jurisdiction, possession, territory, or dependency" means an attorney who:

(A) Is a licensee in good standing of the entity governing the practice of law in each jurisdiction in which the attorney is licensed to practice law, who has not been disbarred, has not resigned with charges pending, or is

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not suspended from practicing law for disciplinary misconduct in any other jurisdiction; and

(B) Remains an active licensee in good standing of the entity governing the practice of law in at least one United States state, jurisdiction, possession, territory, or dependency other than California while practicing law as a registered legal aid attorney in California.

*(Subd (a) amended effective March 1, 2019; adopted as subd (j) effective November 15, 2004; previously relettered effective January 1, 2007; previously amended effective January 1, 2019.)*

### **(b) Scope of practice**

Subject to all applicable rules, regulations, and statutes, an attorney practicing law under this rule may practice law in California only while working, with or without pay, at an eligible legal aid organization, as defined in this rule, and, at that institution and only on behalf of its clients or customers, may engage, under supervision, in all forms of legal practice that are permissible for a licensee of the State Bar of California.

*(Subd (b) amended effective March 1, 2019; adopted as subd (a) effective November 15, 2004; previously amended and relettered effective January 1, 2007; previously amended effective January 1, 2019.)*

### **(c) Requirements**

For an attorney to qualify to practice law under this rule, the attorney must:

- (1) Be an active licensee in good standing of the bar of a United States state, jurisdiction, possession, territory, or dependency;
- (2) Meet all of the requirements for admission to the State Bar of California, except that the attorney:
  - (A) Need not take the California bar examination or the Multistate Professional Responsibility Examination; and
  - (B) May practice law while awaiting the result of his or her Application for Determination of Moral Character;

(3) Comply with the rules adopted by the Board of Trustees relating to the State Bar Registered Legal Aid Attorney Program;

(4) Practice law under the supervision of an attorney who is employed by the eligible legal aid organization and who is a licensee in good standing of the State Bar of California;

(5) Abide by all of the laws and rules that govern licensees of the State Bar of California, including the Minimum Continuing Legal Education (MCLE) requirements;

(6) Satisfy in his or her first year of practice under this rule all of the MCLE requirements, including ethics education, that licensees of the State Bar of California must complete every three years and, thereafter, satisfy the MCLE requirements for the registered legal aid attorney's compliance group as set forth in State Bar Rules 2.70 and 2.71. If the registered legal aid attorney's compliance group is required to report in less than thirty-six months, the MCLE requirements will be reduced proportionally; and

(7) Not have taken and failed the California bar examination within five years immediately preceding initial application to register under this rule.

*(Subd (c) amended and renumbered effective March 1, 2019; adopted as subd (b) effective November 15, 2004; previously relettered effective January 1, 2007; previously amended effective January 1, 2019.)*

### **(d) Application**

The attorney must comply with the following registration requirements:

- (1) Register as a legal aid attorney; submit a separate application for each eligible legal aid organization; file an Application for Determination of Moral Character with the State Bar of California; and comply with Rules of Court, rule 9.9.5, governing attorney fingerprinting;
- (2) Submit to the State Bar of California a declaration signed by the attorney agreeing that he or she will be subject to the disciplinary authority of the Supreme Court of California and the State Bar of California and attesting that he or she will not practice law in California other than

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under supervision of an attorney at an eligible legal aid organization a during the time he or she practices law as a registered legal aid attorney in California; and

(3) Submit to the State Bar of California a declaration signed by a qualifying supervisor on behalf of the from each eligible legal aid organization in California. The declaration must attesting:

(i) that the applicant will work, with or without pay, as an attorney for the organization;

(ii) that the applicant will be supervised as specified in this rule;

(iii) that the eligible legal aid organization and the supervising attorney assume professional responsibility for any work performed by the applicant under this rule;

(iv) that the organization will notify the State Bar of California within 30 days of the cessation of the applicant's employment with that employer in California; and

(v) that the person signing the declaration believes, to the best of his or her knowledge after reasonable inquiry, that the applicant qualifies for registration under this rule and is an individual of good moral character.

*(Subd (d) amended effective March 1, 2019; adopted as subd (c) effective November 15, 2004; previously relettered effective January 1, 2007.)*

### **(e) Duration of practice**

A registered legal aid attorney must renew his or her registration annually and may practice for no more than a total of five years under this rule.

*(Subd (e) amended effective March 1, 2019; adopted as subd (d) effective November 15, 2004; previously relettered effective January 1, 2007.)*

### **(f) Application and registration fees**

The State Bar of California may set appropriate application fees and initial and annual registration fees to be paid by registered legal aid attorneys.

*(Subd (f) amended effective March 1, 2019; adopted as subd (e) effective November 15, 2004; previously amended and relettered effective January 1, 2007.)*

### **(g) State Bar Registered Legal Aid Attorney Program**

The State Bar may establish and administer a program for registering California legal aid attorneys under rules adopted by the Board of Trustees of the State Bar.

*(Subd (g) amended effective March 1, 2019; adopted as subd (f) effective November 15, 2004; previously relettered effective January 1, 2007; previously amended effective January 1, 2019.)*

### **(h) Supervision**

To meet the requirements of this rule, an attorney supervising a registered legal aid attorney:

(1) Must have practiced law as a full-time occupation for at least four years in any United States jurisdiction;

(2) Must have actively practiced law in California for at least two years immediately preceding the time of supervision and be a licensee in good standing of the State Bar of California;

(3) Must assume professional responsibility for any work that the registered legal aid attorney performs under the supervising attorney's supervision;

(4) Must assist, counsel, and provide direct supervision of the registered legal aid attorney in the activities authorized by this rule, approve in writing any appearance in court, deposition, arbitration or any proceeding by the registered legal aid attorney, and review such activities with the supervised registered legal aid attorney, to the extent required for the protection of the client or customer;

(5) Must read, approve, and personally sign any pleadings, briefs, or other similar documents prepared by the registered legal aid attorney before their filing, and must read and approve any documents prepared by the registered legal aid attorney before their submission for execution; and

(6) May, in his or her absence, designate another attorney meeting the requirements of (1)

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through (5) to provide the supervision required under this rule.

*(Subd (h) amended and renumbered effective March 1, 2019; adopted as subd (g) effective November 15, 2004; previously relettered effective January 1, 2007; previously amended effective January 1, 2019.)*

### **(i) Inherent power of Supreme Court**

Nothing in this rule may be construed as affecting the power of the Supreme Court of California to exercise its inherent jurisdiction over the practice of law in California.

*(Subd (i) amended and relettered effective January 1, 2007; adopted as subd (h) effective November 15, 2004.)*

### **(j) Effect of rule on multijurisdictional practice**

Nothing in this rule limits the scope of activities permissible under existing law by attorneys who are not licensees of the State Bar of California.

*(Subd (j) amended effective January 1, 2019; adopted as subd (i) effective November 15, 2004; previously relettered effective January 1, 2007.)*

*Rule 9.45 amended effective March 1, 2019; adopted as rule 964 by the Supreme Court effective November 15, 2004; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2019.*

## **Rule 9.46 Registered In-House Counsel**

### **(a) Definitions**

The following definitions apply to terms used in this rule:

(1) “Qualifying institution” means a corporation, a partnership, an association, or other legal entity, including its subsidiaries and organizational affiliates, which has an office located in California. Neither a governmental entity nor an entity that provides legal services to others can be a qualifying institution for purposes of this rule. A qualifying institution must:

(A) Employ at least 5 full time employees;  
or

(B) Employ in California an attorney who is an active licensee in good standing of the State Bar of California.

(2) “Active licensee in good standing of the bar of a United States state, jurisdiction, possession, territory, or dependency” means an attorney who:

(A) Is a licensee in good standing of the entity governing the practice of law in each jurisdiction in which the attorney is licensed to practice law, who has not been disbarred, has not resigned with charges pending, or is not suspended from practicing law for disciplinary misconduct in any other jurisdiction; and

(B) Remains an active licensee in good standing of the entity governing the practice of law in at least one United States state, jurisdiction, possession, territory, or dependency, other than California, while practicing law as registered in-house counsel in California.

*(Subd (a) amended effective March 1, 2019; adopted as subd (j) effective November 15, 2004; previously relettered effective January 1, 2007; previously amended effective January 1, 2019.)*

### **(b) Scope of practice**

Subject to all applicable rules, regulations, and statutes, an attorney practicing law under this rule is:

(1) Permitted to provide legal services in California only to the qualifying institution that employs him or her;

(2) Permitted to provide pro bono legal services under supervision of a California attorney for either eligible legal aid organizations as defined by Rules of Court, rule 9.45(a)(1), or the qualifying institution that employs him or her;

(3) Not permitted to make court appearances in California state courts or to engage in any other activities for which pro hac vice admission is required if they are performed in California by an attorney who is not a licensee of the State Bar of California; and

(4) Not permitted to provide personal or individual representation to any customers,

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shareholders, owners, partners, officers, employees, servants, or agents of the qualifying institution, except as described in subdivision (b)(2).

*(Subd (b) amended effective March 1, 2019; adopted as subd (a) effective November 15, 2004; previously amended and relettered effective January 1, 2007; previously amended effective January 1, 2019.)*

### (c) Requirements

For an attorney to practice law under this rule, the attorney must:

- (1) Be an active licensee in good standing of the bar of a United States state, jurisdiction, possession, territory, or dependency;
- (2) Meet all of the requirements for admission to the State Bar of California, except that the attorney:
  - (A) Need not take the California bar examination or the Multistate Professional Responsibility Examination; and
  - (B) May practice law while awaiting the result of his or her Application for Determination of Moral Character;
- (3) Comply with the rules adopted by the Board of Trustees relating to the State Bar Registered In-House Counsel Program;
- (4) Practice law exclusively for a single qualifying institution, except that, while practicing under this rule, the attorney may provide pro bono services through eligible legal aid organizations;
- (5) Abide by all of the laws and rules that govern licensees of the State Bar of California, including the Minimum Continuing Legal Education (MCLE) requirements;
- (6) Satisfy in his or her first year of practice under this rule all of the MCLE requirements, including ethics education, that licensees of the State Bar of California must complete every three years and, thereafter, satisfy the MCLE requirements for the registered in-house counsel's compliance group as set forth in State Bar Rules 2.70 and 2.71. If the registered in-house

counsel's compliance group is required to report in less than thirty-six months, the MCLE requirement will be reduced proportionally; and

- (7) Reside in California.

*(Subd (c) amended effective March 1, 2019; adopted as subd (b) effective November 15, 2004; previously relettered effective January 1, 2007; previously amended effective January 1, 2019.)*

### (d) Application

The attorney must comply with the following registration requirements:

- (1) Register as an in-house counsel; submit an application for the qualifying institution; file an Application for Determination of Moral Character with the State Bar of California; and comply with Rules of Court, rule 9.9.5. governing attorney fingerprinting;
- (2) Submit a supplemental form identifying the eligible legal aid organizations as defined by Rules of Court, rule 9.45(a)(1) and the supervising attorney, through which an in-house counsel intends to provide *pro bono* services, if applicable;
- (3) Submit to the State Bar of California a declaration signed by the attorney agreeing that he or she will be subject to the disciplinary authority of the Supreme Court of California and the State Bar of California and attesting that he or she will not practice law in California other than on behalf of the qualifying institution during the time he or she is registered in-house counsel in California, except if supervised, a registered in-house counsel may provide pro bono services through eligible legal aid organization; and
- (4) Submit to the State Bar of California a declaration signed by an officer, a director, or a general counsel of the applicant's employer, on behalf of the applicant's employer. The declaration must attest:
  - (i) that the applicant is employed as an attorney for the employer;
  - (ii) that the nature of the employment conforms to the requirements of this rule;



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(iii) that the employer will notify the State Bar of California within 30 days of the cessation of the applicant's employment in California; and

(iv) that the person signing the declaration believes, to the best of his or her knowledge after reasonable inquiry, that the applicant qualifies for registration under this rule and is an individual of good moral character.

*(Subd (d) amended effective March 1, 2019; adopted as subd (c) effective November 15, 2004; previously relettered effective January 1, 2007.)*

### **(e) Duration of practice**

A registered in-house counsel must renew his or her registration annually. There is no limitation on the number of years in-house counsel may register under this rule. Registered in-house counsel may practice law under this rule only for as long as he or she remains employed by the same qualifying institution that provided the declaration in support of his or her application. If an attorney practicing law as registered in-house counsel leaves the employment of his or her employer or changes employers, he or she must notify the State Bar of California within 30 days. If an attorney wishes to practice law under this rule for a new employer, he or she must first register as in-house counsel for that employer.

*(Subd (e) amended and relettered effective January 1, 2007; adopted as subd (d) effective November 15, 2004.)*

### **(f) Application and registration fees**

The State Bar of California may set appropriate application fees and initial and annual registration fees to be paid by registered in-house counsel.

*(Subd (f) relettered effective March 1, 2019; adopted as subd (f) effective November 15, 2004; previously amended and relettered as subd (g) effective January 1, 2007.)*

### **(g) State Bar Registered In-House Counsel Program**

The State Bar must establish and administer a program for registering California in-house counsel under rules adopted by the Board of Trustees.

*(Subd (g) relettered effective March 1, 2019; adopted as subd (g) effective November 15, 2004; previously amended and relettered as subd (h) effective January 1, 2007; previously amended effective January 1, 2019.)*

### **(h) Inherent power of Supreme Court**

Nothing in this rule may be construed as affecting the power of the Supreme Court of California to exercise its inherent jurisdiction over the practice of law in California.

*(Subd (h) relettered effective March 1, 2019; adopted as subd (h) effective November 15, 2004; previously amended and relettered as subd (i) effective January 1, 2007.)*

### **(i) Effect of rule on multijurisdictional practice**

Nothing in this rule limits the scope of activities permissible under existing law by attorneys who are not licensees of the State Bar of California.

*(Subd (i) relettered effective March 1, 2019; adopted as subd (i) effective November 15, 2004; previously relettered as subd (j) effective January 1, 2007; previously amended effective January 1, 2019.)*

*Rule 9.46 amended effective March 1, 2019; adopted as rule 965 by the Supreme Court effective November 15, 2004; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2019.*

## **Rule 9.47 Attorneys Practicing Law Temporarily in California as Part of Litigation**

### **(a) Definitions**

The following definitions apply to the terms used in this rule:

- (1) "A formal legal proceeding" means litigation, arbitration, mediation, or a legal action before an administrative decision-maker.
- (2) "Authorized to appear" means the attorney is permitted to appear in the proceeding by the rules of the jurisdiction in which the formal legal proceeding is taking place or will be taking place.
- (3) "Active attorney in good standing of the bar of a United States state, jurisdiction, possession,

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territory, or dependency” means an attorney who meets all of the following criteria:

- (A) Is a licensee in good standing of the entity governing the practice of law in each jurisdiction in which the attorney is licensed to practice law;
- (B) Remains an active licensee in good standing of the entity governing the practice of law in at least one United States state, jurisdiction, possession, territory, or dependency while practicing law under this rule; and
- (C) Has not been disbarred, has not resigned with charges pending, or is not suspended from practicing law in any other jurisdiction.

*(Subd (a) amended effective January 1, 2019; adopted as subd (g) effective November 15, 2004; previously relettered effective January 1, 2007.)*

### **(b) Requirements**

For an attorney to practice law under this rule, the attorney must:

- (1) Maintain an office in a United States jurisdiction other than California and in which the attorney is licensed to practice law;
- (2) Already be retained by a client in the matter for which the attorney is providing legal services in California, except that the attorney may provide legal advice to a potential client, at the potential client’s request, to assist the client in deciding whether to retain the attorney;
- (3) Indicate on any Web site or other advertisement that is accessible in California either that the attorney is not a licensee of the State Bar of California or that the attorney is admitted to practice law only in the states listed; and
- (4) Be an active attorney in good standing of the bar of a United States state, jurisdiction, possession, territory, or dependency.

*(Subd (b) amended effective January 1, 2019; adopted as subd (a) effective November 15, 2004; previously relettered effective January 1, 2007.)*

### **(c) Permissible activities**

An attorney meeting the requirements of this rule, who complies with all applicable rules, regulations, and statutes, is not engaging in the unauthorized practice of law in California if the attorney’s services are part of:

- (1) A formal legal proceeding that is pending in another jurisdiction and in which the attorney is authorized to appear;
- (2) A formal legal proceeding that is anticipated but is not yet pending in California and in which the attorney reasonably expects to be authorized to appear;
- (3) A formal legal proceeding that is anticipated but is not yet pending in another jurisdiction and in which the attorney reasonably expects to be authorized to appear; or
- (4) A formal legal proceeding that is anticipated or pending and in which the attorney’s supervisor is authorized to appear or reasonably expects to be authorized to appear.

The attorney whose anticipated authorization to appear in a formal legal proceeding serves as the basis for practice under this rule must seek that authorization promptly after it becomes possible to do so. Failure to seek that authorization promptly, or denial of that authorization, ends eligibility to practice under this rule.

*(Subd (c) relettered effective January 1, 2007; adopted as subd (b) effective November 15, 2004.)*

### **(d) Restrictions**

To qualify to practice law in California under this rule, an attorney must not:

- (1) Hold out to the public or otherwise represent that he or she is admitted to practice law in California;
- (2) Establish or maintain a resident office or other systematic or continuous presence in California for the practice of law;
- (3) Be a resident of California;
- (4) Be regularly employed in California;

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(5) Regularly engage in substantial business or professional activities in California; or

(6) Have been disbarred, have resigned with charges pending, or be suspended from practicing law in any other jurisdiction.

*(Subd (d) relettered effective January 1, 2007; adopted as subd (c) effective November 15, 2004.)*

### **(e) Conditions**

By practicing law in California under this rule, an attorney agrees that he or she is providing legal services in California subject to:

- (1) The jurisdiction of the State Bar of California;
- (2) The jurisdiction of the courts of this state to the same extent as is a licensee of the State Bar of California; and
- (3) The laws of the State of California relating to the practice of law, the State Bar Rules of Professional Conduct, the rules and regulations of the State Bar of California, and these rules.

*(Subd (e) amended effective January 1, 2019; adopted as subd (d) effective November 15, 2004; previously relettered effective January 1, 2007.)*

### **(f) Inherent power of Supreme Court**

Nothing in this rule may be construed as affecting the power of the Supreme Court of California to exercise its inherent jurisdiction over the practice of law in California.

*(Subd (f) amended and relettered effective January 1, 2007; adopted as subd (e) effective November 15, 2004.)*

### **(g) Effect of rule on multijurisdictional practice**

Nothing in this rule limits the scope of activities permissible under existing law by attorneys who are not licensees of the State Bar of California.

*(Subd (g) amended effective January 1, 2019; adopted as subd (f) effective November 15, 2004; previously relettered effective January 1, 2007.)*

*Rule 9.47 amended effective January 1, 2019; adopted as rule 966 by the Supreme Court effective November*

*15, 2004; previously amended and renumbered effective January 1, 2007.*

## **Rule 9.48 Nonlitigating Attorneys Temporarily in California to Provide Legal Services**

### **(a) Definitions**

The following definitions apply to terms used in this rule:

(1) “A transaction or other nonlitigation matter” includes any legal matter other than litigation, arbitration, mediation, or a legal action before an administrative decision-maker.

(2) “Active attorney in good standing of the bar of a United States state, jurisdiction, possession, territory, or dependency” means an attorney who meets all of the following criteria:

(A) Is a licensee in good standing of the entity governing the practice of law in each jurisdiction in which the attorney is licensed to practice law;

(B) Remains an active attorney in good standing of the entity governing the practice of law in at least one United States state, jurisdiction, possession, territory, or dependency other than California while practicing law under this rule; and

(C) Has not been disbarred, has not resigned with charges pending, or is not suspended from practicing law in any other jurisdiction.

*(Subd (a) amended effective January 1, 2019; adopted as subd (h) effective November 15, 2004; previously relettered effective January 1, 2007.)*

### **(b) Requirements**

For an attorney to practice law under this rule, the attorney must:

(1) Maintain an office in a United States jurisdiction other than California and in which the attorney is licensed to practice law;

(2) Already be retained by a client in the matter for which the attorney is providing legal services in California, except that the attorney may provide

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legal advice to a potential client, at the potential client's request, to assist the client in deciding whether to retain the attorney;

(3) Indicate on any Web site or other advertisement that is accessible in California either that the attorney is not a licensee of the State Bar of California or that the attorney is admitted to practice law only in the states listed; and

(4) Be an active attorney in good standing of the bar of a United States state, jurisdiction, possession, territory, or dependency.

*(Subd (b) amended effective January 1, 2019; adopted as subd (a) effective November 15, 2004; previously relettered effective January 1, 2007.)*

### **(c) Permissible activities**

An attorney who meets the requirements of this rule and who complies with all applicable rules, regulations, and statutes is not engaging in the unauthorized practice of law in California if the attorney:

(1) Provides legal assistance or legal advice in California to a client concerning a transaction or other nonlitigation matter, a material aspect of which is taking place in a jurisdiction other than California and in which the attorney is licensed to provide legal services;

(2) Provides legal assistance or legal advice in California on an issue of federal law or of the law of a jurisdiction other than California to attorneys licensed to practice law in California; or

(3) Is an employee of a client and provides legal assistance or legal advice in California to the client or to the client's subsidiaries or organizational affiliates.

*(Subd (c) relettered effective January 1, 2007; adopted as subd (b) effective November 15, 2004.)*

### **(d) Restrictions**

To qualify to practice law in California under this rule, an attorney must not:

(1) Hold out to the public or otherwise represent that he or she is admitted to practice law in California;

(2) Establish or maintain a resident office or other systematic or continuous presence in California for the practice of law;

(3) Be a resident of California;

(4) Be regularly employed in California;

(5) Regularly engage in substantial business or professional activities in California; or

(6) Have been disbarred, have resigned with charges pending, or be suspended from practicing law in any other jurisdiction.

*(Subd (d) amended and relettered effective January 1, 2007; adopted as subd (c) effective November 15, 2004.)*

### **(e) Conditions**

By practicing law in California under this rule, an attorney agrees that he or she is providing legal services in California subject to:

(1) The jurisdiction of the State Bar of California;

(2) The jurisdiction of the courts of this state to the same extent as is a licensee of the State Bar of California; and

(3) The laws of the State of California relating to the practice of law, the State Bar Rules of Professional Conduct, the rules and regulations of the State Bar of California, and these rules.

*(Subd (e) amended and relettered effective January 1, 2019; adopted as subd (d) effective November 15, 2004; previously amended and relettered effective January 1, 2007.)*

### **(f) Scope of practice**

An attorney is permitted by this rule to provide legal assistance or legal services concerning only a transaction or other nonlitigation matter.

*(Subd (f) relettered effective January 1, 2007; adopted as subd (e) effective November 15, 2004.)*

### **(g) Inherent power of Supreme Court**

Nothing in this rule may be construed as affecting the power of the Supreme Court of California to exercise

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its inherent jurisdiction over the practice of law in California.

*(Subd (g) amended and relettered effective January 1, 2007; adopted as subd (f) effective November 15, 2004.)*

### **(h) Effect of rule on multijurisdictional practice**

Nothing in this rule limits the scope of activities permissible under existing law by attorneys who are not licensees of the State Bar of California.

*(Subd (h) amended effective January 1, 2019; adopted as subd (g) effective November 15, 2004; previously relettered effective January 1, 2007.)*

*Rule 9.48 amended effective January 1, 2019; adopted as rule 967 by the Supreme Court effective November 15, 2004; previously amended and renumbered effective January 1, 2007.*

### **Rule 9.49 Provisional Licensure of 2020 Law School Graduates**

#### **(a) State Bar Provisional Licensure Program**

(1) The State Bar shall administer a program for provisionally licensing eligible 2020 Law School Graduates through December 31, 2022. The program shall be referred to as the “Provisional Licensure Program.”

(2) The Provisional Licensure Program shall terminate on December 31, 2022, unless the California Supreme Court extends that date.

(3) Upon termination of the Provisional Licensure Program, no one who was provisionally licensed pursuant to this rule shall be permitted to continue to practice as a Provisionally Licensed Lawyer, nor shall they represent that they remain provisionally licensed or are otherwise authorized to practice law in the State of California unless they have been admitted to the practice of law in California after meeting all criteria for admission including passage of the California Bar Examination, or are otherwise authorized to practice law in this state other than under this rule. The temporary authorization to practice under supervision under the Provisional Licensure Program does not confer either a plenary license or any vested or implied right to be licensed.

#### **(b) Definitions**

(1) A “2020 Law School Graduate” means a person who became eligible to sit for the California Bar Examination under Business and Professions Code sections 6060 and 6061 between December 1, 2019 and December 31, 2020, either by graduating from a qualifying law school with a juris doctor (J.D.) or master of laws (LLM) degree during that time period, or by otherwise meeting the legal education requirements of Business and Professions Code sections 6060 and 6061 during that time period.

(2) For purposes of this rule, a “Provisionally Licensed Lawyer” means a 2020 Law School Graduate who meets the eligibility criteria of this rule and is granted provisional licensure by the State Bar.

(3) “Supervising Lawyer” means a lawyer who meets the eligibility criteria of this rule and who supervises one or more Provisionally Licensed Lawyers.

(4) “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 governmental organization, or of another organization as defined by rule 1.01 of the Rules of Professional Conduct and the commentary thereto.

#### **(c) Application requirements**

(1) To participate in the Provisional Licensure Program, an applicant must complete the following application requirements no later than June 1, 2022:

(A) Submit an Application for Provisional Licensure with the State Bar, along with a fee of \$75, or \$50 if the employer paying the fee receives State Bar Legal Services Trust Fund grants and is a qualified legal services project or qualified support center as defined by statute. There shall be no fee for applicants whose sole use of the Provisional License will be in an unpaid volunteer capacity under the direction of the Supervising Lawyer;

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(B) Submit to the State Bar a declaration signed by the applicant agreeing that the applicant will be subject to the disciplinary authority of the Supreme Court of California and the State Bar with respect to the laws of the State of California and governing the conduct of lawyers, and attesting that the applicant will not practice California law other than under the supervision of a Supervising Lawyer during the time the applicant is provisionally licensed under this rule; and attesting that the applicant will not practice law in a jurisdiction where to do so would be in violation of laws of the profession in that jurisdiction; and

(C) Submit to the State Bar a declaration signed by a Supervising Lawyer who meets the requirements of this rule attesting that the applicant is employed by or volunteers at, or has a conditional offer to be employed by or volunteer with the firm where the Supervising Lawyer works and that the firm has an office located in California; that the nature of the employment conforms with the requirements of this rule; whether the employment is paid or unpaid; and that the Supervising Lawyer meets the eligibility requirements of and will comply with this rule. If an applicant works or volunteers for more than one firm concurrently as a Provisionally Licensed Lawyer, the applicant shall have a Supervising Lawyer at each firm and shall submit a declaration from each Supervising Lawyer.

(2) An Application for Provisional Licensure may be denied if:

(A) An applicant fails to comply with eligibility or application requirements;

(B) In connection with the Application for Provisional Licensure, an applicant makes a statement of material fact that the applicant knows to be false or makes the statement with reckless disregard as to its truth or falsity; or

(C) In connection with the Application for Provisional Licensure, an applicant fails to disclose a fact necessary to correct a statement known by the applicant 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) or rule 1.6 of the California Rules of Professional Conduct.

### **(d) Eligibility requirements**

To qualify as a Provisionally Licensed Lawyer under this rule, the applicant must:

(1) Meet all of the requirements for admission to the State Bar with the following exceptions:

(A) The applicant need not have sat for or passed the California Bar Examination;

(B) The applicant need not have obtained a positive moral character determination, so long as the applicant submitted a complete Application for Determination of Moral Character to the State Bar prior to submission of an Application for Provisional Licensure and that application has not resulted in issuance of an adverse moral character determination by the State Bar; and

(C) The applicant need not have sat for or passed the Multistate Professional Responsibility Exam prior to submission of an Application for Provisional Licensure if the applicant attests they will complete the legal ethics components of the New Attorney Training, described under (e)(1) of this rule, within the first 30 days of licensure as a Provisionally Licensed Attorney. If the legal ethics components of the New Attorney Training are not made available to the applicant at the time of licensure, the 30 days shall run from the first day the training components are made available. The exemption set forth in (e)(1) of this rule does not apply to Provisionally Licensed Lawyers who must take the legal ethics components in lieu of passage of the MPRE.

(2) Comply with any rules or guidelines adopted by the State Bar relating to the State Bar's Provisional Licensure Program;

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(3) Be employed by or volunteering with, or have a conditional offer of employment from or to volunteer with a firm that has an office located in California.; and

(4) Practice law under a Supervising Lawyer who is an active licensee in good standing of the State Bar or is a current judge of a court of record within the California judicial branch, who satisfies the requirements for serving as a Supervising Lawyer under this rule.

### **(e) Responsibilities of Provisionally Licensed Lawyers**

Provisionally Licensed Lawyers must comply with all of the following requirements. Failure to comply with these requirements shall result in immediate termination from the Provisional Licensure Program:

(1) Complete the State Bar New Attorney Training program, as described in State Bar Rule 2.53, during the first 12 months of licensure as a Provisionally Licensed Lawyer, unless they would otherwise be exempt from this requirement under the State Bar Rules if they were admitted to the State Bar as a lawyer;

(2) Expressly refer to themselves orally, including but not limited to, in conversations with clients or potential clients, and in writing, including but not limited to, in court pleadings or other papers filed in any court or tribunal, on letterhead, business cards, advertising, and signature blocks, as a Provisionally Licensed Lawyer and/or participant in the State Bar's Provisional Licensure Program, and not describe themselves as a fully-licensed lawyer, or imply in any way orally or in writing that they are a fully-licensed lawyer;

(3) Include on every document the Provisionally Licensed Lawyer files in court or with any other tribunal the following information about the Supervising Lawyer: name, mailing address, telephone number, and State Bar number;

(4) Maintain with the State Bar a current e-mail address and an address of record that is the current California office address of the Provisionally Licensed Lawyer's firm;

(5) Report to the State Bar immediately upon termination of supervision by the Supervising Lawyer for any reason;

(6) Report to the State Bar any information required of lawyers by the State Bar Act, such as that required by Business and Professions Code sections 6068(o) and 6068.8(c), or by other legal authority;

(7) If reassigned to a new Supervising Lawyer for the same firm, submit a declaration from the new Supervising Lawyer in compliance with (c)(1)(C) and obtain State Bar approval before the new Supervising Lawyer assumes supervisory responsibility over the Provisionally Licensed Lawyer.

(8) Submit a new Application for Provisional Licensure and obtain State Bar approval before beginning employment with a new firm;

(9) Abide by the laws of the State of California relating to the practice of law, the California Rules of Professional Conduct, and the rules and regulations of the State Bar.

### **(f) Prohibition on accessing client trust accounts**

While practicing law under this rule, the Provisionally Licensed Lawyer must not open, maintain, withdraw funds from, deposit funds into, or attempt to open, maintain, or withdraw from or deposit into any client trust account.

### **(g) Permitted activities**

Subject to all applicable rules, regulations, and statutes, a Provisionally Licensed Lawyer may provide legal services to a client, including but not limited to appearing before a court or administrative tribunal, drafting legal documents, contracts or transactional documents, and pleadings, engaging in negotiations and settlement discussions, and providing other legal advice and counsel, provided that the work is performed under the supervision of a Supervising Lawyer.

### **(h) Communications and work product**

For purposes of applying the privileges and doctrines relating to lawyer-client communications and lawyer work product, the Provisionally Licensed Lawyer shall be considered a subordinate of the Supervising Lawyer

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and thus communications and work product of the Provisionally Licensed Lawyer shall qualify for protection under such privileges and doctrines on the same basis.

### (i) Supervision

(1) To meet the requirements of this rule, a Supervising Lawyer must:

(A) Work for the same firm by which the Provisionally Licensed Lawyer is or will be employed or at which the Provisionally Licensed Lawyer is or will be volunteering;

(B) Have practiced law for at least four years in any United States jurisdiction and have actively practiced law in California or taught law at a California Law School for at least two years immediately preceding the time of supervision, and be a licensee in good standing of the State Bar of California or be a current judge of a court of record within the California judicial branch;

(C) Exercise competence in any area of legal service authorized under California law in which the Supervising Lawyer is supervising the Provisionally Licensed Lawyer, consistent with the requirements of rule 1.1 of the Rules of Professional Conduct;

(D) With the exception of a current judge of a court of record within the California judicial branch, not be an inactive licensee in California, or ineligible to practice, actually suspended, under a stayed suspension order, or have resigned or been disbarred in any jurisdiction;

(E) Disclose in writing, via email or other means, at the outset of representation or before the Provisionally Licensed Lawyer begins to provide legal services, that a Provisionally Licensed Lawyer and/or participant in the State Bar's Provisional Licensure Program may provide legal services related to the client's matter;

(F) Be prepared to assume personal representation of the Provisionally Licensed Lawyer's clients if the Provisionally Licensed Lawyer becomes ineligible to practice under

this rule or is otherwise unavailable to continue the representation;

(G) Agree to assume professional responsibility for any work that the Provisionally Licensed Lawyer performs under this rule; and

(H) Agree to notify the State Bar of California, in writing, within 10 calendar days if the Supervising Lawyer becomes aware or reasonably should have become aware that:

i. The Provisionally Licensed Lawyer has terminated employment;

ii. The Provisionally Licensed Lawyer is no longer eligible for participation in the Provisional Licensure Program;

iii. The Supervising Lawyer no longer meets the requirements of this rule;

iv. The Supervising Lawyer is no longer supervising the Provisionally Licensed Lawyer; or

v. The Supervising Lawyer has changed offices or email addresses.

(2) A Supervising Lawyer may delegate some or all day-to-day supervisory responsibilities or supervisory responsibilities related to certain practice areas or assignments to another lawyer in the same organization who otherwise meets the requirements for Supervising Lawyers, without the need for those additional supervisors to file a declaration with the State Bar. The Supervising Lawyer's obligations under (i)(1)(G) are not affected by any such delegation.

(3) A Supervising Lawyer who is a current judge of a court of record within the California judicial branch and lawyers to whom the judge delegates day-to-day supervisory responsibilities pursuant to (2) shall not be subject to the requirements of (i)(D) through (G).

### (j) Termination of Provisional Licensure

(1) A Provisionally Licensed Lawyer's provisional license terminates:



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(A) Upon determination by the State Bar Court that the Provisionally Licensed Lawyer is culpable of conduct that would result in discipline if the Provisionally Licensed Lawyer were fully licensed by the State Bar of California, or upon imposition of any sanction for misconduct by any court or tribunal, or any professional or occupational licensing authority, including administrative or stayed suspension against the Provisionally Licensed Lawyer;

(B) Upon imposition of any discipline for misconduct by the State Bar of California, the Supreme Court, or any other bar, including administrative or stayed suspension, against the Supervising Lawyer, unless the Provisionally Licensed Lawyer has, within 15 calendar days of imposition of such discipline, obtained approval from the State Bar for a new Supervising Lawyer as required by this rule;

(C) Upon initial issuance of an adverse moral character determination by the State Bar. If the Provisionally Licensed Lawyer requests a review of the adverse determination under rule 4.47.1 of the Rules of the State Bar or appeals the adverse moral character determination of the Committee under rule 4.47 of the Rules of the State Bar, in lieu of termination the provisional license shall be suspended until final resolution of the review or appeal.

(D) Upon admission to the State Bar of California;

(E) Upon cessation of the Provisional Licensure Program;

(F) Upon request of the Provisionally Licensed Lawyer;

(G) For failure to complete the State Bar New Attorney Training Program consistent with (e)(1)(A) of this rule or failure to complete the legal ethics components under (d)(1)(C) of this rule;

(H) For failure to pay any fees required by the State Bar; or

(I) If the Provisionally Licensed Lawyer no longer meets the requirements of this rule.

(2) A notice of termination is effective ten calendar days from the date of receipt. Receipt is deemed to be five calendar days from the date of mailing to a California address or emailing to the provisional licensee's email address of record; ten calendar days from the date of mailing to an address elsewhere in the United States; and twenty calendar days from the date of mailing to an address outside the United States. Alternatively, receipt is when the State Bar delivers a document physically by personal service or otherwise.

(3) A Provisionally Licensed Lawyer whose provisional licensure terminated upon request or upon imposition of discipline against the Supervising Lawyer may be reinstated if they meet all eligibility and application requirements of this rule.

### **(k) Public records**

State Bar records for Provisionally Licensed Lawyers, including office address and discipline records, are public to the same extent as State Bar records related to fully-licensed lawyers.

### **(l) Inherent power of Supreme Court**

Nothing in these rules may be construed as affecting the power of the Supreme Court to exercise its inherent jurisdiction over the practice of law in California.

*Rule 9.49 amended effective May 26, 2022; adopted effective November 17, 2020; previously amended February 1, 2021.*

### **Rule 9.49.1 Provisional Licensure with Pathway to Full Licensure for Certain Individuals**

#### **(a) Expansion of the Provisional Licensure Program**

The Provisional Licensure Program established pursuant to Rule 9.49 shall, no later than March 1, 2021, be expanded to include individuals who scored 1390 or higher on a California Bar Examination administered between July 2015 and February 2020, as determined by the first read score or final score, regardless of year of law school graduation or year satisfying the educational requirements to sit for the bar

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examination. The Provisional Licensure Program under this rule shall terminate on December 31, 2022, unless the California Supreme Court extends that date.

### **(b) Definitions**

(1) The definitions of “Supervising Lawyer” and “Firm” or “Law Firm” as set forth in rule 9.49(b) shall apply to this rule.

(2) For purposes of this rule, “Provisionally Licensed Lawyer” means an individual who:

(A) Scored between 1390 and 1439 on any California Bar Examination administered between July 2015 and February 2020, as determined by the first read score or final score, regardless of year of law school graduation or year satisfying the educational requirements to sit for the bar examination; and

(B) Meets the eligibility criteria under (d) and is granted provisional licensure by the State Bar.

(3) For purposes of this rule, “legal practice” means the provision of permitted legal services to clients in compliance with rule 9.49(f) and (g).

### **(c) Application requirements**

All of the application requirements of rule 9.49(c) apply to applicants for provisional licensure under this rule. An application for provisional licensure under this rule must be submitted to the State Bar no later than May 31, 2021. Applications shall not be accepted after that date.

### **(d) Eligibility requirements**

With the exception of (d)(1)(A), all eligibility requirements of rule 9.49(d) apply to applicants for provisional licensure under this rule. However, an applicant who has previously received an adverse moral character determination is ineligible to apply under this rule unless more than two years has elapsed from the date of the final determination or after some other time set by the State Bar, for good cause shown, at the time of its adverse determination, within the meaning of State Bar Rule 4.49.

### **(e) Responsibilities of Provisionally Licensed Lawyer**

All requirements of rule 9.49(e) and (f) apply to Provisionally Licensed Lawyers under this rule with the exception that the State Bar New Attorney Training program described in rule 9.49(e)(1) must be completed in order for a Provisionally Licensed Lawyer to qualify for admission to the State Bar of California under this rule.

### **(f) Permitted activities**

All of the permitted activities set forth in rule 9.49(g) apply to Provisionally Licensed Lawyers under this rule.

### **(g) Communications and work product**

For purposes of applying the privileges and doctrines relating to lawyer-client communications and lawyer work product, the Provisionally Licensed Lawyer under this rule shall be considered a subordinate of the Supervising Lawyer and thus communications and work product of the Provisionally Licensed Lawyer shall qualify for protection under such privileges and doctrines on the same basis.

### **(h) Termination of Provisional Licensure**

The conditions for termination of a provisional license under rule 9.49(j) apply to Provisionally Licensed Lawyers under this rule.

### **(i) Admission to the State Bar of California**

A Provisionally Licensed Lawyer, under this rule, shall be eligible for admission to the State Bar of California upon compliance with all of the following requirements.

(1) The Provisionally Licensed Lawyer shall complete 300 total hours of supervised legal practice in the Provisional Licensure Program:

(2) Provisionally Licensed Lawyers under rule 9.49 who also qualify for participation under this rule may receive credit for hours of supervised legal practice completed as a provisional licensee under rule 9.49 for purposes of meeting the hours requirement under (i)(1). Such individuals must comply with all of the application and eligibility requirements under this rule to qualify for admission to the State Bar of California.

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(3) The Provisionally Licensed Lawyer shall submit, in the format developed by the State Bar of California, a record of the hours of supervised legal practice completed under supervision of the Supervising Lawyer(s).

(4) The Provisionally Licensed Lawyer must complete the required total number of hours of supervised legal practice, satisfy all eligibility requirements for admission not met at the time of application to the program, have an active positive moral character determination, submit a satisfactory evaluation(s) pursuant to (j)(2), and submit all other documentation of completion in the format required by the State Bar by December 31, 2022 to qualify for admission to the State Bar.

(5) A Provisionally Licensed Lawyer who satisfies the requirements of (i)(4) but has a disciplinary matter pending with the Office of Chief Trial Counsel or the State Bar Court shall, prior to the date the Provisional Licensure Program terminates under (a) and (h), be permitted to continue practicing as a Provisionally Licensed Lawyer if all other requirements of this rule have been met. If the disciplinary matter is pending as of the date the program terminates, the Provisionally Licensed Lawyer shall be placed in an abeyance status until the matter is resolved, and shall not continue to practice as Provisionally Licensed Lawyer.

(A) If the complaint is resolved with no disciplinary action, before or after the termination of the Provisional Licensure Program under (a) and (h), the Provisionally Licensed Lawyer shall qualify for admission to the State Bar as long as all other requirements for admission remain current and satisfied.

(B) If the complaint is resolved with a determination that the Provisionally Licensed Lawyer is culpable of conduct that would result in discipline if the Provisionally Licensed Lawyer were fully licensed by the State Bar of California, the Provisionally Licensed Lawyer shall not qualify for admission to the State Bar under this program and shall be terminated from the Provisional Licensure Program.

(6) The Provisionally Licensed Lawyer must comply with all the eligibility requirements for certification to the California Supreme Court for admission to the practice of law under Business and Professions Code section 6060 and rule 4.15 of the Rules of the State Bar of California. A Provisionally Licensed Lawyer who satisfies the requirements of (i)(4) shall be deemed to meet the requirement of Business and Professions Code section 6060, subdivision (g).

### **(j) Supervision and evaluation of Provisionally Licensed Lawyer**

(1) In addition to the requirements under (j)(2), all of the eligibility requirements, duties and responsibilities of a Supervising Lawyer set forth under rule 9.49(i) apply to Supervising Lawyers under this rule.

(2) Each Supervising Lawyer shall provide an evaluation of the Provisionally Licensed Lawyer in the format developed by the State Bar of California. The evaluation shall include the following:

(A) Verification of the number of hours of supervised legal practice completed;

(B) A general description of the types of supervised legal practice performed by the Provisionally Licensed Lawyer;

(C) Whether, in the opinion of the Supervising Lawyer, based on the supervised legal practice performed during the program, the Provisionally Licensed Lawyer possesses the minimum competence expected of an entry level attorney; and

(D) Other criteria established by the State Bar.

(3) If a Supervising Lawyer cannot attest that a Provisionally Licensed Lawyer possesses the minimum competence of an entry level attorney, the Provisionally Licensed Lawyer may not be admitted to the State Bar of California under this program without additional hours of supervised legal practice sufficient to establish to the Supervising Lawyer that the Provisionally Licensed Lawyer possesses the minimum competence of an entry level attorney, and submission of a

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satisfactory evaluation by that Supervising Lawyer before the termination of the program.

*Rule 9.49.1 amended effective May 26, 2022; adopted effective February 1, 2021; previously amended March 17, 2021.*

### **DIVISION 6. JUDICIAL ETHICS OPINIONS**

#### **Rule 9.80 Committee on Judicial Ethics Opinions**

##### **(a) Purpose**

The Supreme Court has established the Committee on Judicial Ethics Opinions to provide judicial ethics advisory opinions and advice to judicial officers and candidates for judicial office.

##### **(b) Committee determinations**

In providing its opinions and advice, the committee acts independently of the Supreme Court, the Commission on Judicial Performance, and all other entities. The committee must rely on the California Code of Judicial Ethics, the decisions of the Supreme Court and of the Commission on Judicial Performance, and may rely on other relevant sources in its opinions and advice.

##### **(c) Membership**

The committee consists of twelve members appointed by the Supreme Court, including at least one justice from a court of appeal and one member who is a subordinate judicial officer employed full-time by a superior court. The remaining members must be justices of a court of appeal or judges of a superior court, active or retired. No more than a total of two retired justices or judges may serve on the committee at one time, except that if an active justice or judge retires during his or her term, he or she will be permitted to complete his or her term. A retired justice or judge may only serve so long as he or she is not an active licensee of the State Bar of California and is not engaged in privately compensated dispute resolution activities.

##### **(d) Terms**

(1) Except as provided in subdivision (d)(2), all full terms are for four years. Appointments to fill a vacancy will be for the balance of the term vacated. A member may apply to be reappointed by the

Supreme Court at the end of a four-year term and renewal of the term is not a presumption.

(2) To create staggered terms among the members of the committee, the Supreme Court appointed initial members of the committee as follows:

(A) Three members each to serve an initial term of five years. The court may reappoint these members to additional full terms.

(B) Three members each to serve an initial term of four years. The court may reappoint these members to additional full terms.

(C) Three members each to serve an initial term of three years. The court may reappoint these members to additional full terms.

(D) Three members each to serve an initial term of two years. The court may reappoint these members to additional full terms.

(3) Committee members may not simultaneously serve as members of the Commission on Judicial Performance or the California Judges Association's Judicial Ethics Committee. If a member of the committee accepts appointment to serve on one of these entities, that member will be deemed to have resigned from the committee and the Supreme Court will appoint a replacement.

*(Subd. (d) amended effective January 1, 2021; adopted effective July 1, 2009; previously amended effective January 1, 2016, and January 1, 2019.)*

##### **(e) Powers and duties**

The committee is authorized to provide ethics advice to judicial officers and candidates for judicial office, including formal written opinions, informal written opinions, and expedited written opinions. Specifically, the committee is authorized to:

(1) Issue formal written opinions, informal written opinions, and expedited written opinions on proper judicial conduct under the California Code of Judicial Ethics, the California Constitution, statutes, and any other authority deemed appropriate by the committee.

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(2) Make recommendations to the Supreme Court for amending the Code of Judicial Ethics or these rules;

(3) Make recommendations regarding appropriate subjects for judicial education programs; and

(4) Make other recommendations to the Supreme Court as deemed appropriate by the committee or as requested by the Court.

*(Subd. (e) amended effective January 1, 2021.)*

### **(f) Referrals to California Judges Association's Judicial Ethics Committee**

The committee may adopt a revocable policy of referring requests for expedited advice, with conditions and exceptions as approved by the committee, to the California Judges Association's Judicial Ethics Committee.

*(Subd. (f) amended effective January 1, 2021.)*

### **(g) Chair and vice-chair**

The Supreme Court will appoint a chair, and vice-chair from the members of the committee to serve a term of four years each. The chair and the vice-chair may be reappointed by the Supreme Court. When a member's term as chair or vice-chair ends and the member is not reappointed as chair or vice-chair, that member's committee membership term also ends unless the Supreme Court reappoints the member to the committee. The chair may call meetings as needed, and to otherwise coordinate the work of the committee.

*(Subd. (g) amended effective January 1, 2021; adopted effective July 1, 2009; previously amended effective January 1, 2016, and January 1, 2019.)*

### **(h) Confidentiality**

Communications to and from the committee are confidential except as described here. Encouraging judicial officers and candidates for judicial office to seek ethics opinions and advice from the committee will promote ethical conduct and the fair administration of justice. Establishing the confidentiality of committee proceedings and communications to and from the committee is critical to encourage judicial officers and candidates for judicial office to seek ethics opinions and advice from the committee. The necessity for preserving the confidentiality of these proceedings and communications to and from the committee outweighs

the necessity for disclosure in the interest of justice. Therefore, to promote ethical conduct by judicial officers and candidates for judicial office and to encourage them to seek ethics opinions and advice from the committee, the following confidentiality requirements, and exceptions, apply to proceedings and other matters under this rule:

(1) Notwithstanding any other provision of law, and with the exception of formal opinions, informal opinions, expedited opinions, and comments from the public on draft formal opinions posted on the committee's website, all opinions, inquiries, replies, circulated drafts, records, documents, writings, files, communications with its staff, work product of the committee or its staff, and deliberations and proceedings of the committee are confidential. All communications, written or verbal, from or to the person or entity requesting an opinion or advice are deemed to be official information within the meaning of the Evidence Code. In addition, all communications and documents regarding opinions or advice of the California Judges Association forwarded by the California Judges Association to the committee are deemed to be confidential information.

(2) Members of the committee and its staff may not disclose outside the committee and its staff any confidential information, including identifying information, obtained by the committee or its staff concerning an individual whose inquiry or conduct was the subject of any communication with the committee or its staff.

(3) A judicial officer or candidate for judicial office may waive confidentiality; any such waiver must be in writing. If the judicial officer or candidate making the request for an opinion or advice waives confidentiality or asserts reliance on an opinion or advice in judicial or attorney discipline proceedings, such opinion or advice no longer is confidential under these rules. Notwithstanding any waiver, committee deliberations and records are confidential.

*(Subd. (h) amended effective January 1, 2021; adopted effective January 1, 2019.)*

**(i) Opinion requests**

(1) The committee may issue formal written opinions, informal written opinions, or expedited written opinions on any subject it deems appropriate. Any person or entity may suggest to the committee, in writing, topics to be addressed in a formal written opinion.

(2) Only judicial officers and candidates for judicial office may request informal written opinions and expedited written opinions.

(3) A judicial officer or candidate for judicial office requesting a written opinion, formal or informal, must submit the request in writing, including by electronic mail. The request must be in a form approved by the committee and must describe the facts and discuss the issues presented in the request. The identity, organizational affiliation, and geographic location of persons requesting opinions are confidential.

(4) A judicial officer or candidate for judicial office requesting an expedited written opinion may communicate in person, in writing, including by electronic mail, or by telephone to committee staff or any member of the committee.

(5) A judicial officer or candidate for judicial office requesting an opinion or advice must disclose to the committee whether the issue that is the subject of the inquiry is also the subject of pending litigation involving the inquiring judicial officer or candidate or a pending Commission on Judicial Performance or State Bar disciplinary proceeding involving the inquiring judicial officer or candidate.

*(Subd. (i) amended effective January 1, 2021.)*

**(j) Consideration of requests**

(1) The committee will determine whether a request for an opinion should be resolved with a formal written opinion, an informal written opinion, an expedited written opinion or any combination or form of advice. The committee may decline to issue an opinion or advice.

(2) Eight members must vote affirmatively to adopt a formal written opinion. After the committee authorizes a formal written opinion and before it becomes final, it will be posted in draft form on the committee's website and made

available for public comment for at least 45 days, unless the committee in its discretion decides such an opinion should be issued in final form in less time or with no prior notice. Public comments may be posted on the website following the public comment period at the committee's discretion. After the public comment period has expired, eight members must vote affirmatively to publish the opinion in its original form, or to modify or withdraw the formal written opinion.

(3) Informal written opinions and expedited written opinions must be approved by vote of the committee members. The committee must adopt procedures concerning the number of votes required to issue an informal written opinion or expedited written opinions.

(4) The committee must adopt procedures concerning the handling and determination of requests for opinions or advice.

(5) The committee will inform the inquiring judicial officer or candidate for judicial office that he or she must disclose all relevant information and that any opinion or advice issued by the committee is based on the premise that the inquiring judicial officer or candidate has disclosed all relevant information.

(6) The committee may confer in person, in writing, including by electronic mail, by telephone, or by videoconference as often as needed to conduct committee business and resolve pending requests.

*(Subd (j) amended effective January 1, 2021; previously amended effective January 1, 2019.)*

**(k) Opinion distribution**

(1) The committee will, upon final approval of a formal written opinion, ensure distribution of the opinion, including to the person or entity who requested the opinion, all California judicial officers, and other interested persons.

(2) The committee's informal written opinions and expedited written opinions will, upon approval by the committee, be provided to the inquiring judicial officer or candidate for judicial office.

(3) The committee will post all formal written opinions on the committee's website. The

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committee may post its informal written opinions and expedited written opinions on the committee's website.

(4) The committee must maintain records of committee determinations and opinions at the committee's office.

*(Subd (k) amended effective January 1, 2021; previously amended effective January 1, 2019.)*

### **(l) Withdrawn, modified, and superseding opinions**

The committee may withdraw, modify, or supersede an opinion or advice at any time.

*(Subd. (l) amended effective January 1, 2021.)*

### **(m) Internal operating rules**

The committee must adopt procedures, subject to approval by the Supreme Court, to implement this rule.

*(Subd. (m) amended effective January 1, 2021.)*

### **(n) Website, e-mail address, and toll-free telephone number**

The committee must maintain a website, e-mail address, and toll-free telephone number.

*(Subd (n) amended effective January 1, 2021; previously amended effective January 1, 2019.)*

*Rule 9.80 amended effective January 1, 2021; adopted effective July 1, 2009; previously amended January 1, 2016, and January 1, 2019.*

## SELECTED STATUTES REGARDING DUTIES OF ATTORNEYS AND DISCIPLINE

**[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.]

### BUSINESS AND PROFESSIONS CODE

#### § 30 State Bar Licensees Furnish Social Security Number to State Bar

(a) (1) Notwithstanding any other law, any board, as defined in Section 22, the State Bar of California, and the Department of Real Estate shall, at the time of issuance of the license, require that the applicant provide its federal employer identification number, if the applicant is a partnership, or the applicant's social security number for all other applicants.

(2) (A) In accordance with Section 135.5, a board, as defined in Section 22, the State Bar of California, and the Department of Real Estate shall require either the individual taxpayer identification number or social security number if the applicant is an individual for a license or certificate, as defined in subparagraph (2) of subdivision (e), and for purposes of this subdivision.

(B) In implementing the requirements of subparagraph (A), a licensing board shall not require an individual to disclose either citizenship status or immigration status for purposes of licensure.

(C) A licensing board shall not deny licensure to an otherwise qualified and eligible individual based solely on the individual's citizenship status or immigration status.

(D) The Legislature finds and declares that the requirements of this subdivision are

consistent with subsection (d) of Section 1621 of Title 8 of the United States Code.

(b) A licensee failing to provide the federal employer identification number, or the individual taxpayer identification number or social security number shall be reported by the licensing board to the Franchise Tax Board. If the licensee fails to provide that information after notification pursuant to paragraph (1) of subdivision (b) of Section 19528 of the Revenue and Taxation Code, the licensee shall be subject to the penalty provided in paragraph (2) of subdivision (b) of Section 19528 of the Revenue and Taxation Code.

(c) In addition to the penalty specified in subdivision (b), a licensing board shall not process an application for an initial license unless the applicant provides its federal employer identification number, or individual taxpayer identification number or social security number where requested on the application.

(d) A licensing board shall, upon request of the Franchise Tax Board or the Employment Development Department, furnish to the board or the department, as applicable, the following information with respect to every licensee:

(1) Name.

(2) Address or addresses of record.

(3) Federal employer identification number if the licensee is a partnership, or the licensee's individual taxpayer identification number or social security number for all other licensees.

(4) Type of license.

(5) Effective date of license or a renewal.

(6) Expiration date of license.

(7) Whether license is active or inactive, if known.

(8) Whether license is new or a renewal.

(e) For the purposes of this section:

(1) "Licensee" means a person or entity, other than a corporation, authorized by a license, certificate, registration, or other means to engage



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- in a business or profession regulated by this code or referred to in Section 1000 or 3600.
- (2) "License" includes a certificate, registration, or any other authorization needed to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600.
- (3) "Licensing board" means any board, as defined in Section 22, the State Bar of California, and the Department of Real Estate.
- (f) The reports required under this section shall be filed on magnetic media or in other machine-readable form, according to standards furnished by the Franchise Tax Board or the Employment Development Department, as applicable.
- (g) Licensing boards shall provide to the Franchise Tax Board or the Employment Development Department the information required by this section at a time that the board or the department, as applicable, may require.
- (h) Notwithstanding Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, a federal employer identification number, individual taxpayer identification number, or social security number furnished pursuant to this section shall not be deemed to be a public record and shall not be open to the public for inspection.
- (i) A deputy, agent, clerk, officer, or employee of a licensing board described in subdivision (a), or any former officer or employee or other individual who, in the course of their employment or duty, has or has had access to the information required to be furnished under this section, shall not disclose or make known in any manner that information, except as provided pursuant to this section, to the Franchise Tax Board, the Employment Development Department, the Office of the Chancellor of the California Community Colleges, a collections agency contracted to collect funds owed to the State Bar by licensees pursuant to Sections 6086.10 and 6140.5, or as provided in subdivisions (j) and (k).
- (j) It is the intent of the Legislature in enacting this section to utilize the federal employer identification number, individual taxpayer identification number, or social security number for the purpose of establishing the identification of persons affected by state tax laws, for purposes of compliance with Section 17520 of the Family Code, for purposes of measuring employment outcomes of students who participate in career technical education programs offered by the California Community Colleges, and for purposes of collecting funds owed to the State Bar by licensees pursuant to Section 6086.10 and Section 6140.5 and, to that end, the information furnished pursuant to this section shall be used exclusively for those purposes.
- (k) If the board utilizes a national examination to issue a license, and if a reciprocity agreement or comity exists between the State of California and the state requesting release of the individual taxpayer identification number or social security number, any deputy, agent, clerk, officer, or employee of any licensing board described in subdivision (a) may release an individual taxpayer identification number or social security number to an examination or licensing entity, only for the purpose of verification of licensure or examination status.
- (l) For the purposes of enforcement of Section 17520 of the Family Code, and notwithstanding any other law, a board, as defined in Section 22, the State Bar of California, and the Department of Real Estate shall at the time of issuance of the license require that each licensee provide the individual taxpayer identification number or social security number of each individual listed on the license and any person who qualifies for the license. For the purposes of this subdivision, "licensee" means an entity that is issued a license by any board, as defined in Section 22, the State Bar of California, the Department of Real Estate, and the Department of Motor Vehicles.
- (m) The department shall, upon request by the Office of the Chancellor of the California Community Colleges, furnish to the chancellor's office, as applicable, the following information with respect to every licensee:
- (1) Name.
  - (2) Federal employer identification number if the licensee is a partnership, or the licensee's individual taxpayer identification number or social security number for all other licensees.
  - (3) Date of birth.

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(4) Type of license.

(5) Effective date of license or a renewal.

(6) Expiration date of license.

(n) The department shall make available information pursuant to subdivision (m) only to allow the chancellor's office to measure employment outcomes of students who participate in career technical education programs offered by the California Community Colleges and recommend how these programs may be improved. Licensure information made available by the department pursuant to this section shall not be used for any other purpose.

(o) The department may make available information pursuant to subdivision (m) only to the extent that making the information available complies with state and federal privacy laws.

(p) The department may, by agreement, condition or limit the availability of licensure information pursuant to subdivision (m) in order to ensure the security of the information and to protect the privacy rights of the individuals to whom the information pertains.

(q) All of the following apply to the licensure information made available pursuant to subdivision (m):

(1) It shall be limited to only the information necessary to accomplish the purpose authorized in subdivision (n).

(2) It shall not be used in a manner that permits third parties to personally identify the individual or individuals to whom the information pertains.

(3) Except as provided in subdivision (n), it shall not be shared with or transmitted to any other party or entity without the consent of the individual or individuals to whom the information pertains.

(4) It shall be protected by reasonable security procedures and practices appropriate to the nature of the information to protect that information from unauthorized access, destruction, use, modification, or disclosure.

(5) It shall be immediately and securely destroyed when no longer needed for the purpose authorized in subdivision (n).

(r) The department or the chancellor's office may share licensure information with a third party who contracts to perform the function described in subdivision (n), if the third party is required by contract to follow the requirements of this section. (Added by Stats. 1986, ch. 1361. Amended by Stats. 1988, ch. 1333, effective September 26, 1988; Stats. 1991, ch. 654; Stats. 1994, ch. 1135; Stats. 1997, ch. 604; Stats. 1997, ch. 605; Stats. 1999, ch. 652; Stats. 2006, ch. 658; Stats. 2013, ch. 352; Stats. 2014, ch. 752; Stats. 2015, ch. 389; Stats. 2016, ch. 770; Stats. 2015, ch. 389; Stats. 2016, ch. 770; Stats. 2017, ch. 828; Stats. 2018, ch. 838; Stats. 2019, ch. 351.)

### **§ 31 Licensee or Applicant Not in Compliance with a Judgment or Order for Support; Enforcement of Obligation; Licensee or Applicant Appearing on List of 500 Largest Tax Delinquencies; Refusal to Issue, Reactivate, Reinstate, or Renew License, or Suspension of License; Inclusion of Statement on Application Regarding Requirement to Pay State Tax Obligation**

(a) As used in this section, "board" means any entity listed in Section 101, the entities referred to in Sections 1000 and 3600, the State Bar, the Department of Real Estate, and any other state agency that issues a license, certificate, or registration authorizing a person to engage in a business or profession.

(b) Each applicant for the issuance or renewal of a license, certificate, registration, or other means to engage in a business or profession regulated by a board who is not in compliance with a judgment or order for support shall be subject to Section 17520 of the Family Code.

(c) "Compliance with a judgment or order for support" has the meaning given in paragraph (4) of subdivision (a) of Section 17520 of the Family Code.

(d) Each licensee or applicant whose name appears on a list of the 500 largest tax delinquencies pursuant to Section 7063 or 19195 of the Revenue and Taxation Code shall be subject to Section 494.5.

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(e) Each application for a new license or renewal of a license shall indicate on the application that the law allows the California Department of Tax and Fee Administration and the Franchise Tax Board to share taxpayer information with a board and requires the licensee to pay the licensee's state tax obligation and that the licensee's license may be suspended if the state tax obligation is not paid.

(f) For purposes of this section, "tax obligation" means the tax imposed under, or in accordance with, Part 1 (commencing with Section 6001), Part 1.5 (commencing with Section 7200), Part 1.6 (commencing with Section 7251), Part 1.7 (commencing with Section 7280), Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code. (Added by Stats. 1991, ch. 110. Amended by Stats. 1991, ch. 542; Stats. 2010, ch. 328; Stats. 2011, ch. 455; Stats. 2013, ch. 352; Stats. 2019, ch. 351.)

### **§ 125.6 Discrimination in the Performance of Licensed Activity**

(a) (1) With regard to an applicant, every person who holds a license under the provisions of this code is subject to disciplinary action under the disciplinary provisions of this code applicable to that person if, because of any characteristic listed or defined in subdivision (b) or (e) of Section 51 of the Civil Code, the person refuses to perform the licensed activity or aids or incites the refusal to perform that licensed activity by another licensee, or if, because of any characteristic listed or defined in subdivision (b) or (e) of Section 51 of the Civil Code, the person makes any discrimination, or restriction in the performance of the licensed activity.

(2) Nothing in this section shall be interpreted to prevent a physician or health care professional licensed pursuant to Division 2 (commencing with Section 500) from considering any of the characteristics of a patient listed in subdivision (b) or (e) of Section 51 of the Civil Code if that consideration is medically necessary and for the sole purpose of determining the appropriate diagnosis or treatment of the patient.

(3) Nothing in this section shall be interpreted to apply to discrimination by employers with regard to employees or prospective employees, nor shall this section authorize action against any club license issued pursuant to Article 4 (commencing with Section 23425) of Chapter 3 of Division 9 because of discriminatory membership policy.

(4) The presence of architectural barriers to an individual with physical disabilities that conform to applicable state or local building codes and regulations shall not constitute discrimination under this section.

(b) (1) Nothing in this section requires a person licensed pursuant to Division 2 (commencing with Section 500) to permit an individual to participate in, or benefit from, the licensed activity of the licensee where that individual poses a direct threat to the health or safety of others. For this purpose, the term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids and services.

(2) Nothing in this section requires a person licensed pursuant to Division 2 (commencing with Section 500) to perform a licensed activity for which the person is not qualified to perform.

(c) (1) "Applicant," as used in this section, means a person applying for licensed services provided by a person licensed under this code.

(2) "License," as used in this section, includes "certificate," "permit," "authority," and "registration" or any other indicia giving authorization to engage in a business or profession regulated by this code. (Added by Stats. 1992, ch. 913. Amended by Stats. 2007, ch. 568; Stats. 2019, ch. 351.)

### **§ 135.5 Legislative Findings and Declarations; State Benefits; Citizenship or Immigration Status; Licensures**

(a) The Legislature finds and declares that it is in the best interests of the State of California to provide persons who are not lawfully present in the United States with the state benefits provided by all licensing

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acts of entities within the department, and therefore enacts this section pursuant to subsection (d) of Section 1621 of Title 8 of the United States Code.

(b) Notwithstanding subdivision (a) of Section 30, and except as required by subdivision (e) of Section 7583.23, no entity within the department shall deny licensure to an applicant based on his or her citizenship status or immigration status.

(c) Every board within the department shall implement all required regulatory or procedural changes necessary to implement this section no later than January 1, 2016. A board may implement the provisions of this section at any time prior to January 1, 2016. (Added by Stats. 2014, ch. 752.)

### **§ 476 Inapplicability of Division to Certain Persons; Application of § 494.5**

(a) Except as provided in subdivision (b), nothing in this division shall apply to the licensure or registration of persons pursuant to Chapter 4 (commencing with Section 6000) of Division 3, or pursuant to Division 9 (commencing with Section 23000) or pursuant to Chapter 5 (commencing with Section 19800) of Division 8.

(b) Section 494.5 shall apply to the licensure of persons authorized to practice law pursuant to Chapter 4 (commencing with Section 6000) of Division 3, and the licensure or registration of persons pursuant to Chapter 5 (commencing with Section 19800) of Division 8 or pursuant to Division 9 (commencing with Section 23000). (Added by Stats. 1972, ch. 903. Amended by Stats. 1983, ch. 721; Stats. 2011, ch. 455.)

### **§ 490 Suspension of License; Licensee Convicted of a Crime**

(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a

licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. An action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code.

(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Chapter 33 of the Statutes of 2008 do not constitute a change to, but rather are declaratory of, existing law. (Added by Stats. 1974, ch. 1321. Amended by Stats. 2008, ch. 33; Stats. 2008, ch. 179; Stats. 2010, ch. 328.)

### **§ 490.5 Suspension of License; Licensee Failure to Comply with Child Support Order or Judgment**

A board may suspend a license pursuant to Section 17520 of the Family Code if a licensee is not in compliance with a child support order or judgment. (Added by Stats. 1994, ch. 906. Amended by Stats. 2010, ch. 328.)

### **§ 494.5 Tax Delinquencies; Licensees Included on Certified Lists**

(a) (1) Except as provided in paragraphs (2), (3), and (4), a state governmental licensing entity shall refuse to issue, reactivate, reinstate, or renew a license and shall suspend a license if a licensee's name is included on a certified list.

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- (2) The Department of Motor Vehicles shall suspend a license if a licensee's name is included on a certified list. Any reference in this section to the issuance, reactivation, reinstatement, renewal, or denial of a license shall not apply to the Department of Motor Vehicles.
- (3) The State Bar of California may recommend to refuse to issue, reactivate, reinstate, or renew a license and may recommend to suspend a license if a licensee's name is included on a certified list. The word "may" shall be substituted for the word "shall" relating to the issuance of a temporary license, refusal to issue, reactivate, reinstate, renew, or suspend a license in this section for licenses under the jurisdiction of the California Supreme Court.
- (4) The Department of Alcoholic Beverage Control may refuse to issue, reactivate, reinstate, or renew a license, and may suspend a license, if a licensee's name is included on a certified list.
- (b) For purposes of this section:
- (1) "Certified list" means either the list provided by the State Board of Equalization or the list provided by the Franchise Tax Board of persons whose names appear on the lists of the 500 largest tax delinquencies pursuant to Section 7063 or 19195 of the Revenue and Taxation Code, as applicable.
- (2) "License" includes a certificate, registration, or any other authorization to engage in a profession or occupation issued by a state governmental licensing entity. "License" includes a driver's license issued pursuant to Chapter 1 (commencing with Section 12500) of Division 6 of the Vehicle Code. "License" excludes a vehicle registration issued pursuant to Division 3 (commencing with Section 4000) of the Vehicle Code.
- (3) "Licensee" means an individual authorized by a license to drive a motor vehicle or authorized by a license, certificate, registration, or other authorization to engage in a profession or occupation issued by a state governmental licensing entity.
- (4) "State governmental licensing entity" means any entity listed in Section 101, 1000, or 19420, the office of the Attorney General, the Department of Insurance, the Department of Motor Vehicles, the State Bar of California, the Department of Real Estate, and any other state agency, board, or commission that issues a license, certificate, or registration authorizing an individual to engage in a profession or occupation, including any certificate, business or occupational license, or permit or license issued by the Department of Motor Vehicles or the Department of the California Highway Patrol. "State governmental licensing entity" shall not include the Contractors State License Board.
- (c) The State Board of Equalization and the Franchise Tax Board shall each submit its respective certified list to every state governmental licensing entity. The certified lists shall include the name, social security number or taxpayer identification number, and the last known address of the persons identified on the certified lists.
- (d) Notwithstanding any other law, each state governmental licensing entity shall collect the social security number or the federal taxpayer identification number from all applicants for the purposes of matching the names of the certified lists provided by the State Board of Equalization and the Franchise Tax Board to applicants and licensees.
- (e) (1) Each state governmental licensing entity shall determine whether an applicant or licensee is on the most recent certified list provided by the State Board of Equalization and the Franchise Tax Board.
- (2) If an applicant or licensee is on either of the certified lists, the state governmental licensing entity shall immediately provide a preliminary notice to the applicant or licensee of the entity's intent to suspend or withhold issuance or renewal of the license. The preliminary notice shall be delivered personally or by mail to the applicant's or licensee's last known mailing address on file with the state governmental licensing entity within 30 days of receipt of the certified list. Service by mail shall be completed in accordance with Section 1013 of the Code of Civil Procedure.
- (A) The state governmental licensing entity shall issue a temporary license valid for a period of 90 days to any applicant whose name is on a certified list if the applicant is otherwise eligible for a license.

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(B) The 90-day time period for a temporary license shall not be extended. Only one temporary license shall be issued during a regular license term and the term of the temporary license shall coincide with the first 90 days of the regular license term. A license for the full term or the remainder of the license term may be issued or renewed only upon compliance with this section.

(C) In the event that a license is suspended or an application for a license or the renewal of a license is denied pursuant to this section, any funds paid by the applicant or licensee shall not be refunded by the state governmental licensing entity.

(f) (1) A state governmental licensing entity shall refuse to issue or shall suspend a license pursuant to this section no sooner than 90 days and no later than 120 days of the mailing of the preliminary notice described in paragraph (2) of subdivision (e), unless the state governmental licensing entity has received a release pursuant to subdivision (h). The procedures in the administrative adjudication provisions of the Administrative Procedure Act (Chapter 4.5 (commencing with Section 11400) and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code) shall not apply to the denial or suspension of, or refusal to renew, a license or the issuance of a temporary license pursuant to this section.

(2) Notwithstanding any other law, if a board, bureau, or commission listed in Section 101, other than the Contractors State License Board, fails to take action in accordance with this section, the Department of Consumer Affairs shall issue a temporary license or suspend or refuse to issue, reactivate, reinstate, or renew a license, as appropriate.

(g) Notices shall be developed by each state governmental licensing entity. For an applicant or licensee on the State Board of Equalization's certified list, the notice shall include the address and telephone number of the State Board of Equalization, and shall emphasize the necessity of obtaining a release from the State Board of Equalization as a condition for the issuance, renewal, or continued valid status of a license or licenses. For an applicant or licensee on the Franchise Tax Board's certified list, the notice shall

include the address and telephone number of the Franchise Tax Board, and shall emphasize the necessity of obtaining a release from the Franchise Tax Board as a condition for the issuance, renewal, or continued valid status of a license or licenses.

(1) The notice shall inform the applicant that the state governmental licensing entity shall issue a temporary license, as provided in subparagraph (A) of paragraph (2) of subdivision (e), for 90 calendar days if the applicant is otherwise eligible and that upon expiration of that time period, the license will be denied unless the state governmental licensing entity has received a release from the State Board of Equalization or the Franchise Tax Board, whichever is applicable.

(2) The notice shall inform the licensee that any license suspended under this section will remain suspended until the state governmental licensing entity receives a release along with applications and fees, if applicable, to reinstate the license.

(3) The notice shall also inform the applicant or licensee that if an application is denied or a license is suspended pursuant to this section, any moneys paid by the applicant or licensee shall not be refunded by the state governmental licensing entity. The state governmental licensing entity shall also develop a form that the applicant or licensee shall use to request a release by the State Board of Equalization or the Franchise Tax Board. A copy of this form shall be included with every notice sent pursuant to this subdivision.

(h) If the applicant or licensee wishes to challenge the submission of their name on a certified list, the applicant or licensee shall make a timely written request for release to the State Board of Equalization or the Franchise Tax Board, whichever is applicable. The State Board of Equalization or the Franchise Tax Board shall immediately send a release to the appropriate state governmental licensing entity and the applicant or licensee, if any of the following conditions are met:

(1) The applicant or licensee has complied with the tax obligation, either by payment of the unpaid taxes or entry into an installment payment agreement, as described in Section 6832 or 19008 of the Revenue and Taxation Code, to satisfy the unpaid taxes.

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- (2) The applicant or licensee has submitted a request for release not later than 45 days after the applicant's or licensee's receipt of a preliminary notice described in paragraph (2) of subdivision (e), but the State Board of Equalization or the Franchise Tax Board, whichever is applicable, will be unable to complete the release review and send notice of its findings to the applicant or licensee and state governmental licensing entity within 45 days after the State Board of Equalization's or the Franchise Tax Board's receipt of the applicant's or licensee's request for release. Whenever a release is granted under this paragraph, and, notwithstanding that release, the applicable license or licenses have been suspended erroneously, the state governmental licensing entity shall reinstate the applicable licenses with retroactive effect back to the date of the erroneous suspension and that suspension shall not be reflected on any license record.
- (3) The applicant or licensee is unable to pay the outstanding tax obligation due to a current financial hardship. "Financial hardship" means financial hardship as determined by the State Board of Equalization or the Franchise Tax Board, whichever is applicable, where the applicant or licensee is unable to pay any part of the outstanding liability and the applicant or licensee is unable to qualify for an installment payment arrangement as provided for by Section 6832 or Section 19008 of the Revenue and Taxation Code. In order to establish the existence of a financial hardship, the applicant or licensee shall submit any information, including information related to reasonable business and personal expenses, requested by the State Board of Equalization or the Franchise Tax Board, whichever is applicable, for purposes of making that determination.
- (i) An applicant or licensee is required to act with diligence in responding to notices from the state governmental licensing entity and the State Board of Equalization or the Franchise Tax Board with the recognition that the temporary license will lapse or the license suspension will go into effect after 90 days and that the State Board of Equalization or the Franchise Tax Board must have time to act within that period. An applicant's or licensee's delay in acting, without good cause, which directly results in the inability of the State Board of Equalization or the Franchise Tax Board, whichever is applicable, to complete a review of the applicant's or licensee's request for release shall not constitute the diligence required under this section which would justify the issuance of a release. An applicant or licensee shall have the burden of establishing that they diligently responded to notices from the state governmental licensing entity or the State Board of Equalization or the Franchise Tax Board and that any delay was not without good cause.
- (j) The State Board of Equalization or the Franchise Tax Board shall create release forms for use pursuant to this section. When the applicant or licensee has complied with the tax obligation by payment of the unpaid taxes, or entry into an installment payment agreement, or establishing the existence of a current financial hardship as defined in paragraph (3) of subdivision (h), the State Board of Equalization or the Franchise Tax Board, whichever is applicable, shall mail a release form to the applicant or licensee and provide a release to the appropriate state governmental licensing entity. Any state governmental licensing entity that has received a release from the State Board of Equalization and the Franchise Tax Board pursuant to this subdivision shall process the release within five business days of its receipt. If the State Board of Equalization or the Franchise Tax Board determines subsequent to the issuance of a release that the licensee has not complied with their installment payment agreement, the State Board of Equalization or the Franchise Tax Board, whichever is applicable, shall notify the state governmental licensing entity and the licensee in a format prescribed by the State Board of Equalization or the Franchise Tax Board, whichever is applicable, that the licensee is not in compliance and the release shall be rescinded. The State Board of Equalization and the Franchise Tax Board may, when it is economically feasible for the state governmental licensing entity to develop an automated process for complying with this subdivision, notify the state governmental licensing entity in a manner prescribed by the State Board of Equalization or the Franchise Tax Board, whichever is applicable, that the licensee has not complied with the installment payment agreement. Upon receipt of this notice, the state governmental licensing entity shall immediately notify the licensee on a form prescribed by the state governmental licensing entity that the licensee's license will be suspended on a specific date, and this date shall be no longer than 30 days from the date the form is mailed. The licensee shall be further notified that the license will remain

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suspended until a new release is issued in accordance with this subdivision.

(k) The State Board of Equalization and the Franchise Tax Board may enter into interagency agreements with the state governmental licensing entities necessary to implement this section.

(l) Notwithstanding any other law, a state governmental licensing entity, with the approval of the appropriate department director or governing body, may impose a fee on a licensee whose license has been suspended pursuant to this section. The fee shall not exceed the amount necessary for the state governmental licensing entity to cover its costs in carrying out the provisions of this section. Fees imposed pursuant to this section shall be deposited in the fund in which other fees imposed by the state governmental licensing entity are deposited and shall be available to that entity upon appropriation in the annual Budget Act.

(m) The process described in subdivision (h) shall constitute the sole administrative remedy for contesting the issuance of a temporary license or the denial or suspension of a license under this section.

(n) Any state governmental licensing entity receiving an inquiry as to the licensed status of an applicant or licensee who has had a license denied or suspended under this section or who has been granted a temporary license under this section shall respond that the license was denied or suspended or the temporary license was issued only because the licensee appeared on a list of the 500 largest tax delinquencies pursuant to Section 7063 or 19195 of the Revenue and Taxation Code. Information collected pursuant to this section by any state agency, board, or department shall be subject to the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code). Any state governmental licensing entity that discloses on its internet website or other publication that the licensee has had a license denied or suspended under this section or has been granted a temporary license under this section shall prominently disclose, in bold and adjacent to the information regarding the status of the license, that the only reason the license was denied, suspended, or temporarily issued is because the licensee failed to pay taxes.

(o) Any rules and regulations issued pursuant to this section by any state agency, board, or department may

be adopted as emergency regulations in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of these regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare. The regulations shall become effective immediately upon filing with the Secretary of State.

(p) The State Board of Equalization, the Franchise Tax Board, and state governmental licensing entities, as appropriate, shall adopt regulations as necessary to implement this section.

(q) (1) Neither the state governmental licensing entity, nor any officer, employee, or agent, or former officer, employee, or agent of a state governmental licensing entity, may disclose or use any information obtained from the State Board of Equalization or the Franchise Tax Board, pursuant to this section, except to inform the public of the denial, refusal to renew, or suspension of a license or the issuance of a temporary license pursuant to this section. The release or other use of information received by a state governmental licensing entity pursuant to this section, except as authorized by this section, is punishable as a misdemeanor. This subdivision may not be interpreted to prevent the State Bar of California from filing a request with the Supreme Court of California to suspend a member of the bar pursuant to this section.

(2) A suspension of, or refusal to renew, a license or issuance of a temporary license pursuant to this section does not constitute denial or discipline of a licensee for purposes of any reporting requirements to the National Practitioner Data Bank and shall not be reported to the National Practitioner Data Bank or the Healthcare Integrity and Protection Data Bank.

(3) Upon release from the certified list, the suspension or revocation of the applicant's or licensee's license shall be purged from the state governmental licensing entity's internet website or other publication within three business days. This paragraph shall not apply to the State Bar of California.



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(r) If any provision of this section or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(s) All rights to review afforded by this section to an applicant shall also be afforded to a licensee.

(t) Unless otherwise provided in this section, the policies, practices, and procedures of a state governmental licensing entity with respect to license suspensions under this section shall be the same as those applicable with respect to suspensions pursuant to Section 17520 of the Family Code.

(u) No provision of this section shall be interpreted to allow a court to review and prevent the collection of taxes prior to the payment of those taxes in violation of the California Constitution.

(v) This section shall apply to any licensee whose name appears on a list of the 500 largest tax delinquencies pursuant to Section 7063 or 19195 of the Revenue and Taxation Code on or after July 1, 2012. (Added by Stats. 2011, ch. 455. Amended by Stats. 2012, ch. 327; Stats. 2020, ch. 312.)

### **§ 801 Medical Malpractice Actions Reporting Requirement—Insurers and Attorneys**

(a) Except as provided in Section 801.01 and subdivisions (b), (c), (d), and (e) of this section, every insurer providing professional liability insurance to a person who holds a license, certificate, or similar authority from or under any agency specified in subdivision (a) of Section 800 shall send a complete report to that agency as to any settlement or arbitration award over three thousand dollars (\$3,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(b) Every insurer providing professional liability insurance to a person licensed pursuant to Chapter 13 (commencing with Section 4980), Chapter 14 (commencing with Section 4990), or Chapter 16

(commencing with Section 4999.10) shall send a complete report to the Board of Behavioral Sciences as to any settlement or arbitration award over ten thousand dollars (\$10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(c) Every insurer providing professional liability insurance to a dentist licensed pursuant to Chapter 4 (commencing with Section 1600) shall send a complete report to the Dental Board of California as to any settlement or arbitration award over ten thousand dollars (\$10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(d) Every insurer providing liability insurance to a veterinarian licensed pursuant to Chapter 11 (commencing with Section 4800) shall send a complete report to the Veterinary Medical Board of any settlement or arbitration award over ten thousand dollars (\$10,000) of a claim or action for damages for death or injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional service. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(e) Every insurer providing professional liability insurance to a person licensed pursuant to Chapter 6 (commencing with Section 2700) shall send a complete report to the Board of Registered Nursing as to any settlement or arbitration award over ten thousand dollars (\$10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

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(f) The insurer shall notify the claimant, or if the claimant is represented by counsel, the insurer shall notify the claimant's attorney, that the report required by subdivision (a), (b), or (c) has been sent to the agency. If the attorney has not received this notice within 45 days after the settlement was reduced to writing and signed by all of the parties, the arbitration award was served on the parties, or the date of entry of the civil judgment, the attorney shall make the report to the agency.

(g) Notwithstanding any other provision of law, no insurer shall enter into a settlement without the written consent of the insured, except that this prohibition shall not void any settlement entered into without that written consent. The requirement of written consent shall only be waived by both the insured and the insurer.

(h) For purposes of this section, "insurer" means the following:

(1) The insurer providing professional liability insurance to the licensee.

(2) The licensee, or his or her counsel, if the licensee does not possess professional liability insurance.

(3) A state or local governmental agency, including, but not limited to, a joint powers authority, that self-insures the licensee. As used in this paragraph, "state governmental agency" includes, but is not limited to, the University of California. (Added by Stats. 1975, ch. 1. Amended by Stats. 1979, ch. 923; Stats. 1989, ch. 886; Stats. 1989, ch. 398; Stats. 1991, ch. 1091, Stats. 1991, ch. 359; Stats. 1994, ch. 468; Stats. 1994, ch. 1206; Stats. 1995, ch. 5; Stats. 1997, ch. 359; Stats. 2002, ch. 1085; Stats. 2004, ch. 467; Stats. 2006, ch. 538; Stats. 2010, ch. 308; Stats. 2011, ch. 381; Stats. 2017, ch. 520.)

### **§ 802 Unauthorized Rendering of Professional Services—Reporting Requirement Following Settlement, Judgment or Arbitration Award**

(a) Every settlement, judgment, or arbitration award over three thousand dollars (\$3,000) of a claim or action for damages for death or personal injury caused by negligence, error or omission in practice, or by the unauthorized rendering of professional services, by a person who holds a license, certificate, or other similar authority from an agency specified in subdivision (a) of

Section 800 (except a person licensed pursuant to Chapter 3 (commencing with Section 1200) or Chapter 5 (commencing with Section 2000) or the Osteopathic Initiative Act) who does not possess professional liability insurance as to that claim shall, within 30 days after the written settlement agreement has been reduced to writing and signed by all the parties thereto or 30 days after service of the judgment or arbitration award on the parties, be reported to the agency that issued the license, certificate, or similar authority. A complete report shall be made by appropriate means by the person or his or her counsel, with a copy of the communication to be sent to the claimant through his or her counsel if the person is so represented, or directly if he or she is not. If, within 45 days of the conclusion of the written settlement agreement or service of the judgment or arbitration award on the parties, counsel for the claimant (or if the claimant is not represented by counsel, the claimant himself or herself) has not received a copy of the report, he or she shall himself or herself make the complete report. Failure of the licensee or claimant (or, if represented by counsel, their counsel) to comply with this section is a public offense punishable by a fine of not less than fifty dollars (\$50) or more than five hundred dollars (\$500). Knowing and intentional failure to comply with this section or conspiracy or collusion not to comply with this section, or to hinder or impede any other person in the compliance, is a public offense punishable by a fine of not less than five thousand dollars (\$5,000) nor more than fifty thousand dollars (\$50,000).

(b) Every settlement, judgment, or arbitration award over ten thousand dollars (\$10,000) of a claim or action for damages for death or personal injury caused by negligence, error or omission in practice, or by the unauthorized rendering of professional services, by a marriage and family therapist, a clinical social worker, or a professional clinical counselor licensed pursuant to Chapter 13 (commencing with Section 4980), Chapter 14 (commencing with Section 4990), or Chapter 16 (commencing with Section 4999.10), respectively, who does not possess professional liability insurance as to that claim shall within 30 days after the written settlement agreement has been reduced to writing and signed by all the parties thereto or 30 days after service of the judgment or arbitration award on the parties be reported to the agency that issued the license, certificate, or similar authority. A complete report shall be made by appropriate means by the person or his or her counsel, with a copy of the communication to be sent to the claimant through his or her counsel if he or

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she is so represented, or directly if he or she is not. If, within 45 days of the conclusion of the written settlement agreement or service of the judgment or arbitration award on the parties, counsel for the claimant (or if he or she is not represented by counsel, the claimant himself or herself) has not received a copy of the report, he or she shall himself or herself make a complete report. Failure of the marriage and family therapist, clinical social worker, or professional clinical counselor or claimant (or, if represented by counsel, his or her counsel) to comply with this section is a public offense punishable by a fine of not less than fifty dollars (\$50) nor more than five hundred dollars (\$500). Knowing and intentional failure to comply with this section, or conspiracy or collusion not to comply with this section or to hinder or impede any other person in that compliance, is a public offense punishable by a fine of not less than five thousand dollars (\$5,000) nor more than fifty thousand dollars (\$50,000). (Added by Stats. 1975, ch. 1. Amended by Stats. 1979, ch. 923; Stats. 1989, ch. 398; Stats. 1997, ch. 359; Stats. 2001, ch. 728; Stats. 2002, ch. 1085; Stats. 2005, ch. 674; Stats. 2006, ch. 223; Stats. 2011, ch. 381.)

### **§ 5499.30 Unlawful Advertising of Legal Services to Obtain Workers' Compensation Benefits**

(a) Any individual, firm, corporation, partnership, organization, or association which prints, displays, publishes, distributes, or broadcasts or causes or permits to be advertised, printed, displayed, published, distributed, or broadcast any advertising which purports to provide legal services for obtaining workers' compensation benefits shall include the name of at least one attorney associated with the individual, firm, corporation, partnership, organization, or association in all such advertising.

(b) As used in this section, the term "legal services" includes any service which refers potential clients to any attorney.

(c) A violation of this section is a misdemeanor, punishable by imprisonment in the county jail for not more than one year, or by a fine not exceeding ten thousand dollars (\$10,000), or both. (Added by Stats. 1993, ch. 120.)

### **§ 6400 Definitions**

(a) "Unlawful detainer assistant" means any individual who for compensation renders assistance or advice in the prosecution or defense of an unlawful detainer claim or action, including any bankruptcy petition that may affect the unlawful detainer claim or action.

(b) "Unlawful detainer claim" means a proceeding, filing, or action affecting rights or liabilities of any person that arises under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the Code of Civil Procedure and that contemplates an adjudication by a court.

(c) "Legal document assistant" means:

(1) Any person who is not exempted under Section 6401 and who provides, or assists in providing, or offers to provide, or offers to assist in providing, for compensation, any self-help service to a member of the public who is representing themselves in a legal matter, or who holds themselves out as someone who offers that service or has that authority. This paragraph does not apply to any individual whose assistance consists merely of secretarial or receptionist services.

(2) A corporation, partnership, association, or other entity that employs or contracts with any person not exempted under Section 6401 who, as part of their responsibilities, provides, or assists in providing, or offers to provide, or offers to assist in providing, for compensation, any self-help service to a member of the public who is representing themselves in a legal matter or holds themselves out as someone who offers that service or has that authority. This paragraph does not apply to an individual whose assistance consists merely of secretarial or receptionist services.

(d) "Self-help service" means all of the following:

(1) Completing legal documents in a ministerial manner, selected by a person who is representing themselves in a legal matter, by typing or otherwise completing the documents at the person's specific direction.

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(2) Providing general published factual information that has been written or approved by an attorney, pertaining to legal procedures, rights, or obligations to a person who is representing themselves in a legal matter, to assist the person in representing themselves. This service in and of itself, does not require registration as a legal document assistant.

(3) Making published legal documents available to a person who is representing themselves in a legal matter.

(4) Filing and serving legal forms and documents at the specific direction of a person who is representing themselves in a legal matter.

(e) "Compensation" means money, property, or anything else of value.

(f) A legal document assistant, including any legal document assistant employed by a partnership or corporation, shall not provide any self-help service for compensation, unless the legal document assistant is registered pursuant to Section 6402.

(g) A legal document assistant may not provide any kind of advice, explanation, opinion, or recommendation to a consumer about possible legal rights, remedies, defenses, options, selection of forms, or strategies. A legal document assistant shall complete documents only in the manner prescribed by paragraph (1) of subdivision (d). (Added by Stats. 2002, ch. 1018. Amended by Stats. 2015, ch. 295; Stats. 2019, ch. 128; Stats. 2020, ch. 370.)

### § 6401 Chapter application exceptions

This chapter does not apply to any person engaged in any of the following occupations, provided that the person does not also perform the duties of a legal document assistant in addition to those occupations:

(a) Any government employee who is acting in the course of their employment.

(b) A licensee of the State Bar of California, or their employee, paralegal, or agent, or an independent contractor while acting on behalf of a licensee of the State Bar.

(c) Any employee of a nonprofit, tax exempt corporation who either assists clients free of charge or

is supervised by a licensee of the State Bar of California who has malpractice insurance.

(d) A licensed real estate broker or licensed real estate salesperson, as defined in Chapter 3 (commencing with Section 10130) of Part 1 of Division 4, who acts pursuant to subdivision (b) of Section 10131 on an unlawful detainer claim as defined in subdivision (b) of Section 6400, and who is a party to the unlawful detainer action.

(e) An immigration consultant, as defined in Chapter 19.5 (commencing with Section 22440) of Division 8.

(f) A person registered as a process server under Chapter 16 (commencing with Section 22350) of Division 8 or a person registered as a professional photocopier under Chapter 20 (commencing with Section 22450) of Division 8.

(g) A person who provides services relative to the preparation of security instruments or conveyance documents as an integral part of the provision of title or escrow service.

(h) A person who provides services that are regulated by federal law.

(i) A person who is employed by, and provides services to, a supervised financial institution, holding company, subsidiary, or affiliate. (Added by Stats. 2002, ch. 1018. Amended by Stats. 2019, ch. 128)

### § 6401.5 Practice of law by nonlawyers

This chapter does not sanction, authorize, or encourage the practice of law by nonlawyers. Registration under this chapter, or an exemption from registration, does not immunize any person from prosecution or liability pursuant to Section 6125, 6126, 6126.5, or 6127. (Added by Stats. 2002, ch. 1018.)

### § 6401.6 Legal document assistant; limitation on service; services of attorney

A legal document assistant may not provide service to a client who requires assistance that exceeds the definition of self-help service in subdivision (d) of Section 6400, and shall inform the client that the client

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requires the services of an attorney. (Added by Stats. 2002, ch. 1018.)

### **§ 6402 Registration Requirement; Registration of Disbarred and Suspended Lawyers Prohibited**

A legal document assistant or unlawful detainer assistant shall be registered pursuant to this chapter by the county clerk in the county in which their principal place of business is located, and in which they maintain a branch office, and provide proof that the registrant has satisfied the bonding requirement of Section 6405. No person who has been disbarred or suspended from the practice of law pursuant to Article 6 (commencing with Section 6100) of Chapter 4 may, during the period of any disbarment or suspension, register as a legal document assistant or unlawful detainer assistant.

The Department of Consumer Affairs shall develop the application required to be completed by a person for purposes of registration as a legal document assistant. The application shall specify the types of proof that the applicant shall provide to the county clerk in order to demonstrate the qualifications and requirements of Section 6402.1. (Added by Stats. 2002, ch. 1018. Amended by Stats. 2015, ch. 295; Stats. 2019, ch. 128.)

#### **§ 6402.1 Registration eligibility**

To be eligible to apply for registration under this chapter as a legal document assistant, the applicant shall possess at least one of the following:

- (a) A high school diploma or general equivalency diploma, and either a minimum of two years of law related experience under the supervision of a licensed attorney, or a minimum of two years experience, prior to January 1, 1999, providing self-help service.
- (b) A baccalaureate degree in any field and either a minimum of one year of law related experience under the supervision of a licensed attorney, or a minimum of one year of experience, prior to January 1, 1999, providing self-help service.
- (c) A certificate of completion from a paralegal program that is institutionally accredited but not approved by the American Bar Association, that requires successful completion of a minimum of 24 semester units, or the equivalent, in legal specialization courses.

- (d) A certificate of completion from a paralegal program approved by the American Bar Association. (Added by Stats. 2002, ch. 1018.)

#### **§ 6402.2 Required Continuing Legal Education Hours**

To be eligible to renew registration under this chapter, the registrant shall complete 15 hours of continuing legal education courses, which meet the requirements of Section 6070, during the two-year period preceding renewal. A registrant is not required to complete legal ethics education as part of the required 15 hours of continuing legal education courses. (Added by Stats. 2015, ch. 295. Amended by Stats. 2018, ch. 776. Repealed as of January 1, 2021, pursuant to Section 6401.7.)

#### **§ 6403 Contents of registration applications**

- (a) The application for registration of a natural person shall contain all of the following statements about the applicant:

- (1) Name, age, address, and telephone number.
- (2) Whether the applicant has been convicted of a felony, or of a misdemeanor under Section 6126 or 6127, or found liable under Section 6126.5.
- (3) Whether the applicant has been held liable in a civil action by final judgment or entry of a stipulated judgment, if the action alleged fraud, the use of an untrue or misleading representation, or the use of an unfair, unlawful, or deceptive business practice.
- (4) Whether the applicant has ever been convicted of a misdemeanor violation of this chapter.
- (5) Whether the applicant has had a civil judgment entered against them in an action arising out of the applicant's negligent, reckless, or willful failure to properly perform their obligation as a legal document assistant or unlawful detainer assistant.
- (6) Whether the applicant has had a registration revoked pursuant to Section 6413.

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(7) If the application is for a renewal of registration, a statement by the applicant that they have completed the legal education courses required by Section 6402.2.

(b) The application for registration of a natural person shall be accompanied by the display of personal identification, such as a California driver's license, birth certificate, or other identification acceptable to the county clerk to adequately determine the identity of the applicant.

(c) The application for registration of a partnership or corporation shall contain all of the following statements about the applicant:

(1) The names, ages, addresses, and telephone numbers of the general partners or officers.

(2) Whether the general partners or officers have ever been convicted of a felony, or a misdemeanor under Section 6126 or 6127 or found liable under Section 6126.5.

(3) Whether the general partners or officers have ever been held liable in a civil action by final judgment or entry of a stipulated judgment, if the action alleged fraud, the use of an untrue or misleading representation, or the use of an unfair, unlawful, or deceptive business practice.

(4) Whether the general partners or officers have ever been convicted of a misdemeanor violation of this chapter.

(5) Whether the general partners or officers have had a civil judgment entered against them in an action arising out of a negligent, reckless, or willful failure to properly perform the obligations of a legal document assistant or unlawful detainer assistant.

(6) Whether the general partners or officers have ever had a registration revoked pursuant to Section 6413.

(7) If the application is for a renewal of registration, a statement by the applicant that the individuals performing legal document assistant or unlawful detainer assistant services have completed the legal education courses required by Section 6402.2.

(d) The applications made under this section shall be made under penalty of perjury.

(e) The county clerk shall retain the application for registration for a period of three years following the expiration date of the application, after which time the application may be destroyed if it is scanned or if the conditions specified in Section 26205.1 of the Government Code are met. If the application is scanned, the scanned image shall be retained for a period of 10 years, after which time that image may be destroyed and, notwithstanding Section 26205.1 of the Government Code, no reproduction thereof need be made or preserved. (Added by Stats. 2002, ch. 1018. Amended by Stats. 2007, ch. 402; Stats. 2015, ch. 295; Stats. 2019, ch. 128.)

### § 6404 Fees

An applicant shall pay a fee of one hundred seventy-five dollars (\$175) to the county clerk at the time the applicant files an application for initial registration or renewal of registration. An additional fee of ten dollars (\$10) shall be paid to the county clerk for each additional identification card. (Added by Stats. 2002, ch. 1018. Amended by Stats. 2015, ch. 295; Stats. 2019, ch. 128.)

### § 6405 Bonds

(a) (1) An application for a certificate of registration by an individual shall be accompanied by a bond of twenty-five thousand dollars (\$25,000) executed by a corporate surety qualified to do business in this state and conditioned upon compliance with this chapter. The total aggregate liability on the bond shall be limited to twenty-five thousand dollars (\$25,000).

(2) An application for a certificate of registration by a partnership or corporation shall be accompanied by a bond executed by a corporate surety qualified to do business in this state and conditioned upon compliance with this chapter in the following amount, based on the total number of legal document assistants and unlawful detainer assistants employed by the partnership or corporation:

(A) Twenty-five thousand dollars (\$25,000) for one to four assistants.

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(B) Fifty thousand dollars (\$50,000) for five to nine assistants.

(C) One hundred thousand dollars (\$100,000) for 10 or more assistants. An application for a certificate of registration by a person employed by a partnership or corporation shall be accompanied by a bond of twenty-five thousand dollars (\$25,000) only if the partnership or corporation has not posted a bond in the amount required by this subdivision.

(3) If a partnership or corporation increases the number of assistants it employs above the number stated in its application for a certificate of registration, the partnership or corporation shall promptly increase the bond to the applicable amount in subparagraphs (B) or (C) of paragraph (2) based on the actual number of assistants it employs, and shall promptly submit the increased bond to the county clerk.

(4) The bond may be terminated pursuant to Section 995.440 of, and Article 13 (commencing with Section 996.310) of Chapter 2 of Title 14 of Part 2 of, the Code of Civil Procedure.

(b) The county clerk shall, upon filing of the bond, deliver the bond forthwith to the county recorder for recording. The recording fee specified in Section 27361 of the Government Code shall be paid by the registrant. The fee may be paid to the county clerk who shall transmit it to the recorder.

(c) The fee for filing, canceling, revoking, or withdrawing the bond is seven dollars (\$7).

(d) The county recorder shall record the bond and any notice of cancellation, revocation, or withdrawal of the bond, and shall thereafter mail the instrument, unless specified to the contrary, to the person named in the instrument and, if no person is named, to the party leaving it for recording. The recording fee specified in Section 27361 of the Government Code for notice of cancellation, revocation, or withdrawal of the bond shall be paid to the county clerk, who shall transmit it to the county recorder.

(e) In lieu of the bond required by subdivision (a), a registrant may deposit the amount required by subdivision (a) in cash with the county clerk.

(f) If the certificate is revoked, the bond or cash deposit shall be returned to the bonding party or depositor subject to subdivision (g) and the right of a person to recover against the bond or cash deposit under Section 6412.

(g) The county clerk may retain a cash deposit until the expiration of three years from the date the registrant has ceased to do business, or three years from the expiration or revocation date of the registration, in order to ensure there are no outstanding claims against the deposit. A judge may order the return of the deposit prior to the expiration of three years upon evidence satisfactory to the judge that there are no outstanding claims against the deposit.

(h) The bond required by this section shall be in favor of the State of California for the benefit of any person who is damaged as a result of the violation of this chapter or by the fraud, dishonesty, or incompetency of an individual, partnership, or corporation registered under this chapter. The bond required by this section shall also indicate the name of the county in which it will be filed. (Added by Stats. 2002, ch. 1018. Amended by Stats. 2015, ch. 295.)

### **§ 6406      Certificates of registration; duration; renewal**

(a) If granted, a certificate of registration shall be effective for a period of two years, until the date the bond expires, or until the total number of legal document assistants and unlawful detainer assistants employed by a partnership or corporation exceeds the number allowed for the amount of the bond in effect, whichever occurs first. Thereafter, a registrant shall file a new certificate of registration or a renewal of the certificate of registration and pay the fee required by Section 6404, and increase the amount of the bond if required to comply with subdivision (a) of Section 6405. A certificate of registration that is currently effective may be renewed up to 60 days prior to its expiration date and the effective date of the renewal shall be the date the current registration expires. The renewal shall be effective for a period of two years from the effective date or until the expiration date of the bond, or until the total number of legal document assistants and unlawful detainer assistants employed by a partnership or corporation exceeds the number allowed for the dollar amount of the bond in effect, whichever occurs first.

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(b) Except as provided in subdivisions (d) to (f), inclusive, an applicant shall be denied registration or renewal of registration if the applicant has been any of the following:

(1) Convicted of a felony, or of a misdemeanor under Section 6126 or 6127, or found liable under Section 6126.5.

(2) Held liable in a civil action by final judgment or entry of a stipulated judgment, if the action alleged fraud, or the use of an untrue or misleading representation, or the use of an unfair, unlawful, or deceptive business practice.

(3) Convicted of a misdemeanor violation of this chapter.

(4) Had a civil judgment entered against them in an action arising out of the applicant's negligent, reckless, or willful failure to properly perform their obligation as a legal document assistant or unlawful detainer assistant.

(5) Had their registration revoked pursuant to Section 6413.

(c) If the county clerk finds that the applicant has failed to demonstrate having met the requisite requirements of Section 6402, 6402.1, or 6402.2, or that any of the paragraphs of subdivision (b) apply, the county clerk, within three business days of submission of the application and fee, shall return the application and fee to the applicant with a notice to the applicant indicating the reason for the denial and the method of appeal.

(d) The denial of an application may be appealed by the applicant by submitting, to the director, the following:

(1) The completed application and notice from the county clerk specifying the reasons for the denial of the application.

(2) A copy of any final judgment or order that resulted from any conviction or civil judgment listed on the application.

(3) Any relevant information the applicant wishes to include for the record.

(e) The director shall order the applicant's certificate of registration to be granted if the director determines

that the issuance of a certificate of registration is not likely to expose consumers to a significant risk of harm based on a review of the application and any other information relating to the applicant's unlawful act or unfair practice described in paragraphs (1) to (5), inclusive, of subdivision (b). The director shall order the applicant's certificate of registration to be denied if the director determines that issuance of a certificate of registration is likely to expose consumers to a significant risk of harm based on a review of the application and any other information relating to the applicant's unlawful act or unfair practice described in paragraphs (1) to (5), inclusive, of subdivision (b). The director shall send to the applicant and the county clerk a written decision listing the reasons registration shall be granted or denied within 30 days of the submission of the matter.

(f) If the director orders that the certificate of registration be granted, the applicant may resubmit the application, with the appropriate application fee and the written decision of the director. The county clerk shall grant the certificate of registration to the applicant within three business days of being supplied this information. (Added by Stats. 2002, ch. 1018. Amended by Stats. 2015, ch. 295; Stats. 2019, ch. 128.)

### § 6407 Register; Identification cards

(a) The county clerk shall maintain a register of legal document assistants, and a register of unlawful detainer assistants, assign a unique number to each legal document assistant, or unlawful detainer assistant, and issue an identification card to each one. Upon renewal of registration, the same number shall be assigned, provided that the applicant is renewing registration in the same county in which they were previously registered and there is no lapse of three or more years in the period of registration.

(b) The identification card shall be a card not less than three and one-quarter by two inches, and shall contain at the top, the title "Legal Document Assistant" or "Unlawful Detainer Assistant," as appropriate, followed by the registrant's name, address, registration number, date of expiration, and county of registration. It shall also contain a photograph of the registrant in the lower left corner. The identification card for a partnership or corporation registration shall be issued in the name of the partnership or corporation, and shall not contain a photograph. The front of the card, above the title, shall also contain the following statement in



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12-point boldface type: "This person is not a lawyer." The front of the card, at the bottom, shall also contain the following statement in 12-point boldface type: "The county clerk has not evaluated this person's knowledge, experience, or services." (Added by Stats. 2002, ch. 1018. Amended by Stats. 2009, ch. 458; Stats. 2015, ch. 295; Stats. 2019, ch. 128.)

### **§ 6408 Disclosure of registration required**

The registrant's name, business address, telephone number, registration number, and county of registration shall appear in any solicitation or advertisement, and on any printed papers or documents prepared or used by the registrant, including, but not limited to, contracts, letterhead, business cards, correspondence, documents, forms, claims, petitions, checks, receipts, and pleadings. The registrant's name, business address, telephone number, registration number, expiration date of the registration, and county of registration shall appear on the written contract required to be provided to a client pursuant to Section 6410, as well as on any Internet Web site maintained by the registrant, and in any solicitation, advertisement, document, or correspondence prepared or used by the registrant in electronic form. (Added by Stats. 2002, ch. 1018. Amended by Stats. 2015, ch. 295.)

### **§ 6408.5 Advertisements and solicitation; required disclaimers**

(a) All advertisements or solicitations published, distributed, or broadcast offering legal document assistant or unlawful detainer assistant services shall include the following statement: "I am not an attorney. I can only provide self-help services at your specific direction." This subdivision does 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 legal document assistant or unlawful detainer assistant.

(b) If the advertisement or solicitation is in a language other than English, the statement required by subdivision (a) shall be in the same language as the advertisement or solicitation. (Added by Stats. 2002, ch. 1018.)

### **§ 6409 Retention of original documents prohibited**

No legal document assistant or unlawful detainer assistant shall retain in their possession original documents of a client. A legal document assistant or an unlawful detainer assistant shall immediately return all of a client's original documents to the client in any one or more of the following circumstances:

- (a) If the client so requests at any time.
- (b) If the written contract required by Section 6410 is not executed or is rescinded, canceled, or voided for any reason.
- (c) If the services described pursuant to paragraph (1) of subdivision (b) of Section 6410 have been completed. (Added by Stats. 2002, ch. 1018. Amended by Stats. 2019, ch. 128.)

### **§ 6409.1 Venues for Disputes**

Notwithstanding any other law, the venue for an action arising out of a dispute between a legal document assistant or unlawful detainer assistant and their client shall be the county in which the client has their primary residence. (Added by Stats. 2015, ch. 295. Amended by Stats. 2019, ch. 128.)

### **§ 6410 Written contracts; contents; rescinding and voiding**

(a) Every legal document assistant or unlawful detainer assistant who enters into a contract or agreement with a client to provide services shall, prior to providing any services, provide the client with a written contract, the contents of which shall be prescribed by regulations adopted by the Department of Consumer Affairs.

(b) The written contract shall include all of the following provisions:

- (1) The services to be performed.
- (2) The costs of the services to be performed.

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(3) The contact information of the county clerk's office for the county in which the legal document assistant or unlawful detainer assistant is registered, including the address, phone number, and, if available, internet website.

(4) There shall be printed on the face of the contract in 12-point boldface type a statement that the legal document assistant or unlawful detainer assistant is not an attorney and may not perform the legal services that an attorney performs.

(5) The contract shall contain a statement in 12-point boldface type that the county clerk has not evaluated or approved the registrant's knowledge or experience, or the quality of the registrant's services.

(6) The contract shall contain a statement in 12-point boldface type that the consumer may obtain information regarding free or low-cost representation through a local bar association or legal aid foundation and that the consumer may contact local law enforcement, a district attorney, or a legal aid foundation if the consumer believes that they have been a victim of fraud, the unauthorized practice of law, or any other injury.

(7) The contract shall contain a statement in 12-point boldface type that a legal document assistant or unlawful detainer assistant is not permitted to engage in the practice of law, including providing any kind of advice, explanation, opinion, or recommendation to a consumer about possible legal rights, remedies, defenses, options, selection of forms, or strategies.

(c) The contract shall be written both in English and in any other language comprehended by the client and principally used in any oral sales presentation or negotiation leading to execution of the contract. The legal document assistant or the unlawful detainer assistant is responsible for translating the contract into the language principally used in any oral sales presentation or negotiation leading to the execution of the contract.

(d) A written contract entered into on or after January 1, 2016, shall contain a statement that,

pursuant to Section 6409.1, the venue for an action arising out of a dispute between a legal document assistant or unlawful detainer assistant and their client shall be the county in which the client has their primary residence.

(e) Failure of a legal document assistant or unlawful detainer assistant to comply with subdivisions (a), (b), (c), and (d) shall make the contract or agreement for services voidable at the option of the client. Upon the voiding of the contract, the legal document assistant or unlawful detainer assistant shall immediately return in full any fees paid by the client.

(f) In addition to any other right to rescind, the client shall have the right to rescind the contract within 24 hours of the signing of the contract. The client may cancel the contract by giving the legal document assistant or the unlawful detainer assistant any written statement to the effect that the contract is canceled. If the client gives notice of cancellation by mail addressed to the legal document assistant or unlawful detainer assistant, with first class postage prepaid, cancellation is effective upon the date indicated on the postmark. Upon the voiding or rescinding of the contract or agreement for services, the legal document assistant or unlawful detainer assistant shall immediately return to the client any fees paid by the client, except fees for services that were actually, necessarily, and reasonably performed on the client's behalf by the legal document assistant or unlawful detainer assistant with the client's knowing and express written consent. The requirements of this subdivision shall be conspicuously set forth in the written contract. (Added by Stats. 2002, ch. 1018. Amended by Stats. 2015, ch. 295; Stats. 2019, ch. 128.)

### **§ 6410.5 First in-person or telephonic solicitation; disclaimers and statements prior to conversation**

(a) It is unlawful for any legal document assistant or unlawful detainer assistant, in the first contact with a prospective client of legal document or unlawful detainer assistant services, to enter into a contract or agreement for services or accept any compensation unless the legal document assistant or the unlawful detainer assistant states orally, clearly, affirmatively, and expressly all of the following, before making any

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other statement, except statements required by law in telephonic or home solicitations, and a greeting, or asking the prospective client any questions:

- (1) The identity of the person making the solicitation.
  - (2) The trade name of the person represented by the person making the solicitation, if any.
  - (3) The kind of services being offered for sale.
  - (4) The statement: "I am not an attorney" and, if the person offering legal document assistant or unlawful detainer assistant services is a partnership or a corporation, or uses a fictitious business name, "[name] is not a law firm. I/we cannot represent you in court, advise you about your legal rights or the law, or select legal forms for you."
  - (5) The county in which the legal document assistant or unlawful detainer assistant is registered and their registration number.
  - (6) The expiration date of the legal document assistant's or unlawful detainer assistant's current registration period.
- (b) After the legal document assistant or unlawful detainer assistant makes the oral statements required pursuant to subdivision (a), and before the legal document assistant or unlawful detainer assistant enters into a contract or agreement for services or accepts any compensation, the legal document assistant or unlawful detainer assistant shall provide the prospective client with a "Notice to Consumer" set forth below. After allowing the prospective client time to read the notice, the legal document assistant or unlawful detainer assistant shall ask the prospective client to sign and date the notice. If the first contact is not in person, the legal document assistant or unlawful detainer assistant shall provide the notice to the prospective client at the first in-person meeting or mail the notice to the prospective client before entering into a contract or agreement for services or accepting any compensation. The notice shall be set forth in black, bold, 12-point type on a separate, white, 8 1/2 by 11-inch sheet of paper that contains no other print or graphics, and shall be in the form set forth below. The notice shall contain only the appropriate name or other designation from those indicated in brackets below. At the time a prospective client signs the notice and

before that prospective client is offered any contract or agreement for signature, the legal document assistant or unlawful detainer assistant shall give the prospective client a clearly legible copy of the signed notice. A legal document assistant or unlawful detainer assistant shall not ask or require a prospective client or a client to sign any other form of acknowledgment regarding this notice.

### NOTICE TO CONSUMER

#### DO NOT SIGN ANYTHING

#### BEFORE YOU READ THIS PAGE

In the first conversation when you contacted [the unlawful detainer assistant or the legal document assistant], did they explain . . . . .

[Name of unlawful detainer assistant or legal document assistant] is not an attorney.

[Name of corporation or partnership, if any, that is offering legal document assistant services or unlawful detainer assistant services] is not a law firm.

[They/name of the business] cannot represent you in court.

[They/name of the business] cannot advise you about your legal rights or the law.

[They/name of the business] cannot select legal forms for you.

[They/name of the business] is registered in [county name] and the registration number is [registration number].

[They/name of the business]'s registration is valid until [date of expiration of registration], after which it must be renewed.

To confirm that [they/name of business] is registered, you may contact the [county name] clerk's office at [office address], [or] [office phone number], [or] [if available, office internet website].

Choose one:

Yes, they explained.

No, they did not explain.

Date:

Signature:

- (c) The legal document assistant or unlawful detainer assistant shall be responsible for translating, if

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necessary, the “Notice to Consumer” required pursuant to subdivision (b) into the language principally used in any oral sales presentation or negotiation. (Added by Stats. 2002, ch. 1018. Amended by Stats. 2015, ch. 295, Stats. 2016, ch. 86; Stats. 2019, ch. 128.)

### § 6411 Unlawful acts

It is unlawful for any person engaged in the business or acting in the capacity of a legal document assistant or unlawful detainer assistant to do any of the following:

(a) Make false or misleading statements to the consumer concerning the subject matter, legal issues, or self-help service being provided by the legal document assistant or unlawful detainer assistant.

(b) Make any guarantee or promise to a client or prospective client, unless the guarantee or promise is in writing and the legal document assistant or unlawful detainer assistant has a reasonable factual basis for making the guarantee or promise.

(c) Make any statement that the legal document assistant or unlawful detainer assistant can or will obtain favors or has special influence with a court, or a state or federal agency.

(d) Provide assistance or advice which constitutes the unlawful practice of law pursuant to Section 6125, 6126, or 6127.

(e) Engage in the unauthorized practice of law, including, but not limited to, giving any kind of advice, explanation, opinion, or recommendation to a consumer about possible legal rights, remedies, defenses, options, selection of forms, or strategies. A legal document assistant shall complete documents only in the manner prescribed by subdivision (d) of Section 6400.

(f) Use in the person’s business name or advertising the words “legal aid,” “legal services,” or any similar term that has the capacity, tendency, or likelihood to mislead members of the public about that person’s status as a nonprofit corporation or governmentally supported organization offering legal services without charge to indigent people, or employing licensees of the State Bar to provide those services. (Added by Stats. 2002, ch. 1018. Amended by Stats. 2019, ch. 128.)

### § 6412 Recovery of damages from bonds; filing of new bonds required

(a) Any owner or manager of residential or commercial rental property, tenant, or other person who is awarded damages in any action or proceeding for injuries caused by the acts of a registrant while in the performance of their duties as a legal document assistant or unlawful detainer assistant may recover damages from the bond or cash deposit required by Section 6405.

(b) If there has been a recovery against a bond or cash deposit under subdivision (a) and the registration has not been revoked pursuant to Section 6413, the registrant shall file a new bond or deposit an additional amount of cash within 30 days to reinstate the bond or cash deposit to the amount required by Section 6405. If the registrant does not file a bond, or deposit this amount within 30 days, the registrant’s certificate of registration shall be revoked. (Added by Stats. 2002, ch. 1018. Amended by Stats. 2019, ch. 128.)

### § 6412.1 Remedies for violation; attorney’s fees

(a) Any person injured by the unlawful act of a legal document assistant or unlawful detainer assistant shall retain all rights and remedies cognizable under law. The penalties, relief, and remedies provided in this chapter are not exclusive, and do not affect any other penalties, relief, and remedies provided by law.

(b) Any person injured by a violation of this chapter by a legal document assistant or unlawful detainer assistant may file a complaint and seek redress in any superior court for injunctive relief, restitution, and damages. Attorney’s fees shall be awarded to the prevailing plaintiff. A claim under this chapter may be maintained in small claims court, if the claim and relief sought are within the small claims court’s jurisdiction. (Added by Stats. 2002, ch. 1018.)

### § 6412.5 Waivers from client

A legal document assistant or an unlawful detainer assistant may neither seek nor obtain a client’s waiver of any of the provisions of this chapter. Any waiver of the provisions of this chapter is contrary to public policy, and is void and unenforceable. (Added by Stats. 2002, ch. 1018.)

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### § 6413 Revocation of registration

The county clerk shall revoke the registration of a legal document assistant or unlawful detainer assistant upon receipt of an official document or record stating that the registrant has been found guilty of the unauthorized practice of law pursuant to Section 6125, 6126, or 6127, has been found guilty of a misdemeanor violation of this chapter, has been found liable under Section 6126.5, or that a civil judgment has been entered against the registrant in an action arising out of the registrant's negligent, reckless, or willful failure to properly perform their obligation as a legal document assistant or unlawful detainer assistant. The county clerk shall be given notice of the disposition in any court action by the city attorney, district attorney, or plaintiff, as applicable. A registrant whose registration is revoked pursuant to this section may reapply for registration three years after the revocation. (Added by Stats. 2002, ch. 1018. Amended by Stats. 2019, ch. 128.)

### § 6414 Appeal of revocation of registration

A registrant whose certificate is revoked shall be entitled to challenge the decision in a court of competent jurisdiction. (Added by Stats. 2002, ch. 1018.)

### § 6415 Penalties

A failure, by a person who engages in acts of a legal document assistant or unlawful detainer assistant, to comply with any of the requirements of Section 6401.6, 6402, 6408, or 6410, subdivision (a), (b), or (c) of Section 6411, or Section 6412.5 is a misdemeanor punishable by a fine of not less than one thousand dollars (\$1,000) or more than two thousand dollars (\$2,000), as to each client with respect to whom a violation occurs, or imprisonment for not more than one year, or by both that fine and imprisonment. Payment of restitution to a client shall take precedence over payment of a fine. (Added by Stats. 2002, ch. 1018.)

### § 6450 Paralegals—Definition; Scope and Limitations of Lawful Activities; Qualifications; Certification

(a) "Paralegal" means a person who holds himself or herself out to be a paralegal, who is qualified by

education, training, or work experience, who either contracts with or is employed by an attorney, law firm, corporation, governmental agency, or other entity, and who performs substantial legal work under the direction and supervision of an active member of the State Bar of California, as defined in Section 6060, or an attorney practicing law in the federal courts of this state, that has been specifically delegated by the attorney to him or her. Tasks performed by a paralegal include, but are not limited to, case planning, development, and management; legal research; interviewing clients; fact gathering and retrieving information; drafting and analyzing legal documents; collecting, compiling, and utilizing technical information to make an independent decision and recommendation to the supervising attorney; and representing clients before a state or federal administrative agency if that representation is permitted by statute, court rule, or administrative rule or regulation.

(b) Notwithstanding subdivision (a), a paralegal shall not do the following:

- (1) Provide legal advice.
- (2) Represent a client in court.
- (3) Select, explain, draft, or recommend the use of any legal document to or for any person other than the attorney who directs and supervises the paralegal.
- (4) Act as a runner or capper, as defined in Sections 6151 and 6152.
- (5) Engage in conduct that constitutes the unlawful practice of law.
- (6) Contract with, or be employed by, a natural person other than an attorney to perform paralegal services.
- (7) In connection with providing paralegal services, induce a person to make an investment, purchase a financial product or service, or enter a transaction from which income or profit, or both, purportedly may be derived.
- (8) Establish the fees to charge a client for the services the paralegal performs, which shall be established by the attorney who supervises the paralegal's work. This paragraph does not apply to fees charged by a paralegal in a contract to provide paralegal services to an attorney, law

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firm, corporation, governmental agency, or other entity as provided in subdivision (a).

(c) A paralegal shall possess at least one of the following:

(1) A certificate of completion of a paralegal program approved by the American Bar Association.

(2) A certificate of completion of a paralegal program at, or a degree from, a postsecondary institution that requires the successful completion of a minimum of 24 semester, or equivalent, units in law-related courses and that has been accredited by a national or regional accrediting organization or approved by the Bureau for Private Postsecondary and Vocational Education.

(3) A baccalaureate degree or an advanced degree in any subject, a minimum of one year of law-related experience under the supervision of an attorney who has been an active member of the State Bar of California for at least the preceding three years or who has practiced in the federal courts of this state for at least the preceding three years, and a written declaration from this attorney stating that the person is qualified to perform paralegal tasks.

(4) A high school diploma or general equivalency diploma, a minimum of three years of law-related experience under the supervision of an attorney who has been an active member of the State Bar of California for at least the preceding three years or who has practiced in the federal courts of this state for at least the preceding three years, and a written declaration from this attorney stating that the person is qualified to perform paralegal tasks. This experience and training shall be completed no later than December 31, 2003.

(d) Every two years, commencing January 1, 2007, any person that is working as a paralegal shall be required to certify completion of four hours of mandatory continuing legal education in legal ethics and four hours of mandatory continuing legal education in either general law or in an area of specialized law. All continuing legal education courses shall meet the requirements of Section 6070. Certification of these continuing education requirements shall be made with the paralegal's supervising attorney. The paralegal shall

be responsible for keeping a record of the paralegal's certifications.

(e) A paralegal does not include a nonlawyer who provides legal services directly to members of the public, or a legal document assistant or unlawful detainer assistant as defined in Section 6400, unless the person is a person described in subdivision (a).

(f) This section shall become operative on January 1, 2004. (Added by Stats. 2000, ch. 439. Amended by Stats. 2001, ch. 311; Stats. 2002, ch. 664; Stats. 2006, ch. 567.)

### **§ 6451 Paralegals—Attorney Supervision**

It is unlawful for a paralegal to perform any services for a consumer except as performed under the direction and supervision of the attorney, law firm, corporation, government agency, or other entity that employs or contracts with the paralegal. Nothing in this chapter shall prohibit a paralegal who is employed by an attorney, law firm, governmental agency, or other entity from providing services to a consumer served by one of these entities if those services are specifically allowed by statute, case law, court rule, or federal or state administrative rule or regulation. "Consumer" means a natural person, firm, association, organization, partnership, business trust, corporation, or public entity. (Added by Stats. 2000, ch. 439. Amended by Stats. 2001, ch. 311.)

### **§ 6452 Paralegals—Identification Requirements; Liability of Supervising Attorney**

(a) It is unlawful for a person to identify himself or herself as a paralegal on any advertisement, letterhead, business card or sign, or elsewhere unless he or she has met the qualifications of subdivision (c) of Section 6450 and performs all services under the direction and supervision of an attorney who is an active member of the State Bar of California or an attorney practicing law in the federal courts of this state who is responsible for all of the services performed by the paralegal. The business card of a paralegal shall include the name of the law firm where he or she is employed or a statement that he or she is employed by or contracting with a licensed attorney.

(b) An attorney who uses the services of a paralegal is liable for any harm caused as the result of the

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paralegal's negligence, misconduct, or violation of this chapter. (Added by Stats. 2000, ch. 439.)

### **§ 6453 Paralegals—Duty of Confidentiality**

A paralegal is subject to the same duty as an attorney specified in subdivision (e) of Section 6068 to maintain inviolate the confidentiality, and at every peril to himself or herself to preserve the attorney client privilege, of a consumer for whom the paralegal has provided any of the services described in subdivision (a) of Section 6450. (Added by Stats. 2000, ch. 439.)

### **§ 6454 Paralegals—Terminology**

The terms "paralegal," "legal assistant," "attorney assistant," "freelance paralegal," "independent paralegal," and "contract paralegal" are synonymous for purposes of this chapter. (Added by Stats. 2000, ch. 439.)

### **§ 6455 Paralegals—Violations; Civil and Criminal Remedies; Attorney Fees**

(a) Any consumer injured by a violation of this chapter may file a complaint and seek redress in superior court for injunctive relief, restitution, and damages. Attorney's fees shall be awarded in this action to the prevailing plaintiff.

(b) Any person who violates the provisions of Section 6451 or 6452 is guilty of an infraction for the first violation, which is punishable upon conviction by a fine of up to two thousand five hundred dollars (\$2,500) as to each consumer with respect to whom a violation occurs, and is guilty of a misdemeanor for the second and each subsequent violation, which is punishable upon conviction by a fine of two thousand five hundred dollars (\$2,500) as to each consumer with respect to whom a violation occurs, or imprisonment in a county jail for not more than one year, or by both that fine and imprisonment. Any person convicted of a violation of this section shall be ordered by the court to pay restitution to the victim pursuant to Section 1202.4 of the Penal Code. (Added by Stats. 2000, ch. 439. Amended by Stats. 2007, ch. 43.)

### **§ 6456 Paralegals—Exemptions**

An individual employed by the state as a paralegal, legal assistant, legal analyst, or similar title, is exempt from the provisions of this chapter. (Added by Stats. 2000, ch. 439.)

### **§ 7190 Advertisement or Promotional Materials; Use of Public Official's Name or Position; Disclaimer**

(a) The name or position of a public official may not be used in an advertisement or any promotional material by a person licensed under this chapter, without the written authorization of the public official. A printed advertisement or promotional material that uses the name or position of a public official with that public official's written authorization, shall also include a disclaimer in at least 10-point roman boldface type, that shall be in a color or print which contrasts with the background so as to be easily legible, and set apart from any other printed matter. The disclaimer shall consist of a statement that reads "The name of (specify name of public official) does not imply that (specify name of public official) endorses this product or service in (his or her) official capacity and does not imply an endorsement by any governmental entity." If the advertisement is broadcast, this statement shall be read in a clearly audible tone of voice.

(b) For purposes of this section, "public official" means a member, officer, employee, or consultant of a local government agency, as defined in Section 82041 of the Government Code, or state agency, as defined in Section 82049 of the Government Code. (Added by Stats. 1994, ch. 1135.)

### **§ 10026 Advance Fee**

(a) The term "advance fee," as used in this part, is a fee, regardless of the form, that is claimed, demanded, charged, received, or collected by a licensee for services requiring a license, or for a listing, as that term is defined in Section 10027, before fully completing the service the licensee contracted to perform or represented would be performed. Neither an advance fee nor the services to be performed shall be separated or divided into components for the purpose of avoiding the application of this division.

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(b) For the purposes of this section, the term “advance fee” does not include:

(1) “Security” as that term is used in Section 1950.5 of the Civil Code.

(2) A “screening fee” as that term is used in Section 1950.6 of the Civil Code.

(3) A fee that is claimed, demanded, charged, received, or collected for the purpose of advertising the sale, lease, or exchange of real estate, or of a business opportunity, in a newspaper of general circulation, any other written publication, or through electronic media comparable to any type of written publication, provided that the electronic media or the publication is not under the control or ownership of the broker.

(4) A fee earned for a specific service under a “limited service” contract. For purposes of this section, a “limited service” contract is a written agreement for real estate services described in subdivision (a), (b), or (c) of Section 10131, and pursuant to which such services are promoted, advertised, or presented as stand-alone services, to be performed on a task-by-task basis, and for which compensation is received as each separate, contracted-for task is completed. To qualify for this exclusion, all services performed pursuant to the contract must be described in subdivision (a), (b), or (c) of Section 10131.

(c) A contract between a real estate broker and a principal that requires payment of a commission to the broker after the contract is fully performed does not represent an agreement for an advance fee.

(d) This section does not exempt from regulation the charging or collecting of a fee under Section 1950.5 or 1950.6 of the Civil Code, but instead regulates fees that are not subject to those sections. (Added by Stats. 2010, ch. 85.)

### **§ 10085 Advance Fee Agreements—Materials Used to Obtain; Submission to Commissioner; Orders; Violations**

The commissioner may require that any or all materials used in obtaining advance fee agreements, including but not limited to the contract forms, letters or cards

used to solicit prospective sellers, and radio and television advertising be submitted to him or her at least 10 calendar days before they are used. Should the commissioner determine that any such matter, when used alone or with any other matter, would tend to mislead he or she may, within 10 calendar days of the date he or she receives same, order that it not be used, disseminated, nor published. Any person or entity using, disseminating, or publishing any matter which the commissioner has ordered, pursuant to this section, not to be used, published, or disseminated shall be guilty of a misdemeanor punishable by a fine not exceeding two thousand five hundred dollars (\$2,500) or by imprisonment in the county jail not exceeding six months, or both, for each such use, dissemination, or publication. The commissioner may determine the form of the advance fee agreements, and all material used in soliciting prospective owners and sellers shall be used in the form and manner which he or she determines is necessary to carry out the purposes and intent of this part. Any violation of any of the provisions of this part or of the rules, regulations, orders or requirements of the commissioner thereunder shall constitute grounds for disciplinary action against a licensee, or for proceedings under Section 10081 of this code, or both. These sanctions are in addition to the criminal proceedings hereinbefore provided. (Added by Stats. 1959, ch. 2117. Amended by Stats. 1983, ch. 1092; Stats. 1990, ch. 728; Stats. 2009, ch. 630, operative October 11, 2009.)

### **§ 10085.6 Mortgage Loan Modifications—Performed by Licensee; Prohibitions; Violations**

(a) Notwithstanding any other provision of law, it shall be unlawful for any licensee who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, to do any of the following:

(1) Claim, demand, charge, collect, or receive any compensation until after the licensee has fully performed each and every service the licensee contracted to perform or represented that he, she, or it would perform.

(2) Take any wage assignment, any lien of any type on real or personal property, or other security to secure the payment of compensation.



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(3) Take any power of attorney from the borrower for any purpose.

(b) A violation of this section by a natural person who is a licensee is a public offense punishable by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment in the county jail for a term not to exceed one year, or by both that fine and imprisonment, or if by a corporation, the violation is punishable by a fine not exceeding fifty thousand dollars (\$50,000). These penalties are cumulative to any other remedies or penalties provided by law.

(c) This section shall apply only to mortgages and deeds of trust secured by residential real property containing four or fewer dwelling units. (Added by Stats. 2009, ch. 630. Amended by Stats. 2012, ch. 569.)

### **§ 10130 Real Estate Broker / Salesperson— License Required; Complaints for Violation; Prosecution**

It is unlawful for any person to engage in the business of, act in the capacity of, advertise as, or assume to act as a real estate broker or a real estate salesperson within this state without first obtaining a real estate license from the department, or to engage in the business of, act in the capacity of, advertise as, or assume to act as a mortgage loan originator within this state without having obtained a license endorsement.

The commissioner may prefer a complaint for violation of this section before any court of competent jurisdiction, and the commissioner and his or her counsel, deputies or assistants may assist in presenting the law or facts at the trial.

It is the duty of the district attorney of each county in this state to prosecute all violations of this section in their respective counties in which the violations occur. (Added by Stats. 1943, ch. 127. Amended by Stats. 1969, ch. 138; Stats. 2012, ch. 569.)

### **§ 10131 Real Estate Brokers—Defined**

A real estate broker within the meaning of this part is a person who, for a compensation or in expectation of a compensation, regardless of the form or time of payment, does or negotiates to do one or more of the following acts for another or others:

(a) Sells or offers to sell, buys or offers to buy, solicits prospective sellers or purchasers of, solicits or obtains listings of, or negotiates the purchase, sale or exchange of real property or a business opportunity.

(b) Leases or rents or offers to lease or rent, or places for rent, or solicits listings of places for rent, or solicits for prospective tenants, or negotiates the sale, purchase or exchanges of leases on real property, or on a business opportunity, or collects rents from real property, or improvements thereon, or from business opportunities.

(c) Assists or offers to assist in filing an application for the purchase or lease of, or in locating or entering upon, lands owned by the state or federal government.

(d) Solicits borrowers or lenders for or negotiates loans or collects payments or performs services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity.

(e) Sells or offers to sell, buys or offers to buy, or exchanges or offers to exchange a real property sales contract, or a promissory note secured directly or collaterally by a lien on real property or on a business opportunity, and performs services for the holders thereof. (Added by Stats. 1943, ch. 127. Amended by Stats. 1955, ch. 1678; Stats. 1959, ch. 2116; Stats. 1959, ch. 2117; Stats. 1960, ch. 45; Stats. 1961, ch. 886; Stats. 1965, ch. 172; Stats. 1984, ch. 177.)

### **§ 10133 Real Estate Brokers—Exemptions from Licensing Requirements**

(a) The acts described in Section 10131 are not acts for which a real estate license is required if performed by:

(1) A regular officer of a corporation or a general partner of a partnership with respect to real property owned or leased by the corporation or partnership, respectively, or in connection with the proposed purchase or leasing of real property by the corporation or partnership, respectively, if the acts are not performed by the officer or partner in expectation of special compensation.

(2) A person holding a duly executed power of attorney from the owner of the real property with respect to which the acts are performed.

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(3) An attorney at law in rendering legal services to a client.

(4) A receiver, trustee in bankruptcy or other person acting under order of a court of competent jurisdiction.

(5) A trustee for the beneficiary of a deed of trust when selling under authority of that deed of trust.

(b) The exemptions in subdivision (a) are not applicable to a person who uses or attempts to use them for the purpose of evading the provisions of this part. (Added by Stats. 1943, ch. 127. Amended by Stats. 1953, ch. 871; Stats. 1985, ch. 476.)

### **§ 10133.1 Inapplicability of Certain Code Sections to Particular Persons or Association**

(a) Subdivisions (d) and (e) of Section 10131, Section 10131.1, Article 5 (commencing with Section 10230), and Article 7 (commencing with Section 10240) of this code and Section 1695.13 of the Civil Code do not apply to any of the following:

(1) Any person or employee thereof doing business under any law of this state, any other state, or the United States relating to banks, trust companies, savings and loan associations, industrial loan companies, pension trusts, credit unions, or insurance companies.

(2) Any nonprofit cooperative association organized under Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code, in loaning or advancing money in connection with any activity mentioned therein.

(3) Any corporation, association, syndicate, joint stock company, or partnership engaged exclusively in the business of marketing agricultural, horticultural, viticultural, dairy, livestock, poultry, or bee products on a cooperative nonprofit basis, in loaning or advancing money to the members thereof or in connection with any business of that type.

(4) Any corporation securing money or credit from any federal intermediate credit bank organized and existing pursuant to the provisions of an act of Congress entitled the "Agricultural

Credits Act of 1923," in loaning or advancing money or credit so secured.

(5) Any person licensed to practice law in this state, not actively and principally engaged in the business of negotiating loans secured by real property, when that person renders services in the course of his or her practice as an attorney at law, and the disbursements of that person, whether paid by the borrower or other person, are not charges or costs and expenses regulated by or subject to the limitations of Article 7 (commencing with Section 10240), and the fees and disbursements are not shared, directly or indirectly, with the person negotiating the loan or the lender.

(6) Any person licensed as a finance lender when acting under the authority of that license.

(7) Any cemetery authority as defined by Section 7018 of the Health and Safety Code, that is authorized to do business in this state or its authorized agent.

(8) Any person authorized in writing by a savings institution to act as an agent of that institution, as authorized by Section 6520 of the Financial Code or comparable authority of the Office of the Comptroller of the Currency of the United States Department of the Treasury by its regulations, when acting under the authority of that written authorization.

(9) Any person who is licensed as a securities broker or securities dealer under any law of this state, or of the United States, or any employee, officer, or agent of that person, if that person, employee, officer, or agent is acting within the scope of authority granted by that license in connection with a transaction involving the offer, sale, purchase, or exchange of a security representing an ownership interest in a pool of promissory notes secured directly or indirectly by liens on real property, which transaction is subject to any law of this state or the United States regulating the offer or sale of securities.

(10) Any person licensed as a residential mortgage lender or servicer when acting under the authority of that license.

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- (11) Any organization that has been approved by the United States Department of Housing and Urban Development pursuant to Section 106(a)(1)(iii) of the federal Housing and Urban Development Act of 1968 (12 U.S.C. Sec. 1701x), to provide counseling services, or an employee of such an organization, when those services are provided at no cost to the borrower and are in connection with the modification of the terms of a loan secured directly or collaterally by a lien on residential real property containing four or fewer dwelling units.
- (12) Any person licensed as a PACE program administrator when acting under the authority of that license.
- (13) A PACE solicitor, when enrolled by a person licensed as a program administrator and acting pursuant to an agreement with that program administrator licensee.
- (14) A PACE solicitor agent, when enrolled by a person licensed as a program administrator and acting pursuant to an agreement between a PACE solicitor and that program administrator licensee.
- (b) Persons described in paragraph (1), (2), or (3), as follows, are exempt from the provisions of subdivisions (d) and (e) of Section 10131 or Section 10131.1 with respect to the collection of payments or performance of services for lenders or on notes of owners in connection with loans secured directly or collaterally by liens on real property:
- (1) The person makes collections on 10 or less of those loans, or in amounts of forty thousand dollars (\$40,000) or less, in any calendar year.
  - (2) The person is a corporation licensed as an escrow agent under Division 6 (commencing with Section 17000) of the Financial Code and the payments are deposited and maintained in the escrow agent's trust account.
  - (3) An employee of a real estate broker who is acting as the agent of a person described in paragraph (4) of subdivision (b) of Section 10232.4.
- For purposes of this subdivision, performance of services does not include soliciting borrowers, lenders, or purchasers for, or negotiating, loans secured directly or collaterally by a lien on real property.
- (c) (1) Subdivision (d) of Section 10131 does not apply to an employee of a real estate broker who, on behalf of the broker, assists the broker in meeting the broker's obligations to its customers in residential mortgage loan transactions, as defined in Section 50003 of the Financial Code, where the lender is an institutional lender, as defined in Section 50003 of the Financial Code, provided the employee does not participate in any negotiations occurring between the principals.
- (2) A broker shall exercise reasonable supervision and control over the activities of nonlicensed employees acting under this subdivision, and shall comply with Section 10163 for each location where the nonlicensed persons are employed.
- (d) This section does not restrict the ability of the commissioner to discipline a broker or corporate broker licensee or its designated officer, or both the corporate broker licensee and its designated officer, for misconduct of a nonlicensed employee acting under this subdivision, or, pursuant to Section 10080, to adopt, amend, or repeal rules or regulations governing the employment or supervision of an employee who is a nonlicensed person as described in this subdivision.
- (e) This section shall become operative on January 1, 2019. (Added by Stats. 1961, ch. 886. Amended by Stats. 1965, ch. 305; Stats. 1968, ch. 397; Stats. 1972, ch. 185; Stats. 1976, ch. 480; Stats. 1979, ch. 655; Stats. 1980, ch. 676; Stats. 1980, ch. 423; Stats. 1981, ch. 263; Stats. 1981, ch. 714; Stats. 1981, ch. 724; Stats. 1982, ch. 466; Stats. 1982, ch. 711; Stats. 1982, ch. 1082; Stats. 1984, ch. 868; Stats. 1987, ch. 1401; Stats. 1989, ch. 1116; Stats. 1989, ch. 1386; Stats. 1994, ch. 994; Stats. 1998, ch. 485; Stats. 1999, ch. 407; Stats. 2002, ch. 167; Stats. 2009, ch. 630, operative October 11, 2009; Stats. 2016, ch. 177; Stats. 2017, ch. 475; Stats. 2018, ch. 285.)

### **§ 10147.6 Mortgage Loan Modifications—Licensee Offering to Perform Modification for Compensation; Notice to Borrower; Violations**

- (a) Any licensee who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or

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other form of mortgage loan forbearance for a fee or other form of compensation paid by the borrower, shall provide the following to the borrower, as a separate statement, in not less than 14-point bold type, prior to entering into any fee agreement with the borrower:

It is not necessary to pay a third party to arrange for a loan modification or other form of forbearance from your mortgage lender or servicer. You may call your lender directly to ask for a change in your loan terms. Nonprofit housing counseling agencies also offer these and other forms of borrower assistance free of charge. A list of nonprofit housing counseling agencies approved by the United States Department of Housing and Urban Development (HUD) is available from your local HUD office or by visiting [www.hud.gov](http://www.hud.gov).

(b) If loan modification or other mortgage loan forbearance services are offered or negotiated in one of the languages set forth in Section 1632 of the Civil Code, a translated copy of the statement in subdivision (a) shall be provided to the borrower in that foreign language.

(c) A violation of this section by a natural person who is a licensee is a public offense punishable by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment in the county jail for a term not to exceed one year, or by both that fine and imprisonment, or if by a corporation, the violation is punishable by a fine not exceeding fifty thousand dollars (\$50,000). These penalties are cumulative to any other remedies or penalties provided by law.

(d) This section shall apply only to mortgages and deeds of trust secured by residential real property containing four or fewer dwelling units. (Added by Stats. 2009, ch. 630, operative October 11, 2009.)

**[Publisher's Note: The following paragraph concerns Business and Professions Code 10147.6 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 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.

### **§ 10177 Real Estate Licenses—Grounds for Revocation or Denial; Disciplinary Action**

The commissioner may suspend or revoke the license of a real estate licensee, delay the renewal of a license of a real estate licensee, or deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, delay the renewal of a license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done any of the following:

(a) Procured, or attempted to procure, a real estate license or license renewal, for themselves or a salesperson, by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in an application for a real estate license, license renewal, or reinstatement.

(b) (1) Entered a plea of guilty or no contest to, or been found guilty of, or been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the Penal Code allowing that licensee to withdraw that licensee's plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.

(2) Notwithstanding paragraph (1), and with the recognition that sentencing may not occur for months or years following the entry of a guilty plea, the commissioner may suspend the license of a real estate licensee upon the entry by the licensee of a guilty plea to any of the crimes described in paragraph (1). If the guilty plea is withdrawn, the suspension shall be rescinded and the license reinstated to its status prior to the suspension. The department shall notify a person whose license is subject to suspension pursuant to this paragraph of that person's right to have the issue of the suspension heard in accordance with Section 10100.

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(c) Knowingly authorized, directed, connived at, or aided in the publication, advertisement, distribution, or circulation of a material false statement or representation concerning their designation or certification of special education, credential, trade organization membership, or business, or concerning a business opportunity or a land or subdivision, as defined in Chapter 1 (commencing with Section 11000) of Part 2, offered for sale.

(d) Willfully disregarded or violated this part or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and regulations of the commissioner for the administration and enforcement of this part and Chapter 1 (commencing with Section 11000) of Part 2.

(e) Willfully used the term “realtor” or a trade name or insignia of membership in a real estate organization of which the licensee is not a member.

(f) Acted or conducted themselves in a manner that would have warranted the denial of their application for a real estate license, either had a license denied or had a license issued by another agency of this state, another state, or the federal government revoked, surrendered, or suspended, or received an order of debarment, for acts that, if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate license, if the action of denial, revocation, surrender, suspension, or debarment by the other agency or entity was taken only after giving the licensee or applicant fair notice of the charges, an opportunity for a hearing, and other due process protections comparable to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and only upon an express finding of a violation of law by the agency or entity.

(g) Demonstrated negligence or incompetence in performing an act for which the officer, director, or person is required to hold a license.

(h) As a broker licensee, failed to exercise reasonable supervision over the activities of that licensee’s salespersons, or, as the officer designated by a corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required.

(i) Used their employment by a governmental agency in a capacity giving access to records, other than public records, in a manner that violates the confidential nature of the records.

(j) Engaged in any other conduct, whether of the same or of a different character than specified in this section, that constitutes fraud or dishonest dealing.

(k) Violated any of the terms, conditions, restrictions, and limitations contained in an order granting a restricted license.

(l) (1) Solicited or induced the sale, lease, or listing for sale or lease of residential property on the grounds, wholly or in part, of loss of value, increase in crime, or decline of the quality of the schools due to the present or prospective entry into the neighborhood of a person or persons having a characteristic listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those characteristics are defined in Sections 12926 and 12926.1 of, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 of, and Section 12955.2 of, the Government Code.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 4760 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

(m) Violated the Franchise Investment Law (Division 5 (commencing with Section 31000) of Title 4 of the Corporations Code) or regulations of the Commissioner of Financial Protection and Innovation pertaining thereto.

(n) Violated the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code) or the regulations of the Commissioner of Financial Protection and Innovation pertaining thereto.

(o) Failed to disclose to the buyer of real property, in a transaction in which the licensee is an agent for the

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buyer, the nature and extent of a licensee's direct or indirect ownership interest in that real property. The direct or indirect ownership interest in the property by a person related to the licensee by blood or marriage, by an entity in which the licensee has an ownership interest, or by any other person with whom the licensee has a special relationship shall be disclosed to the buyer.

(p) Violated Article 6 (commencing with Section 10237).

(q) Violated or failed to comply with Chapter 2 (commencing with Section 2920) of Title 14 of Part 4 of Division 3 of the Civil Code, relating to mortgages.

If a real estate broker that is a corporation has not done any of the foregoing acts, either directly or through its employees, agents, officers, directors, or persons owning or controlling 10 percent or more of the corporation's stock, the commissioner may not deny the issuance or delay the renewal of a real estate license to, or suspend or revoke the real estate license of, the corporation, provided that any offending officer, director, or stockholder, who has done any of the foregoing acts individually and not on behalf of the corporation, has been completely disassociated from any affiliation or ownership in the corporation. A decision by the commissioner to delay the renewal of a real estate license shall toll the expiration of that license until the results of any pending disciplinary actions against that licensee are final or until the licensee voluntarily surrenders the licensee's license, whichever is earlier. (Added by Stats. 2011, ch. 717, operative July 1, 2012. Amended by Stats. 2012, ch. 181, operative January 1, 2014; Stats. 2016, ch. 800; Stats. 2017, ch. 561; Stats. 2018, ch. 285; Stats. 2019, ch. 143; Stats. 2021, ch. 431.)

### **§ 17529 Unsolicited Commercial E-mail— Legislative Findings and Declarations**

The Legislature hereby finds and declares all of the following:

(a) Roughly 40 percent of all e-mail traffic in the United States is comprised of unsolicited commercial e-mail advertisements (hereafter spam) and industry experts predict that by the end of 2003 half of all e-mail traffic will be comprised of spam.

(b) The increase in spam is not only an annoyance but is also an increasing drain on corporate budgets and possibly a threat to the continued usefulness of the most successful tool of the computer age.

(c) Complaints from irate business and home computer users regarding spam have skyrocketed, and polls have reported that 74 percent of respondents favor making mass spamming illegal and only 12 percent are opposed, and that 80 percent of respondents consider spam very annoying.

(d) According to Ferris Research Inc., a San Francisco consulting group, spam will cost United States organizations more than ten billion dollars (\$10,000,000,000) this year, including lost productivity and the additional equipment, software, and manpower needed to combat the problem. California is 12 percent of the United States population with an emphasis on technology business, and it is therefore estimated that spam costs California organizations well over 1.2 billion dollars (\$1,200,000,000).

(e) Like junk faxes, spam imposes a cost on users, using up valuable storage space in e-mail inboxes, as well as costly computer band width, and on networks and the computer servers that power them, and discourages people from using e-mail.

(f) Spam filters have not proven effective.

(g) Like traditional paper "junk" mail, spam can be annoying and waste time, but it also causes many additional problems because it is easy and inexpensive to create, but difficult and costly to eliminate.

(h) The "cost shifting" from deceptive spammers to Internet business and e-mail users has been likened to sending junk mail with postage due or making telemarketing calls to someone's pay per minute cellular phone.

(i) Many spammers have become so adept at masking their tracks that they are rarely found, and are so technologically sophisticated that they can adjust their systems to counter special filters and other barriers against spam and can even electronically commandeer unprotected computers, turning them into spam launching weapons of mass production.

(j) There is a need to regulate the advertisers who use spam, as well as the actual spammers, because

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the actual spammers can be difficult to track down due to some return addresses that show up on the display as “unknown” and many others being obvious fakes and they are often located offshore.

(k) The true beneficiaries of spam are the advertisers who benefit from the marketing derived from the advertisements.

(l) In addition, spam is responsible for virus proliferation that can cause tremendous damage both to individual computers and to business systems.

(m) Because of the above problems, it is necessary that spam be prohibited and that commercial advertising e-mails be regulated as set forth in this article. (Added by Stats. 2003, ch. 487.)

### **§ 17529.1 Unsolicited Commercial E-mail— Definitions**

For the purpose of this article, the following definitions apply:

(a) “Advertiser” means a person or entity that advertises through the use of commercial e-mail advertisements.

(b) “California electronic mail address” or “California e-mail address” means any of the following:

(1) An e-mail address furnished by an electronic mail service provider that sends bills for furnishing and maintaining that e-mail address to a mailing address in this state.

(2) An e-mail address ordinarily accessed from a computer located in this state.

(3) An e-mail address furnished to a resident of this state.

(c) “Commercial e-mail advertisement” means any electronic mail message initiated for the purpose of advertising or promoting the lease, sale, rental, gift offer, or other disposition of any property, goods, services, or extension of credit.

(d) “Direct consent” means that the recipient has expressly consented to receive e-mail advertisements from the advertiser, either in response to a clear and

conspicuous request for the consent or at the recipient’s own initiative.

(e) “Domain name” means any alphanumeric designation that is registered with or assigned by any domain name registrar as part of an electronic address on the Internet.

(f) “Electronic mail” or “e-mail” means an electronic message that is sent to an e-mail address and transmitted between two or more telecommunications devices, computers, or electronic devices capable of receiving electronic messages, whether or not the message is converted to hard copy format after receipt, viewed upon transmission, or stored for later retrieval. “Electronic mail” or “e-mail” includes electronic messages that are transmitted through a local, regional, or global computer network.

(g) “Electronic mail address” or “e-mail address” means a destination, commonly expressed as a string of characters, to which electronic mail can be sent or delivered. An “electronic mail address” or “e-mail address” consists of a user name or mailbox and a reference to an Internet domain.

(h) “Electronic mail service provider” means any person, including an Internet service provider, that is an intermediary in sending or receiving electronic mail or that provides to end users of the electronic mail service the ability to send or receive electronic mail.

(i) “Initiate” means to transmit or cause to be transmitted a commercial e-mail advertisement or assist in the transmission of a commercial e-mail advertisement by providing electronic mail addresses where the advertisement may be sent, but does not include the routine transmission of the advertisement through the network or system of a telecommunications utility or an electronic mail service provider through its network or system.

(j) “Incident” means a single transmission or delivery to a single recipient or to multiple recipients of an unsolicited commercial e-mail advertisement containing substantially similar content.

(k) “Internet” has the meaning set forth in paragraph (6) of subdivision (e) of Section 17538.

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(l) "Preexisting or current business relationship," as used in connection with the sending of a commercial e-mail advertisement, means that the recipient has made an inquiry and has provided his or her e-mail address, or has made an application, purchase, or transaction, with or without consideration, regarding products or services offered by the advertiser. Commercial e-mail advertisements sent pursuant to the exemption provided for a preexisting or current business relationship shall provide the recipient of the commercial e-mail advertisement with the ability to "opt out" from receiving further commercial e-mail advertisements by calling a toll free telephone number or by sending an "unsubscribe" e-mail to the advertiser offering the products or services in the commercial e-mail advertisement. This opt out provision does not apply to recipients who are receiving free e-mail service with regard to commercial e-mail advertisements sent by the provider of the e-mail service.

(m) "Recipient" means the addressee of an unsolicited commercial e-mail advertisement. If an addressee of an unsolicited commercial e-mail advertisement has one or more e-mail addresses to which an unsolicited commercial e-mail advertisement is sent, the addressee shall be deemed to be a separate recipient for each e-mail address to which the e-mail advertisement is sent.

(n) "Routine transmission" means the transmission, routing, relaying, handling, or storing of an electronic mail message through an automatic technical process. "Routine transmission" shall not include the sending, or the knowing participation in the sending, of unsolicited commercial e-mail advertisements.

(o) "Unsolicited commercial e-mail advertisement" means a commercial e-mail advertisement sent to a recipient who meets both of the following criteria:

- (1) The recipient has not provided direct consent to receive advertisements from the advertiser.
- (2) The recipient does not have a preexisting or current business relationship, as defined in subdivision (l), with the advertiser promoting the lease, sale, rental, gift offer, or other disposition of any property, goods, services, or extension of credit. (Added by Stats. 2003, ch. 487. Amended by Stats. 2004, ch. 183.)

### **§ 17529.2 Unsolicited Commercial E-mail—Restrictions**

Notwithstanding any other provision of law, a person or entity may not do any of the following:

(a) Initiate or advertise in an unsolicited commercial e-mail advertisement from California or advertise in an unsolicited commercial e-mail advertisement sent from California.

(b) Initiate or advertise in an unsolicited commercial e-mail advertisement to a California electronic mail address, or advertise in an unsolicited commercial e-mail advertisement sent to a California electronic mail address.

(c) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect any other provision or application that can be given effect without the invalid provision or application. (Added by Stats. 2003, ch. 487.)

### **§ 17529.3 Unsolicited Commercial E-mail—Internet Service Provider Policy**

Nothing in this article shall be construed to limit or restrict the adoption, implementation, or enforcement by a provider of Internet access service of a policy of declining to transmit, receive, route, relay, handle, or store certain types of electronic mail messages. (Added by Stats. 2003, ch. 487.)

### **§ 17529.4 Unlawful Collection of E-mail Addresses**

(a) It is unlawful for any person or entity to collect electronic mail addresses posted on the Internet if the purpose of the collection is for the electronic mail addresses to be used to do either of the following:

- (1) Initiate or advertise in an unsolicited commercial e-mail advertisement from California, or advertise in an unsolicited commercial e-mail advertisement sent from California.
- (2) Initiate or advertise in an unsolicited commercial e-mail advertisement to a California electronic mail address, or advertise in an unsolicited commercial e-mail advertisement sent to California electronic mail address.



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(b) It is unlawful for any person or entity to use an electronic mail address obtained by using automated means based on a combination of names, letters, or numbers to do either of the following:

(1) Initiate or advertise in an unsolicited commercial e-mail advertisement from California, or advertise in an unsolicited commercial e-mail advertisement sent from California.

(2) Initiate or advertise in an unsolicited commercial e-mail advertisement to a California electronic mail address, or advertise in an unsolicited commercial e-mail advertisement sent to a California electronic mail address.

(c) It is unlawful for any person to use scripts or other automated means to register for multiple electronic mail accounts from which to do, or to enable another person to do, either of the following:

(1) Initiate or advertise in an unsolicited commercial e-mail advertisement from California, or advertise in an unsolicited commercial e-mail advertisement sent from California.

(2) Initiate or advertise in an unsolicited commercial e-mail advertisement to a California electronic mail address, or advertise in an unsolicited commercial e-mail advertisement sent to a California electronic mail address. (Added by Stats. 2003, ch. 487.)

### **§ 17529.5 Commercial E-mail Containing Falsified or Misleading Information**

(a) It is unlawful for any person or entity to advertise in a commercial e-mail advertisement either sent from California or sent to a California electronic mail address under any of the following circumstances:

(1) The e-mail advertisement contains or is accompanied by a third-party's domain name without the permission of the third party.

(2) The e-mail advertisement contains or is accompanied by falsified, misrepresented, or forged header information. This paragraph does not apply to truthful information used by a third party who has been lawfully authorized by the advertiser to use that information.

(3) The e-mail advertisement has a subject line that a person knows would be likely to mislead a recipient, acting reasonably under the circumstances, about a material fact regarding the contents or subject matter of the message.

(b) (1) (A) In addition to any other remedies provided by any other provision of law, the following may bring an action against a person or entity that violates any provision of this section:

(i) The Attorney General.

(ii) An electronic mail service provider.

(iii) A recipient of an unsolicited commercial e-mail advertisement, as defined in Section 17529.1.

(B) A person or entity bringing an action pursuant to subparagraph (A) may recover either or both of the following:

(i) Actual damages.

(ii) Liquidated damages of one thousand dollars (\$1,000) for each unsolicited commercial e-mail advertisement transmitted in violation of this section, up to one million dollars (\$1,000,000) per incident.

(C) The recipient, an electronic mail service provider, or the Attorney General, if the prevailing plaintiff, may also recover reasonable attorney's fees and costs.

(D) However, there shall not be a cause of action under this section against an electronic mail service provider that is only involved in the routine transmission of the e-mail advertisement over its computer network.

(2) If the court finds that the defendant established and implemented, with due care, practices and procedures reasonably designed to effectively prevent unsolicited commercial e-mail advertisements that are in violation of this section, the court shall reduce the liquidated damages recoverable under paragraph (1) to a maximum of one hundred dollars (\$100) for each unsolicited commercial e-mail advertisement, or a maximum of

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one hundred thousand dollars (\$100,000) per incident.

- (3) (A) A person who has brought an action against a party under this section shall not bring an action against that party under Section 17529.8 or 17538.45 for the same commercial e-mail advertisement, as defined in subdivision of Section 17529.1.

(B) A person who has brought an action against a party under Section 17529.8 or 17538.45 shall not bring an action against that party under this section for the same commercial e-mail advertisement, as defined in subdivision (c) of Section 17529.1.

(c) A violation of this section is a misdemeanor, punishable by a fine of not more than one thousand dollars (\$1,000), imprisonment in a county jail for not more than six months, or both that fine and imprisonment. (Added by Stats. 2003, ch. 487. Amended by Stats. 2004, ch. 571; Stats. 2005, ch. 247.)

### **§ 17529.8 Unsolicited Commercial E-mail—Remedies**

- (a) (1) In addition to any other remedies provided by this article or by any other provisions of law, a recipient of an unsolicited commercial e-mail advertisement transmitted in violation of this article, an electronic mail service provider, or the Attorney General may bring an action against an entity that violates any provision of this article to recover either or both of the following:

(A) Actual damages.

(B) Liquidated damages of one thousand dollars (\$1,000) for each unsolicited commercial e-mail advertisement transmitted in violation of Section 17529.2, up to one million dollars (\$1,000,000) per incident.

(2) The recipient, an electronic mail service provider, or the Attorney General, if the prevailing plaintiff, may also recover reasonable attorney's fees and costs.

(3) However, there shall not be a cause of action against an electronic mail service provider that is

only involved in the routine transmission of the unsolicited commercial e-mail advertisement over its computer network.

(b) If the court finds that the defendant established and implemented, with due care, practices and procedures reasonably designed to effectively prevent unsolicited commercial e-mail advertisements that are in violation of this article, the court shall reduce the liquidated damages recoverable under subdivision (a) to a maximum of one hundred dollars (\$100) for each unsolicited commercial e-mail advertisement, or a maximum of one hundred thousand dollars (\$100,000) per incident. (Added by Stats. 2003, ch. 487.)

### **§ 17529.9 Unsolicited Commercial E-mail—Severable Provisions**

The provisions of this article are severable. If any provision of this article or its application is held invalid, that invalidity shall not affect any other provision or application that can be given effect without the invalid provision or application. (Added by Stats. 2003, ch. 487.)

### **§ 17538.41 Advertisement Transmitted by Text Message**

(a) (1) Except as provided in subdivision (b), (c), (d), or (e), no person, entity conducting business, candidate, or political committee in this state shall transmit, or cause to be transmitted, a text message advertisement to a mobile telephony services handset, pager, or two way messaging device that is equipped with short message capability or any similar capability allowing the transmission of text messages. A text message advertisement is a message, the principal purpose of which is to promote the sale of goods or services, or to promote a political purpose or objective, to the recipient, and consisting of advertising material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit, or advertising material for political purposes.

(2) This section shall apply when a text message advertisement is transmitted to a number assigned for mobile telephony service, pager service, or two way messaging service to a California resident.

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(b) This section shall not apply to text messages transmitted at the direction of a person or entity offering mobile telephony service, pager service, or two way messaging service if the subscriber is offered an option to not receive those text messages.

(c) This section shall not apply to text messages transmitted by a business, candidate, or political committee that has an existing relationship with the subscriber if the subscriber is offered an option not to receive text messages from that business, candidate, or political committee.

(d) This section shall not apply to text messages transmitted by an affiliate of a business that has an existing relationship with the subscriber, but only if the subscriber has provided consent to the business with which he or she has that relationship to receive text messages from affiliates of that business. "Affiliate" means any company that controls, is controlled by, or is under common control with, another company.

(e) This section shall not apply to electronic mail messages that are forwarded, without the knowledge of the sender, to a mobile telephony services handset, pager, or two way messaging device.

(f) Subdivision (a) shall not impose an obligation on a person or entity offering mobile telephony service, pager service, or two way messaging service to control the transmission of a text message unless the message is transmitted at the direction of that person or entity.

(g) For purposes of this section, "mobile telephony service" means commercially available interconnected mobile phone services that provide access to the public switched telephone network (PSTN) via mobile communication devices employing radiowave technology to transmit calls, including cellular radiotelephone, broadband Personal Communications Services (PCS), and digital Specialized Mobile Radio (SMR). (Added by Stats. 2002, ch. 699. Amended by Stats. 2005, ch. 711.)

### **§ 17538.43 Unsolicited Advertisement Transmitted by Telephone Facsimile Machine**

(a) As used in this section, the following terms have the following meanings:

(1) "Telephone facsimile machine" means equipment that has the capacity to do either or both of the following:

(A) Transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line.

(B) Transcribe text or images, or both, from an electronic signal received over a regular telephone line onto paper.

(2) "Unsolicited advertisement" means any material advertising the commercial availability or quality of any property, goods, or services that is transmitted to any person or entity without that person's or entity's prior express invitation or permission. Prior express invitation or permission may be obtained for a specific or unlimited number of advertisements and may be obtained for a specific or unlimited period of time.

(b) (1) It is unlawful for a person or entity, if either the person or entity or the recipient is located within California, to use any telephone facsimile machine, computer, or other device to send, or cause another person or entity to use such a device to send, an unsolicited advertisement to a telephone facsimile machine.

(2) In addition to any other remedy provided by law, including a remedy provided by the Telephone Consumer Act (47 U.S.C. Sec. 227 and following), a person or entity may bring an action for a violation of this subdivision seeking the following relief:

(A) Injunctive relief against further violations.

(B) Actual damages or statutory damages of five hundred dollars (\$500) per violation, whichever amount is greater.

(C) Both injunctive relief and damages as set forth in subparagraphs (A) and (B). If the court finds that the defendant willfully or knowingly violated this subdivision, the court may, in its discretion, increase the amount of the award to an amount equal to not more than three times the amount otherwise available under subparagraph (B).

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(c) It is unlawful for a person or entity, if either the person or entity or the recipient is located in California, to do either of the following:

(1) Initiate any communication using a telephone facsimile machine that does not clearly mark, in a margin at the top or bottom of each transmitted page or on the first page of each transmission, the date and time sent, an identification of the business, other entity, or individual sending the message, and the telephone number of the sending machine or of the business, other entity, or individual.

(2) Use a computer or other electronic device to send any message via a telephone facsimile machine unless it is clearly marked, in a margin at the top or bottom of each transmitted page of the message or on the first page of the transmission, the date and time it is sent and the identification of the business, other entity, or individual sending the message and the telephone number of the sending machine or of the business, other entity, or individual.

(d) This section shall not apply to a facsimile sent by or on behalf of a professional or trade association that is a tax-exempt nonprofit organization and in furtherance of the association's tax-exempt purpose to a member of the association, provided that all of the following conditions are met:

(1) The member voluntarily provided the association the facsimile number to which the facsimile was sent.

(2) The facsimile is not primarily for the purpose of advertising the commercial availability or quality of any property, goods, or services of one or more third parties.

(3) The member who is sent the facsimile has not requested that the association stop sending facsimiles for the purpose of advertising the commercial availability or quality of any property, goods, or services of one or more third parties. (Added by Stats. 2005, ch. 667.)

### **§ 17538.45 Electronic Mail Advertisement—Definitions**

(a) For purposes of this section, the following words have the following meanings:

(1) "Electronic mail advertisement" means any electronic mail message, the principal purpose of which is to promote, directly or indirectly, the sale or other distribution of goods or services to the recipient.

(2) "Unsolicited electronic mail advertisement" means any electronic mail advertisement that meets both of the following requirements:

(A) It is addressed to a recipient with whom the initiator does not have an existing business or personal relationship.

(B) It is not sent at the request of or with the express consent of the recipient.

(3) "Electronic mail service provider" means any business or organization qualified to do business in California that provides registered users the ability to send or receive electronic mail through equipment located in this state and that is an intermediary in sending or receiving electronic mail.

(4) "Initiation" of an unsolicited electronic mail advertisement refers to the action by the initial sender of the electronic mail advertisement. It does not refer to the actions of any intervening electronic mail service provider that may handle or retransmit the electronic message.

(5) "Registered user" means any individual, corporation, or other entity that maintains an electronic mail address with an electronic mail service provider.

(b) No registered user of an electronic mail service provider shall use or cause to be used that electronic mail service provider's equipment located in this state in violation of that electronic mail service provider's policy prohibiting or restricting the use of its service or equipment for the initiation of unsolicited electronic mail advertisements.

(c) No individual, corporation, or other entity shall use or cause to be used, by initiating an unsolicited

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electronic mail advertisement, an electronic mail service provider's equipment located in this state in violation of that electronic mail service provider's policy prohibiting or restricting the use of its equipment to deliver unsolicited electronic mail advertisements to its registered users.

(d) An electronic mail service provider shall not be required to create a policy prohibiting or restricting the use of its equipment for the initiation or delivery of unsolicited electronic mail advertisements.

(e) Nothing in this section shall be construed to limit or restrict the rights of an electronic mail service provider under Section 230(c)(1) of Title 47 of the United States Code, any decision of an electronic mail service provider to permit or to restrict access to or use of its system, or any exercise of its editorial function.

(f) (1) In addition to any other action available under law, any electronic mail service provider whose policy on unsolicited electronic mail advertisements is violated as provided in this section may bring a civil action to recover the actual monetary loss suffered by that provider by reason of that violation, or liquidated damages of fifty dollars (\$50) for each electronic mail message initiated or delivered in violation of this section, up to a maximum of twenty-five thousand dollars (\$25,000) per day, whichever amount is greater.

(2) In any action brought pursuant to paragraph (1), the court may award reasonable attorney's fees to a prevailing party.

(3) (A) In any action brought pursuant to paragraph (1), the electronic mail service provider shall be required to establish as an element of its cause of action that prior to the alleged violation, the defendant had actual notice of both of the following:

(i) The electronic mail service provider's policy on unsolicited electronic mail advertising.

(ii) The fact that the defendant's unsolicited electronic mail advertisements would use or cause to be used the electronic mail service provider's equipment located in this state.

(B) In this regard, the Legislature finds that with rapid advances in Internet technology, and electronic mail technology in particular, Internet service providers are already experimenting with embedding policy statements directly into the software running on the computers used to provide electronic mail services in a manner that displays the policy statements every time an electronic mail delivery is requested. While the state of the technology does not support this finding at present, the Legislature believes that, in a given case at some future date, a showing that notice was supplied via electronic means between the sending and receiving computers could be held to constitute actual notice to the sender for purposes of this paragraph.

(4) (A) An electronic mail service provider who has brought an action against a party for a violation under Section 17529.8 shall not bring an action against that party under this section for the same unsolicited commercial electronic mail advertisement.

(B) An electronic mail service provider who has brought an action against a party for a violation of this section shall not bring an action against that party under Section 17529.8 for the same unsolicited commercial electronic mail advertisement. (Added by Stats. 1998, ch. 863. Amended by Stats. 2003, ch. 487; Stats. 2004, ch. 183.)

### **§ 22440 Engaging in the Business or Acting in the Capacity of an Immigration Consultant**

It is unlawful for any person, for compensation, other than persons authorized to practice law or authorized by federal law to represent persons before the Board of Immigration Appeals or the United States Citizenship and Immigration Services, to engage in the business or act in the capacity of an immigration consultant within this state except as provided by this chapter. (Added by Stats. 1986, ch. 248. Amended by Stats. 2004, ch. 557.)

### **§ 22441 Immigration Consultants; Definitions**

(a) A person engages in the business or acts in the capacity of an immigration consultant when that

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person gives nonlegal assistance or advice on an immigration matter. That assistance or advice includes, but is not limited to, the following:

- (1) Completing a form provided by a federal or state agency but not advising a person as to their answers on those forms.
- (2) Translating a person's answers to questions posed in those forms.
- (3) Securing for a person supporting documents, such as birth certificates, which may be necessary to complete those forms.
- (4) Submitting completed forms on a person's behalf and at their request to the United States Citizenship and Immigration Services.
- (5) Making referrals to persons who could undertake legal representation activities for a person in an immigration matter.

(b) "Immigration matter" means any proceeding, filing, or action affecting the immigration or citizenship status of any person which arises under immigration and naturalization law, executive order or presidential proclamation, or action of the United States Citizenship and Immigration Services, the United States Department of State, or the United States Department of Labor.

(c) "Compensation" means money, property, or anything else of value.

(d) Every person engaged in the business or acting in the capacity of an immigration consultant shall only offer nonlegal assistance or advice in an immigration matter as defined in subdivision (a). Any act in violation of subdivision (a) is a violation of this chapter. (Added by Stats. 1986, ch. 248. Amended by Stats. 1987, ch. 484; Stats. 2004, ch. 557.)

### **§ 22441.1 Immigration Consultants—Requirement for Background Check**

(a) A person engaged in the business or acting in the capacity of an immigration consultant shall satisfactorily pass a background check conducted by the Secretary of State.

(b) The Secretary of State shall disqualify an individual from acting as an immigration consultant for any of the following reasons:

- (1) Conviction of a felony.
- (2) Conviction of a disqualifying misdemeanor where not more than 10 years have passed since the completion of probation. A conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this paragraph. The list of disqualifying misdemeanors shall be the same as the disqualifying misdemeanors applicable to notaries public appointed and commissioned pursuant to Chapter 3 (commencing with Section 8200) of Division 1 of Title 2 of the Government Code.
- (3) Failure to disclose any arrest or conviction in the disclosure form required pursuant to subdivision (c) of Section 22443.1.

(c) The Secretary of State shall complete a background check on every person engaged in the business or acting in the capacity of an immigration consultant who was bonded and qualified pursuant to this chapter on or before December 31, 2006.

(d) The Secretary of State shall not file a bond, disclosure form, or photograph from a person who has failed to pass the background check required by this section. (Added by Stats. 2006, ch. 605.)

### **§ 22442 Immigration Consultants—Written Contract; Requisite Provisions**

(a) Every person engaged in the business or acting in the capacity of, an immigration consultant who enters into a contract or agreement with a client to provide services shall, prior to providing any services, provide the client with a written contract, the contents of which shall be prescribed by the Department of Consumer Affairs in regulations.

(b) The written contract shall include all provisions relating to the following:

- (1) The services to be performed. Each service to be performed shall be itemized with an explanation of the purpose and process of each service.

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- (2) The cost of each itemized service to be performed.
- (3) There shall be printed on the face of the contract in 10-point boldface type a statement that the immigration consultant is not an attorney and may not perform the legal services that an attorney performs.
- (4) The written contract shall list the documents to be prepared by the immigration consultant, shall explain the purpose and process of each document, and shall list the cost for preparing each document.
- (5) The written contract shall state the purpose for which the immigration consultant has been hired and the actions to be taken by the immigration consultant regarding each document, including the agency and office where each document will be filed and the approximate processing times according to current published agency guidelines.
- (6) The written contract shall include a provision that informs the client that he or she may report complaints relating to immigration consultants to the Executive Office for Immigration Review of the United States Department of Justice. The written contract shall also include a provision stating that complaints concerning the unauthorized practice of law may be reported to the State Bar of California. These required provisions shall include the toll-free telephone numbers and Internet Web sites of those entities.
- (c) An immigration consultant shall not include provisions in the written contract relating to either of the following:
- (1) Any guarantee or promise, unless the immigration consultant has some basis in fact for making the guarantee or promise.
  - (2) Any statement that the immigration consultant can or will obtain special favors from or has special influence with the United States Citizenship and Immigration Services, or any other governmental agency, employee, or official, that may have a bearing on a client's immigration matter.
- (d) The provisions of the written contract shall be stated both in English and in the client's native language.
- (e) A written contract is void if it is not written pursuant to subdivision (d).
- (f) The client shall have the right to rescind the contract within 72 hours of signing the contract. The contents of this subdivision shall be conspicuously set forth in the written contract in both English and the client's native language.
- (g) An immigration consultant shall not make the statements described in subdivision (c) orally to a client.
- (h) Except if required pursuant to subparagraph (B) of paragraph (2) of subdivision (c) of Section 22442.6, this section does not apply to employees of nonprofit, tax-exempt corporations who help clients complete application forms in an immigration matter free of charge or for a nominal fee, including reasonable costs, consistent with that authorized by the Board of Immigration Appeals under Section 292.2 of Title 8 of the Code of Federal Regulations. (Added by Stats. 1986, ch. 248. Amended by Stats. 1987, ch. 484; Stats. 2003, ch. 384; Stats. 2004, ch. 557; Stats. 2006, ch. 605; Stats. 2013, ch. 574.)
- § 22442.1 Immigration Consultants—Required Receipts and Accounting**
- (a) A person engaged in the business or acting in the capacity of an immigration consultant shall provide a signed receipt to a client for each payment made by that client. The receipt shall be typed or computer generated on the consultant's letterhead.
- (b) A statement of accounting for the services rendered and payments made shall be provided to the client every two months, shall be typed or computer generated on the immigration consultant's letterhead, and shall display the individual charges and total charges for services and the client's payments offsetting those charges. The consultant shall provide the client a written translation of the statement in the client's native language. (Added by Stats. 2003, ch. 384.)

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### **§ 22442.2 Immigration Consultants—Posted Notice; Advertisement Notice; Required Information; Written Disclosure**

(a) An immigration consultant shall conspicuously display in his or her office a notice that shall be at least 12 by 20 inches with boldface type or print with each character at least one inch in height and width in English and in the native language of the immigration consultant's clientele, that contains the following information:

- (1) The full name, address, and evidence of compliance with any applicable bonding requirement including the bond number, if any.
- (2) A statement that the immigration consultant is not an attorney.
- (3) The services that the immigration consultant provides and the current and total fee for each service.
- (4) The name of each immigration consultant employed at each location.

(b) Prior to providing any services, an immigration consultant shall provide the client with a written disclosure in the native language of the client that shall include the following information:

- (1) The immigration consultant's name, address, and telephone number.
- (2) The immigration consultant's agent for service of process.
- (3) The legal name of the employee who consulted with the client, if different from the immigration consultant.
- (4) Evidence of compliance with any applicable bonding requirement, including the bond number, if any.

(c) (1) Except as provided in paragraph (2) or (3), an immigration consultant who prints, displays, publishes, distributes, or broadcasts, or who causes to be printed, displayed, published, distributed, or broadcasted, any advertisement for services as an immigration consultant, within the meaning of Section 22441, shall include in that advertisement a clear and conspicuous

statement that the immigration consultant is not an attorney.

(2) Notwithstanding paragraph (1), a person engaging in the business or acting in the capacity of an immigration consultant who is not licensed as an attorney in any state or territory of the United States, but is authorized by federal law to represent persons before the Board of Immigration Appeals or the United States Citizenship and Immigration Services, shall include in any advertisement for services as an immigration consultant a clear and conspicuous statement that the immigration consultant is not an attorney but is authorized by federal law to represent persons before the Board of Immigration Appeals or the United States Citizenship and Immigration Services.

(3) Notwithstanding paragraph (1), a person who is not an active member of the State Bar of California, but is an attorney licensed in another state or territory of the United States and is admitted to practice before the Board of Immigration Appeals or the United States Citizenship and Immigration Services, shall include in any advertisement for immigration services a clear and conspicuous statement that he or she is not an attorney licensed to practice law in California but is an attorney licensed in another state or territory of the United States and is authorized by federal law to represent persons before the Board of Immigration Appeals or the United States Citizenship and Immigration Services.

(4) If an advertisement subject to this subdivision is in a language other than English, the statement required by this subdivision shall be in the same language as the advertisement. (Added by Stats. 1994, ch. 561. Amended by Stats. 2000, ch. 674; Stats. 2003, ch. 384; Stats. 2004, ch. 557.)

### **§ 22442.3 Immigration Consultants—Translation of Specified Phrases; Bonding Requirements; Remedies and Penalties**

(a) An immigration consultant shall not, with the intent to mislead, literally translate, from English into another language, any words or titles, including, but not limited to, "notary public," "notary," "licensed," "attorney," or "lawyer," that imply that the person is an



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attorney, in any document, including an advertisement, stationery, letterhead, business card, or other comparable written material describing the immigration consultant. 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) An immigration consultant may not make or authorize the making of any verbal or written references to his or her compliance with the bonding requirements of Section 22443.1 except as provided in this chapter.

(d) A violation of subdivision (a) or (c) by an immigration consultant shall constitute a violation of subdivision (a) of Section 6126.

(e) (1) In addition to the remedies and penalties prescribed in this chapter, 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 any person injured by the violation or in a civil action brought in the name of the people of the State of California by the Attorney General, a district attorney, or a city attorney.

(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 willfulness of the misconduct.

(E) The defendant’s assets, liabilities, and net worth.

(3) If the Attorney General brings the action, one-half of the civil penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the General Fund. If a district attorney brings the action, the civil penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If a city attorney brings the action, one-half of the civil penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered.

(4) The court shall grant a prevailing plaintiff reasonable attorneys’ fees and costs. (Added by Stats. 1994, ch. 561. Amended by Stats. 2013, ch. 574.)

### **§ 22442.4 Immigration Consultants—Provision of Fingerprint Images and Other Information to Department of Justice**

(a) A person engaged in the business or acting in the capacity of an immigration consultant shall submit to the Department of Justice, fingerprint images and related information required by the Department of Justice for the purpose of obtaining information as to the existence and content of a record of state and federal convictions and arrests and information as to the existence and content of a record of state and federal arrests for which the Department of Justice establishes that the person is free on bail, or on his or her recognizance, pending trial or appeal. An immigration consultant who has been issued a bond as described in Section 22443.1 on or before December 31, 2006, shall submit the fingerprint images and related information to the Department of Justice on or before July 1, 2007.

(b) The Department of Justice shall forward the fingerprint images and related information received pursuant to subdivision (a) to the Federal Bureau of Investigation and request a federal summary of criminal information.

(c) The Department of Justice shall review the information returned from the Federal Bureau of Investigation and compile and disseminate a response to the Secretary of State pursuant to paragraph (1) of subdivision (p) of Section 11105 of the Penal Code.

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(d) The Secretary of State shall request from the Department of Justice subsequent arrest notification service, pursuant to Section 11105.2 of the Penal Code, for each person who submitted information pursuant to subdivision (a).

(e) The Department of Justice shall charge a fee sufficient to cover the cost of processing the requests described in this section.

(f) The Secretary of State shall not post on its Internet Web site information received from the Department of Justice. (Added by Stats. 2006, ch. 605.)

### **§ 22442.5 Immigration Consultants–Client Trust Account for Immigration Reform Act Services**

(a) An immigration consultant who provides immigration reform act services shall establish and deposit into a client trust account any funds received from a client prior to performing those services for that client.

(b) For purposes of this section, the following definitions apply:

(1) “Immigration reform act” means either of the following:

(A) Any pending or future act of Congress that is enacted after October 5, 2013, 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. The State Bar shall announce and post on its Internet Web site when an immigration reform act has been enacted.

(B) 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 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. The State Bar shall announce and post on its Internet Web site when an executive action or order has been issued.

(2) “Immigration reform act services” means services described in Section 22441 that are provided in connection with an immigration reform act.

(c) The immigration consultant providing immigration reform act services for the client may withdraw funds received from that client only in compliance with either of the following:

(1) After completing one or more of the itemized services described in paragraph (1) of subdivision (b) of Section 22442, and only in the amount identified as the cost of that service or those services pursuant to paragraph (2) of subdivision (b) of Section 22442.

(2) After completing one or more of the documents listed, and only in the amounts listed, pursuant to paragraph (4) of subdivision (b) of Section 22442. (Added by Stats. 2013, ch. 574. Amended by Stats. 2015, ch. 6, effective June 17, 2015.)

### **§ 22442.6 Immigration Consultants–Immigration Reform Act Services; Refunding of Advance Payment; Statement of Accounting**

(a) It is unlawful for an immigration consultant 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 subparagraph (A) of paragraph (1) of subdivision (b) of Section 22442.5, before the enactment of that act.

(2) (A) Requests for expanded Deferred Action for Childhood Arrivals (DACA) under an immigration reform act as defined in subparagraph (B) of paragraph (1) of subdivision (b) of Section 22442.5, before the date the United States 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 subparagraph (B) of paragraph (1) of subdivision (b) of Section

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22442.5, before the date the United States Citizenship and Immigration Services begins accepting those requests.

(C) Requests for Expanded Provisional Waivers of Unlawful Presence under an immigration reform act as defined in subparagraph (B) of paragraph (1) of subdivision (b) of Section 22442.5, before the issuance and effective date of new guidelines and regulations for those provisional waivers.

(D) 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.

(c) (1) If an immigration consultant providing immigration reform act services accepted funds prior to the effective date of this amendment to this section, and the services provided in connection with payment of those funds were rendered, the consultant 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 either be refunded to the client or shall be deposited in a client trust account pursuant to Section 22442.5.

(B) If an immigration consultant deposits funds in a client trust account pursuant to this paragraph, he or she shall comply with all applicable provisions of this chapter, including Section 22442, and shall provide to the client a written notice, in both English and in the client's native language, that there are no benefits or relief available, 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 and forms, and that commencing with the effective date of this amendment to this section, it is unlawful for an immigration consultant 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.

(d) (1) In addition to the remedies and penalties prescribed in this chapter, 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 any person injured by the violation or in a civil action brought in the name of the people of the State of California by the Attorney General, a district attorney, or a city attorney.

(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 willfulness of the misconduct.

(E) The defendant's assets, liabilities, and net worth.

(3) If the Attorney General brings the action, one-half of the civil penalty collected shall be paid

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to the treasurer of the county in which the judgment was entered, and one-half to the General Fund. If a district attorney brings the action, the civil penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If a city attorney brings the action, one-half of the civil penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered.

(e) The court shall grant a prevailing plaintiff reasonable attorneys' fees and costs. (Added by Stats. 2013, ch. 574. Amended by Stats. 2015, ch. 6, effective June 17, 2015.)

### **§ 22443 Immigration Consultants—Forms and Documents; Client Copies; Retention**

(a) A person engaged in the business or acting in the capacity of an immigration consultant shall deliver to a client a copy of each document or form completed on behalf of the client. Each document and form delivered must include the name and address of the immigration consultant.

(b) (1) A person engaged in the business or acting in the capacity of an immigration consultant shall retain copies of all documents and forms of a client for not less than three years from the date of the last service to the client.

(2) Upon presentation of a written consent signed by a client, an immigration consultant shall provide a copy of the client file to law enforcement without a warrant or a subpoena.

(c) (1) A person engaged in the business or acting in the capacity of an immigration consultant shall return to a client all original documents, including, but not limited to, original birth certificates, rental agreements, utility bills, employment stubs, Department of Motor Vehicle licenses with dates of entry, and passports, that the client has provided to the consultant in support of the client's application.

(2) Any original document that does not need to be submitted to immigration authorities as an original document shall be returned by the immigration consultant immediately after making a copy or reproduction thereof. (Added by Stats.

1986, ch. 248. Amended by Stats. 1994, ch. 562; Stats. 2003, ch. 384.)

### **§ 22443.1 Immigration Consultants—Bond; Requirements; Filing Fee Disclosure; Posting of Information**

(a) (1) Prior to engaging in the business or acting in the capacity of an immigration consultant, each person shall file with the Secretary of State a bond of one hundred thousand dollars (\$100,000) executed by a corporate surety admitted to do business in this state and conditioned upon compliance with this chapter. The total aggregate liability on the bond shall be limited to one hundred thousand dollars (\$100,000).

(2) The bond may be terminated pursuant to Section 995.440 of, and Article 13 (commencing with Section 996.310) of Chapter 2 of Title 14 of Part 2 of, the Code of Civil Procedure.

(b) The bond required by this section shall be in favor of, and payable to, the people of the State of California and shall be for the benefit of any person damaged by any fraud, misstatement, misrepresentation, unlawful act or omission, or failure to provide the services of the immigration consultant or the agents, representatives, or employees of the immigration consultant while acting within the scope of that employment or agency.

(c) An immigration consultant who is required to file a surety bond with the Secretary of State shall also file a disclosure form with the Secretary of State that contains all of the following information:

(1) The immigration consultant's name, date of birth, residence address, business address, residence telephone number, and business telephone number.

(2) The name and address of the immigration consultant's agent for service of process if one is required to be or has been appointed.

(3) Whether the immigration consultant has ever been convicted of a violation of this chapter or of Section 6126.

(4) Whether the immigration consultant has ever been arrested or convicted of a crime.

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- (5) If applicable, the name, business address, business telephone number, and agent for service of process of the corporation or partnership employing the immigration consultant.
- (d) An immigration consultant shall notify the Secretary of State's office in writing within 30 days when the surety bond required by this section is renewed, and of any change of name, address, telephone number, or agent for service of process.
- (e) The Secretary of State shall post information on its Internet Web site demonstrating that an immigration consultant is in compliance with the bond required by this section and has satisfactorily passed the background check required under Section 22441.1, and shall also post a copy of the immigration consultant's photograph. The Secretary of State shall ensure that the information is current and shall update the information at least every 30 days. The Secretary of State shall only post this information and photograph on its Internet Web site if the person has filed and maintained the bond, filed the disclosure form and photograph required to be filed with the Secretary of State, and passed the background check required by Section 22441.1.
- (f) The Secretary of State shall develop the disclosure form required to file a bond under this section and make it available to any immigration consultant filing a bond pursuant to this section.
- (g) An immigration consultant shall submit all of the following with the disclosure form:
- (1) A copy of valid and current photo identification to determine the immigration consultant's identity, such as a California driver's license or identification card, passport, or other identification acceptable to the Secretary of State.
  - (2) A photograph of himself or herself with the dimensions and in the style that would be acceptable to the United States Department of State for obtaining a United States passport, as instructed by the Secretary of State.
- (h) The Secretary of State shall charge and collect a filing fee to cover the cost of filing the bond.
- (i) The Secretary of State shall enforce the provisions of this chapter that govern the filing and maintenance of bonds.
- (j) This section does not apply to employees of nonprofit, tax-exempt corporations who help clients complete application forms in an immigration matter free of charge or for a nominal fee, including reasonable costs, consistent with that authorized by the Board of Immigration Appeals under Section 292.2 of Title 8 of the Code of Federal Regulations.
- (k) This section shall become operative on July 1, 2014. (Added by Stats. 2013, ch. 574, operative July 1, 2014.)

### **§ 22443.2 Immigration Consultants—Cease and Desist Order for Failure to Maintain Bond or Pass Background Check**

(a) The Secretary of State shall issue a cease and desist order to a person subject to this chapter's provisions who has failed to comply with the provisions governing the filing and maintenance of bonds or who does not satisfactorily pass a background check required by Section 22441.1, and shall give notice of the person's noncompliance or failure to satisfactorily pass the background check to the Attorney General. Prior to issuing a cease and desist order to a person pursuant to this subdivision, the Secretary of State shall provide the person with notice and an opportunity to demonstrate that grounds do not exist for disqualification.

(b) For orders issued for failure to comply with the provisions governing the filing and maintenance of bonds, the order shall include a statement that notice of the person's noncompliance shall be sent to the Attorney General. (Added by Stats. 2006, ch. 605.)

### **§ 22443.3 Immigration Consultants—Bond, Necessity to File with Secretary of State**

It is unlawful for any person to disseminate by any means any statement indicating directly or by implication that the person engages in the business or acts in the capacity of an immigration consultant, or proposes to engage in the business or act in the capacity of an immigration consultant, unless the person has on file with the Secretary of State a disclosure statement and a bond, in the amount of, and subject to the terms described in Section 22443.1, that is maintained throughout the period covered by the statement, such as, but not limited to, the period of a Yellow Pages listing. (Added by Stats. 2001, ch. 304. Amended by Stats. 2006, ch. 605.)

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### § 22444 Immigration Consultants—Illegal Acts

It is unlawful for any person engaged in the business or acting in the capacity of an immigration consultant to do any of the following acts:

- (a) Make false or misleading statements to a client while providing services to that client.
- (b) Make any guarantee or promise to a client, unless the guarantee or promise is in writing and the immigration consultant has some basis in fact for making the guarantee or promise.
- (c) Make any statement that the immigration consultant can or will obtain special favors from or has special influence with the United States Citizenship and Immigration Services, or any other governmental agency, employee, or official, that may have a bearing on a client's immigration matter.
- (d) Charge a client a fee for referral of the client to another for services which the immigration consultant cannot or will not provide to the client. A sign setting forth this prohibition shall be conspicuously displayed in the immigration consultant's office. (Added by Stats. 1986, ch. 248. Amended by Stats. 1988, ch. 160; Stats. 2004, ch. 557.)

### § 22445 Violations; Penalties and Punishment

- (a) (1) A person who violates this chapter shall be subject to a civil penalty not to exceed one hundred thousand dollars (\$100,000) for each violation, to be assessed and collected in a civil action brought by any person injured by the violation or in a civil action brought in the name of the people of the State of California by the Attorney General, a district attorney, or a city attorney. An action brought in the name of the people of the State of California shall not preclude an action being brought by an injured person.
- (2) The court shall impose a civil penalty for each violation of this chapter. 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: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the

misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.

- (3) Any action brought pursuant to this section by the Attorney General, a district attorney, or a city attorney shall also seek relief under subdivision (c) of Section 22446.5.

- (4) If the Attorney General brings the action, one half of the civil penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one half to the General Fund. If a district attorney brings the action, the civil penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If a city attorney brings the action, one half of the civil penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one half to the treasurer of the county in which the judgment was entered.

- (b) In addition to the provisions of subdivision (a), a violation of this chapter is a misdemeanor punishable by a fine of not less than two thousand dollars (\$2,000) or more than ten thousand dollars (\$10,000), as to each client with respect to whom a violation occurs, or imprisonment in the county jail for not more than one year, or by both fine and imprisonment. However, payment of restitution to a client shall take precedence over payment of a fine.

- (c) A second or subsequent violation of Sections 22442.2, 22442.3, and 22442.4 is a misdemeanor subject to the penalties specified in subdivisions (a) and (b). A second or subsequent violation of any other provision of this chapter is a felony punishable by imprisonment in state prison.

- (d) An action brought pursuant to this section shall be commenced within four years after discovery of the commission of the offense. (Added by Stats. 1986, ch. 248. Amended by Stats. 1987, ch. 1363; Stats. 1994, ch. 561; Stats. 1999, ch. 336; Stats. 2000, ch. 674; Stats. 2002, ch. 705; Stats. 2006, ch. 605.)

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### **§ 22446.5 Civil Actions; Attorneys' Fees; Priority of Cases**

(a) A person claiming to be aggrieved by a violation of this chapter by an immigration consultant may bring a civil action for injunctive relief or damages, or both. If the court finds that the defendant has violated a provision of this chapter, it shall award actual damages, plus an amount equal to treble the amount of actual damages or one thousand dollars (\$1,000) per violation, whichever is greater. The court shall also grant a prevailing plaintiff reasonable attorneys' fees and costs.

(b) Any other party who, upon information and belief, claims a violation of this chapter has been committed by an immigration consultant may bring a civil action for injunctive relief on behalf of the general public and, upon prevailing, shall recover reasonable attorneys' fees and costs.

(c) The Attorney General, a district attorney, or a city attorney who claims a violation of this chapter has been committed by an immigration consultant, may bring a civil action for injunctive relief, restitution, and other equitable relief against the immigration consultant in the name of the people of the State of California.

(d) An action brought under this chapter shall be set for trial at the earliest possible date, and shall take precedence over all other cases, except older matters of the same character and matters to which special preference may be given by law. (Added by Stats. 1987, ch. 484. Amended by Stats. 1994, ch. 561; Stats. 2002, ch. 705.)

### **§ 22447 Damage Recovery for the Bond or Deposit; Effect of Reduction of Principal Amount**

(a) A person who is awarded damages in an action or proceeding for injuries caused by the acts of a person engaged in the business of, or acting in the capacity of, an immigration consultant, in the performance of his or her duties as an immigration consultant, may recover damages from the bond required by Section 22443.1. In an action brought by the Attorney General, a district attorney, or a city attorney, the court may order relief for benefit of the injured parties to be paid from the bond.

(b) When any claim or claims against a bond have been paid so as to reduce the principal amount of the bond remaining available to pay claims below the principal amount required by Section 22443.1, the immigration consultant shall cease to conduct any business unless and until the bond has been reinstated up to the minimum amount required by Section 22443.1. (Added by Stats. 1994, ch. 562. Amended by Stats. 1997, ch. 790; Stats. 2001, ch. 304; Stats. 2002, ch. 705.)

### **§ 22448 Cause of Action; Commencement; Accrual**

Any civil action to enforce any cause of action pursuant to this chapter shall be commenced within four years after the cause of action has accrued. The cause of action is not to be deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the violation. (Added by Stats. 1998, ch. 879.)

### **§ 22449 Immigration Consultants—Fees for Providing Consultations, Legal Advice, or Notary Public Services Associated with Filing Application under Deferred Action for Childhood Arrivals Program; Conditions; Penalties; Professional Discipline**

(a) Immigration consultants, attorneys, notaries public, and organizations accredited by the United States Board of Immigration Appeals shall be the only individuals authorized to charge clients or prospective clients fees for providing consultations, legal advice, or notary public services, respectively, associated with filing an application under the federal Deferred Action for Childhood Arrivals program announced by the United States Secretary of Homeland Security on June 15, 2012.

(b) (1) Immigration consultants, attorneys, notaries public, and organizations accredited by the United States Board of Immigration Appeals shall be prohibited from participating in practices that amount to price gouging when a client or prospective client solicits services associated with filing an application for deferred action for childhood arrivals as described in subdivision (a).

(2) For the purposes of this section, "price gouging" means any practice that has the effect of

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pressuring the client or prospective client to purchase services immediately because purchasing them at a later time will result in the client or prospective client paying a higher price for the same services.

- (c) (1) In addition to the civil and criminal penalties described in Section 22445, a violation of this section by an attorney shall be cause for discipline by the State Bar pursuant to Chapter 4 (commencing with Section 6000) of Division 3.

(2) In addition to the civil and criminal penalties described in Section 22445, a violation of this section by a notary public shall be cause for the revocation or suspension of his or her commission as a notary public by the Secretary of State and the application of any other applicable penalties pursuant to Chapter 3 (commencing with Section 8200) of Division 1 of Title 2 of the Government Code. (Added by Stats. 2013, ch. 571.)

### CIVIL CODE

#### **§ 43.95 Immunity from Liability for Referrals by Professional Society**

(a) There shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any professional society or any nonprofit corporation authorized by a professional society to operate a referral service, or their agents, employees, or members, for referring any member of the public to any professional member of the society or service, or for acts of negligence or conduct constituting unprofessional conduct committed by a professional to whom a member of the public was referred, so long as any of the foregoing persons or entities has acted without malice, and the referral was made at no cost added to the initial referral fee as part of a public service referral system organized under the auspices of the professional society. Further, there shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any professional society for providing a telephone information library available for use by the general public without charge, nor against any nonprofit corporation authorized by a professional society for providing a telephone information library available for use by the general

public without charge. "Professional society" includes legal, psychological, architectural, medical, dental, dietetic, accounting, optometric, podiatric, pharmaceutical, chiropractic, veterinary, licensed marriage and family therapy, licensed clinical social work, professional clinical counselor, and engineering organizations having as members at least 25 percent of the eligible persons or licentiates in the geographic area served by the particular society. However, if the society has less than 100 members, it shall have as members at least a majority of the eligible persons or licentiates in the geographic area served by the particular society. "Professional society" also includes organizations with referral services that have been authorized by the State Bar of California and operated in accordance with its Minimum Standards for a Lawyer Referral Service in California, and organizations that have been established to provide free assistance or representation to needy patients or clients.

(b) This section shall not apply whenever the professional society, while making a referral to a professional member of the society, fails to disclose the nature of any disciplinary action of which it has actual knowledge taken by a state licensing agency against that professional member. However, there shall be no duty to disclose a disciplinary action in either of the following cases:

(1) Where a disciplinary proceeding results in no disciplinary action being taken against the professional to whom a member of the public was referred.

(2) Where a period of three years has elapsed since the professional to whom a member of the public was referred has satisfied any terms, conditions, or sanctions imposed upon the professional as disciplinary action; except that if the professional is an attorney, there shall be no time limit on the duty to disclose. (Added by Stats. 1987, ch. 727, effective July 1, 1993. Amended by Stats 1988, ch. 312; Stats. 2002, ch. 1013; Stats. 2011, ch. 381.)

#### **§ 54.27 Construction-Related Accessibility Claim—Prelitigation Letters and Complaints to Education Entities; Requirements**

(a) An attorney who provides a prelitigation letter to an education entity shall do both of the following:



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- (1) Include the attorney's State Bar license number in the prelitigation letter.
  - (2) Within five business days of providing the prelitigation letter, send a copy of the prelitigation letter to the California Commission on Disability Access.
- (b) An attorney who sends or serves a complaint against an education entity shall do both of the following:
- (1) Send a copy of the complaint and submit information about the complaint in a standard format specified by the California Commission on Disability Access to the commission within five business days of sending or serving the complaint.
  - (2) Notify the California Commission on Disability Access within five business days of judgment, settlement, or dismissal of the claim or claims alleged in the complaint of the following information in a standard format specified by the commission:
    - (A) The date of the judgment, settlement, or dismissal.
    - (B) Whether or not the construction-related accessibility violations alleged in the complaint were remedied in whole or in part after the plaintiff filed a complaint.
    - (C) If the construction-related accessibility violations alleged in the complaint were not remedied in whole or in part after the plaintiff filed a complaint, whether or not another favorable result was achieved after the plaintiff filed the complaint.
- (c) A violation of paragraph (2) of subdivision (a) or subdivision (b) shall constitute cause for the imposition of discipline of an attorney if a copy of the prelitigation letter, complaint, or notification of a case outcome is not sent to the California Commission on Disability Access within five business days. In the event the State Bar of California receives information indicating that an attorney has failed to send a copy of the prelitigation letter, complaint, or notification of a case outcome to the California Commission on Disability Access within five business days, the State Bar of California shall investigate to determine whether paragraph (2) of subdivision (a) or subdivision (b) has been violated.
- (d) Notwithstanding subdivisions (a) and (b), an attorney is not required to send to the California Commission on Disability Access a copy of any subsequent prelitigation letter or amended complaint in the same dispute following the initial prelitigation letter or complaint, unless that subsequent prelitigation letter or amended complaint alleges a new construction-related accessibility claim.
- (e) A prelitigation letter or notification of a case outcome sent to the California Commission on Disability Access shall be for the informational purposes of Section 8299.08 of the Government Code.
- (f) The California Commission on Disability Access shall review and report on the prelitigation letters, complaints, and notifications of case outcomes it receives in the same manner as provided in Section 8299.08 of the Government Code.
- (g) Paragraph (2) of subdivision (a) and subdivision (b) does not apply to a prelitigation letter or complaint sent or filed by an attorney employed or retained by a qualified legal services project or a qualified support center, as defined in Section 6213 of the Business and Professions Code, when acting within the scope of employment in asserting a construction-related accessibility claim. The Legislature finds and declares that qualified legal services projects and support centers are extensively regulated by the State Bar of California, and that there is no evidence of any abusive use of demand letters or complaints by these organizations. The Legislature further finds that, in light of the evidence of the extraordinarily small number of construction-related accessibility cases brought by regulated legal services programs, and given the resources of those programs, exempting regulated legal services programs from the requirements of this section to report to the California Commission on Disability Access will not affect the purpose of the reporting to, and tabulation by, the commission of all other construction-related accessibility claims.
- (h) This section does not apply to a claim for money or damages against a public entity governed by Division 3.6 (commencing with Section 810) of Title 1 of the Government Code or make the requirements of this section applicable to such a claim.
- (i) For purposes of this section, the following terms have the following meanings:

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(1) “Complaint” means a civil complaint that is filed or is to be filed with a court and is sent to or served upon a defendant on the basis of one or more construction-related accessibility claims.

(2) “Construction-related accessibility claim” or “claim” means any claim of a violation of any construction-related accessibility standard, as defined in paragraph (6) of subdivision (a) of Section 55.52, with respect to a public building, public facility, or other public place of an education entity. “Construction-related accessibility claim” does not include a claim of interference with housing within the meaning of paragraph (2) of subdivision (b) of Section 54.1, or any claim of interference caused by something other than the construction-related accessibility condition of the property, including, but not limited to, the conduct of any person.

(3) “Education entity” means the Regents of the University of California, the Trustees of the California State University and the California State University, the office of the Chancellor of the California Community Colleges, a K-12 school district, or any local education agency.

(4) “Prelitigation letter” means a prelitigation written document that alleges the site is in violation of one or more construction-related accessibility standards, as defined in paragraph (6) of subdivision (a) of Section 55.52 and is provided to the education entity whether or not the attorney intends to file a complaint, or eventually files a complaint, in state or federal court. A prelitigation letter does not include a claim for money or damages against a local public entity governed by Division 3.6 (commencing with Section 810) of Title 1 of the Government Code. (Added by Stats. 2016, ch. 892. Amended by Stats. 2017, ch. 561.)

### **§ 55.3 Construction-Related Accessibility Claim—Defined**

(a) For purposes of this section, the following apply:

(1) “Complaint” means a civil complaint that is filed or is to be filed with a court and is sent to or served upon a defendant on the basis of one or more construction-related accessibility claims, as defined in this section.

(2) “Construction-related accessibility claim” means any claim of a violation of any construction-related accessibility standard, as defined by paragraph (6) of subdivision (a) of Section 55.52, with respect to a place of public accommodation. “Construction-related accessibility claim” does not include a claim of interference with housing within the meaning of paragraph (2) of subdivision (b) of Section 54.1, or any claim of interference caused by something other than the construction-related accessibility condition of the property, including, but not limited to, the conduct of any person.

(3) “Demand for money” means a prelitigation written document or oral statement that is provided or issued to a building owner or tenant, or the owner’s or tenant’s agent or employee, that does all of the following:

(A) Alleges that the site is in violation of one or more construction-related accessibility standards, as defined in paragraph (6) of subdivision (a) of Section 55.52, or alleges one or more construction-related accessibility claims, as defined in paragraph (2).

(B) Contains or makes a request or demand for money or an offer or agreement to accept money.

(C) Is provided or issued whether or not the attorney intends to file a complaint, or eventually files a complaint, in state or federal court.

(4) “Demand letter” means a prelitigation written document that is provided to a building owner or tenant, or the owner’s or tenant’s agent or employee, that alleges the site is in violation of one or more construction-related accessibility standards, as defined in paragraph (6) of subdivision (a) of Section 55.52, or alleges one or more construction-related accessibility claims, as defined in paragraph (2), and is provided whether or not the attorney intends to file a complaint, or eventually files a complaint, in state or federal court.

(b) An attorney shall provide the following items with each demand letter or complaint sent to or served

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upon a defendant or potential defendant alleging a construction-related accessibility claim:

(1) A written advisory on the form described in subparagraph (B), or, until that form is available, on a separate page or pages that are clearly distinguishable from the demand letter or complaint. The advisory shall not be required in subsequent communications following the initial demand letter or initial complaint unless a new construction-related accessibility claim is asserted in the subsequent demand letter or amended complaint.

(A) The advisory shall state as follows:

### STATE LAW REQUIRES THAT YOU GET THIS IMPORTANT ADVISORY INFORMATION FOR BUILDING OWNERS AND TENANTS

This information is available in English, Spanish, Chinese, Vietnamese, and Korean through the Judicial Council of California. Persons with visual impairments can get assistance in viewing this form through the Judicial Council Internet Web site at [www.courts.ca.gov](http://www.courts.ca.gov).

California law requires that you receive this information because the demand letter or court complaint you received with this document claims that your building or property does not comply with one or more existing construction-related accessibility laws or regulations protecting the civil rights of persons with disabilities to access public places.

**YOU HAVE IMPORTANT LEGAL OBLIGATIONS.** Compliance with disability access laws is a serious and significant responsibility that applies to all California building owners and tenants with buildings open for business to the public. You may obtain information about your legal obligations and how to comply with disability access laws through the Division of the State Architect at [www.dgs.ca.gov](http://www.dgs.ca.gov). Information is also available from the California Commission on Disability Access at [www.ccda.ca.gov/guide.htm](http://www.ccda.ca.gov/guide.htm).

**YOU HAVE IMPORTANT LEGAL RIGHTS.** The allegations made in the accompanying demand letter or court complaint do not mean that you are required to pay any money unless and until a court finds you liable. Moreover, RECEIPT OF A DEMAND LETTER OR COURT COMPLAINT AND THIS ADVISORY

DOES NOT NECESSARILY MEAN YOU WILL BE FOUND LIABLE FOR ANYTHING. You will have the right if you are later sued to fully present your explanation why you believe you have not in fact violated disability access laws or have corrected the violation or violations giving rise to the claim.

You have the right to seek assistance or advice about this demand letter or court complaint from any person of your choice. If you have insurance, you may also wish to contact your insurance provider. Your best interest may be served by seeking legal advice or representation from an attorney, but you may also represent yourself and file the necessary court papers to protect your interests if you are served with a court complaint. If you have hired an attorney to represent you, you should immediately notify your attorney.

If a court complaint has been served on you, you will get a separate advisory notice with the complaint advising you of special options and procedures available to you under certain conditions.

### ADDITIONAL THINGS YOU SHOULD KNOW:

**ATTORNEY MISCONDUCT.** Except for limited circumstances, state law generally requires that a prelitigation demand letter from an attorney MAY NOT MAKE A REQUEST OR DEMAND FOR MONEY OR AN OFFER OR AGREEMENT TO ACCEPT MONEY. Moreover, a demand letter from an attorney MUST INCLUDE THE ATTORNEY'S STATE BAR LICENSE NUMBER.

If you believe the attorney who provided you with this notice and prelitigation demand letter is not complying with state law, you may send a copy of the demand letter you received from the attorney to the State Bar of California by facsimile transmission to 1-415-538-2171, or by mail to the State Bar of California, 180 Howard Street, San Francisco, CA, 94105, Attention: Professional Competence.

**REDUCING YOUR DAMAGES.** If you are a small business owner and correct all of the construction-related violations that are the basis of the complaint against you within 30 days of being served with the complaint, you may qualify for reduced damages. You may wish to consult an attorney to obtain legal advice. You may also wish to contact the California Commission on Disability Access for additional

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information about the rights and obligations of business owners.

COMMERCIAL TENANT. If you are a commercial tenant, you may not be responsible for ensuring that some or all portions of the premises you lease for your business, including common areas such as parking lots, are accessible to the public because those areas may be the responsibility of your landlord. You may want to refer to your lease agreement and consult with an attorney or contact your landlord, to determine if your landlord is responsible for maintaining and improving some or all of the areas you lease.

(B) On or before July 1, 2016, the Judicial Council shall update the advisory form that may be used by an attorney to comply with the requirements of subparagraph (A). The advisory form shall be in substantially the same format and include all of the text set forth in subparagraph (A). The advisory form shall be available in English, Spanish, Chinese, Vietnamese, and Korean, and shall include a statement that the advisory form is available in additional languages, and the Judicial Council Internet Web site address where the different versions of the advisory form are located. The advisory form shall include Internet Web site information for the Division of the State Architect and the California Commission on Disability Access.

(2) A verified answer form developed by the Judicial Council, which allows a defendant to respond to the complaint in the event a complaint is filed.

(A) The answer form shall be written in plain language and allow the defendant to state any relevant information affecting the defendant's liability or damages including, but not limited to, the following:

(i) Specific denials of the allegations in the complaint, including whether the plaintiff has demonstrated that he or she was denied full and equal access to the place of public accommodation on a particular occasion pursuant to Section 55.56.

(ii) Potential affirmative defenses available to the defendant, including:

(I) An assertion that the defendant's landlord is responsible for ensuring that some or all of the property leased by the defendant, including the areas at issue in the complaint, are accessible to the public. The defendant shall provide facts supporting that assertion, and the name and contact information of the defendant's landlord.

(II) Any other affirmative defense the defendant wishes to assert.

(iii) A request to meet in person at the subject premises, if the defendant qualifies for an early evaluation conference pursuant to Section 55.54.

(iv) Any other information that the defendant believes is relevant to his or her potential liability or damages, including that the defendant qualifies for reduced damages pursuant to paragraph (1) or (2) of subdivision (f) of Section 55.56, and, if so, any facts supporting that assertion.

(B) The answer form shall provide instructions to a defendant who wishes to file the form as an answer to the complaint. The form shall also notify the defendant that he or she may use the completed form as an informal response to a demand letter or for settlement discussion purposes.

(C) On or before July 1, 2016, the Judicial Council shall adopt the answer form that may be used by an attorney to comply with the requirements of this paragraph, and shall post the answer form on the Judicial Council Internet Web site.

(c) Subdivision (b) applies only to a demand letter or complaint made by an attorney. This section does not affect the right to file a civil complaint under any other law or regulation protecting the physical access rights of persons with disabilities. Additionally, this section does not require a party to provide or send a demand letter to another party before proceeding against that party with a civil complaint.

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(d) This section does not apply to an action brought by the Attorney General or any district attorney, city attorney, or county counsel. (Added by Stats. 2008, ch. 549. Amended by Stats. 2011, ch. 419; Stats. 2012, ch. 383; Stats. 2015, ch. 755, effective October 10, 2015.)

### **§ 55.31 Construction-Related Accessibility Claim—Demand Letter Requirements; Prohibitions**

(a) Commencing January 1, 2013, a demand letter alleging a construction-related accessibility claim, as defined in subdivision (a) of Section 55.3, shall state facts sufficient to allow a reasonable person to identify the basis of the violation or violations supporting the claim, including all of the following:

(1) A plain language explanation of the specific access barrier or barriers the individual encountered, or by which the individual alleges he or she was deterred, with sufficient information about the location of the barrier to enable a reasonable person to identify the access barrier.

(2) The way in which the barrier encountered interfered with the individual's full and equal use or access, or in which it deterred the individual, on each particular occasion.

(3) The date or dates of each particular occasion on which the individual encountered the specific access barrier, or on which he or she was deterred.

(b) A demand letter may offer prelitigation settlement negotiations, but shall not include a request or demand for money or an offer or agreement to accept money.

(1) With respect to potential monetary damages for an alleged construction-related accessibility claim or claims, a demand letter shall not state any specific potential monetary liability for any asserted claim or claims, and may only state: "The property owner or tenant, or both, may be civilly liable for actual and statutory damages for a violation of a construction-related accessibility requirement."

(2) Notwithstanding any other law, a demand letter meeting the requirements of this section shall be deemed to satisfy the requirements for prelitigation notice of a potential claim when

prelitigation notice is required by statute or common law for an award of attorney's fees.

(3) This subdivision and subdivision (a) do not apply to a demand for money, which is governed by subdivision (c).

(c) An attorney, or a person acting at the direction of an attorney, shall not issue a demand for money as defined in subdivision (a) of Section 55.3. This subdivision does not apply to a demand letter as defined in subdivision (a) of Section 55.3.

(d) (1) A violation of subdivision (b) or (c) constitutes cause for the imposition of discipline of an attorney. Subdivisions (b) and (c) do not prohibit an attorney from presenting a settlement figure or specification of damages in response to a request from the building owner or tenant, or the owner's or tenant's authorized agent or employee, following a demand letter provided pursuant to Section 55.3.

(2) Any liability for a violation of subdivision (c) is as provided in paragraph (1) of this subdivision. A violation of subdivision (c) does not create a new cause of action.

(e) Subdivision (c) does not prohibit any prelitigation settlement discussion of liability for damages and attorney's fees that occurs after a written or oral agreement is reached between the parties for the repair or correction of the alleged violation or violations of a construction-related accessibility standard.

(f) Subdivision (c) shall not apply to a claim involving physical injury and resulting special damages, but a demand for money relating to that claim that is sent shall otherwise comply with the requirements of subdivision (a) and Section 55.32.

(g) Nothing in this section shall apply to a demand or statement of alleged damages made in a prelitigation claim presented to a governmental entity as required by state or federal law, including, but not limited to, claims made under Part 3 (commencing with Section 900) of Division 3.6 of the Government Code.

(h) If subdivision (c) is not operative or becomes inoperative for any reason, the requirements of subdivision (a) and Section 55.32 shall apply to any written demand for money. (Added by Stats. 2012, ch. 383, effective September 19, 2012.)

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### **§ 55.32 Construction-Related Accessibility Claim—Attorney Requirements When Providing a Demand Letter; Violations**

(a) An attorney who provides a demand letter, as defined in subdivision (a) of Section 55.3, shall do all of the following:

(1) Include the attorney's State Bar license number in the demand letter.

(2) Within five business days of providing the demand letter, send a copy of the demand letter, and submit information about the demand letter in a standard format specified by the California Commission on Disability Access on the commission's internet website pursuant to Section 14985.8 of the Government Code, to the commission.

(b) An attorney who sends or serves a complaint, as defined in subdivision (a) of Section 55.3, or a complaint alleging that an internet website is not accessible, shall do both of the following:

(1) Send a copy of the complaint and submit information about the complaint in a standard format specified by the California Commission on Disability Access on the commission's internet website pursuant to Section 14985.8 of the Government Code to the commission within five business days of sending or serving the complaint.

(2) Notify the California Commission on Disability Access within five business days of judgment, settlement, or dismissal of the claim or claims alleged in the complaint of the following information in a standard format specified by the commission on the commission's internet website pursuant to Section 14985.8 of the Government Code:

(A) The date of the judgment, settlement, or dismissal.

(B) Whether or not the construction-related accessibility violations or accessibility violations related to an internet website alleged in the complaint were remedied in whole or in part after the plaintiff filed a complaint or provided a demand letter, as defined by Section 55.3.

(C) If the construction-related accessibility violations or accessibility violations related to an internet website alleged in the complaint were not remedied in whole or in part after the plaintiff filed a complaint or provided a demand letter, as defined by Section 55.3, whether or not another favorable result was achieved after the plaintiff filed the complaint or provided the demand letter.

(D) Whether or not the defendant submitted an application for an early evaluation conference and stay pursuant to Section 55.54, whether the defendant requested a site inspection of an alleged construction-related accessibility violation, the date of any early evaluation conference, and the date of any site inspection of an alleged construction-related accessibility violation.

(c) A violation of paragraph (2) of subdivision (a) or subdivision (b) shall constitute cause for the imposition of discipline of an attorney if a copy of the demand letter, complaint, or notification of a case outcome is not sent to the California Commission on Disability Access in the standard format specified on the commission's internet website pursuant to Section 14985.8 of the Government Code within five business days. In the event the State Bar receives information indicating that an attorney has failed to send a copy of the demand letter, complaint, or notification of a case outcome to the California Commission on Disability Access in the standard format specified on the commission's internet website pursuant to Section 14985.8 of the Government Code within five business days, the State Bar shall investigate to determine whether paragraph (2) of subdivision (a) or subdivision (b) has been violated.

(d) Notwithstanding subdivisions (a) and (b), an attorney is not required to send to the California Commission on Disability Access a copy of any subsequent demand letter or amended complaint in the same dispute following the initial demand letter or complaint, unless that subsequent demand letter or amended complaint alleges a new construction-related accessibility claim.

(e) A demand letter or notification of a case outcome sent to the California Commission on Disability Access shall be for the informational purposes of Section 14985.8 of the Government Code. A demand letter

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received by the State Bar from the recipient of the demand letter shall be reviewed by the State Bar to determine whether subdivision (b) or (c) of Section 55.31 has been violated.

(f) (1) Notwithstanding Section 10231.5 of the Government Code, on or before April 30, 2019, and annually as part of the Annual Discipline Report, no later than April 30 thereafter, the State Bar shall report to the Legislature and the Chairs of the Senate and Assembly Judiciary Committees, both of the following with respect to demand letters received by the State Bar:

(A) The number of investigations opened to date on a suspected violation of subdivision (b) or (c) of Section 55.31.

(B) Whether any disciplinary action resulted from the investigation, and the results of that disciplinary action.

(2) A report to be submitted pursuant to this subdivision shall be submitted in compliance with Section 9795 of the Government Code.

(g) The California Commission on Disability Access shall review and report on the demand letters, complaints, and notifications of case outcomes it receives as provided in Section 14985.8 of the Government Code.

(h) The expiration of any ground for discipline of an attorney shall not affect the imposition of discipline for any act prior to the expiration. An act or omission that constituted cause for imposition of discipline of an attorney when committed or omitted prior to January 1, 2019, shall continue to constitute cause for the imposition of discipline of that attorney on and after January 1, 2019.

(i) Paragraph (2) of subdivision (a) and subdivision (b) shall not apply to a demand letter or complaint sent or filed by an attorney employed or retained by a qualified legal services project or a qualified support center, as defined in Section 6213 of the Business and Professions Code, when acting within the scope of employment in asserting a construction-related accessibility claim. The Legislature finds and declares that qualified legal services projects and support centers are extensively regulated by the State Bar of California, and that there is no evidence of any abusive use of demand letters or complaints by these organizations. The Legislature

further finds that, in light of the evidence of the extraordinarily small number of construction-related accessibility cases brought by regulated legal services programs, and given the resources of those programs, exempting regulated legal services programs from the requirements of this section to report to the California Commission on Disability Access will not affect the purpose of the reporting to, and tabulation by, the commission of all other construction-related accessibility claims. (Added by Stats. 2012, ch. 383. Amended by Stats. 2015, ch. 755, effective October 10, 2015; Stats. 2016, ch. 872; Stats. 2018, ch. 659; Stats. 2020, ch. 36; Stats. 2022, ch. 897.)

### **§ 55.54 Service of Summons and Complaint in Construction-Related Accessibility Claim**

(a) (1) An attorney who causes a summons and complaint to be served in an action that includes a construction-related accessibility claim, including, but not limited to, a claim brought under Section 51, 54, 54.1, or 55, shall, at the same time, cause to be served a copy of the application form specified in subdivision (c) and a copy of the following notice, including, until January 1, 2013, the bracketed text, to the defendant on separate papers that shall be served with the summons and complaint:

#### **ADVISORY NOTICE TO DEFENDANT**

YOU MAY BE ENTITLED TO ASK FOR A COURT STAY (AN ORDER TEMPORARILY STOPPING ANY LAWSUIT) AND EARLY EVALUATION CONFERENCE IN THIS LAWSUIT AND MAY BE ASSESSED REDUCED STATUTORY DAMAGES IF YOU MEET CERTAIN CONDITIONS.

If the construction-related accessibility claim pertains to a site that has a Certified Access Specialist (CASp) inspection report for that site, or to a site where new construction or improvement was approved after January 1, 2008, by the local building permit and inspection process, you may make an immediate request for a court stay and early evaluation conference in the construction-related accessibility claim by filing the attached application form with the court. You may be entitled to the court stay and early evaluation conference regarding the accessibility claim only

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if ALL of the statements in the application form applicable to you are true.

FURTHER, if you are a defendant described above (with a CASp inspection report or with new construction after January 1, 2008), and, to the best of your knowledge, there have been no modifications or alterations completed or commenced since the CASp report or building department approval of the new construction or improvement that impacted compliance with construction-related accessibility standards with respect to the plaintiff's claim, your liability for minimum statutory damages may be reduced to \$1,000 for each offense, unless the violation was intentional, and if all construction-related accessibility violations giving rise to the claim are corrected within 60 days of being served with this complaint.

ALSO, if your business has been served with a complaint filed by a high-frequency litigant, as defined in subdivision (b) of Section 425.55 of the Code of Civil Procedure, asserting a construction-related accessibility claim, including, but not limited to, a claim brought under Section 51, 54, 54.1, or 55 of the Civil Code, you may also be entitled to a court stay and an early evaluation conference. If you choose to request a stay and early evaluation conference, you may also request to meet in person with the plaintiff and counsel for both parties, as well as experts if the parties so elect, at the subject premises no later than 30 days after issuance of the court order to jointly inspect the portions of the subject premises and review any conditions that are claimed to constitute a violation of a construction-related accessibility standard.

IN ADDITION, if your business is a small business that, over the previous three years, or the existence of the business if less than three years, employs 25 or fewer employees on average over that time period and meets specified gross receipts criteria, you may also be entitled to the court stay and early evaluation conference and your minimum statutory damages for each claim may be reduced to \$2,000 for each offense, unless the violation was intentional, and if all the alleged construction-related accessibility violations are

corrected within 30 days of being served with the complaint.

If you plan to correct the violations giving rise to the claim, you should take pictures and measurements or similar action to document the condition of the physical barrier asserted to be the basis for a violation before undertaking any corrective action in case a court needs to see the condition of a barrier before it was corrected.

The court will schedule the conference to be held within 70 days after you file the attached application form.

[If you are not a defendant with a CASp inspection report, until a form is adopted by the Judicial Council, you may use the attached form if you modify the form and supplement it with your declaration stating any one of the following:

(1) Until January 1, 2018, that the site's new construction or improvement on or after January 1, 2008, and before January 1, 2016, was approved pursuant to the local building permit and inspection process; that, to the best of your knowledge, there have been no modifications or alterations completed or commenced since the building department approval that impacted compliance with construction-related accessibility standards with respect to the plaintiff's claim; and that all violations giving rise to the claim have been corrected, or will be corrected within 60 days of the complaint being served.

(2) That the site's new construction or improvement passed inspection by a local building department inspector who is a certified access specialist; that, to the best of your knowledge, there have been no modifications or alterations completed or commenced since that inspection approval that impacted compliance with construction-related accessibility standards with respect to the plaintiff's claim; and that all violations giving rise to the claim have been corrected, or will be corrected within 60 days of the complaint being served.



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(3) That your business is a small business with 25 or fewer employees and meets the gross receipts criteria set out in Section 55.56 of the Civil Code, and that all violations giving rise to the claim have been corrected, or will be corrected within 30 days of being served with the complaint.]

The court will also issue an immediate stay of the proceedings unless the plaintiff has obtained a temporary restraining order in the construction-related accessibility claim. You may obtain a copy of the application form, filing instructions, and additional information about the stay and early evaluation conference through the Judicial Council Internet Web site at [www.courts.ca.gov/selfhelp-start.htm](http://www.courts.ca.gov/selfhelp-start.htm).

You may file the application after you are served with a summons and complaint, but no later than your first court pleading or appearance in this case, which is due within 30 days after you receive the summons and complaint. If you do not file the application, you will still need to file your reply to the lawsuit within 30 days after you receive the summons and complaint to contest it. You may obtain more information about how to represent yourself and how to file a reply without hiring an attorney at [www.courts.ca.gov/selfhelp-start.htm](http://www.courts.ca.gov/selfhelp-start.htm).

You may file the application without the assistance of an attorney, but it may be in your best interest to immediately seek the assistance of an attorney experienced in disability access laws when you receive a summons and complaint. You may make an offer to settle the case, and it may be in your interest to put that offer in writing so that it may be considered under Section 55.55 of the Civil Code.

(2) An attorney who files a Notice of Substitution of Counsel to appear as counsel for a plaintiff who, acting in propria persona, had previously filed a complaint in an action that includes a construction-related accessibility claim, including, but not limited to, a claim brought under Section 51, 54, 54.1, or 55, shall,

at the same time, cause to be served a copy of the application form specified in subdivision (c) and a copy of the notice specified in paragraph (1) upon the defendant on separate pages that shall be attached to the Notice of Substitution of Counsel.

(b) (1) Notwithstanding any other law, upon being served with a summons and complaint asserting a construction-related accessibility claim, including, but not limited to, a claim brought under Section 51, 54, 54.1, or 55, a qualified defendant, or other defendant as defined in paragraph (2), may file a request for a court stay and early evaluation conference in the proceedings of that claim prior to or simultaneous with that defendant's responsive pleading or other initial appearance in the action that includes the claim. If that defendant filed a timely request for stay and early evaluation conference before a responsive pleading was due, the period for filing a responsive pleading shall be tolled until the stay is lifted. Any responsive pleading filed simultaneously with a request for stay and early evaluation conference may be amended without prejudice, and the period for filing that amendment shall be tolled until the stay is lifted.

(2) This subdivision shall also apply to a defendant if any of the following apply:

(A) Until January 1, 2018, the site's new construction or improvement on or after January 1, 2008, and before January 1, 2016, was approved pursuant to the local building permit and inspection process, and the defendant declares with the application that, to the best of the defendant's knowledge, there have been no modifications or alterations completed or commenced since that approval that impacted compliance with construction-related accessibility standards with respect to the plaintiff's claim, and that all violations have been corrected, or will be corrected within 60 days of being served with the complaint.

(B) The site's new construction or improvement was approved by a local public building department inspector who is a certified access specialist, and the defendant declares with the application that, to the

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best of the defendant's knowledge, there have been no modifications or alterations completed or commenced since that approval that impacted compliance with construction-related accessibility standards with respect to the plaintiff's claim, and that all violations have been corrected, or will be corrected within 60 days of being served with the complaint.

(C) The defendant is a small business described in subdivision (f) of Section 55.56, and the defendant declares with the application that all violations have been corrected, or will be corrected within 30 days of being served with the complaint.

(D) The defendant is a business that has been served with a complaint filed by a high-frequency litigant, as defined in subdivision (b) of Section 425.55 of the Code of Civil Procedure, asserting a construction-related accessibility claim, including, but not limited to, a claim brought under Section 51, 54, 54.1, or 55.

(3) Notwithstanding any other law, if the plaintiff had acted in propria persona in filing a complaint that includes a construction-related accessibility claim, including, but not limited to, a claim brought under Section 51, 54, 54.1, or 55, a qualified defendant, or a defendant described by paragraph (2), who is served with a Notice of Substitution of Counsel shall have 30 days to file an application for a stay and an early evaluation conference. The application may be filed prior to or after the defendant's filing of a responsive pleading or other initial appearance in the action that includes the claim, except that an application may not be filed in a claim in which an early evaluation conference or settlement conference has already been held on the claim.

(c) (1) An application for an early evaluation conference and stay by a qualified defendant shall include a signed declaration that states both of the following:

(A) The site identified in the complaint has been CASp-inspected or meets applicable standards, or is CASp determination pending or has been inspected by a CASp, and if the site is CASp-inspected or meets

applicable standards, there have been no modifications completed or commenced since the date of inspection that may impact compliance with construction-related accessibility standards to the best of the defendant's knowledge.

(B) An inspection report pertaining to the site has been issued by a CASp. The inspection report shall be provided to the court and the plaintiff at least 15 days prior to the court date set for the early evaluation conference.

(2) An application for an early evaluation conference and stay by a defendant described by subparagraph (A) of paragraph (2) of subdivision (b), which may be filed until January 1, 2018, shall include a signed declaration that states all of the following:

(A) The site's new construction or improvement was approved pursuant to the local building permit and inspection process on or after January 1, 2008, and before January 1, 2016.

(B) To the best of the defendant's knowledge there have been no modifications or alterations completed or commenced since that approval that impacted compliance with construction-related accessibility standards with respect to the plaintiff's claim.

(C) All construction-related violations giving rise to the claim have been corrected, or will be corrected within 60 days of the complaint being served upon the defendant.

(3) An application for an early evaluation conference and stay by a defendant described in subparagraph (B) of paragraph (2) of subdivision (b) shall include a signed declaration that states all of the following:

(A) The site's new construction or improvement was approved by a local building department inspector who is a certified access specialist.

(B) To the best of the defendant's knowledge there have been no modifications

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or alterations completed or commenced since that approval that impacted compliance with construction-related accessibility standards with respect to the plaintiff's claim.

(C) All construction related violations giving rise to the claim have been corrected, or will be corrected within 60 days of the complaint being served upon the defendant.

(4) An application for an early evaluation conference and stay by a defendant described by subparagraph (C) of paragraph (2) of subdivision (b) shall include the materials listed in paragraphs (5) and (6) of this subdivision, and shall include a signed declaration that states both of the following:

(A) The defendant is a small business that employs 25 or fewer employees and meets the gross receipts eligibility criteria provided in paragraph (2) of subdivision (f) of Section 55.56.

(B) All construction-related violations giving rise to the claim have been corrected, or will be corrected within 30 days of the complaint being served upon the defendant.

(5) An application for an early evaluation conference and stay by a small business defendant under paragraph (4) shall include evidence showing correction of all violations within 30 days of the service of the complaint and served upon the plaintiff with the reply unless the application is filed prior to completion of the corrections. In that event, the evidence shall be provided to the court and served upon the plaintiff within 10 days of the court order as provided in paragraph (4) of subdivision (d). This paragraph shall not be construed to extend the permissible time under subdivision (f) of Section 55.56 to make the corrections.

(6) An application for an early evaluation conference and stay by a small business defendant under paragraph (4) shall also include both of the following, which shall be confidential documents filed only with the court and not served upon or available to the plaintiff:

(A) Proof of the defendant's number of employees, as shown by wage report forms filed with the Employment Development Department.

(B) Proof of the defendant's average gross receipts for the previous three years, or for the existence of the business if less than three years, as shown by a federal or state tax document.

(7) An application for an early evaluation conference and stay by a defendant described by subparagraph (D) of paragraph (2) of subdivision (b) shall include a signed declaration that the defendant was served with a complaint filed by a high-frequency litigant, as defined in subdivision (b) of Section 425.55 of the Code of Civil Procedure, asserting a construction-related accessibility claim, including, but not limited to, a claim brought under Section 51, 54, 54.1, or 55.

(8) The following provisional request and notice forms may be used and filed by a qualified defendant until forms are adopted by the Judicial Council for those purposes pursuant to subdivision (I):

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NOTICE OF INCOMPLETE TEXT: Forms relating to

Stay of Proceedings and Early Evaluation Conference

appear in the published chaptered bill.

See Sec. 4, Chapter 755 (pp. 23–25), Statutes of 2015.

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(9) The provisional forms and any replacement Judicial Council forms shall include the defendant's declaration of proof of service of the application, the notice of the court's order, and the court's order pursuant to subdivision (d).

(d) Upon the filing of an application for stay and early evaluation conference by a qualified defendant, or a defendant described by paragraph (2) of subdivision (b), the court shall immediately issue an order that does all of the following:

(1) Grants a 90-day stay of the proceedings with respect to the construction-related accessibility

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claim, unless the plaintiff has obtained temporary injunctive relief that is still in place for the construction-related accessibility claim.

(2) Schedules a mandatory early evaluation conference for a date as soon as possible from the date of the order, but in no event later than 70 days after issuance of the order, and in no event earlier than 50 days after the filing of the request.

(3) Directs the parties, and any other person whose authority is required to negotiate and enter into settlement, to appear in person at the time set for the conference. Appearance by counsel shall not satisfy the requirement that the parties or those with negotiation and settlement authority personally appear, provided, however, that the court may allow a party who is unable to attend in person due to his or her disability to participate in the hearing by telephone or other alternative means or through a representative authorized to settle the case.

(4) (A) Directs the qualified defendant to file with the court and serve on the plaintiff a copy of any relevant CASp inspection report at least 15 days before the date of the conference. The CASp inspection report is confidential and is available only as set forth in paragraph (5) of this subdivision and in paragraph (4) of subdivision (e).

(B) Directs a defendant described by subparagraph (A) or (B) of paragraph (2) of subdivision (b) who has filed a declaration stating that the violation or violations have been corrected, or will be corrected within 60 days of service of the complaint to file with the court and serve on the plaintiff evidence showing correction of the violation or violations within 10 calendar days after the completion of the corrections.

(C) Directs a defendant described by subparagraph (C) of paragraph (2) of subdivision (b) who has filed a declaration stating that the violation or violations have been corrected, or will be corrected within 30 days of service of the complaint to file with the court and serve on the plaintiff within 10 days after issuance of the court order evidence of correction of the violation or violations, if that evidence showing

correction was not filed previously with the application and served on the plaintiff.

(5) Directs the parties that the CASp inspection report may be disclosed only to the court, the parties to the action, the parties' attorneys, those individuals employed or retained by the attorneys to assist in the litigation, and insurance representatives or others involved in the evaluation and settlement of the case.

(6) If the defendant so requests, directs the parties that no later than 30 days after issuance of the court order the parties and their counsel, accompanied by their experts if the parties so elect, shall meet in person at the subject premises. They shall jointly inspect the portions of the subject premises, and shall review any programmatic or policy issues, that are claimed to constitute a violation of a construction-related accessibility standard. The court may allow a plaintiff who is unable to meet in person at the subject premises to be excused from participating in a site visit or to participate by telephone or other alternative means for good cause. A plaintiff or plaintiff's counsel is not required, but may agree, to attend more than one in-person site meeting. A site inspection pursuant to this paragraph shall not affect the right of the parties to conduct otherwise appropriate discovery.

(7) Directs the plaintiff to file with the court and serve on the defendant at least 15 days before the date of the conference a statement that includes, to the extent reasonably known, for use solely for the purpose of the early evaluation conference, all of the following:

(A) An itemized list of specific conditions on the subject premises that are the basis of the claimed violations of construction-related accessibility standards in the plaintiff's complaint.

(B) The amount of damages claimed.

(C) The amount of attorney's fees and costs incurred to date, if any, that are being claimed.

(D) Any demand for settlement of the case in its entirety.

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- (e) (1) A party failing to comply with any court order may be subject to court sanction at the court's discretion.
- (2) (A) The court shall lift the stay when the defendant has failed to file and serve the CASp inspection report prior to the early evaluation conference and has failed also to produce the report at the time of the early evaluation conference, unless the defendant shows good cause for that failure.
- (B) The court shall lift the stay when a defendant described by paragraph (2) of subdivision (b) has failed to file and serve the evidence showing correction of the violation or violations as required by law.
- (3) The court may lift the stay at the conclusion of the early evaluation conference upon a showing of good cause by the plaintiff. Good cause may include the defendant's failure to make reasonably timely progress toward completion of corrections noted by a CASp.
- (4) The CASp inspection report filed and served pursuant to subdivision (d) shall remain confidential throughout the stay and shall continue to be confidential until the conclusion of the claim, whether by dismissal, settlement, or final judgment, unless there is a showing of good cause by any party. Good cause may include the defendant's failure to make reasonably timely progress toward completion of corrections noted by a CASp. The confidentiality of the inspection report shall terminate upon the conclusion of the claim, unless the owner of the report obtains a court order pursuant to the California Rules of Court to seal the record.
- (f) All discussions at the early evaluation conference shall be subject to Section 1152 of the Evidence Code. It is the intent of the Legislature that the purpose of the evaluation conference shall include, but not be limited to, evaluation of all of the following, as applicable:
- (1) Whether the defendant is entitled to the 90-day stay for some or all of the identified issues in the case, as a qualified defendant.
- (2) The current condition of the site and the status of any plan of corrections, including whether the qualified defendant has corrected or is willing to correct the alleged violations, and the timeline for doing so.
- (3) Whether subdivision (f) of Section 55.56 may be applicable to the case, and whether all violations giving rise to the claim have been corrected within the specified time periods.
- (4) Whether the case, including any claim for damages or injunctive relief, can be settled in whole or in part.
- (5) Whether the parties should share other information that may facilitate early evaluation and resolution of the dispute.
- (g) Nothing in this section precludes any party from making an offer to compromise pursuant to Section 998 of the Code of Civil Procedure.
- (h) For a claim involving a qualified defendant, as provided in paragraph (1) of subdivision (b), the court may schedule additional conferences and may extend the 90-day stay for good cause shown, but not to exceed one additional 90-day extension.
- (i) Early evaluation conferences shall be conducted by a superior court judge or commissioner, or a court early evaluation conference officer. A commissioner shall not be qualified to conduct early evaluation conferences pursuant to this subdivision unless he or she has received training regarding disability access requirements imposed by the federal Americans with Disabilities Act of 1990 (Public Law 101-336; 42 U.S.C. Sec. 12101 et seq.), state laws that govern access to public facilities, and federal and state regulations adopted pursuant to those laws. For purposes of this subdivision, a "court early evaluation conference officer" means an attorney employed by the court who has received training regarding disability access requirements imposed by the federal Americans with Disabilities Act of 1990, state laws that govern access to public facilities, and federal and state regulations adopted pursuant to those laws. Attorneys serving in this capacity may also be utilized by the court for other purposes not related to these proceedings.
- (j) Nothing in this part shall be deemed to make any inspection report, opinion, statement, or other finding or conclusion of a CASp binding on the court, or to abrogate in any manner the ultimate authority of the court to make all appropriate findings of fact and law. The CASp inspection report and any opinion,

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statement, finding, or conclusion therein shall be given the weight the trier of fact finds that it deserves.

(k) Nothing in this part shall be construed to invalidate or limit any California construction-related accessibility standard that provides greater or equal protection for the rights of individuals with disabilities than is afforded by the federal Americans with Disabilities Act (Public Law 101-336; 42 U.S.C. Sec. 12101 et seq.) and the federal regulations adopted pursuant to that act.

(l) (1) The Judicial Council shall, by January 1, 2013, prepare and post on its Internet Web site instructions and a form for use by a qualified defendant, or other defendant described by paragraph (2) of subdivision (b), to file an application for stay and early evaluation conference as provided in subdivisions (b) and (c), a form for the court's notice of stay and early evaluation conference, and any other forms appropriate to implement the provisions relating to early evaluation conferences. Until those forms are adopted, the Judicial Council shall post on its Internet Web site the provisional forms set forth in subdivision (c).

(2) Until the adoption of the forms as provided in paragraph (1), the provisional application form may be used by a defendant described by paragraph (2) of subdivision (b).

(3) In lieu of the provisions specified in number 3 of page 1 of the application form set forth in paragraph (7) of subdivision (c), the application shall include one of the following declarations of the defendant as to the basis for the application, as follows:

(A) That all of the following apply to a defendant described by subparagraph (A) of paragraph (2) of subdivision (b):

(i) The site's new construction or improvement was approved pursuant to the local building permit and inspection process on or after January 1, 2008, and before January 1, 2016.

(ii) To the best of the defendant's knowledge there have been no modifications or alterations completed or commenced since that approval that

impacted compliance with construction-related accessibility standards with respect to the plaintiff's claim.

(iii) All the violations giving rise to the claim have been corrected, or will be corrected within 60 days of the complaint being served.

(B) That all of the following apply to a defendant described by subparagraph (B) of paragraph (2) of subdivision (b):

(i) The site's new construction or improvement was approved by a local public building department inspector who is a certified access specialist.

(ii) To the best of the defendant's knowledge there have been no modifications or alterations completed or commenced since that approval that impacted compliance with construction-related accessibility standards with respect to the plaintiff's claim.

(iii) All the violations giving rise to the claim have been corrected, or will be corrected within 60 days of the complaint being served.

(C) That both of the following apply to a defendant described by subparagraph (C) of paragraph (2) of subdivision (b):

(i) The defendant is a small business described in paragraph (2) of subdivision (f) of Section 55.56.

(ii) The violation or violations giving rise to the claim have been corrected, or will be corrected within 30 days of the complaint being served.

(4) In lieu of the provision specified in number 4(c) of page 1 of the application form set forth in paragraph (7) of subdivision (c), the application shall include a request that the court order the defendant to do either of the following:

(A) For a defendant who has filed a declaration stating that all violations have

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been corrected, or will be corrected within 60 days of service of the complaint, file with the court and serve on the plaintiff evidence showing correction of the violation or violations within 10 calendar days of the completion of the corrections.

(B) For a defendant who is a small business that has filed a declaration stating that all the violations have been corrected, or will be corrected within 30 days of the service of the complaint, file with the court and serve on the plaintiff evidence showing correction of the violation or violations within 10 calendar days after issuance of the court order, if that evidence showing correction was not filed previously with the application and served on the plaintiff.

(5) The Judicial Council shall also prepare and post on its Internet Web site instructions and cover pages to assist plaintiffs and defendants, respectively, to comply with their filing responsibilities under subdivision (d). The cover pages shall also provide for the party's declaration of proof of service of the pertinent document served under the court order.

(m) The stay provisions shall not apply to any construction-related accessibility claim in which the plaintiff has been granted temporary injunctive relief that remains in place.

(n) This section shall not apply to any action brought by the Attorney General, or by any district attorney, city attorney, or county counsel.

(o) The amendments to this section made by Senate Bill 1186 of the 2011–12 Regular Session of the Legislature shall apply only to claims filed on or after the operative date of that act. Nothing in this part is intended to affect any complaint filed before that date.

(p) Nothing in this part is intended to affect existing law regarding class action requirements. (Added by Stats. 2008, ch. 549. Amended by Stats. 2009, ch. 569; Stats. 2012, ch. 383; Stats. 2015, ch. 755, effective October 10, 2015. Subd. (a) may become inoperative, and other provisions may have limited operation, under conditions prescribed by Stats. 2008, ch. 549, Sec. 12, subd. (b). Note: See published chaptered bill for complete section text. Forms relating to Stay of

Proceedings and Early Evaluation Conference appear on pages 23 to 25 of ch. 755.)

### **§ 55.55 Construction-Related Accessibility Claim—Attorney's Fees and Costs; Additional Factors to Consider**

Notwithstanding subdivision (f) of Section 55.54, in determining an award of reasonable attorney's fees and recoverable costs with respect to any construction-related accessibility claim, the court may consider, along with other relevant information, written settlement offers made and rejected by the parties. Nothing in this section affects or modifies the inadmissibility of evidence regarding offers of compromise pursuant to Section 1152 of the Evidence Code, including, but not limited to, inadmissibility to prove injury or damage. (Added by Stats. 2008, ch. 549.)

### **§ 55.56 Construction-Related Accessibility Claim—Statutory Damages; Full and Equal Access Denied; Reduction in Liability**

(a) Statutory damages under either subdivision (a) of Section 52 or subdivision (a) of Section 54.3 may be recovered in a construction-related accessibility claim against a place of public accommodation only if a violation or violations of one or more construction-related accessibility standards denied the plaintiff full and equal access to the place of public accommodation on a particular occasion.

(b) A plaintiff is denied full and equal access only if the plaintiff personally encountered the violation on a particular occasion, or the plaintiff was deterred from accessing a place of public accommodation on a particular occasion.

(c) A violation personally encountered by a plaintiff may be sufficient to cause a denial of full and equal access if the plaintiff experienced difficulty, discomfort, or embarrassment because of the violation.

(d) A plaintiff demonstrates that he or she was deterred from accessing a place of public accommodation on a particular occasion only if both of the following apply:

(1) The plaintiff had actual knowledge of a violation or violations that prevented or reasonably dissuaded the plaintiff from accessing

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a place of public accommodation that the plaintiff intended to use on a particular occasion.

(2) The violation or violations would have actually denied the plaintiff full and equal access if the plaintiff had accessed the place of public accommodation on that particular occasion.

- (e) (1) The following technical violations are presumed to not cause a person difficulty, discomfort, or embarrassment for the purpose of an award of minimum statutory damages in a construction-related accessibility claim, as set forth in subdivision (c), where the defendant is a small business, as described by subparagraph (B) of paragraph (2) of subdivision (g), the defendant has corrected, within 15 days of the service of a summons and complaint asserting a construction-related accessibility claim or receipt of a written notice, whichever is earlier, all of the technical violations that are the basis of the claim, and the claim is based on one or more of the following violations:

(A) Interior signs, other than directional signs or signs that identify the location of accessible elements, facilities, or features, when not all such elements, facilities, or features are accessible.

(B) The lack of exterior signs, other than parking signs and directional signs, including signs that indicate the location of accessible pathways or entrance and exit doors when not all pathways, entrance and exit doors are accessible.

(C) The order in which parking signs are placed or the exact location or wording of parking signs, provided that the parking signs are clearly visible and indicate the location of accessible parking and van-accessible parking.

(D) The color of parking signs, provided that the color of the background contrasts with the color of the information on the sign.

(E) The color of parking lot striping, provided that it exists and provides sufficient contrast with the surface upon which it is applied to be reasonably visible.

(F) Faded, chipped, damaged, or deteriorated paint in otherwise fully compliant parking spaces and passenger access aisles in parking lots, provided that it indicates the required dimensions of a parking space or access aisle in a manner that is reasonably visible.

(G) The presence or condition of detectable warning surfaces on ramps, except where the ramp is part of a pedestrian path of travel that intersects with a vehicular lane or other hazardous area.

(2) The presumption set forth in paragraph (1) affects the plaintiff's burden of proof and is rebuttable by evidence showing, by a preponderance of the evidence, that the plaintiff did, in fact, experience difficulty, discomfort, or embarrassment on the particular occasion as a result of one or more of the technical violations listed in paragraph (1).

(3) This subdivision shall apply only to claims filed on or after the effective date of Senate Bill 269 of the 2015–16 Regular Session.

(f) Statutory damages may be assessed pursuant to subdivision (a) based on each particular occasion that the plaintiff was denied full and equal access, and not upon the number of violations of construction-related accessibility standards identified at the place of public accommodation where the denial of full and equal access occurred. If the place of public accommodation consists of distinct facilities that offer distinct services, statutory damages may be assessed based on each denial of full and equal access to the distinct facility, and not upon the number of violations of construction-related accessibility standards identified at the place of public accommodation where the denial of full and equal access occurred.

(g) (1) Notwithstanding any other law, a defendant's liability for statutory damages in a construction-related accessibility claim against a place of public accommodation is reduced to a minimum of one thousand dollars (\$1,000) for each offense if the defendant demonstrates that it has corrected all construction-related violations that are the basis of a claim within 60 days of being served with the complaint, and the defendant demonstrates any of the following:



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(A) The structure or area of the alleged violation was determined to be “CAsp-inspected” or “meets applicable standards” and, to the best of the defendant’s knowledge, there were no modifications or alterations that impacted compliance with construction-related accessibility standards with respect to the plaintiff’s claim that were completed or commenced between the date of that determination and the particular occasion on which the plaintiff was allegedly denied full and equal access.

(B) The structure or area of the alleged violation was the subject of an inspection report indicating “CAsp determination pending” or “Inspected by a CAsp,” and the defendant has either implemented reasonable measures to correct the alleged violation before the particular occasion on which the plaintiff was allegedly denied full and equal access, or the defendant was in the process of correcting the alleged violation within a reasonable time and manner before the particular occasion on which the plaintiff was allegedly denied full and equal access.

(C) For a claim alleging a construction-related accessibility violation filed before January 1, 2018, the structure or area of the alleged violation was a new construction or an improvement that was approved by, and passed inspection by, the local building department permit and inspection process on or after January 1, 2008, and before January 1, 2016, and, to the best of the defendant’s knowledge, there were no modifications or alterations that impacted compliance with respect to the plaintiff’s claim that were completed or commenced between the completion date of the new construction or improvement and the particular occasion on which the plaintiff was allegedly denied full and equal access.

(D) The structure or area of the alleged violation was new construction or an improvement that was approved by, and passed inspection by a local building department official who is a certified access specialist, and, to the best of the defendant’s

knowledge, there were no modifications or alterations that affected compliance with respect to the plaintiff’s claim that were completed or commenced between the completion date of the new construction or improvement and the particular occasion on which the plaintiff was allegedly denied full and equal access.

(2) Notwithstanding any other law, a defendant’s liability for statutory damages in a construction-related accessibility claim against a place of public accommodation is reduced to a minimum of two thousand dollars (\$2,000) for each offense if the defendant demonstrates both of the following:

(A) The defendant has corrected all construction-related violations that are the basis of a claim within 30 days of being served with the complaint.

(B) The defendant is a small business that has employed 25 or fewer employees on average over the past three years, or for the years it has been in existence if less than three years, as evidenced by wage report forms filed with the Economic Development Department, and has average annual gross receipts of less than three million five hundred thousand dollars (\$3,500,000) over the previous three years, or for the years it has been in existence if less than three years, as evidenced by federal or state income tax returns. The average annual gross receipts dollar amount shall be adjusted biannually by the Department of General Services for changes in the California Consumer Price Index for All Urban Consumers, as compiled by the Department of Industrial Relations. The Department of General Services shall post that adjusted amount on its Internet Web site.

(3) (A) Notwithstanding any other law, a defendant shall not be liable for minimum statutory damages in a construction-related accessibility claim, with respect to a violation noted in a report by a certified access specialist (CAsp), for a period of 120 days following the date of the inspection if the defendant demonstrates compliance with each of the following:

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- (i) The defendant is a business that, as of the date of inspection, has employed 50 or fewer employees on average over the past three years, or for the years it has been in existence if less than three years, as evidenced by wage report forms filed with the Employment Development Department.
  - (ii) The structure or area of the alleged violation was the subject of an inspection report indicating "CASp determination pending" or "Inspected by a CASp."
  - (iii) The inspection predates the filing of the claim by, or receipt of a demand letter from, the plaintiff regarding the alleged violation of a construction-related accessibility standard, and the defendant was not on notice of the alleged violation prior to the CASp inspection.
  - (iv) The defendant has corrected, within 120 days of the date of the inspection, all construction-related violations in the structure or area inspected by the CASp that are noted in the CASp report that are the basis of the claim.
- (B) Notwithstanding any other law, a defendant who claims the benefit of the reduction of, or protection from liability for, minimum statutory damages under this subdivision shall disclose the date and findings of any CASp inspection to a plaintiff if relevant to a claim or defense in an action.
- (4) A defendant may claim the protection from liability for minimum statutory damages under paragraph (3) only once for each structure or area inspected by a CASp, unless the inspected structure or area has undergone modifications or alterations that affect the compliance with construction-related accessibility standards of those structures or areas after the date of the last inspection, and the defendant obtains an additional CASp inspection within 30 days of final approval by the building department or certificate of occupancy, as appropriate, regarding the modification or alterations.
- (5) If the defendant has failed to correct, within 120 days of the date of the inspection, all construction-related violations in the structure or area inspected by the CASp that are noted in the CASp report, the defendant shall not receive any protection from liability for minimum statutory damages pursuant to paragraph (3), unless a building permit is required for the repairs which cannot reasonably be completed by the defendant within 120 days and the defendant is in the process of correcting the violations noted in the CASp report, as evidenced by having, at least, an active building permit necessary for the repairs to correct the violation that was noted, but not corrected, in the CASp report and all of the repairs are completed within 180 days of the date of the inspection.
- (6) This subdivision shall not be applicable to intentional violations.
- (7) Nothing in this subdivision affects the awarding of actual damages, or affects the awarding of treble actual damages.
- (8) This subdivision shall apply only to claims filed on or after the effective date of Chapter 383 of the Statutes of 2012, except for paragraphs (3), (4), and (5), which shall apply only to claims filed on or after the effective date of Senate Bill 269 of the 2015–16 Regular Session. Nothing in this subdivision is intended to affect a complaint filed before those dates, as applicable.
- (h) This section does not alter the applicable law for the awarding of injunctive or other equitable relief for a violation or violations of one or more construction-related accessibility standards, nor alter any legal obligation of a party to mitigate damages.
- (i) In assessing liability under subdivision (d), in an action alleging multiple claims for the same construction-related accessibility violation on different particular occasions, the court shall consider the reasonableness of the plaintiff's conduct in light of the plaintiff's obligation, if any, to mitigate damages.
- (j) For purposes of this section, the "structure or area inspected" means one of the following: the interior of the premises, the exterior of the premises, or both the interior and exterior. (Added by Stats. 2008, ch. 549. Amended by Stats. 2012, ch. 383; Stats. 2013, ch. 76; Stats. 2016, ch. 13, effective May 10, 2016.)

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*[Publisher's Note: The following paragraphs concern Civil Code §§ 55.3-55.32 and § 55.56 and was added by Stats. 2012, ch. 383, but not codified. It is provided below for your information.]*

SEC. 24. The Legislature finds and declares that a very small number of plaintiffs' attorneys have been abusing the right of petition under Sections 52 and 54.3 of the Civil Code by issuing a demand for money to a California business owner that demands the owner pay a quick settlement of the attorney's alleged claim under those laws or else incur greater liability and legal costs if a lawsuit is filed. These demands for money allege one or more, but frequently multiple, claims for asserted violations of a construction-related accessibility standard and often demand a quick money settlement based on the alleged multiple claims without seeking and obtaining actual repair or correction of the alleged violations on the site. These "pay me now or pay me more" demands are used to scare businesses into paying quick settlements that only financially enrich the attorney and claimant and do not promote accessibility either for the claimant or the disability community as a whole. These practices, often involving a series of demand for money letters sent to numerous businesses, do not promote compliance with the accessibility requirements and erode public support for and confidence in our laws. Therefore, the Legislature finds and declares that it is necessary and appropriate to enact Sections 55.31 and 55.32 of the Civil Code, and Section 425.50 of the Code of Civil Procedure to protect the public's confidence and support of the right to petition under Sections 52 and 54.3 of the Civil Code.

SEC. 25. The Legislature finds and declares all of the following:

(a) Subdivision (h) of Section 55.56 of the Civil Code, as added by Section 11 of this act, is intended to address the misuse of Sections 52 and 54.3 of the Civil Code by a small minority of disability rights lawyers and plaintiffs. These lawyers and plaintiffs have alleged in demand letters and complaints that they were deterred on repeated occasions by the same violation of a construction-related accessibility standard and thereby assert multiple claims for the same violation without a reasonable explanation for the repeated conduct in light of the obligation to mitigate damages. Their assertions of these "stacked" multiple claims for the same construction-related accessibility violation on different occasions are made

to substantially increase the purported statutory liability of a defendant in order to intimidate and pressure the defendant into making a quick monetary settlement. The provisions of subdivision (h) of Section 55.56 of the Civil Code reiterate that where multiple claims for the same construction-related accessibility violation on separate particular occasions are alleged, a plaintiff's conduct must have a reasonable explanation for the asserted need for multiple visits to a site where a known barrier violation would deny full and equal access, in light of the obligation to mitigate damages.

(b) Correspondingly, if there is a reasonable explanation in light of the obligation to mitigate damages for the need to make multiple visits to a site where a known barrier violation would deny full and equal access, a multiple claim for repeated violations of the same construction-related accessibility standard may properly lie. In addition, there may be clear instances when the needs of a person with a disability and circumstances may make mitigation efforts impossible or futile in cases involving multiple instances of deterrence on separate particular occasions where the individual has a reasonable explanation for the need for multiple visits to the same site.

(c) Further, nothing in subdivision (h) of Section 55.56 of the Civil Code is intended to change existing law with respect to the fact that an alleged failure to mitigate damages is pled and proven as an affirmative defense.

SEC. 26. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 29. 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 Constitution and shall go into immediate effect. The facts constituting the necessity are: In order to avoid unnecessary litigation and to facilitate compliance with the disability access law, it is necessary that this act take effect immediately.

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### **§ 55.61 Gender Discrimination in Services Compliance Act—Short Title**

This part shall be known, and may be cited, as the Small Business Gender Discrimination in Services Compliance Act. (Added by Stats. 2017, ch. 156.)

### **§ 55.62 Gender Discrimination in Services Claim—Definitions; Attorney Requirements When Providing a Demand Letter; Advisory Notice; Penalties**

(a) For purposes of this part, the following definitions apply:

(1) “Gender discrimination in pricing services claim” means any civil claim in a civil action with respect to a business establishment, including, but not limited to, a claim brought under Section 51 or 51.6, based wholly or in part on an alleged price difference charged for services of similar or like kind, against a person because of the person’s gender.

(2) “Demand letter” means a prelitigation written document that is provided to a business alleging a gender discrimination in pricing services claim and demanding money, whether or not the attorney intends to file a complaint, or eventually files a complaint, in state court.

(b) An attorney shall provide the following items with each demand letter or complaint sent to or served upon a defendant or potential defendant alleging gender discrimination in pricing services, including, but not limited to, claims brought pursuant to Section 51 or 51.6:

(1) A copy of the written advisory notice as specified in subdivision (c). Until the Judicial Council adopts this notice, the attorney shall provide a written statement that replicates the advisory notice described in subdivision (c).

(2) A copy of the pamphlet or other informational material specified in Section 55.63, after the pamphlet or material is developed by the Department of Consumer Affairs.

(c) On or before January 1, 2019, the Judicial Council shall adopt a written advisory notice that shall be used by a plaintiff’s attorney to comply with the requirements of paragraph (1) of subdivision (b). The advisory notice

shall be available in English, Spanish, Chinese, Vietnamese, and Korean, and shall include a statement that the advisory notice is available in additional languages, and the Judicial Council Internet Web site address where the different versions of the advisory notice are located. The advisory notice shall state the following:

#### ADVISORY NOTICE TO DEFENDANT

STATE LAW REQUIRES THAT YOU GET THIS IMPORTANT ADVISORY INFORMATION FOR BUSINESSES

This information is available in English, Spanish, Chinese, Vietnamese, and Korean through the Judicial Council of California. Persons with visual impairments can get assistance in viewing this form through the Judicial Council Internet Web site at [www.courts.ca.gov](http://www.courts.ca.gov).

California law requires that you receive this information because the demand letter or court complaint you received with this document claims that you have discriminated, with respect to the price charged for services of similar or like kind, against a person because of that person’s gender.

YOU HAVE IMPORTANT LEGAL OBLIGATIONS. State law requires that businesses charge the same price for the same services, or services of the same or similar kind, regardless of the customer’s gender. In addition, state law requires that certain business establishments clearly and conspicuously disclose to their customers in writing the pricing for each standard service provided. The posting requirement applies to the following businesses:

(1) Tailors or businesses providing aftermarket clothing alterations.

(2) Barbers or hair salons.

(3) Dry cleaners and laundries providing services to individuals.

YOU HAVE IMPORTANT LEGAL RIGHTS. The allegations made in the accompanying demand letter or court complaint do not mean that you are required to pay any money unless and until a court finds you liable. Moreover, RECEIPT OF A

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DEMAND LETTER OR COURT COMPLAINT AND THIS ADVISORY DOES NOT NECESSARILY MEAN YOU WILL BE FOUND LIABLE FOR ANYTHING.

You have the right to seek assistance or advice about this demand letter or complaint from any person of your choice. If you have insurance, you may also wish to contact your insurance provider. Your best interest may be served by seeking legal advice or representation from an attorney, but you may also represent yourself and file the necessary court papers to protect your interests if you are served with a court complaint. If you have hired an attorney to represent you, you should immediately notify your attorney.

### ADDITIONAL THINGS YOU SHOULD KNOW

**WHEN YOU CAN AND CANNOT CHARGE DIFFERENT PRICES:** The Gender Tax Repeal Act of 1995 (California Civil Code Section 51.6) prohibits a business from charging a different price for the same service because of the gender of the person receiving the service. However, you may charge different prices based specifically upon the amount of time, difficulty, or cost of providing the services.

**POSTING PRICES:** The Gender Tax Repeal Act of 1995 also requires that certain businesses clearly disclose to the customer in writing the price of each standard service provided. This pricing disclosure is required for the following businesses: tailors or businesses providing aftermarket clothing alterations; barbers or hair salons; dry cleaners and laundries providing service to individuals. The price list must be posted in a place where customers will likely see it and it must be in no less than 14-point boldface font. A business must also provide a written copy of the prices to the customer if one is requested by the customer. Finally, a business must clearly and conspicuously display a sign, in no less than 24-point font, that reads:

“CALIFORNIA LAW PROHIBITS ANY BUSINESS ESTABLISHMENT FROM DISCRIMINATING, WITH RESPECT TO THE PRICE CHARGED FOR SERVICES OF SIMILAR OR LIKE KIND, AGAINST A PERSON BECAUSE OF THE PERSON’S GENDER. A

COMPLETE PRICE LIST IS AVAILABLE UPON REQUEST.”

### RIGHT TO CORRECT A POSTING VIOLATION ONLY:

If you receive a written notice claiming that you have failed to properly post any of the above information, you have 30 days to correct the violation. If you fail to correct the violation you will be liable for a civil penalty of \$1,000. (Note that the 30-day period to correct applies only to posting violations, not to discriminatory pricing violations.)

(d) This section does not apply to an action brought by the Attorney General or any district attorney, city attorney, or county counsel. (Added by Stats. 2017, ch. 156.)

### **§ 55.63 Pamphlet or Informational Materials for Use by Businesses; Rights and Obligations; Provision of Pamphlet**

(a) (1) On or before January 1, 2019, the Department of Consumer Affairs shall develop a pamphlet or other informational materials for use by the following business establishments: tailors and businesses providing aftermarket clothing alterations; barbers and hair salons; and dry cleaners and laundries providing services to individuals. The pamphlet shall explain the business’ rights and obligations under Section 51.6 in clear and concise language. Specifically, the pamphlet shall explain that the business is prohibited from charging different prices for services of similar or like kind based on the customer’s gender, unless the price difference is based upon the amount of time, difficulty, or cost of providing the services and that the business shall disclose a price list and sign in the manner prescribed in subdivision (f) of Section 51.6. The pamphlet shall explain that a business has 30 days to correct any violation of the posting requirements in subdivision (f) of Section 51.6 and that a business that fails to correct within 30 days of receiving notice of the violation is liable for a civil penalty of one thousand dollars (\$1,000). The department may include any other information that would help the business comply with Section 51.6. The department shall subsequently revise the pamphlet, as necessary.

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(2) The department shall provide the pamphlet or other informational materials required by paragraph (1) to an affected business establishment at the time that the business establishment applies for or renews a license, at the time of any inspection, or at both times. The department shall post a copy of the pamphlet or other informational materials on its internet website.

(3) Commencing October 1, 2020, the department shall provide the pamphlet and other informational materials required by paragraph (1) in English, Spanish, Chinese, Tagalog, Vietnamese, and Korean.

(b) By October 1, 2020, the department shall develop a written notice explaining the requirements and obligations specified in Section 51.6. The notice shall be available in English, Spanish, Chinese, Tagalog, Vietnamese, and Korean. The department shall post a copy of the notice in each language on its internet website in a format available for download. The department shall subsequently revise the notice, as necessary. (Added by Stats. 2017, ch. 156. Amended by Stats. 2019, ch. 293.)

**§ 224.10** (Repealed and incorporated into Family Code Section 8800 by Stats. 1992, ch. 162.)

**§ 225m.** (Repealed and renumbered by Stats. 1990, ch. 1363.)

### **§ 1714.10 Attorney-Client Civil Conspiracy; Proof and Pre-Pleading Court Determination; Defense; Limitations; Appeal**

(a) No cause of action against an attorney for a civil conspiracy with his or her client arising from any attempt to contest or compromise a claim or dispute, and which is based upon the attorney's representation of the client, shall be included in a complaint or other pleading unless the court enters an order allowing the pleading that includes the claim for civil conspiracy to be filed after the court determines that the party seeking to file the pleading has established that there is a reasonable probability that the party will prevail in the action. The court may allow the filing of a pleading claiming liability based upon such a civil conspiracy following the filing of a verified petition therefor

accompanied by the proposed pleading and supporting affidavits stating the facts upon which the liability is based. The court shall order service of the petition upon the party against whom the action is proposed to be filed and permit that party to submit opposing affidavits prior to making its determination. The filing of the petition, proposed pleading, and accompanying affidavits shall toll the running of any applicable statute of limitations until the final determination of the matter, which ruling, if favorable to the petitioning party, shall permit the proposed pleading to be filed.

(b) Failure to obtain a court order where required by subdivision (a) shall be a defense to any action for civil conspiracy filed in violation thereof. The defense shall be raised by the attorney charged with civil conspiracy upon that attorney's first appearance by demurrer, motion to strike, or such other motion or application as may be appropriate. Failure to timely raise the defense shall constitute a waiver thereof.

(c) This section shall not apply to a cause of action against an attorney for a civil conspiracy with his or her client, where (1) the attorney has an independent legal duty to the plaintiff, or (2) the attorney's acts go beyond the performance of a professional duty to serve the client and involve a conspiracy to violate a legal duty in furtherance of the attorney's financial gain.

(d) This section establishes a special proceeding of a civil nature. Any order made under subdivision (a), (b), or (c) which determines the rights of a petitioner or an attorney against whom a pleading has been or is proposed to be filed, shall be appealable as a final judgment in a civil action.

(e) Subdivision (d) does not constitute a change in, but is declaratory of, the existing law. (Added by Stats. 1988, ch. 1052. Amended by Stats. 1991, ch. 916; Stats. 1992, ch. 427; Stats. 1993, ch. 645; Stats. 2000, ch. 472.)

### **§ 1717 Action on Contract; Award of Attorney's Fees and Costs; Prevailing Party; Deposit of Amounts in Insured, Interest-Bearing Account; Damages Not Based on Contract**

(a) In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to

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be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs.

Where a contract provides for attorney's fees, as set forth above, that provision shall be construed as applying to the entire contract, unless each party was represented by counsel in the negotiation and execution of the contract, and the fact of that representation is specified in the contract.

Reasonable attorney's fees shall be fixed by the court, and shall be an element of the costs of suit.

Attorney's fees provided for by this section shall not be subject to waiver by the parties to any contract which is entered into after the effective date of this section. Any provision in any such contract which provides for a waiver of attorney's fees is void.

(b) (1) The court, upon notice and motion by a party, shall determine who is the party prevailing on the contract for purposes of this section, whether or not the suit proceeds to final judgment. Except as provided in paragraph (2), the party prevailing on the contract shall be the party who recovered a greater relief in the action on the contract. The court may also determine that there is no party prevailing on the contract for purposes of this section.

(2) Where an action has been voluntarily dismissed or dismissed pursuant to a settlement of the case, there shall be no prevailing party for purposes of this section.

Where the defendant alleges in his or her answer that he or she tendered to the plaintiff the full amount to which he or she was entitled, and thereupon deposits in court for the plaintiff, the amount so tendered, and the allegation is found to be true, then the defendant is deemed to be a party prevailing on the contract within the meaning of this section.

Where a deposit has been made pursuant to this section, the court shall, on the application of any party to the action, order the deposit to be invested in an insured, interest-bearing account. Interest on the amount shall be allocated to the parties in the same proportion as the original funds are allocated.

(c) In an action which seeks relief in addition to that based on a contract, if the party prevailing on the contract has damages awarded against it on causes of action not on the contract, the amounts awarded to the party prevailing on the contract under this section shall be deducted from any damages awarded in favor of the party who did not prevail on the contract. If the amount awarded under this section exceeds the amount of damages awarded the party not prevailing on the contract, the net amount shall be awarded the party prevailing on the contract and judgment may be entered in favor of the party prevailing on the contract for that net amount. (Added by Stats. 1968, ch. 266. Amended by Stats. 1981, ch. 888; Stats. 1983, ch. 1073; Stats. 1986, ch. 377; Stats. 1986, ch. 785; Stats. 1987, ch. 1080.)

### **§ 1717.5 Action on Contract Based on Book Account; Award of Attorney's Fees for the Prevailing Party; Effect of Written Agreement; Scope of Application**

(a) Except as otherwise provided by law or where waived by the parties to an agreement, in any action on a contract based on a book account, as defined in Section 337a of the Code of Civil Procedure, entered into on or after January 1, 1987, which does not provide for attorney's fees and costs, as provided in Section 1717, the party who is determined to be the party prevailing on the contract shall be entitled to reasonable attorney's fees, as provided below, in addition to other costs. The prevailing party on the contract shall be the party who recovered a greater relief in the action on the contract. The court may determine that there is no party prevailing on the contract for purposes of this section.

Reasonable attorney's fees awarded pursuant to this section for the prevailing party bringing the action on the book account shall be fixed by the court in an amount that shall not exceed the lesser of: (1) nine hundred sixty dollars (\$960) for book accounts based upon an obligation owing by a natural person for goods, moneys, or services which were primarily for personal, family, or household purposes; and one thousand two hundred dollars (\$1,200) for all other book accounts to which this section applies; or (2) 25 percent of the principal obligation owing under the contract.

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For the party against whom the obligation on the book account was asserted in the action subject to this section, if that party is found to have no obligation owing on a book account, the court shall award that prevailing party reasonable attorney's fees not to exceed nine hundred sixty dollars (\$960) for book accounts based upon an obligation owing by a natural person for goods, moneys, or services which were primarily for personal, family, or household purposes, and one thousand two hundred dollars (\$1,200) for all other book accounts to which this section applies. These attorney's fees shall be an element of the costs of the suit.

If there is a written agreement between the parties signed by the person to be charged, the fees provided by this section may not be imposed unless that agreement contains a statement that the prevailing party in any action between the parties is entitled to the fees provided by this section.

(b) The attorney's fees allowed pursuant to this section shall be the lesser of either the maximum amount allowed by this section, the amount provided by any default attorney's fee schedule adopted by the court applicable to the suit, or an amount as otherwise provided by the court. Any claim for attorney's fees pursuant to this section in excess of the amounts set forth in the default attorney's fee schedule shall be reasonable attorney's fees, as proved by the party, as actual and necessary for the claim that is subject to this section.

(c) This section does not apply to any action in which an insurance company is a party nor shall an insurance company, surety, or guarantor be liable under this section, in the absence of a specific contractual provision, for the attorney's fees and costs awarded a prevailing party against its insured.

This section does not apply to any action in which a bank, a savings association, a federal association, a state or federal credit union, or a subsidiary, affiliate, or holding company of any of those entities, or an authorized industrial loan company, a licensed consumer finance lender, or a licensed commercial finance lender, is a party. (Added by Stats. 1986, ch. 884. Amended by Stats. 1987, ch. 764; Stats. 1991, ch. 406; Stats. 1992, ch. 530; Stats. 2004, ch. 328; Stats. 2015, ch. 80.)

### **§ 1940.05 "Immigration or citizenship status"—Defined**

For purposes of this chapter, "immigration or citizenship status" includes a perception that the person has a particular immigration status or citizenship status, or that the person is associated with a person who has, or is perceived to have, a particular immigration status or citizenship status. (Added by Stats. 2017, ch. 489.)

### **§ 2944.6 Mortgage Loan Modifications—Person Offering to Perform Modification for a Fee; Notice to Borrower; Violations**

(a) Notwithstanding any other provision of law, any person who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, shall provide the following to the borrower, as a separate statement, in not less than 14-point bold type, prior to entering into any fee agreement with the borrower:

It is not necessary to pay a third party to arrange for a loan modification or other form of forbearance from your mortgage lender or servicer. You may call your lender directly to ask for a change in your loan terms. Nonprofit housing counseling agencies also offer these and other forms of borrower assistance free of charge. A list of nonprofit housing counseling agencies approved by the United States Department of Housing and Urban Development (HUD) is available from your local HUD office or by visiting [www.hud.gov](http://www.hud.gov).

(b) If loan modification or other mortgage loan forbearance services are offered or negotiated in one of the languages set forth in Section 1632, a translated copy of the statement in subdivision (a) shall be provided to the borrower in that foreign language.

(c) A violation of this section by a natural person is a public offense punishable by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment in the county jail for a term not to exceed one year, or by both that fine and imprisonment, or if by a business entity, the violation is punishable by a fine not exceeding fifty thousand dollars (\$50,000). These penalties are cumulative to any other remedies or penalties provided by law.



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(d) This section does not apply to a person, or an agent acting on that person's behalf, offering loan modification or other loan forbearance services for a loan owned or serviced by that person.

(e) This section shall apply only to mortgages and deeds of trust secured by residential real property containing four or fewer dwelling units. (Added by Stats. 2009, ch. 630, operative October 11, 2009.)

### **§ 2944.7 Mortgage Loan Modifications—Person Offering to Perform Modification for a Fee; Prohibitions; Violations**

(a) Notwithstanding any other law, it shall be unlawful for any person who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, to do any of the following:

(1) Claim, demand, charge, collect, or receive any compensation until after the person has fully performed each and every service the person contracted to perform or represented that he or she would perform.

(2) Take any wage assignment, any lien of any type on real or personal property, or other security to secure the payment of compensation.

(3) Take any power of attorney from the borrower for any purpose.

(b) A violation of this section by a natural person is punishable by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment in the county jail for a term not to exceed one year, or by both that fine and imprisonment, or if by a business entity, the violation is punishable by a fine not exceeding fifty thousand dollars (\$50,000). These penalties are cumulative to any other remedies or penalties provided by law.

(c) In addition to the penalties and remedies provided by Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code, a person who violates this section shall be liable for a civil penalty not to exceed twenty thousand dollars (\$20,000) for each violation, which shall be assessed and recovered in a civil action

brought in the name of the people of the State of California by the Attorney General, by any district attorney, by any county counsel authorized by agreement with the district attorney in actions involving a violation of a county ordinance, by any city attorney of a city having a population in excess of 750,000, by any city attorney of any city and county, or, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor, in any court of competent jurisdiction pursuant to Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code.

(d) Nothing in this section precludes a person, or an agent acting on that person's behalf, who offers loan modification or other loan forbearance services for a loan owned or serviced by that person, from doing any of the following:

(1) Collecting principal, interest, or other charges under the terms of a loan, before the loan is modified, including charges to establish a new payment schedule for a nondelinquent loan, after the borrower reduces the unpaid principal balance of that loan for the express purpose of lowering the monthly payment due under the terms of the loan.

(2) Collecting principal, interest, or other charges under the terms of a loan, after the loan is modified.

(3) Accepting payment from a federal agency in connection with the federal Making Home Affordable Plan or other federal plan intended to help borrowers refinance or modify their loans or otherwise avoid foreclosures.

(e) This section shall apply only to mortgages and deeds of trust secured by residential real property containing four or fewer dwelling units. (Added by Stats. 2009, ch. 630, operative October 11, 2009. Amended by Stats. 2012, ch. 563; Stats. 2012, ch. 569; Stats. 2014, ch. 457.)

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### **§ 2944.8 Mortgage Loan Modifications– Negotiating or Offering to Perform Mortgage Loan Modification for a Fee; Additional Penalties Where Victim is Senior Citizen or Disabled Person**

(a) In addition to any liability for a civil penalty pursuant to Section 2944.7, if a person violates Section 2944.7 with respect to a victim who is a senior citizen or a disabled person, the violator may be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation, which may be assessed and recovered in a civil action.

(b) As used in this section, the following terms have the following meanings:

(1) “Disabled person” means a person who has a physical or mental disability, as defined in Sections 12926 and 12926.1 of the Government Code.

(2) “Senior citizen” means a person who is 65 years of age or older.

(c) In determining whether to impose a civil penalty pursuant to subdivision (a) and the amount thereof, the court shall consider, in addition to any other appropriate factors, the extent to which one or more of the following factors are present:

(1) Whether the defendant knew or should have known that his or her conduct was directed to one or more senior citizens or disabled persons.

(2) Whether the defendant’s conduct caused one or more senior citizens or disabled persons to suffer any of the following: loss or encumbrance of a primary residence, principal employment, or source of income, substantial loss of property set aside for retirement, or for personal or family care and maintenance, or substantial loss of payments received under a pension or retirement plan or a government benefits program, or assets essential to the health or welfare of the senior citizen or disabled person.

(3) Whether one or more senior citizens or disabled persons are substantially more vulnerable than other members of the public to the defendant’s conduct because of age, poor health or infirmity, impaired understanding, restricted mobility, or disability, and actually suffered substantial physical, emotional, or

economic damage resulting from the defendant’s conduct.

(d) A court of competent jurisdiction hearing an action pursuant to this section may make orders and judgments as necessary to restore to a senior citizen or disabled person money or property, real or personal, that may have been acquired by means of a violation of Section 2944.7. (Added by Stats. 2014, ch. 457.)

### **§ 2944.10 Mortgage Loan Modifications– Negotiating or Offering to Perform Mortgage Loan Modification for a Fee; Additional Penalties Where Victim is Senior Citizen or Disabled Person**

Any action to enforce any cause of action pursuant to Section 2944.7 or 2944.8 shall be commenced within four years after the cause of action accrued. No cause of action barred under existing law on the effective date of this section shall be revived by its enactment. (Added by Stats. 2014, ch. 457.)

### **§ 2945.1 Foreclosure Consultants–Defined**

The following definitions apply to this chapter:

(a) “Foreclosure consultant” means any person who makes any solicitation, representation, or offer to any owner to perform for compensation or who, for compensation, performs any service which the person in any manner represents will in any manner do any of the following:

(1) Stop or postpone the foreclosure sale.

(2) Obtain any forbearance from any beneficiary or mortgagee.

(3) Assist the owner to exercise the right of reinstatement provided in Section 2924c.

(4) Obtain any extension of the period within which the owner may reinstate his or her obligation.

(5) Obtain any waiver of an acceleration clause contained in any promissory note or contract secured by a deed of trust or mortgage on a residence in foreclosure or contained that deed of trust or mortgage.

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- (6) Assist the owner to obtain a loan or advance of funds.
- (7) Avoid or ameliorate the impairment of the owner's credit resulting from the recording of a notice of default or the conduct of a foreclosure sale.
- (8) Save the owner's residence from foreclosure.
- (9) Assist the owner in obtaining from the beneficiary, mortgagee, trustee under a power of sale, or counsel for the beneficiary, mortgagee, or trustee, the remaining proceeds from the foreclosure sale of the owner's residence.
- (b) A foreclosure consultant does not include any of the following:
- (1) A person licensed to practice law in this state when the person renders service in the course of his or her practice as an attorney at law.
  - (2) A person licensed under Division 3 (commencing with Section 12000) of the Financial Code when the person is acting as a prorater as defined therein.
  - (3) A person licensed under Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code when the person is acting under the authority of that license, as described in Section 10131 or 10131.1 of the Business and Professions Code.
  - (4) A person licensed under Chapter 1 (commencing with Section 5000) of Division 3 of the Business and Professions Code when the person is acting in any capacity for which the person is licensed under those provisions.
  - (5) A person or his or her authorized agent acting under the express authority or written approval of the Department of Housing and Urban Development or other department or agency of the United States or this state to provide services.
  - (6) A person who holds or is owed an obligation secured by a lien on any residence in foreclosure when the person performs services in connection with this obligation or lien.
  - (7) Any person licensed to make loans pursuant to Division 9 (commencing with Section 22000) of the Financial Code when the person is acting under the authority of that license.
- (8) Any person or entity doing business under any law of this state, or of the United States relating to banks, trust companies, savings and loan associations, industrial loan companies, pension trusts, credit unions, insurance companies, or any person or entity authorized under the laws of this state to conduct a title or escrow business, or a mortgagee which is a United States Department of Housing and Urban Development approved mortgagee and any subsidiary or affiliate of the above, and any agent or employee of the above while engaged in the business of these persons or entities.
- (9) A person licensed as a residential mortgage lender or servicer pursuant to Division 20 (commencing with Section 50000) of the Financial Code, when acting under the authority of that license.
- (c) Notwithstanding subdivision (b), any person who provides services pursuant to paragraph (9) of subdivision (a) is a foreclosure consultant unless he or she is the owner's attorney.
- (d) "Person" means any individual, partnership, corporation, limited liability company, association or other group, however organized.
- (e) "Service" means and includes, but is not limited to, any of the following:
- (1) Debt, budget, or financial counseling of any type.
  - (2) Receiving money for the purpose of distributing it to creditors in payment or partial payment of any obligation secured by a lien on a residence in foreclosure.
  - (3) Contacting creditors on behalf of an owner of a residence in foreclosure.
  - (4) Arranging or attempting to arrange for an extension of the period within which the owner of a residence in foreclosure may cure his or her default and reinstate his or her obligation pursuant to Section 2924c.

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(5) Arranging or attempting to arrange for any delay or postponement of the time of sale of the residence in foreclosure.

(6) Advising the filing of any document or assisting in any manner in the preparation of any document for filing with any bankruptcy court.

(7) Giving any advice, explanation or instruction to an owner of a residence in foreclosure which in any manner relates to the cure of a default in or the reinstatement of an obligation secured by a lien on the residence in foreclosure, the full satisfaction of that obligation, or the postponement or avoidance of a sale of a residence in foreclosure pursuant to a power of sale contained in any deed of trust.

(8) Arranging or attempting to arrange for the payment by the beneficiary, mortgagee, trustee under a power of sale, or counsel for the beneficiary, mortgagee, or trustee, of the remaining proceeds to which the owner is entitled from a foreclosure sale of the owner's residence in foreclosure. Arranging or attempting to arrange for the payment shall include any arrangement where the owner transfers or assigns the right to the remaining proceeds of a foreclosure sale to the foreclosure consultant or any person designated by the foreclosure consultant, whether that transfer is effected by agreement, assignment, deed, power of attorney, or assignment of claim.

(f) "Residence in foreclosure" means a residence in foreclosure as defined in Section 1695.1.

(g) "Owner" means a property owner as defined in Section 1695.1.

(h) "Contract" means any agreement, or any term thereof, between a foreclosure consultant and an owner for the rendition of any service as defined in subdivision (e). (Added by Stats. 1979, ch. 1029. Amended by Stats. 1980, ch. 108; Stats. 1980, ch. 423; Stats. 1980, ch. 676; Stats. 1980, ch. 706; Stats. 1981, ch. 724; Stats. 1982, ch. 1082; Stats. 1986, ch. 248; Stats. 1994, ch. 1010; Stats. 1995, ch. 564; Stats. 2004, ch. 177; Stats. 2009, ch. 630, operative October 11, 2009.)

### **§ 3339.10 Immigration or Citizenship Status Irrelevant to Issues of Liability or Remedy in Specified Proceedings; Discovery**

(a) The immigration or citizenship status of any person is irrelevant to any issue of liability or remedy under Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3, Chapter 2 (commencing with Section 789) of Title 2 of Part 2 of Division 2 of this code, or under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the Code of Civil Procedure, or in any civil action involving a tenant's housing rights.

(b) (1) In proceedings or discovery undertaken in a civil action to enforce Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3, Chapter 2 (commencing with Section 789) of Title 2 of Part 2 of Division 2 of this code, or under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the Code of Civil Procedure, or in any civil action involving a tenant's housing rights, no inquiry shall be permitted into a person's immigration or citizenship status, except as follows:

(A) The tenant's claims or defenses raised place the person's immigration or citizenship status directly in contention.

(B) The person seeking to make this inquiry demonstrates by clear and convincing evidence that this inquiry is necessary in order to comply with federal immigration law.

(2) The assertion of an affirmative defense to an unlawful detainer action under Section 1161.4 of the Code of Civil Procedure does not constitute cause under this subdivision for discovery or other inquiry into that person's immigration or citizenship status. (Added by Stats. 2017, ch. 489.)

## CODE OF CIVIL PROCEDURE

### **§ 128 Inherent Powers of the Court**

(a) Every court shall have the power to do all of the following:

(1) To preserve and enforce order in its immediate presence.

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- (2) To enforce order in the proceedings before it, or before a person or persons empowered to conduct a judicial investigation under its authority.
- (3) To provide for the orderly conduct of proceedings before it, or its officers.
- (4) To compel obedience to its judgments, orders, and process, and to the orders of a judge out of court, in an action or proceeding pending therein.
- (5) To control in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every matter pertaining thereto.
- (6) To compel the attendance of persons to testify in an action or proceeding pending therein, in the cases and manner provided in this code.
- (7) To administer oaths in an action or proceeding pending therein, and in all other cases where it may be necessary in the exercise of its powers and duties.
- (8) To amend and control its process and orders so as to make them conform to law and justice. An appellate court shall not reverse or vacate a duly entered judgment upon an agreement or stipulation of the parties unless the court finds both of the following:
- (A) There is no reasonable possibility that the interests of nonparties or the public will be adversely affected by the reversal.
  - (B) The reasons of the parties for requesting reversal outweigh the erosion of public trust that may result from the nullification of a judgment and the risk that the availability of stipulated reversal will reduce the incentive for pretrial settlement.
- (b) Notwithstanding Section 1211 or any other law, if an order of contempt is made affecting an attorney, his or her agent, investigator, or any person acting under the attorney's direction, in the preparation and conduct of any action or proceeding, the execution of any sentence shall be stayed pending the filing within three judicial days of a petition for extraordinary relief testing the lawfulness of the court's order, the violation of which is the basis of the contempt except for the conduct as may be proscribed by subdivision (b) of Section 6068 of the Business and Professions Code, relating to an attorney's duty to maintain respect due to the courts and judicial officers.
- (c) Notwithstanding Section 1211 or any other law, if an order of contempt is made affecting a public safety employee acting within the scope of employment for reason of the employee's failure to comply with a duly issued subpoena or subpoena duces tecum, the execution of any sentence shall be stayed pending the filing within three judicial days of a petition for extraordinary relief testing the lawfulness of the court's order, a violation of which is the basis for the contempt.
- As used in this subdivision, "public safety employee" includes any peace officer, firefighter, paramedic, or any other employee of a public law enforcement agency whose duty is either to maintain official records or to analyze or present evidence for investigative or prosecutorial purposes.
- (d) Notwithstanding Section 1211 or any other law, if an order of contempt is made affecting the victim of a sexual assault, where the contempt consists of refusing to testify concerning that sexual assault, the execution of any sentence shall be stayed pending the filing within three judicial days of a petition for extraordinary relief testing the lawfulness of the court's order, a violation of which is the basis for the contempt. As used in this subdivision, "sexual assault" means any act made punishable by Section 261, 262, 264.1, 285, 286, 288, 288a, or 289 of the Penal Code.
- (e) Notwithstanding Section 1211 or any other law, if an order of contempt is made affecting the victim of domestic violence, where the contempt consists of refusing to testify concerning that domestic violence, the execution of any sentence shall be stayed pending the filing within three judicial days of a petition for extraordinary relief testing the lawfulness of the court's order, a violation of which is the basis for the contempt. As used in this subdivision, the term "domestic violence" means "domestic violence" as defined in Section 6211 of the Family Code.
- (f) Notwithstanding Section 1211 or any other provision of law, no order of contempt shall be made affecting a county government or any member of its governing body acting pursuant to its constitutional or statutory authority unless the court finds, based on a

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review of evidence presented at a hearing conducted for this purpose, that either of the following conditions exist:

- (1) That the county has the resources necessary to comply with the order of the court.
- (2) That the county has the authority, without recourse to voter approval or without incurring additional indebtedness, to generate the additional resources necessary to comply with the order of the court, that compliance with the order of the court will not expose the county, any member of its governing body, or any other county officer to liability for failure to perform other constitutional or statutory duties, and that compliance with the order of the court will not deprive the county of resources necessary for its reasonable support and maintenance. (Added by Stats. 1987, ch. 3. Amended by Stats. 1991, ch. 866; Stats. 1992, ch. 163; Stats. 1992, ch. 967; Stats. 1993, ch. 219; Stats. 1999, ch. 508.)

### **§ 128.5 Frivolous Actions or Delaying Tactics—Award of Expenses, Including Attorney’s Fees on Motion**

(a) A trial court may order a party, the party’s attorney, or both, to pay the reasonable expenses, including attorney’s fees, incurred by another party as a result of actions or tactics, made in bad faith, that are frivolous or solely intended to cause unnecessary delay. This section also applies to judicial arbitration proceedings under Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3.

(b) For purposes of this section:

- (1) “Actions or tactics” include, but are not limited to, the making or opposing of motions or the filing and service of a complaint, cross-complaint, answer, or other responsive pleading. The mere filing of a complaint without service thereof on an opposing party does not constitute “actions or tactics” for purposes of this section.
- (2) “Frivolous” means totally and completely without merit or for the sole purpose of harassing an opposing party.

(c) Expenses pursuant to this section shall not be imposed except on notice contained in a party’s moving

or responding papers or, on the court’s own motion, after notice and opportunity to be heard. An order imposing expenses shall be in writing and shall recite in detail the action or tactic or circumstances justifying the order.

(d) In addition to any award pursuant to this section for an action or tactic described in subdivision (a), the court may assess punitive damages against the plaintiff on a determination by the court that the plaintiff’s action was an action maintained by a person convicted of a felony against the person’s victim, or the victim’s heirs, relatives, estate, or personal representative, for injuries arising from the acts for which the person was convicted of a felony, and that the plaintiff is guilty of fraud, oppression, or malice in maintaining the action.

(e) This section shall not apply to disclosures and discovery requests, responses, objections, and motions.

(f) Sanctions ordered pursuant to this section shall be ordered pursuant to the following conditions and procedures:

(1) If, after notice and a reasonable opportunity to respond, the court issues an order pursuant to subdivision (a), the court may, subject to the conditions stated below, impose an appropriate sanction upon the party, the party’s attorneys, or both, for an action or tactic described in subdivision (a). In determining what sanctions, if any, should be ordered, the court shall consider whether a party seeking sanctions has exercised due diligence.

(A) A motion for sanctions under this section shall be made separately from other motions or requests and shall describe the specific alleged action or tactic, made in bad faith, that is frivolous or solely intended to cause unnecessary delay.

(B) If the alleged action or tactic is the making or opposing of a written motion or the filing and service of a complaint, cross-complaint, answer, or other responsive pleading that can be withdrawn or appropriately corrected, a notice of motion shall be served as provided in Section 1010, but shall not be filed with or presented to the court, unless 21 days after service of the motion or any other period as the court may

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prescribe, the challenged action or tactic is not withdrawn or appropriately corrected.

(C) If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(D) If the alleged action or tactic is the making or opposing of a written motion or the filing and service of a complaint, cross-complaint, answer, or other responsive pleading that can be withdrawn or appropriately corrected, the court on its own motion may enter an order describing the specific action or tactic, made in bad faith, that is frivolous or solely intended to cause unnecessary delay, and direct an attorney, law firm, or party to show cause why it has made an action or tactic as defined in subdivision (b), unless, within 21 days of service of the order to show cause, the challenged action or tactic is withdrawn or appropriately corrected.

(2) An order for sanctions pursuant to this section shall be limited to what is sufficient to deter repetition of the action or tactic or comparable action or tactic by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney's fees and other expenses incurred as a direct result of the action or tactic described in subdivision (a).

(A) Monetary sanctions may not be awarded against a represented party for a violation of presenting a claim, defense, and other legal contentions that are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

(B) Monetary sanctions may not be awarded on the court's motion unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.

(g) A motion for sanctions brought by a party or a party's attorney primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, shall itself be subject to a motion for sanctions. It is the intent of the Legislature that courts shall vigorously use its sanction authority to deter the improper actions or tactics or comparable actions or tactics of others similarly situated.

(h) The liability imposed by this section is in addition to any other liability imposed by law for acts or omissions within the purview of this section.

(i) This section applies to actions or tactics that were part of a civil case filed on or after January 1, 2015. (Added by Stats. 1981, ch. 762. Amended by Stats. 1984, ch. 355; Stats. 1985, ch. 296; Stats. 1990, ch. 887; Stats. 1994, ch. 1062; Stats. 2014, ch. 425; Stats. 2017, ch. 169, effective August 1, 2017.)

**§ 128.6** (Added by Stats. 1994, ch. 1062. Repealed by Stats. 2010, ch. 328.)

### **§ 128.7 Pleadings, Petitions and Other Papers; Required Name, Address, Telephone Number, and Signature of Attorney of Record or Party; Remedies and Sanctions**

(a) Every pleading, petition, written notice of motion, or other similar paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Except when otherwise provided by law, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(b) By presenting to the court, whether by signing, filing, submitting, or later advocating, a pleading, petition, written notice of motion, or other similar

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paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, all of the following conditions are met:

(1) It is not being presented primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

(3) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

(4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation. In determining what sanctions, if any, should be ordered, the court shall consider whether a party seeking sanctions has exercised due diligence.

(1) A motion for sanctions under this section shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). Notice of motion shall be served as provided in Section 1010, but shall not be filed with or presented to the court unless, within 21 days after service of the motion, or any other period as the court may prescribe, the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall

be held jointly responsible for violations committed by its partners, associates, and employees.

(2) On its own motion, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b), unless, within 21 days of service of the order to show cause, the challenged paper, claim, defense, contention, allegation, or denial is withdrawn or appropriately corrected.

(d) A sanction imposed for violation of subdivision (b) shall be limited to what is sufficient to deter repetition of this conduct or comparable conduct by others similarly situated. Subject to the limitations in paragraphs (1) and (2), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney's fees and other expenses incurred as a direct result of the violation.

(1) Monetary sanctions may not be awarded against a represented party for a violation of paragraph (2) of subdivision (b).

(2) Monetary sanctions may not be awarded on the court's motion unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.

(e) When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this section and explain the basis for the sanction imposed.

(f) In addition to any award pursuant to this section for conduct described in subdivision (b), the court may assess punitive damages against the plaintiff upon a determination by the court that the plaintiff's action was an action maintained by a person convicted of a felony against the person's victim, or the victim's heirs, relatives, estate, or personal representative, for injuries arising from the acts for which the person was convicted of a felony, and that the plaintiff is guilty of fraud, oppression, or malice in maintaining the action.



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(g) This section shall not apply to disclosures and discovery requests, responses, objections, and motions.

(h) A motion for sanctions brought by a party or a party's attorney primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, shall itself be subject to a motion for sanctions. It is the intent of the Legislature that courts shall vigorously use its sanctions authority to deter that improper conduct or comparable conduct by others similarly situated.

(i) This section shall apply to a complaint or petition filed on or after January 1, 1995, and any other pleading, written notice of motion, or other similar paper filed in that matter. (Added by Stats. 1994, ch. 1062. Amended by Stats. 1998, ch. 121; Stats. 2002, ch. 491; Stats. 2005, ch. 706.)

### § 170.1 Judges—Grounds for Disqualification

(a) A judge shall be disqualified if any one or more of the following are true:

(1) (A) The judge has personal knowledge of disputed evidentiary facts concerning the proceeding.

(B) A judge shall be deemed to have personal knowledge within the meaning of this paragraph if the judge, or the spouse of the judge, or a person within the third degree of relationship to either of them, or the spouse of such a person is to the judge's knowledge likely to be a material witness in the proceeding.

(2) (A) The judge served as a lawyer in the proceeding, or in any other proceeding involving the same issues he or she served as a lawyer for a party in the present proceeding or gave advice to a party in the present proceeding upon a matter involved in the action or proceeding.

(B) A judge shall be deemed to have served as a lawyer in the proceeding if within the past two years:

(i) A party to the proceeding, or an officer, director, or trustee of a party, was a client of the judge when the

judge was in the private practice of law or a client of a lawyer with whom the judge was associated in the private practice of law.

(ii) A lawyer in the proceeding was associated in the private practice of law with the judge.

(C) A judge who served as a lawyer for, or officer of, a public agency that is a party to the proceeding shall be deemed to have served as a lawyer in the proceeding if he or she personally advised or in any way represented the public agency concerning the factual or legal issues in the proceeding.

(3) (A) The judge has a financial interest in the subject matter in a proceeding or in a party to the proceeding.

(B) A judge shall be deemed to have a financial interest within the meaning of this paragraph if:

(i) A spouse or minor child living in the household has a financial interest.

(ii) The judge or the spouse of the judge is a fiduciary who has a financial interest.

(C) A judge has a duty to make reasonable efforts to inform himself or herself about his or her personal and fiduciary interests and those of his or her spouse and the personal financial interests of children living in the household.

(4) The judge, or the spouse of the judge, or a person within the third degree of relationship to either of them, or the spouse of such a person is a party to the proceeding or an officer, director, or trustee of a party.

(5) A lawyer or a spouse of a lawyer in the proceeding is the spouse, former spouse, child, sibling, or parent of the judge or the judge's spouse or if such a person is associated in the private practice of law with a lawyer in the proceeding.

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(6) (A) For any reason:

(i) The judge believes his or her recusal would further the interests of justice.

(ii) The judge believes there is a substantial doubt as to his or her capacity to be impartial.

(iii) A person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial.

(B) Bias or prejudice toward a lawyer in the proceeding may be grounds for disqualification.

(7) By reason of permanent or temporary physical impairment, the judge is unable to properly perceive the evidence or is unable to properly conduct the proceeding.

(8) (A) The judge has a current arrangement concerning prospective employment or other compensated service as a dispute resolution neutral or is participating in, or, within the last two years has participated in, discussions regarding prospective employment or service as a dispute resolution neutral, or has been engaged in such employment or service, and any of the following applies:

(i) The arrangement is, or the prior employment or discussion was, with a party to the proceeding.

(ii) The matter before the judge includes issues relating to the enforcement of either an agreement to submit a dispute to an alternative dispute resolution process or an award or other final decision by a dispute resolution neutral.

(iii) The judge directs the parties to participate in an alternative dispute resolution process in which the dispute resolution neutral will be an individual or entity with whom the judge has the arrangement, has previously been employed or served, or is discussing or

has discussed the employment or service.

(iv) The judge will select a dispute resolution neutral or entity to conduct an alternative dispute resolution process in the matter before the judge, and among those available for selection is an individual or entity with whom the judge has the arrangement, with whom the judge has previously been employed or served, or with whom the judge is discussing or has discussed the employment or service.

(B) For the purposes of this paragraph, all of the following apply:

(i) "Participating in discussions" or "has participated in discussion" means that the judge solicited or otherwise indicated an interest in accepting or negotiating possible employment or service as an alternative dispute resolution neutral, or responded to an unsolicited statement regarding, or an offer of, that employment or service by expressing an interest in that employment or service, making an inquiry regarding the employment or service, or encouraging the person making the statement or offer to provide additional information about that possible employment or service. If a judge's response to an unsolicited statement regarding, a question about, or offer of, prospective employment or other compensated service as a dispute resolution neutral is limited to responding negatively, declining the offer, or declining to discuss that employment or service, that response does not constitute participating in discussions.

(ii) "Party" includes the parent, subsidiary, or other legal affiliate of any entity that is a party and is involved in the transaction, contract, or facts that gave rise to the issues subject to the proceeding.

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(iii) "Dispute resolution neutral" means an arbitrator, mediator, temporary judge appointed under Section 21 of Article VI of the California Constitution, referee appointed under Section 638 or 639, special master, neutral evaluator, settlement officer, or settlement facilitator.

(9) (A) The judge has received a contribution in excess of one thousand five hundred dollars (\$1500) from a party or lawyer in the proceeding, and either of the following applies:

(i) The contribution was received in support of the judge's last election, if the last election was within the last six years.

(ii) The contribution was received in anticipation of an upcoming election.

(B) Notwithstanding subparagraph (A), the judge shall be disqualified based on a contribution of a lesser amount if subparagraph (A) of paragraph (6) applies.

(C) The judge shall disclose any contribution from a party or lawyer in a matter that is before the court that is required to be reported under subdivision (f) of Section 84211 of the Government Code, even if the amount would not require disqualification under this paragraph. The manner of disclosure shall be the same as that provided in Canon 3E of the Code of Judicial Ethics.

(D) Notwithstanding paragraph (1) of subdivision (b) of Section 170.3, the disqualification required under this paragraph may be waived by the party that did not make the contribution unless there are other circumstances that would prohibit a waiver pursuant to paragraph (2) of subdivision (b) of Section 170.3.

(b) A judge before whom a proceeding was tried or heard shall be disqualified from participating in any appellate review of that proceeding.

(c) At the request of a party or on its own motion an appellate court shall consider whether in the interests of justice it should direct that further proceedings be heard before a trial judge other than the judge whose judgment or order was reviewed by the appellate court. (Added by Stats. 1984, ch. 1555. Amended by Stats. 2002, ch. 1094; Stats. 2005, ch. 332; Stats. 2010, ch. 686.)

### **§ 170.6 Judicial Offices—Prejudice Against Parties or Attorneys; Motion and Affidavit; Notice Reassignment; Limit on Motions; Continuance; Cumulative Remedies; Severability**

(a) (1) A judge, court commissioner, or referee of a superior court of the State of California shall not try a civil or criminal action or special proceeding of any kind or character nor hear any matter therein that involves a contested issue of law or fact when it is established as provided in this section that the judge or court commissioner is prejudiced against a party or attorney or the interest of a party or attorney appearing in the action or proceeding.

(2) A party to, or an attorney appearing in, an action or proceeding may establish this prejudice by an oral or written motion without prior notice supported by affidavit or declaration under penalty of perjury, or an oral statement under oath, that the judge, court commissioner, or referee before whom the action or proceeding is pending, or to whom it is assigned, is prejudiced against a party or attorney, or the interest of the party or attorney, so that the party or attorney cannot, or believes that he or she cannot, have a fair and impartial trial or hearing before the judge, court commissioner, or referee. If the judge, other than a judge assigned to the case for all purposes, court commissioner, or referee assigned to, or who is scheduled to try, the cause or hear the matter is known at least 10 days before the date set for trial or hearing, the motion shall be made at least 5 days before that date. If directed to the trial of a cause with a master calendar, the motion shall be made to the judge supervising the master calendar not later than the time the cause is assigned for trial. If directed to the trial of a criminal cause that has been assigned to a judge for all purposes, the motion shall be made to the

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assigned judge or to the presiding judge by a party within 10 days after notice of the all purpose assignment, or if the party has not yet appeared in the action, then within 10 days after the appearance. If directed to the trial of a civil cause that has been assigned to a judge for all purposes, the motion shall be made to the assigned judge or to the presiding judge by a party within 15 days after notice of the all purpose assignment, or if the party has not yet appeared in the action, then within 15 days after the appearance. If the court in which the action is pending is authorized to have no more than one judge, and the motion claims that the duly elected or appointed judge of that court is prejudiced, the motion shall be made before the expiration of 30 days from the date of the first appearance in the action of the party who is making the motion or whose attorney is making the motion. In no event shall a judge, court commissioner, or referee entertain the motion if it is made after the drawing of the name of the first juror, or if there is no jury, after the making of an opening statement by counsel for plaintiff, or if there is no opening statement by counsel for plaintiff, then after swearing in the first witness or the giving of any evidence or after trial of the cause has otherwise commenced. If the motion is directed to a hearing, other than the trial of a cause, the motion shall be made not later than the commencement of the hearing. In the case of trials or hearings not specifically provided for in this paragraph, the procedure specified herein shall be followed as nearly as possible. The fact that a judge, court commissioner, or referee has presided at, or acted in connection with, a pretrial conference or other hearing, proceeding, or motion prior to trial, and not involving a determination of contested fact issues relating to the merits, shall not preclude the later making of the motion provided for in this paragraph at the time and in the manner herein provided. A motion under this paragraph may be made following reversal on appeal of a trial court's decision, or following reversal on appeal of a trial court's final judgment, if the trial judge in the prior proceeding is assigned to conduct a new trial on the matter. Notwithstanding paragraph (4), the party who filed the appeal that resulted in the reversal of a final judgment of a trial court may make a motion under this section regardless of

whether that party or side has previously done so. The motion shall be made within 60 days after the party or the party's attorney has been notified of the assignment.

(3) A party to a civil action making that motion under this section shall serve notice on all parties no later than five days after making the motion.

(4) If the motion is duly presented, and the affidavit or declaration under penalty of perjury is duly filed or an oral statement under oath is duly made, thereupon and without any further act or proof, the judge supervising the master calendar, if any, shall assign some other judge, court commissioner, or referee to try the cause or hear the matter. In other cases, the trial of the cause or the hearing of the matter shall be assigned or transferred to another judge, court commissioner, or referee of the court in which the trial or matter is pending or, if there is no other judge, court commissioner, or referee of the court in which the trial or matter is pending, the Chair of the Judicial Council shall assign some other judge, court commissioner, or referee to try the cause or hear the matter as promptly as possible. Except as provided in this section, no party or attorney shall be permitted to make more than one such motion in any one action or special proceeding pursuant to this section. In actions or special proceedings where there may be more than one plaintiff or similar party or more than one defendant or similar party appearing in the action or special proceeding, only one motion for each side may be made in any one action or special proceeding.

(5) Unless required for the convenience of the court or unless good cause is shown, a continuance of the trial or hearing shall not be granted by reason of the making of a motion under this section. If a continuance is granted, the cause or matter shall be continued from day to day or for other limited periods upon the trial or other calendar and shall be reassigned or transferred for trial or hearing as promptly as possible.

(6) Any affidavit filed pursuant to this section shall be in substantially the following form:

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(Here set forth court and cause)

State of California,                      ss. PEREMPTORY  
County of \_\_\_\_\_ CHALLENGE

\_\_\_\_\_, being duly sworn, deposes and says:  
That he or she is a party (or attorney for a party) to the within action (or special proceeding). That \_\_\_\_\_ the judge, court commissioner, or referee before whom the trial of the (or a hearing in the) action (or special proceeding) is pending (or to whom it is assigned) is prejudiced against the party (or his or her attorney) or the interest of the party (or his or her attorney) so that affiant cannot or believes that he or she cannot have a fair and impartial trial or hearing before the judge, court commissioner, or referee.

Subscribed and sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(Clerk or notary public or other officer  
administering oath)

(7) Any oral statement under oath or declaration under penalty of perjury made pursuant to this section shall include substantially the same contents as the affidavit above.

(b) Nothing in this section shall affect or limit Section 170 or Title 4 (commencing with Section 392) of Part 2, and this section shall be construed as cumulative thereto.

(c) If any provision of this section or the application to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of the section that can be given effect without the invalid provision or application and, to this end, the provisions of this section are declared to be severable. (Added by Stats. 1957, ch. 1055. Amended by Stats. 1959, ch. 640; Stats. 1961, ch. 526; Stats. 1965, ch. 1442; Stats. 1967, ch. 1602; Stats. 1976, ch. 1071; Stats. 1981, ch. 192; Stats. 1982, ch. 1644; Stats. 1985, ch. 715; Stats. 1989, ch. 537; Stats. 1998, ch. 167; Stats. 2002, ch. 784; Stats. 2003, ch. 62; Stats. 2010, ch. 131.)

### **§ 170.9      Gifts to Judges—Acceptance; Limits; Exceptions; Adjustments; Travel Expenses**

(a) A judge shall not accept gifts from a single source in a calendar year with a total value of more than two

hundred fifty dollars (\$250). This section shall not be construed to authorize the receipt of gifts that would otherwise be prohibited by the Code of Judicial Ethics adopted by the California Supreme Court or any other law.

(b) This section shall not prohibit or limit the following:

(1) Payments, advances, or reimbursements for travel and related lodging and subsistence permitted by subdivision (e).

(2) Wedding gifts and gifts exchanged between individuals on birthdays, holidays, and other similar occasions, if the gifts exchanged are not substantially disproportionate in value.

(3) A gift, bequest, favor, or loan from a person whose preexisting relationship with a judge would prevent the judge from hearing a case involving that person, under the Code of Judicial Ethics adopted by the California Supreme Court.

(c) For purposes of this section, “judge” includes all of the following:

(1) Judges of the superior courts.

(2) Justices of the courts of appeal and the Supreme Court.

(3) Subordinate judicial officers, as defined in Section 71601 of the Government Code.

(d) The gift limitation amounts in this section shall be adjusted biennially by the Commission on Judicial Performance to reflect changes in the Consumer Price Index, rounded to the nearest ten dollars (\$10).

(e) Payments, advances, or reimbursements for travel, including actual transportation and related lodging and subsistence that is reasonably related to a judicial or governmental purpose, or to an issue of state, national, or international public policy, are not prohibited or limited by this section if any of the following apply:

(1) The travel is in connection with a speech, practice demonstration, or group or panel discussion given or participated in by the judge, the lodging and subsistence expenses are limited to the day immediately preceding, the day of, and the day immediately following the speech,

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demonstration, or discussion, and the travel is within the United States.

(2) The travel is provided by a government, a governmental agency or authority, a foreign government, a foreign bar association, an international service organization, a bona fide public or private educational institution, as defined in Section 203 of the Revenue and Taxation Code, or a nonprofit charitable or religious organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or by a person domiciled outside the United States who substantially satisfies the requirements for tax exempt status under Section 501(c)(3) of the Internal Revenue Code.

For purposes of this section, "foreign bar association" means an association of attorneys located outside the United States (A) that performs functions substantially equivalent to those performed by state or local bar associations in this state and (B) that permits membership by attorneys in that country representing various legal specialties and does not limit membership to attorneys generally representing one side or another in litigation. "International service organization" means a bona fide international service organization of which the judge is a member. A judge who accepts travel payments from an international service organization pursuant to this subdivision shall not preside over or participate in decisions affecting that organization, its state or local chapters, or its local members.

(3) The travel is provided by a state or local bar association or judges professional association in connection with testimony before a governmental body or attendance at any professional function hosted by the bar association or judges professional association, the lodging and subsistence expenses are limited to the day immediately preceding, the day of, and the day immediately following the professional function.

(f) Payments, advances, and reimbursements for travel not described in subdivision (e) are subject to the limit in subdivision (a).

(g) No judge shall accept any honorarium.

(h) "Honorarium" means a payment made in consideration for any speech given, article published, or attendance at a public or private conference, convention, meeting, social event, meal, or like gathering.

(i) "Honorarium" does not include earned income for personal services that are customarily provided in connection with the practice of a bona fide business, trade, or profession, such as teaching or writing for a publisher, and does not include fees or other things of value received pursuant to Section 94.5 of the Penal Code for performance of a marriage.

For purposes of this section, "teaching" shall include presentations to impart educational information to lawyers in events qualifying for credit under mandatory continuing legal education, to students in bona fide educational institutions, and to associations or groups of judges.

(j) Subdivisions (a) and (e) shall apply to all payments, advances, and reimbursements for travel and related lodging and subsistence.

(k) This section does not apply to any honorarium that is not used and, within 30 days after receipt, is either returned to the donor or delivered to the Controller for deposit in the General Fund without being claimed as a deduction from income for tax purposes.

(l) "Gift" means a payment to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status. A person, other than a defendant in a criminal action, who claims that a payment is not a gift by reason of receipt of consideration has the burden of proving that the consideration received is of equal or greater value. However, the term "gift" does not include any of the following:

(1) Informational material such as books, reports, pamphlets, calendars, periodicals, cassettes and discs, or free or reduced-price admission, tuition, or registration, for informational conferences or seminars. No payment for travel or reimbursement for any expenses shall be deemed "informational material."

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(2) Gifts that are not used and, within 30 days after receipt, are returned to the donor or delivered to a charitable organization without being claimed as a charitable contribution for tax purposes.

(3) Gifts from a judge's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin or the spouse of any such person. However, a gift from any of those persons shall be considered a gift if the donor is acting as an agent or intermediary for a person not covered by this paragraph.

(4) Campaign contributions required to be reported under Chapter 4 (commencing with Section 84100) of Title 9 of the Government Code.

(5) Any devise or inheritance.

(6) Personalized plaques and trophies with an individual value of less than two hundred fifty dollars (\$250).

(7) Admission to events hosted by state or local bar associations or judges' professional associations, and provision of related food and beverages at those events, when attendance does not require "travel," as described in paragraph (3) of subdivision (e).

(m) The Commission on Judicial Performance shall enforce the prohibitions of this section with regard to judges of the superior courts and justices of the courts of appeal and the Supreme Court. With regard to subordinate judicial officers, consistent with Section 18.1 of Article VI of the California Constitution, the court employing the subordinate judicial officer shall exercise initial jurisdiction to enforce the prohibitions of this section and the Commission on Judicial Performance shall exercise discretionary jurisdiction with respect to the enforcement of the prohibitions of this section. (Added by Stats. 1994, ch. 1238. Amended by Stats. 1995, ch. 378; Stats. 1996, ch. 557; Stats. 2002, ch. 784; Stats. 2010, ch. 206; Stats. 2011, ch. 296.)

### § 177 Conduct of Proceedings

A judicial officer shall have power:

(a) To preserve and enforce order in the officer's immediate presence, and in proceedings before the

officer, when the officer is engaged in the performance of official duty.

(b) To compel obedience to the officer's lawful orders as provided in this code.

(c) To compel the attendance of persons to testify in a proceeding before the officer, in the cases and manner provided in this code.

(d) To administer oaths to persons in a proceeding pending before the officer, and in all other cases where it may be necessary in the exercise of the officer's powers and duties.

(e) To prohibit activities that threaten access to state courthouses and court proceedings, and to prohibit interruption of judicial administration, including protecting the privilege from civil arrest at courthouses and court proceedings. (Enacted in 1872. Amended by Code Am.1880, ch. 35, p. 42, § 1; Stats. 2019, ch. 787.)

### § 177.5 Judicial Officers—Sanctions

A judicial officer shall have the power to impose reasonable money sanctions, not to exceed fifteen hundred dollars (\$1,500), notwithstanding any other provision of law, payable to the court, for any violation of a lawful court order by a person, done without good cause or substantial justification. This power shall not apply to advocacy of counsel before the court. For the purposes of this section, the term "person" includes a witness, a party, a party's attorney, or both.

Sanctions pursuant to this section shall not be imposed except on notice contained in a party's moving or responding papers; or on the court's own motion, after notice and opportunity to be heard. An order imposing sanctions shall be in writing and shall recite in detail the conduct or circumstances justifying the order. (Added by Stats. 1982, ch. 1564. Amended by Stats. 2005, ch. 75.)

### § 206 Criminal Actions—Discussions with Jury After Discharge

(a) Prior to discharging the jury from the case, the judge in a criminal action shall inform the jurors that they have an absolute right to discuss or not to discuss the deliberation or verdict with anyone. The judge shall also

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inform the jurors of the provisions set forth in subdivisions (b), (d), and (e).

(b) Following the discharge of the jury in a criminal case, the defendant, or his or her attorney or representative, or the prosecutor, or his or her representative, may discuss the jury deliberation or verdict with a member of the jury, provided that the juror consents to the discussion and that the discussion takes place at a reasonable time and place.

(c) If a discussion of the jury deliberation or verdict with a member of the jury pursuant to subdivision (b) occurs at any time more than 24 hours after the verdict, prior to discussing the jury deliberation or verdict with a member of a jury pursuant to subdivision (b), the defendant or his or her attorney or representative, or the prosecutor or his or her representative, shall inform the juror of the identity of the case, the party in that case which the person represents, the subject of the interview, the absolute right of the juror to discuss or not discuss the deliberations or verdict in the case with the person, and the juror's right to review and have a copy of any declaration filed with the court.

(d) Any unreasonable contact with a juror by the defendant, or his or her attorney or representative, or by the prosecutor, or his or her representative, without the juror's consent shall be immediately reported to the trial judge.

(e) Any violation of this section shall be considered a violation of a lawful court order and shall be subject to reasonable monetary sanctions in accordance with Section 177.5 of the Code of Civil Procedure.

(f) Nothing in the section shall prohibit a peace officer from investigating an allegation of criminal conduct.

(g) Pursuant to Section 237, a defendant or defendant's counsel may, following the recording of a jury's verdict in a criminal proceeding, petition the court for access to personal juror identifying information within the court's records necessary for the defendant to communicate with jurors for the purpose of developing a motion for new trial or any other lawful purpose. This information consists of jurors' names, addresses, and telephone numbers. The court shall consider all requests for personal juror identifying information pursuant to Section 237. (Added by Stats. 1988, ch. 1245. Amended

by Stats. 1992, ch. 971; Stats. 1993, ch. 632; Stats. 1995, ch. 964; Stats. 1996, ch. 636; Stats. 2000, ch. 242.)

### § 283 Authority to Bind Client

An attorney and counselor shall have authority:

1. To bind his client in any of the steps of an action or proceeding by his agreement filed with the clerk, or entered upon the minutes of the court, and not otherwise;
2. To receive money claimed by his client in an action or proceeding during the pendency thereof, or after judgment, unless a revocation of his authority is filed, and upon the payment thereof, and not otherwise, to discharge the claim or acknowledge satisfaction of the judgment. (Enacted 1872; amended 1880.)

### § 284 Substitution—Consent or Order

The attorney in an action or special proceeding may be changed at any time before or after judgment or final determination, as follows:

1. Upon the consent of both client and attorney, filed with the clerk, or entered upon the minutes.
2. Upon the order of the court, upon the application of either client or attorney, after notice from one to the other. (Enacted 1872; amended 1874, 1880. Amended by Stats. 1935, ch. 560; Stats. 1967, ch. 161.)

### § 285 Notice to Adversary

When an attorney is changed, as provided in the last section, written notice of the change and of the substitution of a new attorney, or of the appearance of the party in person, must be given to the adverse party. Until then he must recognize the former attorney. (Enacted 1872; amended 1880.)

### § 285.1 Withdrawal in Domestic Relations Matters

An attorney of record for any party in any civil action or proceeding for dissolution of marriage, legal separation, or for a declaration of void or voidable



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marriage, or for the support, maintenance or custody of minor children may withdraw at any time subsequent to the time when any judgment in such action or proceeding, other than an interlocutory judgment, becomes final, and prior to service upon him of pleadings or motion papers in any proceeding then pending in said cause, by filing a notice of withdrawal. Such notice shall state (a) date of entry of final decree or judgment, (b) the last known address of such party, (c) that such attorney withdraws as attorney for such party. A copy of such notice shall be mailed to such party at his last known address and shall be served upon the adverse party. (Added by Stats. 1963, ch. 1333; Stats. 1969, ch. 1608.)

### **§ 285.2      Withdrawal When Public Funding Reduced**

If a reduction in public funding for legal service materially impairs a legal service agency attorney's ability to represent an indigent client, the court, on its own motion or on the motion of either the client or attorney, shall permit the withdrawal of such attorney upon a showing that all of the following apply:

- (a) There are not adequate public funds to continue the effective representation of the indigent client.
- (b) A good faith effort was made to find alternate representation for such client.
- (c) All reasonable steps to reduce the legal prejudice to the client have been taken.

A showing of indigency of the client, in and of itself, will not be deemed sufficient cause to deny the application for withdrawal. (Added by Stats. 1983, ch. 279.)

### **§ 285.3      Withdrawal Pursuant to 285.2—When Tolling Required**

The court, upon the granting of a motion for withdrawal pursuant to Section 285.2, may toll the running of any statute of limitations, filing requirement, statute providing for mandatory dismissal, notice of appeal, or discovery requirement, for a period not to exceed 90 days, on the court's own motion or on motion of any party or attorney, when the court finds that tolling is required to avoid legal prejudice caused by the withdrawal of the legal

service agency attorney. (Added by Stats. 1983, ch. 279.)

### **§ 285.4      Appointment Pursuant to 285.2—No Compensation**

The court, upon the granting of a motion for withdrawal pursuant to Section 285.2, may appoint any member of the bar or any law firm or professional law corporation to represent the indigent client without compensation, upon a showing of good cause. Nothing herein shall preclude the appointed attorney from recovering any attorneys' fees and costs to which the client may be entitled by law. In determining the existence of good cause, the court may consider, but is not limited to, the following factors:

- (a) The probable merit of the client's claim.
- (b) The client's financial ability to pay for legal services.
- (c) The availability of alternative legal representation.
- (d) The need for legal representation to avoid irreparable legal prejudice to the indigent client.
- (e) The ability of appointed counsel to effectively represent the indigent client.
- (f) Present and recent pro bono work of the appointed attorney, law firm or private law corporation.
- (g) The ability of the indigent client to represent himself.
- (h) The workload of the appointed attorney. (Added by Stats. 1983, ch. 279.)

### **§ 286          Death or Disability—Appearance**

When an attorney dies, or is removed or suspended, or ceases to act as such, a party to an action, for whom he was acting as attorney, must, before any further proceedings are had against him, be required by the adverse party, by written notice, to appoint another attorney, or to appear in person. (Enacted 1872; amended 1880.)

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### § 340.3 Commencement of Actions

(a) Unless a longer period is prescribed for a specific action, in any action for damages against a defendant based upon the defendant's commission of a felony offense for which the defendant has been convicted, the time for commencement of the action shall be within one year after judgment is pronounced.

(b) (1) Notwithstanding subdivision (a), an action for damages against a defendant based upon the defendant's commission of a felony offense for which the defendant has been convicted may be commenced within 10 years of the date on which the defendant is discharged from parole if the conviction was for any offense specified in paragraph (1), except voluntary manslaughter, (2), (3), (4), (5), (6), (7), (9), (16), (17), (20), (22), (25), (34), or (35) of subdivision (c) of Section 1192.7 of the Penal Code.

(2) No civil action may be commenced pursuant to paragraph (1) if any of the following applies:

(A) The defendant has received either a certificate of rehabilitation as provided in Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or a pardon as provided in Chapter 1 (commencing with Section 4800) or Chapter 3 (commencing with Section 4850) of Title 6 of Part 3 of the Penal Code.

(B) Following a conviction for murder or attempted murder, the defendant has been paroled based in whole or in part upon evidence presented to the Board of Prison Terms that the defendant committed the crime because he or she was the victim of intimate partner battering.

(C) The defendant was convicted of murder or attempted murder in the second degree in a trial at which substantial evidence was presented that the person committed the crime because he or she was a victim of intimate partner battering.

(c) If the sentence or judgment is stayed, the time for the commencement of the action shall be tolled until the stay is lifted. For purposes of this section, a judgment is not stayed if the judgment is appealed or the defendant is placed on probation.

(d) (1) Subdivision (b) shall apply to any action commenced before, on, or after the effective date of this section, including any action otherwise barred by a limitation of time in effect prior to the effective date of this section, thereby reviving those causes of action that had lapsed or expired under the law in effect prior to the effective date of this section.

(2) Paragraph (1) does not apply to either of the following:

(A) Any claim that has been litigated to finality on the merits in any court of competent jurisdiction prior to January 1, 2003. For purposes of this section, termination of a prior action on the basis of the statute of limitations does not constitute a claim that has been litigated to finality on the merits.

(B) Any written, compromised settlement agreement that has been entered into between a plaintiff and a defendant if the plaintiff was represented by an attorney who was admitted to practice law in this state at the time of the settlement, and the plaintiff signed the agreement.

(e) Any restitution paid by the defendant to the victim shall be credited against any judgment, award, or settlement obtained pursuant to this section. Any judgment, award, or settlement obtained pursuant to an action under this section shall be subject to the provisions of Section 13966.01 of the Government Code. (Amended by Stats. 2006, ch. 215.)

### § 340.6 Limitations: Commencement of Action Against an Attorney

(a) An action against an attorney for a wrongful act or omission, other than for actual fraud, arising in the performance of professional services shall be commenced within one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the facts constituting the wrongful act or omission, or four years from the date of the wrongful act or omission, whichever occurs first. If the plaintiff is required to establish the plaintiff's factual innocence for an underlying criminal charge as an element of the plaintiff's claim, the action shall be commenced within two years after the plaintiff

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achieves postconviction exoneration in the form of a final judicial disposition of the criminal case. Except for a claim for which the plaintiff is required to establish the plaintiff's factual innocence, the time for commencement of legal action shall not exceed four years except that the period shall be tolled during the time that any of the following exist:

- (1) The plaintiff has not sustained actual injury.
- (2) The attorney continues to represent the plaintiff regarding the specific subject matter in which the alleged wrongful act or omission occurred.
- (3) The attorney willfully conceals the facts constituting the wrongful act or omission when those facts are known to the attorney, except that this subdivision shall toll only the four-year limitation.
- (4) The plaintiff is under a legal or physical disability which restricts the plaintiff's ability to commence legal action.
- (5) A dispute between the lawyer and client concerning fees, costs, or both is pending resolution under Article 13 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and Professions Code. As used in this paragraph, "pending" means from the date a request for arbitration is filed until 30 days after receipt of notice of the award of the arbitrators, or receipt of notice that the arbitration is otherwise terminated, whichever occurs first.

(b) In an action based upon an instrument in writing, the effective date of which depends upon some act or event of the future, the period of limitations provided for by this section shall commence to run upon the occurrence of that act or event. (Added by Stats. 1977, ch. 863. Amended by Stats. 2009, ch. 432; Stats. 2019, ch. 13.)

### **§ 364      Ninety Days Prior Notice of Intention to Commence Action—Definitions**

(a) No action based upon the health care provider's professional negligence may be commenced unless the defendant has been given at least 90 days' prior notice of the intention to commence the action.

(b) No particular form of notice is required, but it shall notify the defendant of the legal basis of the claim and the type of loss sustained, including with specificity the nature of the injuries suffered.

(c) The notice may be served in the manner prescribed in Chapter 5 (commencing with Section 1010) of Title 14 of Part 2.

(d) If the notice is served within 90 days of the expiration of the applicable statute of limitations, the time for the commencement of the action shall be extended 90 days from the service of the notice.

(e) The provisions of this section shall not be applicable with respect to any defendant whose name is unknown to the plaintiff at the time of filing the complaint and who is identified therein by a fictitious name, as provided in Section 474.

(f) For the purposes of this section:

(1) "Health care provider" means any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, 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;

(2) "Professional negligence" means 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 such 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 15, 1975.)

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### § 365 Failure to Comply With Provisions

Failure to comply with this chapter shall not invalidate any proceedings of any court of this state, nor shall it affect the jurisdiction of the court to render a judgment therein. However, failure to comply with such provisions by any attorney at law shall be grounds for professional discipline and the State Bar of California shall investigate and take appropriate action in any such cases brought to its attention. (Added by Stats. 1975, ch. 1.)

### § 411.35 Malpractice Actions; Architects, Engineers, Land Surveyors; Attorney's Certification of Case Review and Consultation; Reliance on Res Ipsa Loquitur or Failure to Inform of the Consequences of a Procedure Exceptions; Failure to File

(a) In every action, including a cross complaint for damages or indemnity, arising out of the professional negligence of a person holding a valid architect's certificate issued pursuant to Chapter 3 (commencing with Section 5500) of Division 3 of the Business and Professions Code, or of a person holding a valid registration as a professional engineer issued pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, or a person holding a valid land surveyor's license issued pursuant to Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code on or before the date of service of the complaint or cross complaint on any defendant or cross defendant, the attorney for the plaintiff or cross complainant shall file and serve the certificate specified by subdivision (b).

(b) A certificate shall be executed by the attorney for the plaintiff or cross complainant declaring one of the following:

(1) That the attorney has reviewed the facts of the case, that the attorney has consulted with and received an opinion from at least one architect, professional engineer, or land surveyor who is licensed to practice and practices in this state or any other state, or who teaches at an accredited college or university and is licensed to practice in this state or any other state, in the same discipline as the defendant or cross defendant and who the attorney reasonably believes is knowledgeable in

the relevant issues involved in the particular action, and that the attorney has concluded on the basis of this review and consultation that there is reasonable and meritorious cause for the filing of this action. The person consulted may not be a party to the litigation. The person consulted shall render his or her opinion that the named defendant or cross defendant was negligent or was not negligent in the performance of the applicable professional services.

(2) That the attorney was unable to obtain the consultation required by paragraph (1) because a statute of limitations would impair the action and that the certificate required by paragraph (1) could not be obtained before the impairment of the action. If a certificate is executed pursuant to this paragraph, the certificate required by paragraph (1) shall be filed within 60 days after filing the complaint.

(3) That the attorney was unable to obtain the consultation required by paragraph (1) because the attorney had made three separate good faith attempts with three separate architects, professional engineers, or land surveyors to obtain this consultation and none of those contacted would agree to the consultation.

(c) Where a certificate is required pursuant to this section, only one certificate shall be filed, notwithstanding that multiple defendants have been named in the complaint or may be named at a later time.

(d) Where the attorney intends to rely solely on the doctrine of "res ipsa loquitur," as defined in Section 646 of the Evidence Code, or exclusively on a failure to inform of the consequences of a procedure, or both, this section shall be inapplicable. The attorney shall certify upon filing of the complaint that the attorney is solely relying on the doctrines of "res ipsa loquitur" or failure to inform of the consequences of a procedure or both, and for that reason is not filing a certificate required by this section.

(e) For purposes of this section, and subject to Section 912 of the Evidence Code, an attorney who submits a certificate as required by paragraph (1) or (2) of subdivision (b) has a privilege to refuse to disclose the identity of the architect, professional engineer, or land surveyor consulted and the contents of the consultation. The privilege shall also be held by the

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architect, professional engineer, or land surveyor so consulted. If, however, the attorney makes a claim under paragraph (3) of subdivision (b) that he or she was unable to obtain the required consultation with the architect, professional engineer, or land surveyor, the court may require the attorney to divulge the names of architects, professional engineers, or land surveyors refusing the consultation.

(f) A violation of this section may constitute unprofessional conduct and be grounds for discipline against the attorney, except that the failure to file the certificate required by paragraph (1) of subdivision (b), within 60 days after filing the complaint and certificate provided for by paragraph (2) of subdivision (b), shall not be grounds for discipline against the attorney.

(g) The failure to file a certificate in accordance with this section shall be grounds for a demurrer pursuant to Section 430.10 or a motion to strike pursuant to Section 435.

(h) Upon the favorable conclusion of the litigation with respect to any party for whom a certificate of merit was filed or for whom a certificate of merit should have been filed pursuant to this section, the trial court may, upon the motion of a party or upon the court's own motion, verify compliance with this section, by requiring the attorney for the plaintiff or cross complainant who was required by subdivision (b) to execute the certificate to reveal the name, address, and telephone number of the person or persons consulted with pursuant to subdivision (b) that were relied upon by the attorney in preparation of the certificate of merit. The name, address, and telephone number shall be disclosed to the trial judge in an in camera proceeding at which the moving party shall not be present. If the trial judge finds there has been a failure to comply with this section, the court may order a party, a party's attorney, or both, to pay any reasonable expenses, including attorney's fees, incurred by another party as a result of the failure to comply with this section.

(i) For purposes of this section, "action" includes a complaint or cross complaint for equitable indemnity arising out of the rendition of professional services whether or not the complaint or cross complaint specifically asserts or utilizes the terms "professional negligence" or "negligence." (Added by Stats. 1979, ch. 973. Amended by Stats. 1983, ch. 414; Stats. 1986, ch.

1231; Stats. 1988, ch. 1070; Stats. 1990, ch. 204; Stats. 1991, ch. 272; Stats. 1995, ch. 241; Stats. 1999, ch. 176.)

### **§ 425.50 Construction-Related Accessibility Claim—Complaint Requirements**

(a) An allegation of a construction-related accessibility claim in a complaint, as defined in subdivision (a) of Section 55.52 of the Civil Code, shall state facts sufficient to allow a reasonable person to identify the basis of the violation or violations supporting the claim, including all of the following:

(1) A plain language explanation of the specific access barrier or barriers the individual encountered, or by which the individual alleges he or she was deterred, with sufficient information about the location of the alleged barrier to enable a reasonable person to identify the access barrier.

(2) The way in which the barrier denied the individual full and equal use or access, or in which it deterred the individual, on each particular occasion.

(3) The date or dates of each particular occasion on which the claimant encountered the specific access barrier, or on which he or she was deterred.

(4) (A) Except in complaints that allege physical injury or damage to property, a complaint filed by or on behalf of a high-frequency litigant shall also state all of the following:

(i) Whether the complaint is filed by, or on behalf of, a high-frequency litigant.

(ii) In the case of a high-frequency litigant who is a plaintiff, the number of complaints alleging a construction-related accessibility claim that the high-frequency litigant has filed during the 12 months prior to filing the complaint.

(iii) In the case of a high-frequency litigant who is a plaintiff, the reason the individual was in the geographic area of the defendant's business.

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(iv) In the case of a high-frequency litigant who is a plaintiff, the reason why the individual desired to access the defendant's business, including the specific commercial, business, personal, social, leisure, recreational, or other purpose.

(B) As used in this section "high-frequency litigant" has the same meaning as set forth in subdivision (b) of Section 425.55.

(b) (1) A complaint alleging a construction-related accessibility claim, as those terms are defined in subdivision (a) of Section 55.3 of the Civil Code, shall be verified by the plaintiff. A complaint filed without verification shall be subject to a motion to strike.

(2) A complaint alleging a construction-related accessibility claim filed by, or on behalf of, a high-frequency litigant shall state in the caption "ACTION SUBJECT TO THE SUPPLEMENTAL FEE IN GOVERNMENT CODE SECTION 70616.5."

(c) A complaint alleging a construction-related accessibility claim shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. By signing the complaint, the attorney or unrepresented party is certifying that, to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, all of the following conditions are met:

(1) It is not being presented primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

(3) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

(4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(d) A court may, after notice and a reasonable opportunity to respond, determine whether subdivision (c) has been violated and, if so, impose sanctions as provided in Section 128.7 for violations of subdivision (b) of Section 128.7.

(e) Nothing in this section shall limit the right of a plaintiff to amend a complaint under Section 472, or with leave of the court under Section 473. However, an amended pleading alleging a construction-related accessibility claim shall be pled as required by subdivision (a).

(f) The determination whether an attorney is a high-frequency litigant shall be made solely on the basis of the verified complaint and any other publicly available documents. Notwithstanding any other law, no party to the proceeding may conduct discovery with respect to whether an attorney is a high-frequency litigant.

(g) This section shall become operative on January 1, 2013. (Added by Stats. 2012, ch. 383, operative September 19, 2012. Amended by Stats. 2013, ch. 76; Stats. 2015, ch. 755, effective October 10, 2015.)

**[Publisher's Note: The following sections concern Code of Civil Procedure § 425.50 and were added by Stats. 2012, ch. 383, but not codified. It is provided below for your information.]**

SEC. 24. The Legislature finds and declares that a very small number of plaintiffs' attorneys have been abusing the right of petition under Sections 52 and 54.3 of the Civil Code by issuing a demand for money to a California business owner that demands the owner pay a quick settlement of the attorney's alleged claim under those laws or else incur greater liability and legal costs if a lawsuit is filed. These demands for money allege one or more, but frequently multiple, claims for asserted violations of a construction-related accessibility standard and often demand a quick money settlement based on the alleged multiple claims without seeking and obtaining actual repair or correction of the alleged violations on the site. These "pay me now or pay me more" demands are used to scare businesses into paying quick settlements that only financially enrich the attorney and claimant and do not promote accessibility either for the claimant or the

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disability community as a whole. These practices, often involving a series of demand for money letters sent to numerous businesses, do not promote compliance with the accessibility requirements and erode public support for and confidence in our laws. Therefore, the Legislature finds and declares that it is necessary and appropriate to enact Sections 55.31 and 55.32 of the Civil Code, and Section 425.50 of the Code of Civil Procedure to protect the public's confidence and support of the right to petition under Sections 52 and 54.3 of the Civil Code.

SEC. 25. The Legislature finds and declares all of the following:

(a) Subdivision (h) of Section 55.56 of the Civil Code, as added by Section 11 of this act, is intended to address the misuse of Sections 52 and 54.3 of the Civil Code by a small minority of disability rights lawyers and plaintiffs. These lawyers and plaintiffs have alleged in demand letters and complaints that they were deterred on repeated occasions by the same violation of a construction-related accessibility standard and thereby assert multiple claims for the same violation without a reasonable explanation for the repeated conduct in light of the obligation to mitigate damages. Their assertions of these "stacked" multiple claims for the same construction-related accessibility violation on different occasions are made to substantially increase the purported statutory liability of a defendant in order to intimidate and pressure the defendant into making a quick monetary settlement. The provisions of subdivision (h) of Section 55.56 of the Civil Code reiterate that where multiple claims for the same construction-related accessibility violation on separate particular occasions are alleged, a plaintiff's conduct must have a reasonable explanation for the asserted need for multiple visits to a site where a known barrier violation would deny full and equal access, in light of the obligation to mitigate damages.

(b) Correspondingly, if there is a reasonable explanation in light of the obligation to mitigate damages for the need to make multiple visits to a site where a known barrier violation would deny full and equal access, a multiple claim for repeated violations of the same construction-related accessibility standard may properly lie. In addition, there may be clear instances when the needs of a person with a disability and circumstances may make mitigation efforts impossible or futile in cases involving multiple instances of deterrence on separate particular occasions

where the individual has a reasonable explanation for the need for multiple visits to the same site.

(c) Further, nothing in subdivision (h) of Section 55.56 of the Civil Code is intended to change existing law with respect to the fact that an alleged failure to mitigate damages is pled and proven as an affirmative defense.

SEC. 26. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 29. 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 Constitution and shall go into immediate effect. The facts constituting the necessity are: In order to avoid unnecessary litigation and to facilitate compliance with the disability access law, it is necessary that this act take effect immediately.

### **§ 425.55 Legislative Findings and Declarations Regarding the Protection of the Civil Rights of Persons with Disabilities; "High-Frequency Litigant" Defined**

(a) The Legislature finds and declares all of the following:

(1) Protection of the civil rights of persons with disabilities is of the utmost importance to this state, and private enforcement is the essential means of achieving that goal, as the law has been designed.

(2) According to information from the California Commission on Disability Access, more than one-half, or 54 percent, of all construction-related accessibility complaints filed between 2012 and 2014 were filed by two law firms. Forty-six percent of all complaints were filed by a total of 14 parties. Therefore, a very small number of plaintiffs have filed a disproportionately large number of the construction-related accessibility claims in the state, from 70 to 300 lawsuits each year. Moreover, these lawsuits are frequently filed against small businesses on the basis of boilerplate complaints, apparently seeking quick cash settlements rather than correction of the

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accessibility violation. This practice unfairly taints the reputation of other innocent disabled consumers who are merely trying to go about their daily lives accessing public accommodations as they are entitled to have full and equal access under the state's Unruh Civil Rights Act (Section 51 of the Civil Code) and the federal Americans with Disability Act of 1990 (Public Law 101-336).

(3) Therefore, given these special and unique circumstances, the provisions of this section are warranted for this limited group of plaintiffs.

(b) For the purposes of this article, "high-frequency litigant" means a person, except as specified in paragraph (3), who utilizes court resources in actions arising from alleged construction-related access violations at such a high level that it is appropriate that additional safeguards apply so as to ensure that the claims are warranted. A "high-frequency litigant" means one or more of the following:

(1) A plaintiff who has filed 10 or more complaints alleging a construction-related accessibility violation within the 12-month period immediately preceding the filing of the current complaint alleging a construction-related accessibility violation.

(2) An attorney who has represented as attorney of record 10 or more high-frequency litigant plaintiffs in actions that were resolved within the 12-month period immediately preceding the filing of the current complaint alleging a construction-related accessibility violation, excluding all of the following actions:

(A) An action in which an early evaluation conference was held pursuant to Section 55.54 of the Civil Code.

(B) An action in which judgment was entered in favor of the plaintiff.

(C) An action in which the construction-related accessibility violations alleged in the complaint were remedied in whole or in part, or a favorable result was achieved, after the plaintiff filed a complaint or provided a demand letter, as defined in Section 55.3 of the Civil Code.

(3) This section does not apply to an attorney employed or retained by a qualified legal services project or a qualified support center, as defined in Section 6213 of the Business and Professions Code, when acting within the scope of employment to represent a client in asserting a construction-related accessibility claim, or the client in such a case. (Added by Stats. 2015, ch. 755, effective Oct. 10, 2015.)

### **§ 527.6 Injunction and Temporary Restraining Order Prohibiting Harassment–Appearance In Court by Guardian**

(a) (1) A person who has suffered harassment as defined in subdivision (b) may seek a temporary restraining order and an order after hearing prohibiting harassment as provided in this section.

(2) A minor, under 12 years of age, accompanied by a duly appointed and acting guardian ad litem, shall be permitted to appear in court without counsel for the limited purpose of requesting or opposing a request for a temporary restraining order or order after hearing, or both, under this section as provided in Section 374.

(b) For purposes of this section, the following terms have the following meanings:

(1) "Course of conduct" is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including following or stalking an individual, making harassing telephone calls to an individual, or sending harassing correspondence to an individual by any means, including, but not limited to, the use of public or private mails, interoffice mail, facsimile, or email. Constitutionally protected activity is not included within the meaning of "course of conduct."

(2) "Credible threat of violence" is a knowing and willful statement or course of conduct that would place a reasonable person in fear for the person's safety or the safety of the person's immediate family, and that serves no legitimate purpose.

(3) "Harassment" is unlawful violence, a credible threat of violence, or a knowing and willful course



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of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be that which would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner.

(4) “Petitioner” means the person to be protected by the temporary restraining order and order after hearing and, if the court grants the petition, the protected person.

(5) “Respondent” means the person against whom the temporary restraining order and order after hearing are sought and, if the petition is granted, the restrained person.

(6) “Temporary restraining order” and “order after hearing” mean orders that include any of the following restraining orders, whether issued ex parte or after notice and hearing:

(A) An order enjoining a party from harassing, intimidating, molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, abusing, telephoning, including, but not limited to, making annoying telephone calls, as described in Section 653m of the Penal Code, destroying personal property, contacting, either directly or indirectly, by mail or otherwise, or coming within a specified distance of, or disturbing the peace of, the petitioner. On a showing of good cause, in an order issued pursuant to this subparagraph in connection with an animal owned, possessed, leased, kept, or held by the petitioner, or residing in the residence or household of the petitioner, the court may do either or both of the following:

(i) Grant the petitioner exclusive care, possession, or control of the animal.

(ii) Order the respondent to stay away from the animal and refrain from taking, transferring, encumbering, concealing, molesting, attacking, striking, threatening, harming, or otherwise disposing of the animal.

(B) An order enjoining a party from specified behavior that the court determines is necessary to effectuate orders described in subparagraph (A).

(7) “Unlawful violence” is any assault or battery, or stalking as prohibited in Section 646.9 of the Penal Code, but does not include lawful acts of self-defense or defense of others.

(c) In the discretion of the court, on a showing of good cause, a temporary restraining order or order after hearing issued under this section may include other named family or household members.

(d) Upon filing a petition for orders under this section, the petitioner may obtain a temporary restraining order in accordance with Section 527, except to the extent this section provides an inconsistent rule. The temporary restraining order may include any of the restraining orders described in paragraph (6) of subdivision (b). A temporary restraining order may be issued with or without notice, based on a declaration that, to the satisfaction of the court, shows reasonable proof of harassment of the petitioner by the respondent, and that great or irreparable harm would result to the petitioner.

(e) A request for the issuance of a temporary restraining order without notice under this section shall be granted or denied on the same day that the petition is submitted to the court. If the petition is filed too late in the day to permit effective review, the order shall be granted or denied on the next day of judicial business in sufficient time for the order to be filed that day with the clerk of the court.

(f) A temporary restraining order issued under this section shall remain in effect, at the court’s discretion, for a period not to exceed 21 days, or, if the court extends the time for hearing under subdivision (g), not to exceed 25 days, unless otherwise modified or terminated by the court.

(g) Within 21 days, or, if good cause appears to the court, 25 days from the date that a petition for a temporary order is granted or denied, a hearing shall be held on the petition. If a request for a temporary order is not made, the hearing shall be held within 21 days, or, if good cause appears to the court, 25 days, from the date that the petition is filed.

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(h) The respondent may file a response that explains, excuses, justifies, or denies the alleged harassment, or may file a cross-petition under this section.

(i) At the hearing, the judge shall receive any testimony that is relevant, and may make an independent inquiry. If the judge finds by clear and convincing evidence that unlawful harassment exists, an order shall issue prohibiting the harassment.

(j) (1) In the discretion of the court, an order issued after notice and hearing under this section may have a duration of no more than five years, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. The order may be renewed, upon the request of a party, for a duration of no more than five additional years, without a showing of any further harassment since the issuance of the original order, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. A request for renewal may be brought any time within the three months before the order expires.

(2) The failure to state the expiration date on the face of the form creates an order with a duration of three years from the date of issuance.

(3) If an action is filed for the purpose of terminating or modifying a protective order before the expiration date specified in the order by a party other than the protected party, the party who is protected by the order shall be given notice, pursuant to subdivision (b) of Section 1005, of the proceeding by personal service or, if the protected party has satisfied the requirements of Chapter 3.1 (commencing with Section 6205) of Division 7 of Title 1 of the Government Code, by service on the Secretary of State. If the party who is protected by the order cannot be notified before the hearing for modification or termination of the protective order, the court shall deny the motion to modify or terminate the order without prejudice or continue the hearing until the party who is protected can be properly noticed and may, upon a showing of good cause, specify another method for service of process that is reasonably designed to afford actual notice to the protected party. The protected party may waive the protected party's right to notice if the

protected party is physically present in court and does not challenge the sufficiency of the notice.

(k) This section does not preclude either party from representation by private counsel or from appearing on the party's own behalf.

(l) In a proceeding under this section if there are allegations of unlawful violence or credible threats of violence, a support person may accompany a party in court and, if the party is not represented by an attorney, may sit with the party at the table that is generally reserved for the party and the party's attorney. The support person is present to provide moral and emotional support for a person who alleges they are a victim of violence. The support person is not present as a legal adviser and may not provide legal advice. The support person may assist the person who alleges they are a victim of violence in feeling more confident that they will not be injured or threatened by the other party during the proceedings if the person who alleges the person is a victim of violence and the other party are required to be present in close proximity. This subdivision does not preclude the court from exercising its discretion to remove the support person from the courtroom if the court believes the support person is prompting, swaying, or influencing the party assisted by the support person.

(m) (1) Except as provided in paragraph (2), upon the filing of a petition under this section, the respondent shall be personally served with a copy of the petition, temporary restraining order, if any, and notice of hearing of the petition. Service shall be made at least five days before the hearing. The court may for good cause, on motion of the petitioner or on its own motion, shorten the time for service on the respondent.

(2) If the court determines at the hearing that, after a diligent effort, the petitioner has been unable to accomplish personal service, and that there is reason to believe that the respondent is evading service or cannot be located, then the court may specify another method of service that is reasonably calculated to give actual notice to the respondent and may prescribe the manner in which proof of service shall be made.

(n) A notice of hearing under this section shall notify the respondent that if the respondent does not attend the hearing, the court may make orders against the respondent that could last up to five years.

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(o) The respondent shall be entitled, as a matter of course, to one continuance, for a reasonable period, to respond to the petition.

(p) (1) Either party may request a continuance of the hearing, which the court shall grant on a showing of good cause. The request may be made in writing before or at the hearing, or orally at the hearing. The court may also grant a continuance on its own motion.

(2) If the court grants a continuance, any temporary restraining order that has been granted shall remain in effect until the end of the continued hearing, unless otherwise ordered by the court. In granting a continuance, the court may modify or terminate a temporary restraining order.

(q) (1) If a respondent named in a restraining order issued after a hearing has not been served personally with the order but has received actual notice of the existence and substance of the order through personal appearance in court to hear the terms of the order from the court, additional proof of service is not required for enforcement of the order.

(2) If the respondent named in a temporary restraining order is personally served with the order and notice of hearing with respect to a restraining order or protective order based on the temporary restraining order, but the respondent does not appear at the hearing, either personally or by an attorney, and the terms and conditions of the restraining order or protective order issued at the hearing are identical to the temporary restraining order, except for the duration of the order, the restraining order or protective order issued at the hearing may be served on the respondent by first-class mail sent to the respondent at the most current address for the respondent available to the court.

(3) The Judicial Council form for temporary orders issued pursuant to this subdivision shall contain a statement in substantially the following form:

"If you have been personally served with this temporary restraining order and notice of hearing, but you do not appear at the hearing either in person or by a lawyer, and a restraining

order that is the same as this temporary restraining order except for the expiration date is issued at the hearing, a copy of the restraining order will be served on you by mail at the following address: \_\_\_\_.

If that address is not correct or you wish to verify that the temporary restraining order was converted to a restraining order at the hearing without substantive change and to find out the duration of that order, contact the clerk of the court."

(4) If information about a minor has been made confidential pursuant to subdivision (v), the notice shall identify the information, specifically, that has been made confidential and shall include a statement that disclosure or misuse of that information is punishable as a contempt of court.

(r) (1) Information on a temporary restraining order or order after hearing relating to civil harassment issued by a court pursuant to this section shall be transmitted to the Department of Justice in accordance with either paragraph (2) or (3).

(2) The court shall order the petitioner or the attorney for the petitioner to deliver a copy of an order issued under this section, or reissuance, extension, modification, or termination of the order, and any subsequent proof of service, by the close of the business day on which the order, reissuance, extension, modification, or termination was made, to a law enforcement agency having jurisdiction over the residence of the petitioner and to any additional law enforcement agencies within the court's discretion as are requested by the petitioner.

(3) Alternatively, the court or its designee shall transmit, within one business day, to law enforcement personnel all information required under subdivision (b) of Section 6380 of the Family Code regarding any order issued under this section, or a reissuance, extension, modification, or termination of the order, and any subsequent proof of service, by either one of the following methods:

(A) Transmitting a physical copy of the order or proof of service to a local law enforcement agency authorized by the

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Department of Justice to enter orders into the California Law Enforcement Telecommunications System (CLETS).

(B) With the approval of the Department of Justice, entering the order or proof of service into CLETS directly.

(4) Each appropriate law enforcement agency shall make available information as to the existence and current status of orders issued under this section to law enforcement officers responding to the scene of reported harassment.

(5) An order issued under this section shall, on request of the petitioner, be served on the respondent, whether or not the respondent has been taken into custody, by any law enforcement officer who is present at the scene of reported harassment involving the parties to the proceeding. The petitioner shall provide the officer with an endorsed copy of the order and a proof of service that the officer shall complete and send to the issuing court.

(6) Upon receiving information at the scene of an incident of harassment that a protective order has been issued under this section, or that a person who has been taken into custody is the subject of an order, if the protected person cannot produce a certified copy of the order, a law enforcement officer shall immediately attempt to verify the existence of the order.

(7) If the law enforcement officer determines that a protective order has been issued, but not served, the officer shall immediately notify the respondent of the terms of the order and shall at that time also enforce the order. Verbal notice of the terms of the order shall constitute service of the order and is sufficient notice for purposes of this section and for purposes of Section 29825 of the Penal Code. Verbal notice shall include the information required pursuant to paragraph (4) of subdivision (q).

(s) The prevailing party in an action brought pursuant to this section may be awarded court costs and attorney's fees, if any.

(t) Willful disobedience of a temporary restraining order or order after hearing granted pursuant to this

section is punishable pursuant to Section 273.6 of the Penal Code.

(u) (1) A person subject to a protective order issued pursuant to this section shall not own, possess, purchase, receive, or attempt to purchase or receive a firearm or ammunition while the protective order is in effect.

(2) The court shall order a person subject to a protective order issued pursuant to this section to relinquish any firearms the person owns or possesses pursuant to Section 527.9.

(3) A person who owns, possesses, purchases, or receives, or attempts to purchase or receive, a firearm or ammunition while the protective order is in effect is punishable pursuant to Section 29825 of the Penal Code.

(v) (1) A minor or the minor's legal guardian may petition the court to have information regarding the minor that was obtained in connection with a request for a protective order pursuant to this section, including, but not limited to, the minor's name, address, and the circumstances surrounding the request for a protective order with respect to that minor, be kept confidential.

(2) The court may order the information specified in paragraph (1) be kept confidential if the court expressly finds all of the following:

(A) The minor's right to privacy overcomes the right of public access to the information.

(B) There is a substantial probability that the minor's interest will be prejudiced if the information is not kept confidential.

(C) The order to keep the information confidential is narrowly tailored.

(D) No less restrictive means exist to protect the minor's privacy.

(3) (A) If the request is granted, except as provided in paragraph (4), information regarding the minor shall be maintained in a confidential case file and shall not become part of the public file in the proceeding or any other civil proceeding involving the parties. Except as provided in subparagraph (B), if the court determines that disclosure

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of confidential information has been made without a court order, the court may impose a sanction of up to one thousand dollars (\$1,000). A minor who has alleged harassment, as defined in subdivision (b), shall not be sanctioned for disclosure of the confidential information. If the court imposes a sanction, the court shall first determine whether the person has or is reasonably likely to have the ability to pay.

(B) Confidential information may be disclosed without a court order only in the following circumstances:

(i) By the minor's legal guardian who petitioned to keep the information confidential pursuant to this subdivision or the protected party in an order pursuant to this division, provided that the disclosure is necessary to prevent harassment or is in the minor's best interest. A legal guardian or a protected party who makes a disclosure under this clause is subject to the sanction in subparagraph (A) only if the disclosure was malicious.

(ii) By a person to whom confidential information is disclosed, provided that the disclosure is necessary to prevent harassment or is in the best interest of the minor, no more information than necessary is disclosed, and a delay would be caused by first obtaining a court order to authorize the disclosure of the information. A person who makes a disclosure pursuant to this clause is subject to the sanction in subparagraph (A) if the person discloses the information in a manner that recklessly or maliciously disregards these requirements.

(4) (A) Confidential information shall be made available to both of the following:

(i) Law enforcement pursuant to subdivision (r), to the extent necessary and only for the purpose of enforcing the order.

(ii) The respondent to allow the respondent to comply with the order for confidentiality and to allow the respondent to comply with and respond to the protective order. A notice shall be provided to the respondent that identifies the specific information that has been made confidential and shall include a statement that disclosure is punishable by a monetary fine.

(B) At any time, the court on its own may authorize a disclosure of any portion of the confidential information to certain individuals or entities as necessary to prevent harassment, as defined under subdivision (b), including implementation of the protective order, or if it is in the best interest of the minor.

(C) The court may authorize a disclosure of any portion of the confidential information to any person that files a petition if necessary to prevent harassment, as defined under subdivision (b), or if it is in the best interest of the minor. The party who petitioned the court to keep the information confidential pursuant to this subdivision shall be served personally or by first-class mail with a copy of the petition and afforded an opportunity to object to the disclosure.

(w) This section does not apply to any action or proceeding covered by Title 1.6C (commencing with Section 1788) of Part 4 of Division 3 of the Civil Code or by Division 10 (commencing with Section 6200) of the Family Code. This section does not preclude a petitioner from using other existing civil remedies.

(x) (1) The Judicial Council shall develop forms, instructions, and rules relating to matters governed by this section. The petition and response forms shall be simple and concise, and their use by parties in actions brought pursuant to this section is mandatory.

(2) A temporary restraining order or order after hearing relating to civil harassment issued by a court pursuant to this section shall be issued on forms adopted by the Judicial Council and that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the

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Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

(y) There is no filing fee for a petition that alleges that a person has inflicted or threatened violence against the petitioner, stalked the petitioner, or acted or spoken in any other manner that has placed the petitioner in reasonable fear of violence, and that seeks a protective or restraining order restraining stalking, future violence, or threats of violence, in an action brought pursuant to this section. A fee shall not be paid for a subpoena filed in connection with a petition alleging these acts. A fee shall not be paid for filing a response to a petition alleging these acts.

(z) (1) Subject to paragraph (4) of subdivision (b) of Section 6103.2 of the Government Code, there shall not be a fee for the service of process by a sheriff or marshal of a protective or restraining order to be issued, if either of the following conditions apply:

(A) The protective or restraining order issued pursuant to this section is based upon stalking, as prohibited by Section 646.9 of the Penal Code.

(B) The protective or restraining order issued pursuant to this section is based upon unlawful violence or a credible threat of violence.

(2) The Judicial Council shall prepare and develop forms for persons who wish to avail themselves of the services described in this subdivision. (Added by Stats. 2013, ch. 158. Amended by Stats. 2015, ch. 401; Stats. 2015, ch. 411; Stats. 2016, ch. 86; Stats. 2019, ch. 294; Stats. 2021, ch. 156.)

### **§ 527.8 Employees Subject to Unlawful Violence or Threat of Violence at the Workplace; Temporary Restraining Order; Order After Hearing; Constitutional Protections for Speech and Activities**

(a) Any employer, whose employee has suffered unlawful violence or a credible threat of violence from any individual, that can reasonably be construed to be

carried out or to have been carried out at the workplace, may seek a temporary restraining order and an order after hearing on behalf of the employee and, at the discretion of the court, any number of other employees at the workplace, and, if appropriate, other employees at other workplaces of the employer.

(b) For purposes of this section:

(1) “Course of conduct” is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including following or stalking an employee to or from the place of work; entering the workplace; following an employee during hours of employment; making telephone calls to an employee; or sending correspondence to an employee by any means, including, but not limited to, the use of the public or private mails, interoffice mail, facsimile, or computer email.

(2) “Credible threat of violence” is a knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose.

(3) “Employer” and “employee” mean persons defined in Section 350 of the Labor Code. “Employer” also includes a federal agency, the state, a state agency, a city, county, or district, and a private, public, or quasi-public corporation, or any public agency thereof or therein. “Employee” also includes the members of boards of directors of private, public, and quasi-public corporations and elected and appointed public officers. For purposes of this section only, “employee” also includes a volunteer or independent contractor who performs services for the employer at the employer’s worksite.

(4) “Petitioner” means the employer that petitions under subdivision (a) for a temporary restraining order and order after hearing.

(5) “Respondent” means the person against whom the temporary restraining order and order after hearing are sought and, if the petition is granted, the restrained person.

(6) “Temporary restraining order” and “order after hearing” mean orders that include any of the

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following restraining orders, whether issued ex parte or after notice and hearing:

(A) An order enjoining a party from harassing, intimidating, molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, abusing, telephoning, including, but not limited to, making annoying telephone calls as described in Section 653m of the Penal Code, destroying personal property, contacting, either directly or indirectly, by mail or otherwise, or coming within a specified distance of, or disturbing the peace of, the employee.

(B) An order enjoining a party from specified behavior that the court determines is necessary to effectuate orders described in subparagraph (A).

(7) "Unlawful violence" is any assault or battery, or stalking as prohibited in Section 646.9 of the Penal Code, but shall not include lawful acts of self-defense or defense of others.

(c) This section does not permit a court to issue a temporary restraining order or order after hearing prohibiting speech or other activities that are constitutionally protected, or otherwise protected by Section 527.3 or any other provision of law.

(d) In the discretion of the court, on a showing of good cause, a temporary restraining order or order after hearing issued under this section may include other named family or household members, or other persons employed at the employee's workplace or workplaces.

(e) Upon filing a petition under this section, the petitioner may obtain a temporary restraining order in accordance with subdivision (a) of Section 527, if the petitioner also files a declaration that, to the satisfaction of the court, shows reasonable proof that an employee has suffered unlawful violence or a credible threat of violence by the respondent, and that great or irreparable harm would result to an employee. The temporary restraining order may include any of the protective orders described in paragraph (6) of subdivision (b).

(f) A request for the issuance of a temporary restraining order without notice under this section shall be granted or denied on the same day that the petition

is submitted to the court, unless the petition is filed too late in the day to permit effective review, in which case the order shall be granted or denied on the next day of judicial business in sufficient time for the order to be filed that day with the clerk of the court.

(g) A temporary restraining order granted under this section shall remain in effect, at the court's discretion, for a period not to exceed 21 days, or if the court extends the time for hearing under subdivision (h), not to exceed 25 days, unless otherwise modified or terminated by the court.

(h) Within 21 days, or if good cause appears to the court, 25 days from the date that a petition for a temporary order is granted or denied, a hearing shall be held on the petition. If no request for temporary orders is made, the hearing shall be held within 21 days, or, if good cause appears to the court, 25 days, from the date that the petition is filed.

(i) The respondent may file a response that explains, excuses, justifies, or denies the alleged unlawful violence or credible threats of violence.

(j) At the hearing, the judge shall receive any testimony that is relevant and may make an independent inquiry. Moreover, if the respondent is a current employee of the entity requesting the order, the judge shall receive evidence concerning the employer's decision to retain, terminate, or otherwise discipline the respondent. If the judge finds by clear and convincing evidence that the respondent engaged in unlawful violence or made a credible threat of violence, an order shall issue prohibiting further unlawful violence or threats of violence.

(k) (1) In the discretion of the court, an order issued after notice and hearing under this section may have a duration of not more than three years, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. These orders may be renewed, upon the request of a party, for a duration of not more than three years, without a showing of any further violence or threats of violence since the issuance of the original order, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. The request for renewal may be brought at any time within the three months before the expiration of the order.

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(2) The failure to state the expiration date on the face of the form creates an order with a duration of three years from the date of issuance.

(3) If an action is filed for the purpose of terminating or modifying a protective order prior to the expiration date specified in the order by a party other than the protected party, the party who is protected by the order shall be given notice, pursuant to subdivision (b) of Section 1005, of the proceeding by personal service or, if the protected party has satisfied the requirements of Chapter 3.1 (commencing with Section 6205) of Division 7 of Title 1 of the Government Code, by service on the Secretary of State. If the party who is protected by the order cannot be notified prior to the hearing for modification or termination of the protective order, the court shall deny the motion to modify or terminate the order without prejudice or continue the hearing until the party who is protected can be properly noticed and may, upon a showing of good cause, specify another method for service of process that is reasonably designed to afford actual notice to the protected party. The protected party may waive his or her right to notice if he or she is physically present in court and does not challenge the sufficiency of the notice.

(l) This section does not preclude either party from representation by private counsel or from appearing on his or her own behalf.

(m) Upon filing of a petition under this section, the respondent shall be personally served with a copy of the petition, temporary restraining order, if any, and notice of hearing of the petition. Service shall be made at least five days before the hearing. The court may, for good cause, on motion of the petitioner or on its own motion, shorten the time for service on the respondent.

(n) A notice of hearing under this section shall notify the respondent that, if he or she does not attend the hearing, the court may make orders against him or her that could last up to three years.

(o) The respondent shall be entitled, as a matter of course, to one continuance, for a reasonable period, to respond to the petition.

(p) (1) Either party may request a continuance of the hearing, which the court shall grant on a

showing of good cause. The request may be made in writing before or at the hearing or orally at the hearing. The court may also grant a continuance on its own motion.

(2) If the court grants a continuance, any temporary restraining order that has been granted shall remain in effect until the end of the continued hearing, unless otherwise ordered by the court. In granting a continuance, the court may modify or terminate a temporary restraining order.

(q) (1) If a respondent, named in a restraining order issued under this section after a hearing, has not been served personally with the order but has received actual notice of the existence and substance of the order through personal appearance in court to hear the terms of the order from the court, no additional proof of service is required for enforcement of the order.

(2) If the respondent named in a temporary restraining order is personally served with the order and notice of hearing with respect to a restraining order or protective order based on the temporary restraining order, but the person does not appear at the hearing, either personally or by an attorney, and the terms and conditions of the restraining order or protective order issued at the hearing are identical to the temporary restraining order, except for the duration of the order, then the restraining order or protective order issued at the hearing may be served on the person by first-class mail sent to that person at the most current address for the person available to the court.

(3) The Judicial Council form for temporary orders issued pursuant to this subdivision shall contain a statement in substantially the following form:

"If you have been personally served with this temporary restraining order and notice of hearing, but you do not appear at the hearing either in person or by a lawyer, and a restraining order that is the same as this restraining order except for the expiration date is issued at the hearing, a copy of the order will be served on you by mail at the following address: \_\_\_\_.

If that address is not correct or you wish to verify that the temporary restraining order was



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converted to a restraining order at the hearing without substantive change and to find out the duration of that order, contact the clerk of the court.”

- (r) (1) Information on a temporary restraining order or order after hearing relating to workplace violence issued by a court pursuant to this section shall be transmitted to the Department of Justice in accordance with either paragraph (2) or (3).

(2) The court shall order the petitioner or the attorney for the petitioner to deliver a copy of any order issued under this section, or a reissuance, extension, modification, or termination of the order, and any subsequent proof of service, by the close of the business day on which the order, reissuance, extension, modification, or termination was made, to each law enforcement agency having jurisdiction over the residence of the petitioner and to any additional law enforcement agencies within the court's discretion as are requested by the petitioner.

(3) Alternatively, the court or its designee shall transmit, within one business day, to law enforcement personnel all information required under subdivision (b) of Section 6380 of the Family Code regarding any order issued under this section, or a reissuance, extension, modification, or termination of the order, and any subsequent proof of service, by either one of the following methods:

(A) Transmitting a physical copy of the order or proof of service to a local law enforcement agency authorized by the Department of Justice to enter orders into the California Law Enforcement Telecommunications System (CLETS).

(B) With the approval of the Department of Justice, entering the order or proof of service into CLETS directly.

(4) Each appropriate law enforcement agency shall make available information as to the existence and current status of these orders to law enforcement officers responding to the scene of reported unlawful violence or a credible threat of violence.

(5) At the request of the petitioner, an order issued under this section shall be served on the respondent, regardless of whether the respondent has been taken into custody, by any law enforcement officer who is present at the scene of reported unlawful violence or a credible threat of violence involving the parties to the proceedings. The petitioner shall provide the officer with an endorsed copy of the order and proof of service that the officer shall complete and send to the issuing court.

(6) Upon receiving information at the scene of an incident of unlawful violence or a credible threat of violence that a protective order has been issued under this section, or that a person who has been taken into custody is the subject of an order, if the petitioner or the protected person cannot produce an endorsed copy of the order, a law enforcement officer shall immediately attempt to verify the existence of the order.

(7) If the law enforcement officer determines that a protective order has been issued but not served, the officer shall immediately notify the respondent of the terms of the order and obtain the respondent's address. The law enforcement officer shall at that time also enforce the order, but may not arrest or take the respondent into custody for acts in violation of the order that were committed prior to the verbal notice of the terms and conditions of the order. The law enforcement officer's verbal notice of the terms of the order shall constitute service of the order and constitutes sufficient notice for the purposes of this section and for the purposes of Section 29825 of the Penal Code. The petitioner shall mail an endorsed copy of the order to the respondent's mailing address provided to the law enforcement officer within one business day of the reported incident of unlawful violence or a credible threat of violence at which a verbal notice of the terms of the order was provided by a law enforcement officer.

- (s) (1) A person subject to a protective order issued under this section shall not own, possess, purchase, receive, or attempt to purchase or receive a firearm or ammunition while the protective order is in effect.

(2) The court shall order a person subject to a protective order issued under this section to

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relinquish any firearms he or she owns or possesses pursuant to Section 527.9.

(3) Every person who owns, possesses, purchases or receives, or attempts to purchase or receive a firearm or ammunition while the protective order is in effect is punishable pursuant to Section 29825 of the Penal Code.

(t) Any intentional disobedience of any temporary restraining order or order after hearing granted under this section is punishable pursuant to Section 273.6 of the Penal Code.

(u) This section shall not be construed as expanding, diminishing, altering, or modifying the duty, if any, of an employer to provide a safe workplace for employees and other persons.

(v) (1) The Judicial Council shall develop forms, instructions, and rules for relating to matters governed by this section. The forms for the petition and response shall be simple and concise, and their use by parties in actions brought pursuant to this section shall be mandatory.

(2) A temporary restraining order or order after hearing relating to unlawful violence or a credible threat of violence issued by a court pursuant to this section shall be issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

(w) There is no filing fee for a petition that alleges that a person has inflicted or threatened violence against an employee of the petitioner, or stalked the employee, or acted or spoken in any other manner that has placed the employee in reasonable fear of violence, and that seeks a protective or restraining order restraining stalking or future violence or threats of violence, in any action brought pursuant to this section. No fee shall be paid for a subpoena filed in connection with a petition alleging these acts. No fee shall be paid for filing a response to a petition alleging these acts.

(x) (1) Subject to paragraph (4) of subdivision (b) of Section 6103.2 of the Government Code, there shall be no fee for the service of process by a sheriff or marshal of a temporary restraining order or order after hearing to be issued pursuant to this section if either of the following conditions applies:

(A) The temporary restraining order or order after hearing issued pursuant to this section is based upon stalking, as prohibited by Section 646.9 of the Penal Code.

(B) The temporary restraining order or order after hearing issued pursuant to this section is based on unlawful violence or a credible threat of violence.

(2) The Judicial Council shall prepare and develop forms for persons who wish to avail themselves of the services described in this subdivision. (Added by Stats. 1993-94, ch. 29. Amended by Stats. 1998, ch. 581; Stats. 1999, ch. 661; Stats. 2000, ch. 688; Stats. 2002, ch. 1008; Stats. 2003, ch. 498; Stats. 2005, ch. 467; Stats. 2006, ch. 476; Stats. 2010, ch. 178; Stats. 2010, ch. 572; Stats. 2011, ch. 285; Stats. 2011, ch. 101; Stats. 2012, ch. 162; Stats. 2015, ch. 411.)

### **§ 527.85 Officers Authorized to Maintain Order on School Campus or Facility; Threat of Violence Made Off School Campus; Temporary Restraining Order and Order After Hearing; Violation of Restraining Order**

(a) Any chief administrative officer of a postsecondary educational institution, or an officer or employee designated by the chief administrative officer to maintain order on the school campus or facility, a student of which has suffered a credible threat of violence made off the school campus or facility from any individual which can reasonably be construed to be carried out or to have been carried out at the school campus or facility, may, with the written consent of the student, seek a temporary restraining order and an order after hearing on behalf of the student and, at the discretion of the court, any number of other students at the campus or facility who are similarly situated.

(b) For purposes of this section, the following definitions apply:

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(1) “Chief administrative officer” means the principal, president, or highest ranking official of the postsecondary educational institution.

(2) “Course of conduct” means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including any of the following:

(A) Following or stalking a student to or from school.

(B) Entering the school campus or facility.

(C) Following a student during school hours.

(D) Making telephone calls to a student.

(E) Sending correspondence to a student by any means, including, but not limited to, the use of the public or private mails, interoffice mail, facsimile, or computer email.

(3) “Credible threat of violence” means a knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose.

(4) “Petitioner” means the chief administrative officer, or his or her designee, who petitions under subdivision (a) for a temporary restraining order and order after hearing.

(5) “Postsecondary educational institution” means a private institution of vocational, professional, or postsecondary education.

(6) “Respondent” means the person against whom the temporary restraining order and order after hearing are sought and, if the petition is granted, the restrained person.

(7) “Student” means an adult currently enrolled in or applying for admission to a postsecondary educational institution.

(8) “Temporary restraining order” and “order after hearing” mean orders that include any of the

following restraining orders, whether issued ex parte, or after notice and hearing:

(A) An order enjoining a party from harassing, intimidating, molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, abusing, telephoning, including, but not limited to, making annoying telephone calls as described in Section 653m of the Penal Code, destroying personal property, contacting, either directly or indirectly, by mail or otherwise, or coming within a specified distance of, or disturbing the peace of, the student.

(B) An order enjoining a party from specified behavior that the court determines is necessary to effectuate orders described in subparagraph (A).

(9) “Unlawful violence” means any assault or battery, or stalking as prohibited in Section 646.9 of the Penal Code, but shall not include lawful acts of self-defense or defense of others.

(c) This section does not permit a court to issue a temporary restraining order or order after hearing prohibiting speech or other activities that are constitutionally protected, or otherwise protected by Section 527.3 or any other provision of law.

(d) In the discretion of the court, on a showing of good cause, a temporary restraining order or order after hearing issued under this section may include other named family or household members of the student, or other students at the campus or facility.

(e) Upon filing a petition under this section, the petitioner may obtain a temporary restraining order in accordance with subdivision (a) of Section 527, if the petitioner also files a declaration that, to the satisfaction of the court, shows reasonable proof that a student has suffered a credible threat of violence made off the school campus or facility by the respondent, and that great or irreparable harm would result to the student. The temporary restraining order may include any of the protective orders described in paragraph (8) of subdivision (b).

(f) A request for the issuance of a temporary restraining order without notice under this section shall be granted or denied on the same day that the petition is submitted to the court, unless the petition is filed too

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late in the day to permit effective review, in which case the order shall be granted or denied on the next day of judicial business in sufficient time for the order to be filed that day with the clerk of the court.

(g) A temporary restraining order granted under this section shall remain in effect, at the court's discretion, for a period not to exceed 21 days, or if the court extends the time for hearing under subdivision (h), not to exceed 25 days, unless otherwise modified or terminated by the court.

(h) Within 21 days, or if good cause appears to the court, within 25 days, from the date that a petition for a temporary order is granted or denied, a hearing shall be held on the petition. If no request for temporary orders is made, the hearing shall be held within 21 days, or if good cause appears to the court, 25 days, from the date the petition is filed.

(i) The respondent may file a response that explains, excuses, justifies, or denies the alleged credible threats of violence.

(j) At the hearing, the judge shall receive any testimony that is relevant and may make an independent inquiry. Moreover, if the respondent is a current student of the entity requesting the order, the judge shall receive evidence concerning the decision of the postsecondary educational institution decision to retain, terminate, or otherwise discipline the respondent. If the judge finds by clear and convincing evidence that the respondent made a credible threat of violence off the school campus or facility, an order shall be issued prohibiting further threats of violence.

(k) (1) In the discretion of the court, an order issued after notice and hearing under this section may have a duration of not more than three years, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. These orders may be renewed, upon the request of a party, for a duration of not more than three years, without a showing of any further violence or threats of violence since the issuance of the original order, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. The request for renewal may be brought at any time within the three months before the expiration of the order.

(2) The failure to state the expiration date on the face of the form creates an order with a duration of three years from the date of issuance.

(3) If an action is filed for the purpose of terminating or modifying a protective order prior to the expiration date specified in the order by a party other than the protected party, the party who is protected by the order shall be given notice, pursuant to subdivision (b) of Section 1005, of the proceeding by personal service or, if the protected party has satisfied the requirements of Chapter 3.1 (commencing with Section 6205) of Division 7 of Title 1 of the Government Code, by service on the Secretary of State. If the party who is protected by the order cannot be notified prior to the hearing for modification or termination of the protective order, the court shall deny the motion to modify or terminate the order without prejudice or continue the hearing until the party who is protected can be properly noticed and may, upon a showing of good cause, specify another method for service of process that is reasonably designed to afford actual notice to the protected party. The protected party may waive his or her right to notice if he or she is physically present in court and does not challenge the sufficiency of the notice.

(l) This section does not preclude either party from representation by private counsel or from appearing on his or her own behalf.

(m) Upon filing of a petition under this section, the respondent shall be personally served with a copy of the petition, temporary restraining order, if any, and notice of hearing of the petition. Service shall be made at least five days before the hearing. The court may, for good cause, on motion of the petitioner or on its own motion, shorten the time for service on the respondent.

(n) A notice of hearing under this section shall notify the respondent that if he or she does not attend the hearing, the court may make orders against him or her that could last up to three years.

(o) The respondent shall be entitled, as a matter of course, to one continuance, for a reasonable period, to respond to the petition.

(p) (1) Either party may request a continuance of the hearing, which the court shall grant on a

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showing of good cause. The request may be made in writing before or at the hearing or orally at the hearing. The court may also grant a continuance on its own motion.

(2) If the court grants a continuance, any temporary restraining order that has been granted shall remain in effect until the end of the continued hearing, unless otherwise ordered by the court. In granting a continuance, the court may modify or terminate a temporary restraining order.

(q) (1) If a respondent, named in an order issued under this section after a hearing, has not been served personally with the order but has received actual notice of the existence and substance of the order through personal appearance in court to hear the terms of the order from the court, no additional proof of service is required for enforcement of the order.

(2) If the respondent named in a temporary restraining order is personally served with the order and notice of hearing with respect to a restraining order or protective order based on the temporary restraining order, but the respondent does not appear at the hearing, either personally or by an attorney, and the terms and conditions of the restraining order or protective order issued at the hearing are identical to the temporary restraining order, except for the duration of the order, then the restraining order or protective order issued at the hearing may be served on the respondent by first-class mail sent to that person at the most current address for the respondent available to the court.

(3) The Judicial Council form for temporary orders issued pursuant to this subdivision shall contain a statement in substantially the following form:

“If you have been personally served with a temporary restraining order and notice of hearing, but you do not appear at the hearing either in person or by a lawyer, and a restraining order that is the same as this temporary restraining order except for the expiration date is issued at the hearing, a copy of the order will be served on you by mail at the following address:\_\_\_\_\_.

If that address is not correct or you wish to verify that the temporary restraining order was converted to a restraining order at the hearing without substantive change and to find out the duration of that order, contact the clerk of the court.”

(r) (1) Information on a temporary restraining order or order after hearing relating to schoolsite violence issued by a court pursuant to this section shall be transmitted to the Department of Justice in accordance with either paragraph (2) or (3).

(2) The court shall order the petitioner or the attorney for the petitioner to deliver a copy of any order issued under this section, or a reissuance, extension, modification, or termination of the order, and any subsequent proof of service, by the close of the business day on which the order, reissuance, or termination of the order, and any proof of service, was made, to each law enforcement agency having jurisdiction over the residence of the petition and to any additional law enforcement agencies within the court’s discretion as are requested by the petitioner.

(3) Alternatively, the court or its designee shall transmit, within one business day, to law enforcement personnel all information required under subdivision (b) of Section 6380 of the Family Code regarding any order issued under this section, or a reissuance, extension, modification, or termination of the order, and any subsequent proof of service, by either one of the following methods:

(A) Transmitting a physical copy of the order or proof of service to a local law enforcement agency authorized by the Department of Justice to enter orders into the California Law Enforcement Telecommunications System (CLETS).

(B) With the approval of the Department of Justice, entering the order of proof of service into CLETS directly.

(4) Each appropriate law enforcement agency shall make available information as to the existence and current status of these orders to law enforcement officers responding to the scene of reported unlawful violence or a credible threat of violence.

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(5) At the request of the petitioner, an order issued under this section shall be served on the respondent, regardless of whether the respondent has been taken into custody, by any law enforcement officer who is present at the scene of reported unlawful violence or a credible threat of violence involving the parties to the proceedings. The petitioner shall provide the officer with an endorsed copy of the order and proof of service that the officer shall complete and send to the issuing court.

(6) Upon receiving information at the scene of an incident of unlawful violence or a credible threat of violence that a protective order has been issued under this section, or that a person who has been taken into custody is the subject of an order, if the petitioner or the protected person cannot produce an endorsed copy of the order, a law enforcement officer shall immediately attempt to verify the existence of the order.

(7) If the law enforcement officer determines that a protective order has been issued but not served, the officer shall immediately notify the respondent of the terms of the order and obtain the respondent's address. The law enforcement officer shall at that time also enforce the order, but may not arrest or take the respondent into custody for acts in violation of the order that were committed prior to the verbal notice of the terms and conditions of the order. The law enforcement officer's verbal notice of the terms of the order shall constitute service of the order and constitutes sufficient notice for the purposes of this section, and Section 29825 of the Penal Code. The petitioner shall mail an endorsed copy of the order to the respondent's mailing address provided to the law enforcement officer within one business day of the reported incident of unlawful violence or a credible threat of violence at which a verbal notice of the terms of the order was provided by a law enforcement officer.

(s) (1) A person subject to a protective order issued under this section shall not own, possess, purchase, receive, or attempt to purchase or receive a firearm or ammunition while the protective order is in effect.

(2) The court shall order a person subject to a protective order issued under this section to

relinquish any firearms he or she owns or possesses pursuant to Section 527.9.

(3) Every person who owns, possesses, purchases, or receives, or attempts to purchase or receive a firearm or ammunition while the protective order is in effect is punishable pursuant to Section 29825 of the Penal Code.

(t) Any intentional disobedience of any temporary restraining order or order after hearing granted under this section is punishable pursuant to Section 273.6 of the Penal Code.

(u) This section shall not be construed as expanding, diminishing, altering, or modifying the duty, if any, of a postsecondary educational institution to provide a safe environment for students and other persons.

(v) (1) The Judicial Council shall develop forms, instructions, and rules relating to matters governed by this section. The forms for the petition and response shall be simple and concise, and their use by parties in actions brought pursuant to this section shall be mandatory.

(2) A temporary restraining order or order after hearing relating to unlawful violence or a credible threat of violence issued by a court pursuant to this section shall be issued on forms adopted by the Judicial Council that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

(w) There is no filing fee for a petition that alleges that a person has threatened violence against a student of the petitioner, or stalked the student, or acted or spoken in any other manner that has placed the student in reasonable fear of violence, and that seeks a protective or restraining order restraining stalking or future threats of violence, in any action brought pursuant to this section. No fee shall be paid for a subpoena filed in connection with a petition alleging these acts. No fee shall be paid for filing a response to a petition alleging these acts.

(x) (1) Subject to paragraph (4) of subdivision (b) of Section 6103.2 of the Government Code, there

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shall be no fee for the service of process by a sheriff or marshal of a temporary restraining order or order after hearing to be issued pursuant to this section if either of the following conditions applies:

(A) The temporary restraining order or order after hearing issued pursuant to this section is based upon stalking, as prohibited by Section 646.9 of the Penal Code.

(B) The temporary restraining order or order after hearing issued pursuant to this section is based upon a credible threat of violence.

(2) The Judicial Council shall prepare and develop forms for persons who wish to avail themselves of the services described in this subdivision. (Added by Stats. 2009, ch. 566. Amended by Stats. 2010, ch. 178; Stats. 2010, ch. 572; Stats. 2011, ch. 285; Stats. 2011, ch. 101; Stats. 2012, ch. 162; Stats. 2015, ch. 411.)

### **§ 566      Persons Ineligible for Appointment; Consent; Undertaking on Ex Parte Application**

(a) No party, or attorney of a party, or person interested in an action, or related to any judge of the court by consanguinity or affinity within the third degree, can be appointed receiver therein without the written consent of the parties, filed with the clerk.

(b) If a receiver is appointed upon an ex parte application, the court, before making the order, must require from the applicant an undertaking in an amount to be fixed by the court, to the effect that the applicant will pay to the defendant all damages the defendant may sustain by reason of the appointment of the receiver and the entry by the receiver upon the duties, in case the applicant shall have procured the appointment wrongfully, maliciously, or without sufficient cause. (Enacted in 1982. Amended by Stats. 1874, ch. 383, Stats. 1897, ch. 69; Stats. 1907, ch. 374, Stats. 1982, ch. 517.)

### **§ 568      Powers of Receivers**

The receiver has, under the control of the Court, power to bring and defend actions in his own name, as receiver; to take and keep possession of the property, to receive rents, collect debts, to compound for and

compromise the same, to make transfers, and generally to do such acts respecting the property as the Court may authorize. (Enacted in 1872.)

### **§ 638      Reference by Agreement of the Parties; Purposes**

A referee may be appointed upon the agreement of the parties filed with the clerk, or judge, or entered in the minutes, or upon the motion of a party to a written contract or lease that provides that any controversy arising therefrom shall be heard by a referee if the court finds a reference agreement exists between the parties:

(a) To hear and determine any or all of the issues in an action or proceeding, whether of fact or of law, and to report a statement of decision.

(b) To ascertain a fact necessary to enable the court to determine an action or proceeding.

(c) In any matter in which a referee is appointed pursuant to this section, a copy of the order shall be forwarded to the office of the presiding judge. The Judicial Council shall, by rule, collect information on the use of these referees. The Judicial Council shall also collect information on fees paid by the parties for the use of referees to the extent that information regarding those fees is reported to the court. The Judicial Council shall report thereon to the Legislature by July 1, 2003. This subdivision shall become inoperative on January 1, 2004. (Enacted 1872. Amended by Stats. 1933, ch. 744; Stats. 1951, ch. 1737; Stats. 1982, ch. 440; Stats. 1984, ch. 350; Stats. 2000, ch. 644; Stats. 2001, ch. 44; Stats. 2002, ch. 1008.)

### **§ 639      Direction of a Reference; Application; Motion of the Court**

(a) When the parties do not consent, the court may, upon the written motion of any party, or of its own motion, appoint a referee in the following cases pursuant to the provisions of subdivision (b) of Section 640:

(1) When the trial of an issue of fact requires the examination of a long account on either side; in which case the referees may be directed to hear and decide the whole issue, or report upon any specific question of fact involved therein.

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- (2) When the taking of an account is necessary for the information of the court before judgment, or for carrying a judgment or order into effect.
- (3) When a question of fact, other than upon the pleadings, arises upon motion or otherwise, in any stage of the action.
- (4) When it is necessary for the information of the court in a special proceeding.
- (5) When the court in any pending action determines that it is necessary for the court to appoint a referee to hear and determine any and all discovery motions and disputes relevant to discovery in the action and to report findings and make a recommendation thereon.
- (b) In a discovery matter, a motion to disqualify an appointed referee pursuant to Section 170.6 shall be made to the court by a party either:
- (A) Within 10 days after notice of the appointment, or if the party has not yet appeared in the action, a motion shall be made within 10 days after the appearance, if a discovery referee has been appointed for all discovery purposes.
- (B) At least five days before the date set for hearing, if the referee assigned is known at least 10 days before the date set for hearing and the discovery referee has been assigned only for limited discovery purposes.
- (c) When a referee is appointed pursuant to paragraph (5) of subdivision (a), the order shall indicate whether the referee is being appointed for all discovery purposes in the action.
- (d) All appointments of referees pursuant to this section shall be by written order and shall include the following:
- (1) When the referee is appointed pursuant to paragraph (1), (2), (3), or (4) of subdivision (a), a statement of the reason the referee is being appointed.
- (2) When the referee is appointed pursuant to paragraph (5) of subdivision (a), the exceptional circumstances requiring the reference, which must be specific to the circumstances of the particular case.
- (3) The subject matter or matters included in the reference.
- (4) The name, business address, and telephone number of the referee.
- (5) The maximum hourly rate the referee may charge and, at the request of any party, the maximum number of hours for which the referee may charge. Upon the written application of any party or the referee, the court may, for good cause shown, modify the maximum number of hours subject to any findings as set forth in paragraph (6).
- (6) (A) Either a finding that no party has established an economic inability to pay a pro rata share of the referee's fee or a finding that one or more parties has established an economic inability to pay a pro rata share of the referee's fees and that another party has agreed voluntarily to pay that additional share of the referee's fee. A court shall not appoint a referee at a cost to the parties if neither of these findings is made.
- (B) In determining whether a party has established an inability to pay the referee's fees under subparagraph (A), the court shall consider only the ability of the party, not the party's counsel, to pay these fees. If a party is proceeding in forma pauperis, the party shall be deemed by the court to have an economic inability to pay the referee's fees. However, a determination of economic inability to pay the fees shall not be limited to parties that proceed in forma pauperis. For those parties who are not proceeding in forma pauperis, the court, in determining whether a party has established an inability to pay the fees, shall consider, among other things, the estimated cost of the referral and the impact of the proposed fees on the party's ability to proceed with the litigation.
- (e) In any matter in which a referee is appointed pursuant to paragraph (5) of subdivision (a), a copy of the order appointing the referee shall be forwarded to the office of the presiding judge of the court. The Judicial Council shall, by rule, collect information on the use of these references and the reference fees charged to litigants, and shall report thereon to the Legislature by July 1, 2003. This subdivision shall become inoperative on January 1, 2004. (Enacted by Stats. 1872. Amended



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by Stats. 1933, ch. 744; Stats. 1951, ch. 1737; Stats. 1977, ch. 1257; Stats. 1981, ch. 299, Stats. 2000, ch. 1011; Stats. 2001, ch. 362.)

*[Publisher's Note: The outline format found under subsection (b) of the above provision is printed as it appears in the bill as chaptered by the legislature in 2001.]*

### **§ 907           Appeal Frivolous or Taken Solely for Delay**

When it appears to the reviewing court that the appeal was frivolous or taken solely for delay, it may add to the costs on appeal such damages as may be just. (Added by Stats. 1968, ch. 385.)

### **§ 1002           Settlement Agreement Provisions or Court Orders Preventing Disclosure of Factual Information Relating to Action**

(a) Notwithstanding any other law, a provision within a settlement agreement that prevents the disclosure of factual information related to the action is prohibited in any civil action the factual foundation for which establishes a cause of action for civil damages for any of the following:

- (1) An act that may be prosecuted as a felony sex offense.
- (2) An act of childhood sexual assault, as defined in Section 340.1.
- (3) An act of sexual exploitation of a minor, as defined in Section 11165.1 of the Penal Code, or conduct prohibited with respect to a minor pursuant to Section 311.1, 311.5, or 311.6 of the Penal Code.
- (4) An act of sexual assault, as defined in paragraphs (1) to (9), inclusive, of subdivision (e) of Section 15610.63 of the Welfare and Institutions Code, against an elder or dependent adult, as defined in Sections 15610.23 and 15610.27 of the Welfare and Institutions Code.

(b) Notwithstanding any other law, in a civil action described in paragraphs (1) to (4), inclusive, of subdivision (a), a court shall not enter, by stipulation or otherwise, an

order that restricts the disclosure of information in a manner that conflicts with subdivision (a).

(c) Subdivisions (a) and (b) do not preclude an agreement preventing the disclosure of any medical information or personal identifying information, as defined in subdivision (b) of Section 530.55 of the Penal Code, regarding the victim of the offense listed in subdivision (a) or of any information revealing the nature of the relationship between the victim and the defendant. This subdivision shall not be construed to limit the right of a crime victim to disclose this information.

(d) Except as authorized by subdivision (c), a provision within a settlement agreement that prevents the disclosure of factual information related to the action described in subdivision (a) that is entered into on or after January 1, 2017, is void as a matter of law and against public policy.

(e) An attorney's failure to comply with the requirements of this section by demanding that a provision be included in a settlement agreement that prevents the disclosure of factual information related to the action described in subdivision (a) that is not otherwise authorized by subdivision (c) as a condition of settlement, or advising a client to sign an agreement that includes such a provision, may be grounds for professional discipline and the State Bar of California shall investigate and take appropriate action in any such case brought to its attention. (Added by Stats. 2006, ch. 151. Amended by Stats. 2016, ch. 876; Stats. 2017, ch. 561; Stats. 2019, ch. 861.)

### **§ 1015           Nonresident Party; Service on Clerk or Attorney**

When a plaintiff or a defendant, who has appeared, resides out of the state, and has no attorney in the action or proceeding, the service may be made on the clerk of the court, for that party. But in all cases where a party has an attorney in the action or proceeding, the service of papers, when required, must be upon the attorney instead of the party, except service of subpoenas, of writs, and other process issued in the suit, and of papers to bring the party into contempt. If the sole attorney for a party is removed or suspended from practice, then the party has no attorney within the meaning of this section. If the party's sole attorney has no known office in this state, notices and papers may be served by leaving a copy thereof with the clerk

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of the court, unless the attorney has filed in the cause an address of a place at which notices and papers may be served on the attorney, in which event they may be served at that place. (Enacted in 1872. Amended by Stats. 1907, ch. 327; Stats. 1933, ch. 744; Stats. 1951, ch. 1737; Stats. 2007, ch. 263.)

### **§ 1021 Attorney's Fees—Determined by Agreement**

Except as attorney's fees are specifically provided for by statute, the measure and mode of compensation of attorneys and counselors at law is left to the agreement, express or implied, of the parties; but parties to actions or proceedings are entitled to their costs, as hereinafter provided. (Enacted 1872. Amended by Stats. 1933, ch. 744; Stats. 1986, ch. 377.)

### **§ 1029.8 Damages for Injury Caused by an Unlicensed Person who Provides Services for which a License is Required**

(a) Any unlicensed person who causes injury or damage to another person as a result of providing goods or performing services for which a license is required under Division 2 (commencing with Section 500) or any initiative act referred to therein, Division 3 (commencing with Section 5000), or Chapter 2 (commencing with Section 18600) or Chapter 3 (commencing with Section 19000) of Division 8, of the Business and Professions Code, or Chapter 2 (commencing with Section 25210) or Chapter 3 (commencing with Section 25230) of Part 3 of Division 1 of Title 4 of the Corporations Code, shall be liable to the injured person for treble the amount of damages assessed in a civil action in any court having proper jurisdiction. The court may, in its discretion, award all costs and attorney's fees to the injured person if that person prevails in the action.

(b) This section shall not be construed to confer an additional cause of action or to affect or limit any other remedy, including, but not limited to, a claim for exemplary damages.

(c) The additional damages provided for in subdivision (a) shall not exceed ten thousand dollars (\$10,000).

(d) For the purposes of this section, the term "unlicensed person" shall not apply to any of the following:

(1) Any person, partnership, corporation, or other entity providing goods or services under the good faith belief that they are properly licensed and acting within the proper scope of that licensure.

(2) Any person, partnership, corporation, or other entity whose license has expired for nonpayment of license renewal fees, but who is eligible to renew that license without the necessity of applying and qualifying for an original license.

(3) Any person, partnership, or corporation licensed under Chapter 6 (commencing with Section 2700) or Chapter 6.5 (commencing with Section 2840) of the Business and Professions Code, who provides professional nursing services under an existing license, if the action arises from a claim that the licensee exceeded the scope of practice authorized by his or her license.

(e) This section shall not apply to any action for unfair trade practices brought against an unlicensed person under Chapter 4 (commencing with Section 17000) of Part 2 of Division 7 of the Business and Professions Code, by a person who holds a license that is required, or closely related to the license that is required, to engage in those activities performed by the unlicensed person. (Added by Stats. 1985, ch. 895. Amended by Stats. 2004, ch. 575.)

### **§ 1032 Definitions; Prevailing Party's Right to Recover Costs; Stipulations**

(a) As used in this section, unless the context clearly requires otherwise:

(1) "Complaint" includes a cross-complaint.

(2) "Defendant" includes a cross-defendant, a person against whom a complaint is filed, or a party who files an answer in intervention.

(3) "Plaintiff" includes a cross-complainant or a party who files a complaint in intervention.

(4) "Prevailing party" includes the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant. If any party recovers other than monetary relief and in situations other than as specified, the "prevailing

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party” shall be as determined by the court, and under those circumstances, the court, in its discretion, may allow costs or not and, if allowed, may apportion costs between the parties on the same or adverse sides pursuant to rules adopted under Section 1034.

(b) Except as otherwise expressly provided by statute, a prevailing party is entitled as a matter of right to recover costs in any action or proceeding.

(c) Nothing in this section shall prohibit parties from stipulating to alternative procedures for awarding costs in the litigation pursuant to rules adopted under Section 1034. (Added by Stats. 1986, ch. 377. Amended by Stats. 2017, ch. 131.)

### **§ 1033 Judicial Discretion to Award Costs— Limited Civil Case or Small Claims Division**

(a) Costs or any portion of claimed costs shall be as determined by the court in its discretion in a case other than a limited civil case in accordance with Section 1034 where the prevailing party recovers a judgment that could have been rendered in a limited civil case.

(b) When a prevailing plaintiff in a limited civil case recovers less than the amount prescribed by law as the maximum limitation upon the jurisdiction of the small claims court, the following shall apply:

(1) When the party could have brought the action in the small claims division but did not do so, the court may, in its discretion, allow or deny costs to the prevailing party, or may allow costs in part in any amount as it deems proper.

(2) When the party could not have brought the action in the small claims court, costs and necessary disbursements shall be limited to the actual cost of the filing fee, the actual cost of service of process, and, when otherwise specifically allowed by law, reasonable attorneys’ fees. However, those costs shall only be awarded to the plaintiff if the court is satisfied that prior to the commencement of the action, the plaintiff informed the defendant in writing of the intended legal action against the defendant and that legal action could result in a judgment against the defendant that would include the costs and necessary disbursements allowed by this paragraph. (Added by Stats. 1986, ch. 377.

Amended by Stats. 1987, ch. 4; Stats. 1989, ch. 62; Stats. 1998, ch. 931.)

### **§ 1033.5 Costs Allowed Under Section 1032**

(a) The following items are allowable as costs under Section 1032:

(1) Filing, motion, and jury fees.

(2) Juror food and lodging while they are kept together during trial and after the jury retires for deliberation.

(3) (A) Taking, video recording, and transcribing necessary depositions, including an original and one copy of those taken by the claimant and one copy of depositions taken by the party against whom costs are allowed.

(B) Fees of a certified or registered interpreter for the deposition of a party or witness who does not proficiently speak or understand the English language.

(C) Travel expenses to attend depositions.

(4) Service of process by a public officer, registered process server, or other means, as follows:

(A) When service is by a public officer, the recoverable cost is the fee authorized by law at the time of service.

(B) If service is by a process server registered pursuant to Chapter 16 (commencing with Section 22350) of Division 8 of the Business and Professions Code, the recoverable cost is the amount actually incurred in effecting service, including, but not limited to, a stakeout or other means employed in locating the person to be served, unless those charges are successfully challenged by a party to the action.

(C) When service is by publication, the recoverable cost is the sum actually incurred in effecting service.

(D) When service is by a means other than that set forth in subparagraph (A), (B), or (C),

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the recoverable cost is the lesser of the sum actually incurred, or the amount allowed to a public officer in this state for that service, except that the court may allow the sum actually incurred in effecting service upon application pursuant to paragraph (4) of subdivision (c).

(5) Expenses of attachment including keeper's fees.

(6) Premiums on necessary surety bonds.

(7) Ordinary witness fees pursuant to Section 68093 of the Government Code.

(8) Fees of expert witnesses ordered by the court.

(9) Transcripts of court proceedings ordered by the court.

(10) Attorney's fees, when authorized by any of the following:

(A) Contract.

(B) Statute.

(C) Law.

(11) Court reporter fees as established by statute.

(12) Court interpreter fees for a qualified court interpreter authorized by the court for an indigent person represented by a qualified legal services project, as defined in Section 6213 of the Business and Professions Code, or a pro bono attorney, as defined in Section 8030.4 of the Business and Professions Code.

(13) Models, the enlargements of exhibits and photocopies of exhibits, and the electronic presentation of exhibits, including costs of rental equipment and electronic formatting, may be allowed if they were reasonably helpful to aid the trier of fact.

(14) Fees for the electronic filing or service of documents through an electronic filing service provider if a court requires or orders electronic filing or service of documents.

(15) Fees for the hosting of electronic documents if a court requires or orders a party to have documents hosted by an electronic filing service provider. This paragraph shall become inoperative on January 1, 2022.

(16) Any other item that is required to be awarded to the prevailing party pursuant to statute as an incident to prevailing in the action at trial or on appeal.

(b) The following items are not allowable as costs, except when expressly authorized by law:

(1) Fees of experts not ordered by the court.

(2) Investigation expenses in preparing the case for trial.

(3) Postage, telephone, and photocopying charges, except for exhibits.

(4) Costs in investigation of jurors or in preparation for voir dire.

(5) Transcripts of court proceedings not ordered by the court.

(c) An award of costs shall be subject to the following:

(1) Costs are allowable if incurred, whether or not paid.

(2) Allowable costs shall be reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation.

(3) Allowable costs shall be reasonable in amount.

(4) Items not mentioned in this section and items assessed upon application may be allowed or denied in the court's discretion.

(5) (A) If a statute of this state refers to the award of "costs and attorney's fees," attorney's fees are an item and component of the costs to be awarded and are allowable as costs pursuant to subparagraph (B) of paragraph (10) of subdivision (a). A claim not based upon the court's established schedule of attorney's

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fees for actions on a contract shall bear the burden of proof. Attorney's fees allowable as costs pursuant to subparagraph (B) of paragraph (10) of subdivision (a) may be fixed as follows: (i) upon a noticed motion, (ii) at the time a statement of decision is rendered, (iii) upon application supported by affidavit made concurrently with a claim for other costs, or (iv) upon entry of default judgment. Attorney's fees allowable as costs pursuant to subparagraph (A) or (C) of paragraph (10) of subdivision (a) shall be fixed either upon a noticed motion or upon entry of a default judgment, unless otherwise provided by stipulation of the parties.

(B) Attorney's fees awarded pursuant to Section 1717 of the Civil Code are allowable costs under Section 1032 as authorized by subparagraph (A) of paragraph (10) of subdivision (a). (Added by Stats. 1986, ch. 377. Amended by Stats. 1987, ch. 1080; Stats. 1989, ch. 1416; Stats. 1990, ch. 804; Stats. 1993, ch. 456; Stats. 2009, ch. 88; Stats. 2011, ch. 409; Stats. 2012, ch. 758; Stats. 2015, ch. 90; Stats. 2016, ch. 461; Stats. 2017, ch. 583.)

### **§ 1141.18 Arbitrators, Qualifications; Compensation; Method of Selection; Disqualification**

(a) Arbitrators shall be retired judges, retired court commissioners who were licensed to practice law prior to their appointment as a commissioner, or members of the State Bar, and shall sit individually. A judge may also serve as an arbitrator without compensation. People who are not attorneys may serve as arbitrators upon the stipulation of all parties.

(b) The Judicial Council rules shall provide for the compensation, if any, of arbitrators. Compensation for arbitrators may not be less than one hundred fifty dollars (\$150) per case, or one hundred fifty dollars (\$150) per day, whichever is greater. A superior court may set a higher level of compensation for that court. Arbitrators may waive compensation in whole or in part. No compensation shall be paid before the filing of the award by the arbitrator, or before the settlement of the case by the parties.

(c) In cases submitted to arbitration under Section 1141.11 or 1141.12, an arbitrator shall be assigned within 30 days from the time of submission to arbitration.

(d) Any party may request the disqualification of the arbitrator selected for his or her case on the grounds and by the procedures specified in Section 170.1 or 170.6. A request for disqualification of an arbitrator on grounds specified in Section 170.6 shall be made within five days of the naming of the arbitrator. An arbitrator shall disqualify himself or herself, upon demand of any party to the arbitration made before the conclusion of the arbitration proceedings on any of the grounds specified in Section 170.1. (Added by Stats. 1978, ch. 743, operative July 1, 1979. Amended by Stats. 1981, ch. 1110; Stats. 1993, ch. 768; Stats. 2003, ch. 449.)

### **§ 1209 Acts and Omissions Constituting Contempt**

(a) The following acts or omissions in respect to a court of justice, or proceedings therein, are contempts of the authority of the court:

(1) Disorderly, contemptuous, or insolent behavior toward the judge while holding the court, tending to interrupt the due course of a trial or other judicial proceeding.

(2) A breach of the peace, boisterous conduct, or violent disturbance, tending to interrupt the due course of a trial or other judicial proceeding.

(3) Misbehavior in office, or other willful neglect or violation of duty by an attorney, counsel, clerk, sheriff, coroner, or other person, appointed or elected to perform a judicial or ministerial service.

(4) Abuse of the process or proceedings of the court, or falsely pretending to act under authority of an order or process of the court.

(5) Disobedience of any lawful judgment, order, or process of the court.

(6) Willful disobedience by a juror of a court admonishment related to the prohibition on any form of communication or research about the case, including all forms of electronic or wireless communication or research.

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(7) Rescuing any person or property in the custody of an officer by virtue of an order or process of that court.

(8) Unlawfully detaining a witness, or party to an action while going to, remaining at, or returning from the court where the action is on the calendar for trial.

(9) Any other unlawful interference with the process or proceedings of a court.

(10) Disobedience of a subpoena duly served, or refusing to be sworn or answer as a witness.

(11) When summoned as a juror in a court, neglecting to attend or serve as a juror, or improperly conversing with a party to an action, to be tried at the court, or with any other person, in relation to the merits of the action, or receiving a communication from a party or other person in respect to the action, without immediately disclosing the communication to the court.

(12) Disobedience by an inferior tribunal or judicial officer of the lawful judgment, order, or process of a superior court, or proceeding in an action or special proceeding contrary to law, after the action or special proceeding is removed from the jurisdiction of the inferior tribunal or judicial officer.

(b) A speech or publication reflecting upon or concerning a court or an officer thereof shall not be treated or punished as a contempt of the court unless made in the immediate presence of the court while in session and in such a manner as to actually interfere with its proceedings.

(c) Notwithstanding Section 1211 or any other law, if an order of contempt is made affecting an attorney, his or her agent, investigator, or any person acting under the attorney's direction, in the preparation and conduct of an action or proceeding, the execution of any sentence shall be stayed pending the filing within three judicial days of a petition for extraordinary relief testing the lawfulness of the court's order, the violation of which is the basis of the contempt, except for conduct proscribed by subdivision (b) of Section 6068 of the Business and Professions Code, relating to an attorney's duty to maintain respect due to the courts and judicial officers.

(d) Notwithstanding Section 1211 or any other law, if an order of contempt is made affecting a public safety

employee acting within the scope of employment for reason of the employee's failure to comply with a duly issued subpoena or subpoena duces tecum, the execution of any sentence shall be stayed pending the filing within three judicial days of a petition for extraordinary relief testing the lawfulness of the court's order, a violation of which is the basis for the contempt.

As used in this subdivision, "public safety employee" includes any peace officer, firefighter, paramedic, or any other employee of a public law enforcement agency whose duty is either to maintain official records or to analyze or present evidence for investigative or prosecutorial purposes. (Enacted 1872; amended 1891. Amended by Stats. 1907, ch. 255; Stats. 1939, ch. 979; Stats. 1975, ch. 836; Stats. 1982, ch. 510; Stats. 2011, ch. 181.)

### **§ 1281.85 Neutral Arbitrators—Applicability of Ethics Standards**

(a) Beginning July 1, 2002, a person serving as a neutral arbitrator pursuant to an arbitration agreement shall comply with the ethics standards for arbitrators adopted by the Judicial Council pursuant to this section. The Judicial Council shall adopt ethical standards for all neutral arbitrators effective July 1, 2002. These standards shall be consistent with the standards established for arbitrators in the judicial arbitration program and may expand but may not limit the disclosure and disqualification requirements established by this chapter. The standards shall address the disclosure of interests, relationships, or affiliations that may constitute conflicts of interest, including prior service as an arbitrator or other dispute resolution neutral entity, disqualifications, acceptance of gifts, and establishment of future professional relationships.

(b) Subdivision (a) does not apply to an arbitration conducted pursuant to the terms of a public or private sector collective bargaining agreement.

(c) The ethics requirements and standards of this chapter are nonnegotiable and shall not be waived. (Added by Stats. 2001, ch. 362. Amended by Stats. 2002, ch. 176; Stats. 2009, ch. 133)

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### § 1281.9 Neutral Arbitrations; Disclosure of Information; Disqualification; Waiver

(a) In any arbitration pursuant to an arbitration agreement, when a person is to serve as a neutral arbitrator, the proposed neutral arbitrator shall disclose all matters that could cause a person aware of the facts to reasonably entertain a doubt that the proposed neutral arbitrator would be able to be impartial, including all of the following:

(1) The existence of any ground specified in Section 170.1 for disqualification of a judge. For purposes of paragraph (8) of subdivision (a) of Section 170.1, the proposed neutral arbitrator shall disclose whether or not he or she has a current arrangement concerning prospective employment or other compensated service as a dispute resolution neutral or is participating in, or, within the last two years, has participated in, discussions regarding such prospective employment or service with a party to the proceeding.

(2) Any matters required to be disclosed by the ethics standards for neutral arbitrators adopted by the Judicial Council pursuant to this chapter.

(3) The names of the parties to all prior or pending noncollective bargaining cases in which the proposed neutral arbitrator served or is serving as a party arbitrator for any party to the arbitration proceeding or for a lawyer for a party and the results of each case arbitrated to conclusion, including the date of the arbitration award, identification of the prevailing party, the names of the parties' attorneys and the amount of monetary damages awarded, if any. In order to preserve confidentiality, it shall be sufficient to give the name of any party who is not a party to the pending arbitration as "claimant" or "respondent" if the party is an individual and not a business or corporate entity.

(4) The names of the parties to all prior or pending noncollective bargaining cases involving any party to the arbitration or lawyer for a party for which the proposed neutral arbitrator served or is serving as neutral arbitrator, and the results of each case arbitrated to conclusion, including the date of the arbitration award, identification of the

prevailing party, the names of the parties' attorneys and the amount of monetary damages awarded, if any. In order to preserve confidentiality, it shall be sufficient to give the name of any party not a party to the pending arbitration as "claimant" or "respondent" if the party is an individual and not a business or corporate entity.

(5) Any attorney client relationship the proposed neutral arbitrator has or had with any party or lawyer for a party to the arbitration proceeding.

(6) Any professional or significant personal relationship the proposed neutral arbitrator or his or her spouse or minor child living in the household has or has had with any party to the arbitration proceeding or lawyer for a party.

(b) Subject only to the disclosure requirements of law, the proposed neutral arbitrator shall disclose all matters required to be disclosed pursuant to this section to all parties in writing within 10 calendar days of service of notice of the proposed nomination or appointment.

(c) For purposes of this section, "lawyer for a party" includes any lawyer or law firm currently associated in the practice of law with the lawyer hired to represent a party.

(d) For purposes of this section, "prior cases" means noncollective bargaining cases in which an arbitration award was rendered within five years prior to the date of the proposed nomination or appointment.

(e) For purposes of this section, "any arbitration" does not include an arbitration conducted pursuant to the terms of a public or private sector collective bargaining agreement. (Added by Stats. 1994, ch. 1202. Amended by Stats. 1997, ch. 445; Stats. 2001, ch. 362; Stats. 2002, ch. 1094.)

### § 1281.92 Restrictions Against Private Arbitration Company from Administering Consumer Arbitration or Related Services

(a) No private arbitration company may administer a consumer arbitration, or provide any other services related to a consumer arbitration, if the company has,

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or within the preceding year has had, a financial interest, as defined in Section 170.5, in any party or attorney for a party.

(b) No private arbitration company may administer a consumer arbitration, or provide any other services related to a consumer arbitration, if any party or attorney for a party has, or within the preceding year has had, any type of financial interest in the private arbitration company.

(c) This section shall operate only prospectively so as not to prohibit the administration of consumer arbitrations on the basis of financial interests held prior to January 1, 2003.

(d) This section applies to all consumer arbitration agreements subject to this article, and to all consumer arbitration proceedings conducted in California.

(e) This section shall become operative on January 1, 2003. (Added by Stats. 2002, ch. 952.)

### **§ 1281.96 Private Arbitration Companies; Publication of Consumer Arbitration Information; Liability**

(a) Except as provided in paragraph (2) of subdivision (c), a private arbitration company that administers or is otherwise involved in a consumer arbitration, shall collect, publish at least quarterly, and make available to the public on the internet website of the private arbitration company, if any, and on paper upon request, a single cumulative report that contains all of the following information regarding each consumer arbitration within the preceding five years:

(1) Whether arbitration was demanded pursuant to a pre-dispute arbitration clause and, if so, whether the pre-dispute arbitration clause designated the administering private arbitration company.

(2) The name of the nonconsumer party, if the nonconsumer party is a corporation or other business entity, and whether the nonconsumer party was the initiating party or the responding party, if known.

(3) The nature of the dispute involved as one of the following: goods; credit; other banking or finance; insurance; health care; construction; real

estate; telecommunications, including software and Internet usage; debt collection; personal injury; employment; or other. If the dispute involved employment, the amount of the employee's annual wage divided into the following ranges: less than one hundred thousand dollars (\$100,000), one hundred thousand dollars (\$100,000) to two hundred fifty thousand dollars (\$250,000), inclusive, and over two hundred fifty thousand dollars (\$250,000). If the employee chooses not to provide wage information, it may be noted.

(4) Whether the consumer or nonconsumer party was the prevailing party. As used in this section, "prevailing party" includes the party with a net monetary recovery or an award of injunctive relief.

(5) The total number of occasions, if any, the nonconsumer party has previously been a party in an arbitration administered by the private arbitration company.

(6) The total number of occasions, if any, the nonconsumer party has previously been a party in a mediation administered by the private arbitration company.

(7) Whether the consumer party was represented by an attorney and, if so, the name of the attorney and the full name of the law firm that employs the attorney, if any.

(8) The date the private arbitration company received the demand for arbitration, the date the arbitrator was appointed, and the date of disposition by the arbitrator or private arbitration company.

(9) The type of disposition of the dispute, if known, identified as one of the following: withdrawal, abandonment, settlement, award after hearing, award without hearing, default, or dismissal without hearing. If a case was administered in a hearing, indicate whether the hearing was conducted in person, by telephone or video conference, or by documents only.

(10) The amount of the claim, whether equitable relief was requested or awarded, the amount of any monetary award, the amount of any attorney's fees awarded, and any other relief granted, if any.



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- (11) The name of the arbitrator, the arbitrator's total fee for the case, the percentage of the arbitrator's fee allocated to each party, whether a waiver of any fees was granted, and, if so, the amount of the waiver.
- (12) Demographic data, reported in the aggregate, relative to ethnicity, race, disability, veteran status, gender, gender identity, and sexual orientation of all arbitrators as self-reported by the arbitrators. Demographic data disclosed or released pursuant to this paragraph shall also indicate the percentage of respondents who declined to respond.
- (b) The information required by this section shall be made available in a format that allows the public to search and sort the information using readily available software, and shall be directly accessible from a conspicuously displayed link on the internet website of the private arbitration company with the identifying description: "consumer case information."
- (c) (1) If the information required by subdivision (a) is provided by the private arbitration company in compliance with subdivision (b) and may be downloaded without a fee, the company may charge the actual cost of copying to any person who requests the information on paper. If the information required by subdivision (a) is not accessible by the Internet in compliance with subdivision (b), the company shall provide that information without charge to any person who requests the information on paper.
- (2) Notwithstanding paragraph (1), a private arbitration company that receives funding pursuant to Chapter 8 (commencing with Section 465) of Division 1 of the Business and Professions Code and that administers or conducts fewer than 50 consumer arbitrations per year may collect and publish the information required by subdivision (a) semiannually, provide the information only on paper, and charge the actual cost of copying.
- (d) This section shall apply to any consumer arbitration commenced on or after January 1, 2003.
- (e) A private arbitration company shall not have any liability for collecting, publishing, or distributing the information required by this section.
- (f) It is the intent of the Legislature that private arbitration companies comply with all legal obligations of this section.
- (g) The amendments to subdivision (a) made by the act adding this subdivision shall not apply to any consumer arbitration administered by a private arbitration company before January 1, 2015. (Added by Stats. 2002, ch. 1158. Amended by Stats. 2014, ch. 870; Stats. 2019, ch. 870.)
- § 1281.97 Fees and Costs of Arbitration Initiation; Breach; Sanctions**
- (a) (1) In an employment or consumer arbitration that requires, either expressly or through application of state or federal law or the rules of the arbitration provider, the drafting party to pay certain fees and costs before the arbitration can proceed, if the fees or costs to initiate an arbitration proceeding are not paid within 30 days after the due date, the drafting party is in material breach of the arbitration agreement, is in default of the arbitration, and waives its right to compel arbitration under Section 1281.2.
- (2) After an employee or consumer meets the filing requirements necessary to initiate an arbitration, the arbitration provider shall immediately provide an invoice for any fees and costs required before the arbitration can proceed to all of the parties to the arbitration. The invoice shall be provided in its entirety, shall state the full amount owed and the date that payment is due, and shall be sent to all parties by the same means on the same day. To avoid delay, absent an express provision in the arbitration agreement stating the number of days in which the parties to the arbitration must pay any required fees or costs, the arbitration provider shall issue all invoices to the parties as due upon receipt.
- (b) If the drafting party materially breaches the arbitration agreement and is in default under subdivision (a), the employee or consumer may do either of the following:
- (1) Withdraw the claim from arbitration and proceed in a court of appropriate jurisdiction.

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(2) Compel arbitration in which the drafting party shall pay reasonable attorney's fees and costs related to the arbitration.

(c) If the employee or consumer withdraws the claim from arbitration and proceeds with an action in a court of appropriate jurisdiction under paragraph (1) of subdivision (b), the statute of limitations with regard to all claims brought or that relate back to any claim brought in arbitration shall be tolled as of the date of the first filing of a claim in a court, arbitration forum, or other dispute resolution forum.

(d) If the employee or consumer proceeds with an action in a court of appropriate jurisdiction, the court shall impose sanctions on the drafting party in accordance with Section 1281.99. (Added by Stats. 2019, ch. 870. Amended by Stats. 2021, ch. 222.)

### **§ 1281.98 Fees and Costs of Arbitration Continuance; Breach; Sanctions**

(a) (1) In an employment or consumer arbitration that requires, either expressly or through application of state or federal law or the rules of the arbitration provider, that the drafting party pay certain fees and costs during the pendency of an arbitration proceeding, if the fees or costs required to continue the arbitration proceeding are not paid within 30 days after the due date, the drafting party is in material breach of the arbitration agreement, is in default of the arbitration, and waives its right to compel the employee or consumer to proceed with that arbitration as a result of the material breach.

(2) The arbitration provider shall provide an invoice for any fees and costs required for the arbitration proceeding to continue to all of the parties to the arbitration. The invoice shall be provided in its entirety, shall state the full amount owed and the date that payment is due, and shall be sent to all parties by the same means on the same day. To avoid delay, absent an express provision in the arbitration agreement stating the number of days in which the parties to the arbitration must pay any required fees or costs, the arbitration provider shall issue all invoices to the parties as due upon receipt. Any extension of time for the due date shall be agreed upon by all parties.

(b) If the drafting party materially breaches the arbitration agreement and is in default under subdivision (a), the employee or consumer may unilaterally elect to do any of the following:

(1) Withdraw the claim from arbitration and proceed in a court of appropriate jurisdiction. If the employee or consumer withdraws the claim from arbitration and proceeds with an action in a court of appropriate jurisdiction, the statute of limitations with regard to all claims brought or that relate back to any claim brought in arbitration shall be tolled as of the date of the first filing of a claim in any court, arbitration forum, or other dispute resolution forum.

(2) Continue the arbitration proceeding, if the arbitration provider agrees to continue administering the proceeding, notwithstanding the drafting party's failure to pay fees or costs. The neutral arbitrator or arbitration provider may institute a collection action at the conclusion of the arbitration proceeding against the drafting party that is in default of the arbitration for payment of all fees associated with the employment or consumer arbitration proceeding, including the cost of administering any proceedings after the default.

(3) Petition the court for an order compelling the drafting party to pay all arbitration fees that the drafting party is obligated to pay under the arbitration agreement or the rules of the arbitration provider.

(4) Pay the drafting party's fees and proceed with the arbitration proceeding. As part of the award, the employee or consumer shall recover all arbitration fees paid on behalf of the drafting party without regard to any findings on the merits in the underlying arbitration.

(c) If the employee or consumer withdraws the claim from arbitration and proceeds in a court of appropriate jurisdiction pursuant to paragraph (1) of subdivision (b), both of the following apply:

(1) The employee or consumer may bring a motion, or a separate action, to recover all attorney's fees and all costs associated with the abandoned arbitration proceeding. The recovery of arbitration fees, interest, and related attorney's fees shall be without regard to any

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findings on the merits in the underlying action or arbitration.

(2) The court shall impose sanctions on the drafting party in accordance with Section 1281.99.

(d) If the employee or consumer continues in arbitration pursuant to paragraphs (2) through (4) of subdivision (b), inclusive, the arbitrator shall impose appropriate sanctions on the drafting party, including monetary sanctions, issue sanctions, evidence sanctions, or terminating sanctions. (Added by Stats. 2019, ch. 870. Amended by Stats. 2021, ch. 222.)

### **§ 1281.99 Breach of Arbitration Agreement; Sanctions**

(a) The court shall impose a monetary sanction against a drafting party that materially breaches an arbitration agreement pursuant to subdivision (a) of Section 1281.97 or subdivision (a) of Section 1281.98, by ordering the drafting party to pay the reasonable expenses, including attorney's fees and costs, incurred by the employee or consumer as a result of the material breach.

(b) In addition to the monetary sanction described in subdivision (a), the court may order any of the following sanctions against a drafting party that materially breaches an arbitration agreement pursuant to subdivision (a) of Section 1281.97 or subdivision (a) of Section 1281.98, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(c) (1) An evidence sanction by an order prohibiting the drafting party from conducting discovery in the civil action.

(2) A terminating sanction by one of the following orders:

(A) An order striking out the pleadings or parts of the pleadings of the drafting party.

(B) An order rendering a judgment by default against the drafting party.

(3) A contempt sanction by an order treating the drafting party as in contempt of court. (Added by Stats. 2019, ch. 870.)

### **§ 1282.4 Right to be Represented by Attorney at Arbitration Proceeding; Condition for Representation by Out-of-State Attorney**

(a) A party to the arbitration has the right to be represented by an attorney at any proceeding or hearing in arbitration under this title. A waiver of this right may be revoked; but if a party revokes that waiver, the other party is entitled to a reasonable continuance for the purpose of procuring an attorney.

(b) Notwithstanding any other law, including Section 6125 of the Business and Professions Code, an attorney admitted to the bar of any other state may represent the parties in the course of, or in connection with, an arbitration proceeding in this state, provided that the attorney, if not admitted to the State Bar of California, satisfies all of the following:

(1) He or she timely serves the certificate described in subdivision (c).

(2) The attorney's appearance is approved in writing on that certificate by the arbitrator, the arbitrators, or the arbitral forum.

(3) The certificate bearing approval of the attorney's appearance is filed with the State Bar of California and served on the parties as described in this section.

(c) Within a reasonable period of time after the attorney described in subdivision (b) indicates an intention to appear in the arbitration, the attorney shall serve a certificate in a form prescribed by the State Bar of California on the arbitrator, arbitrators, or arbitral forum, the State Bar of California, and all other parties and counsel in the arbitration whose addresses are known to the attorney. The certificate shall state all of the following:

(1) The case name and number, and the name of the arbitrator, arbitrators, or arbitral forum assigned to the proceeding in which the attorney seeks to appear.

(2) The attorney's residence and office address.

(3) The courts before which the attorney has been admitted to practice and the dates of admission.

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(4) That the attorney is currently a member in good standing of, and eligible to practice law before, the bar of those courts.

(5) That the attorney is not currently on suspension or disbarred from the practice of law before the bar of any court.

(6) That the attorney is not a resident of the State of California.

(7) That the attorney is not regularly employed in the State of California.

(8) That the attorney is not regularly engaged in substantial business, professional, or other activities in the State of California.

(9) That the attorney agrees to be subject to the jurisdiction of the courts of this state with respect to the law of this state governing the conduct of attorneys to the same extent as a member of the State Bar of California.

(10) The title of the court and the cause in which the attorney has filed an application to appear as counsel *pro hac vice* in this state or filed a certificate pursuant to this section in the preceding two years, the date of each application or certificate, and whether or not it was granted. If the attorney has made repeated appearances, the certificate shall reflect the special circumstances that warrant the approval of the attorney's appearance in the arbitration.

(11) The name, address, and telephone number of the active member of the State Bar of California who is the attorney of record.

(d) The arbitrator, arbitrators, or arbitral forum may approve the attorney's appearance if the attorney has complied with subdivision (c). Failure to timely file and serve the certificate described in subdivision (c) shall be grounds for disapproval of the appearance and disqualification from serving as an attorney in the arbitration in which the certificate was filed. In the absence of special circumstances, repeated appearances shall be grounds for disapproval of the appearance and disqualification from serving as an attorney in the arbitration in which the certificate was filed.

(e) Within a reasonable period of time after the arbitrator, arbitrators, or arbitral forum approves the

certificate, the attorney shall file the certificate with the State Bar of California and serve the certificate as described in Section 1013a on all parties and counsel in the arbitration whose addresses are known to the attorney.

(f) An attorney who fails to file or serve the certificate required by this section or files or serves a certificate containing false information or who otherwise fails to comply with the standards of professional conduct required of members of the State Bar of California shall be subject to the disciplinary jurisdiction of the State Bar with respect to that certificate or any of his or her acts occurring in the course of the arbitration.

(g) Notwithstanding any other law, including Section 6125 of the Business and Professions Code, an attorney who is a member in good standing of the bar of any state may represent the parties in connection with rendering legal services in this state in the course of and in connection with an arbitration pending in another state.

(h) Notwithstanding any other provision of law, including Section 6125 of the Business and Professions Code, any party to an arbitration arising under collective bargaining agreements in industries and provisions subject to either state or federal law may be represented in the course of, and in connection with, those proceedings by any person, regardless of whether that person is licensed to practice law in this state.

(i) Nothing in this section shall apply to Division 4 (commencing with Section 3200) of the Labor Code.

(j) (1) In enacting the amendments to this section made by Assembly Bill 2086 of the 1997-98 Regular Session, it is the intent of the Legislature to respond to the holding in *Birbrower v. Superior Court* (1998) 17 Cal.4th 119, to provide a procedure for nonresident attorneys who are not licensed in this state to appear in California arbitration proceedings.

(2) In enacting subdivision (h), it is the intent of the Legislature to make clear that any party to an arbitration arising under a collective bargaining agreement governed by the laws of this state may be represented in the course of and in connection with those proceedings by any person regardless of whether that person is licensed to practice law in this state.

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(3) Except as otherwise specifically provided in this section, in enacting the amendments to this section made by Assembly Bill 2086 of the 1997-98 Regular Session, it is the Legislature's intent that nothing in this section is intended to expand or restrict the ability of a party prior to the decision in Birbrower to elect to be represented by any person in a nonjudicial arbitration proceeding, to the extent those rights or abilities existed prior to that decision. To the extent that Birbrower is interpreted to expand or restrict that right or ability pursuant to the laws of this state, it is hereby abrogated except as specifically provided in this section.

(4) In enacting subdivision (i), it is the intent of the Legislature to make clear that nothing in this section shall affect those provisions of law governing the right of injured workers to elect to be represented by any person, regardless of whether that person is licensed to practice law in this state, as set forth in Division 4 (commencing with Section 3200) of the Labor Code. (Added by Stats. 1961, ch. 461. Amended by Stats. 1998, ch. 915; Stats. 2000, ch. 1011; Stats. 2005, ch. 607, Stats. 2006, ch. 357, Stats. 2010, ch. 277; Stats. 2012, ch. 53; Stats. 2013, ch. 76, Stats. 2014, ch. 71.)

### **§ 1284.3 Consumer Arbitrations; Agreements to Pay Fees and Costs; Waiver for Indigents**

(a) No neutral arbitrator or private arbitration company shall administer a consumer arbitration under any agreement or rule requiring that a consumer who is a party to the arbitration pay the fees and costs incurred by an opposing party if the consumer does not prevail in the arbitration, including, but not limited to, the fees and costs of the arbitrator, provider organization, attorney, or witnesses.

(b) (1) All fees and costs charged to or assessed upon a consumer party by a private arbitration company in a consumer arbitration, exclusive of arbitrator fees, shall be waived for an indigent consumer. For the purposes of this section, "indigent consumer" means a person having a gross monthly income that is less than 300 percent of the federal poverty guidelines. Nothing in this section shall affect the ability of a

private arbitration company to shift fees that would otherwise be charged or assessed upon a consumer party to a nonconsumer party.

(2) Prior to requesting or obtaining any fee, a private arbitration company shall provide written notice of the right to obtain a waiver of fees to a consumer or prospective consumer in a manner calculated to bring the matter to the attention of a reasonable consumer, including, but not limited to, prominently placing a notice in its first written communication to the consumer and in any invoice, bill, submission form, fee schedule, rules, or code of procedure.

(3) Any consumer requesting a waiver of fees or costs may establish his or her eligibility by making a declaration under oath on a form provided to the consumer by the private arbitration company for signature stating his or her monthly income and the number of persons living in his or her household. No private arbitration company may require a consumer to provide any further statement or evidence of indigence.

(4) Any information obtained by a private arbitration company about a consumer's identity, financial condition, income, wealth, or fee waiver request shall be kept confidential and may not be disclosed to any adverse party or any nonparty to the arbitration, except a private arbitration company may not keep confidential the number of waiver requests received or granted, or the total amount of fees waived.

(c) This section applies to all consumer arbitration agreements subject to this article, and to all consumer arbitration proceedings conducted in California. (Added by Stats. 2002, ch. 1101.)

### **§ 1297.119 Arbitrator Immunity**

An arbitrator has the immunity of a judicial officer from civil liability when acting in the capacity of arbitrator under any statute or contract.

The immunity afforded by this section shall supplement, and not supplant, any otherwise applicable common law or statutory immunity. (Added by Stats. 1994, ch. 228.)

## SELECTED STATUTES REGARDING DUTIES OF ATTORNEYS AND DISCIPLINE

### § 1518 When Fiduciary Property Escheats to State

(a) (1) All tangible personal property located in this state and, subject to Section 1510, all intangible personal property, including intangible personal property maintained in a deposit or account, and the income or increment on such tangible or intangible property, held in a fiduciary capacity for the benefit of another person escheats to this state if for more than three years after it becomes payable or distributable, the owner has not done any of the following:

- (A) Increased or decreased the principal.
- (B) Accepted payment of principal or income.
- (C) Corresponded in writing concerning the property.
- (D) Otherwise indicated an interest in the property as evidenced by a memorandum or other record on file with the fiduciary.

(2) Notwithstanding paragraph (1), tangible or intangible property, and the income or increment on the tangible or intangible property, held in a fiduciary capacity for another person shall not escheat to the state if the requirements of subparagraphs (A) and (B) are satisfied.

(A) During the previous three years, the fiduciary took one of the following actions:

- (i) Held another deposit or account for the benefit of the owner.
- (ii) Maintained a deposit or account on behalf of the owner in an individual retirement account.
- (iii) Held funds or other property under a retirement plan for a self-employed individual, or similar account or plan, established pursuant to the internal revenue laws of the United States or the laws of this state.

(B) During the previous three years, the owner has done any of the acts described in subparagraph (A), (B), (C), or (D) of

paragraph (1) with respect to the deposit, account, or plan described in subparagraph (A), and the fiduciary has communicated electronically or in writing with the owner at the address to which communications regarding that deposit, account, or plan are regularly sent, with regard to the deposit, account, or plan that would otherwise escheat under this subdivision. "Communications," for purposes of this subparagraph, includes account statements or statements required under the internal revenue laws of the United States.

(b) Funds in an individual retirement account or a retirement plan for self-employed individuals or similar account or plan established pursuant to the internal revenue laws of the United States or of this state are not payable or distributable within the meaning of subdivision (a) unless either of the following is true:

(1) Under the terms of the account or plan, distribution of all or part of the funds would then be mandatory.

(2) For an account or plan not subject to mandatory distribution requirement under the internal revenue laws of the United States or the laws of this state, the owner has attained 70 1/2 years of age.

(c) For the purpose of this section, when a person holds property as an agent for a business association, he or she is deemed to hold the property in a fiduciary capacity for the business association alone, unless the agreement between him or her and the business association clearly provides the contrary. For the purposes of this chapter, if a person holds property in a fiduciary capacity for a business association alone, he or she is the holder of the property only insofar as the interest of the business association in the property is concerned and the association is deemed to be the holder of the property insofar as the interest of any other person in the property is concerned. (Formerly 1506, added by Stats. 1959, ch. 1809 and amended by Stats. 1961, ch. 1904. Renumbered 1518 and amended by Stats. 1968, ch. 356; Stats. 1976, ch. 49; Stats. 1982, ch. 786; Stats. 1988, ch. 286; Stats. 1990, ch. 450, effective July 31, 1990; Stats. 2011, ch. 305.)

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### **§ 1564.5 Abandoned IOLTA (Interest on Lawyers' Trust Account) Property Account; Establishment, Deposits, and Transfers**

(a) Notwithstanding any law, including, but not limited to, Section 1564, all money received under this chapter from funds held in an Interest on Lawyers' Trust Account (IOLTA) that escheat to the state shall be administered as set forth in this section. The money shall be deposited into the Abandoned IOLTA Property Account, which is hereby established within the Unclaimed Property Fund.

(b) Twenty-five percent of the money in the Abandoned IOLTA Property Account shall be deposited into the IOLTA Claims Reserve Subaccount, which is hereby established within the Abandoned IOLTA Property Account. Funds in the subaccount shall, upon appropriation by the Legislature, be available to the Controller for the payment of all refunds, claims, and costs pursuant to this chapter related to escheated IOLTA funds.

(c) The balance of the funds in the Abandoned IOLTA Property Account, excluding funds in the subaccount, shall be transferred on an annual basis to the Public Interest Attorney Loan Repayment Account established pursuant to Section 6032.5 of the Business and Professions Code. Before making this transfer, the Controller shall record the name and last known address of each person appearing from the holders' report to be entitled to the escheated property. The record shall be available for public inspection at all reasonable business hours. (Added by Stats. 2015, ch. 488.)

## **CHAPTER 4. ATTORNEY WORK PRODUCT**

**§ 2018** (Added by Stats. 1987, ch. 86, operative July 1, 1987. Repealed by Stats. 2004, ch. 182.)

### **§ 2018.010 Client Defined**

For purposes of this chapter, "client" means a "client" as defined in Section 951 of the Evidence Code. (Added by Stats. 2004, ch. 182, operative July 1, 2005.)

### **§ 2018.020 Policy**

It is the policy of the state to do both of the following:

(a) Preserve the rights of attorneys to prepare cases for trial with that degree of privacy necessary to encourage them to prepare their cases thoroughly and to investigate not only the favorable but the unfavorable aspects of those cases.

(b) Prevent attorneys from taking undue advantage of their adversary's industry and efforts. (Added by Stats. 2004, ch. 182, operative July 1, 2005.)

### **§ 2018.030 Limitations on Discovery**

(a) A writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories is not discoverable under any circumstances.

(b) The work product of an attorney, other than a writing described in subdivision (a), is not discoverable unless the court determines that denial of discovery will unfairly prejudice the party seeking discovery in preparing that party's claim or defense or will result in an injustice. (Added by Stats. 2004, ch. 182, operative July 1, 2005.)

### **§ 2018.040 Scope**

This chapter is intended to be a restatement of existing law relating to protection of work product. It is not intended to expand or reduce the extent to which work product is discoverable under existing law in any action. (Added by Stats. 2004, ch. 182, operative July 1, 2005.)

### **§ 2018.050 Crime or Fraud Exception**

Notwithstanding Section 2018.040, when a lawyer is suspected of knowingly participating in a crime or fraud, there is no protection of work product under this chapter in any official investigation by a law enforcement agency or proceeding or action brought by a public prosecutor in the name of the people of the State of California if the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit a crime or fraud. (Added by Stats. 2004, ch. 182, operative July 1, 2005.)

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### § 2018.060 In Camera Hearing Request

Nothing in this chapter is intended to limit an attorney's ability to request an in camera hearing as provided for in *People v. Superior Court (Laff)* (2001) 25 Cal.4th 703. (Added by Stats. 2004, ch. 182, operative July 1, 2005.)

### § 2018.070 Exception: State Bar Disciplinary Charges Pending; Client Approval; Confidentiality

(a) The State Bar may discover the work product of an attorney against whom disciplinary charges are pending when it is relevant to issues of breach of duty by the lawyer and requisite client approval has been granted.

(b) Where requested and for good cause, discovery under this section shall be subject to a protective order to ensure the confidentiality of the work product except for its use by the State Bar in disciplinary investigations and its consideration under seal in State Bar Court proceedings.

(c) For purposes of this chapter, whenever a client has initiated a complaint against an attorney, the requisite client approval shall be deemed to have been granted. (Added by Stats. 2004, ch. 182, operative July 1, 2005.)

### § 2018.080 Breach of Attorney's Duty Arising Out of Attorney-Client Relationship

In an action between an attorney and a client or a former client of the attorney, no work product privilege under this chapter exists if the work product is relevant to an issue of breach by the attorney of a duty to the client arising out of the attorney client relationship. (Added by Stats. 2004, ch. 182, operative July 1, 2005.)

## CHAPTER 9.

### ORAL DEPOSITIONS INSIDE CALIFORNIA

### § 2025.220 Transcription of Deposition Testimony; Allocation of Costs; Requirements for Distribution and Retention of Copies

(a) A party desiring to take the oral deposition of any person shall give notice in writing. The deposition

notice shall state all of the following, in at least 12-point type:

(1) The address where the deposition will be taken.

(2) The date of the deposition, selected under Section 2025.270, and the time it will commence.

(3) The name of each deponent, and the address and telephone number, if known, of any deponent who is not a party to the action. If the name of the deponent is not known, the deposition notice shall set forth instead a general description sufficient to identify the person or particular class to which the person belongs.

(4) The specification with reasonable particularity of any materials or category of materials, including any electronically stored information, to be produced by the deponent.

(5) Any intention by the party noticing the deposition to record the testimony by audio or video technology, in addition to recording the testimony by the stenographic method as required by Section 2025.330 and any intention to record the testimony by stenographic method through the instant visual display of the testimony. If the deposition will be conducted using instant visual display, a copy of the deposition notice shall also be given to the deposition officer. Any offer to provide the instant visual display of the testimony or to provide rough draft transcripts to any party which is accepted prior to, or offered at, the deposition shall also be made by the deposition officer at the deposition to all parties in attendance. Any party or attorney requesting the provision of the instant visual display of the testimony, or rough draft transcripts, shall pay the reasonable cost of those services, which may be no greater than the costs charged to any other party or attorney.

(6) Any intention to reserve the right to use at trial a video recording of the deposition testimony of a treating or consulting physician or of an expert witness under subdivision (d) of Section 2025.620. In this event, the operator of the video camera shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties.



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(7) The form in which any electronically stored information is to be produced, if a particular form is desired.

(8) (A) A statement disclosing the existence of a contract, if any is known to the noticing party, between the noticing party or a third party who is financing all or part of the action and either of the following for any service beyond the noticed deposition:

(i) The deposition officer.

(ii) The entity providing the services of the deposition officer.

(B) A statement disclosing that the party noticing the deposition, or a third party financing all or part of the action, directed his or her attorney to use a particular officer or entity to provide services for the deposition, if applicable.

(b) Notwithstanding subdivision (a), where under Article 4 (commencing with Section 2020.410) only the production by a nonparty of business records for copying is desired, a copy of the deposition subpoena shall serve as the notice of deposition. (Added by Stats. 2004, ch. 182. Amended by Stats. 2012, ch. 72; Stats. 2015, ch. 346; Stats. 2018, ch. 268.)

### **§ 2025.510 Transcription of Deposition Testimony; Allocation of Costs; Requirements for Distribution and Retention of Copies**

(a) Unless the parties agree otherwise, the testimony at a deposition recorded by stenographic means shall be transcribed.

(b) The party noticing the deposition shall bear the cost of the transcription, unless the court, on motion and for good cause shown, orders that the cost be borne or shared by another party.

(c) Notwithstanding subdivision (b) of Section 2025.320, any other party or the deponent, at the expense of that party or deponent, may obtain a copy of the transcript.

(d) If the deposition officer receives a request from a party for an original or a copy of the deposition transcript, or any portion thereof, and the full or partial transcript will be available to that party prior to the time the original or copy would be available to any other party, the deposition officer shall immediately

notify all other parties attending the deposition of the request, and shall, upon request by any party other than the party making the original request, make that copy of the full or partial deposition transcript available to all parties at the same time.

(e) Stenographic notes of depositions shall be retained by the reporter for a period of not less than eight years from the date of the deposition, where no transcript is produced, and not less than one year from the date on which the transcript is produced. The notes may be either on paper or electronic media, as long as it allows for satisfactory production of a transcript at any time during the periods specified.

(f) At the request of any other party to the action, including a party who did not attend the taking of the deposition testimony, any party who records or causes the recording of that testimony by means of audio or video technology shall promptly do both of the following:

(1) Permit that other party to hear the audio recording or to view the video recording.

(2) Furnish a copy of the audio or video recording to that other party on receipt of payment of the reasonable cost of making that copy of the recording.

(g) If the testimony at the deposition is recorded both stenographically and by audio or video technology, the stenographic transcript shall be the official record of that testimony for the purpose of the trial and any subsequent hearing or appeal.

(h) (1) The requesting attorney or party appearing in propria persona shall timely pay the deposition officer or the entity providing the services of the deposition officer for the transcription or copy of the transcription described in subdivision (b) or (c), and any other deposition product or service that is requested either orally or in writing.

(2) This subdivision shall apply unless responsibility for the payment is otherwise provided by law or unless the deposition officer or entity is notified in writing at the time the services or products are requested that the party or another identified person will be responsible for payment.

(3) This subdivision does not prohibit or supersede an agreement between an attorney

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and a party allocating responsibility for the payment of deposition costs to the party.

(4) Nothing in the case of *Serrano v. Stefan Merli Plastering Co., Inc.* (2008) 162 Cal.App.4th 1014 shall be construed to alter the standards by which a court acquires personal jurisdiction over a nonparty to an action.

(i) For purposes of this section, “deposition product or service” means any product or service provided in connection with a deposition that qualifies as shorthand reporting, as described in Section 8017 of the Business and Professions Code, and any product or service derived from that shorthand reporting. (Added by Stats. 2004, ch. 182. Amended by Stats. 2007, ch. 115; Stats. 2012, ch. 125; Stats. 2014, ch. 913.)

### **§ 2031.240 Partial Objection to Demand for Inspection; Privilege Log**

(a) If only part of an item or category of item in a demand for inspection, copying, testing, or sampling is objectionable, the response shall contain a statement of compliance, or a representation of inability to comply with respect to the remainder of that item or category.

(b) If the responding party objects to the demand for inspection, copying, testing, or sampling of an item or category of item, the response shall do both of the following:

(1) Identify with particularity any document, tangible thing, land, or electronically stored information falling within any category of item in the demand to which an objection is being made.

(2) Set forth clearly the extent of, and the specific ground for, the objection. If an objection is based on a claim of privilege, the particular privilege invoked shall be stated. If an objection is based on a claim that the information sought is protected work product under Chapter 4 (commencing with Section 2018.010), that claim shall be expressly asserted.

(c) (1) If an objection is based on a claim of privilege or a claim that the information sought is protected work product, the response shall provide sufficient factual information for other

parties to evaluate the merits of that claim, including, if necessary, a privilege log.

(2) It is the intent of the Legislature to codify the concept of a privilege log as that term is used in California case law. Nothing in this subdivision shall be construed to constitute a substantive change in case law. (Added by Stats. 2004, ch. 182, operative July 1, 2005. Amended by Stats. 2009, ch. 5, effective June 29, 2009; Stats. 2012, ch. 232.)

## CORPORATIONS CODE

### **§ 10830 Formation; Requirements; Supervision**

A nonprofit corporation may be formed under Part 3 (commencing with Section 7110) of this division for the purposes of administering a system or systems of defraying the cost of professional services of attorneys, but any such corporation may not engage directly or indirectly in the performance of the corporate purposes or objects unless all of the following requirements are met:

(a) The attorneys furnishing professional services pursuant to such system or systems are acting in compliance with the Rules of Professional Conduct of the State Bar of California concerning such system or systems.

(b) Membership in the corporation and an opportunity to render professional services upon a uniform basis are available to all active members of the State Bar.

(c) Voting by proxy and cumulative voting are prohibited.

(d) A certificate is issued to the corporation by the State Bar of California, finding compliance with the requirements of subdivisions (a), (b) and (c).

Any such corporation shall be subject to supervision by the State Bar of California and shall also be subject to Part 3 (commencing with Section 7110) of this division except as to matters specifically otherwise provided for in this article. (Added by Stats. 1978, ch. 1305, operative January 1, 1980.)

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### § 16100 Uniform Partnership Act of 1994

This chapter may be cited as the Uniform Partnership Act of 1994. (Added by Stats. 1996, ch. 1003.)

### § 16101 Uniform Partnership Act—Definitions

(a) As used in this chapter, the following terms and phrases have the following meanings:

(1) “Business” includes every trade, occupation, and profession.

(2) “Debtor in bankruptcy” means a person who is the subject of either of the following:

(A) An order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application.

(B) A comparable order under federal, state, or foreign law governing insolvency.

(3) “Distribution” means a transfer of money or other property from a partnership to a partner in the partner’s capacity as a partner or to the partner’s transferee.

(4) “Electronic transmission by the partnership” means a communication (a) delivered by (1) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, for that recipient on record with the partnership, (2) posting on an electronic message board or network that the partnership has designated for those communications, together with a separate notice to the recipient of the posting, which transmission shall be validly delivered upon the later of the posting or delivery of the separate notice thereof, or (3) other means of electronic communication, (b) to a recipient who has provided an unrevoked consent to the use of those means of transmission, and (c) that creates a record that is capable of retention, retrieval, and review, and that may thereafter be rendered into clearly legible tangible form. However, an electronic transmission by a partnership to an individual partner is not authorized unless, in addition to satisfying the requirements of this section, the transmission satisfies the

requirements applicable to consumer consent to electronic records as set forth in the Electronic Signatures in Global and National Commerce Act (15 U.S.C. Sec. 7001(c)(1)).

(5) “Electronic transmission to the partnership” means a communication (a) delivered by (1) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, which the partnership has provided from time to time to partners for sending communications to the partnership, (2) posting on an electronic message board or network that the partnership has designated for those communications, and which transmission shall be validly delivered upon the posting, or (3) other means of electronic communication, (b) as to which the partnership has placed in effect reasonable measures to verify that the sender is the partner, in person or by proxy, purporting to send the transmission, and (c) that creates a record that is capable of retention, retrieval, and review, and that may thereafter be rendered into clearly legible tangible form.

(6) (A) “Foreign limited liability partnership” means a partnership, other than a limited partnership, formed pursuant to an agreement governed by the laws of another jurisdiction and denominated or registered as a limited liability partnership or registered limited liability partnership under the laws of that jurisdiction (i) in which each partner is a licensed person or a person licensed or authorized to provide professional limited liability partnership services in a jurisdiction or jurisdictions other than this state, (ii) which is licensed under the laws of the state to engage in the practice of architecture, the practice of public accountancy, the practice of engineering, the practice of land surveying, or the practice of law, or (iii) which (I) is related to a registered limited liability partnership that practices public accountancy or, to the extent permitted by the State Bar of California, practices law or is related to a foreign limited liability partnership and (II) provides services related or complementary to the professional limited liability partnership services provided by, or provides services or facilities to, that registered limited

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liability partnership or foreign limited liability partnership.

(B) For the purposes of clause (iii) of subparagraph (A), a partnership is related to a registered limited liability partnership or foreign limited liability partnership if (i) at least a majority of the partners in one partnership are also partners in the other partnership, or (ii) at least a majority in interest in each partnership hold interests in or are members of another person, except an individual, and each partnership renders services pursuant to an agreement with that other person, or (iii) one partnership, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the other partnership.

(7) “Licensed person” means any person who is duly licensed, authorized, or registered under the provisions of the Business and Professions Code to provide professional limited liability partnership services or who is lawfully able to render professional limited liability partnership services in this state.

(8) (A) “Registered limited liability partnership” means a partnership, other than a limited partnership, formed pursuant to an agreement governed by Article 10 (commencing with Section 16951), that is registered under Section 16953 and (i) each of the partners of which is a licensed person or a person licensed or authorized to provide professional limited liability partnership services in a jurisdiction or jurisdictions other than this state, (ii) is licensed under the laws of the state to engage in the practice of architecture, the practice of public accountancy, the practice of engineering, the practice of land surveying, or the practice of law, or (iii) (I) is related to a registered limited liability partnership that practices public accountancy or, to the extent permitted by the State Bar of California, practices law or is related to a foreign limited liability partnership and (II) provides services related or complementary to the professional limited liability partnership services provided by, or provides services or facilities to, that

registered limited liability partnership or foreign limited liability partnership.

(B) For the purposes of clause (iii) of subparagraph (A), a partnership is related to a registered limited liability partnership or foreign limited liability partnership if (i) at least a majority of the partners in one partnership are also partners in the other partnership, or (ii) at least a majority in interest in each partnership hold interests in or are members of another person, other than an individual, and each partnership renders services pursuant to an agreement with that other person, or (iii) one partnership, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the other partnership.

(9) “Partnership” means an association of two or more persons to carry on as coowners a business for profit formed under Section 16202, predecessor law, or comparable law of another jurisdiction, and includes, for all purposes of the laws of this state, a registered limited liability partnership, and excludes any partnership formed under Chapter 4.5 (commencing with Section 15900).

(10) “Partnership agreement” means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement.

(11) “Partnership at will” means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

(12) “Partnership interest” or “partner’s interest in the partnership” means all of a partner’s interests in the partnership, including the partner’s transferable interest and all management and other rights.

(13) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited partnership, limited liability partnership, limited liability company, association, joint venture, government, governmental subdivision, agency,

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or instrumentality, or any other legal or commercial entity.

(14) “Professional limited liability partnership services” means the practice of architecture, the practice of public accountancy, the practice of engineering, the practice of land surveying, or the practice of law.

(15) “Property” means all property, real, personal, or mixed, tangible or intangible, or any interest therein.

(16) “State” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(17) “Statement” means a statement of partnership authority under Section 16303, a statement of denial under Section 16304, a statement of dissociation under Section 16704, a statement of dissolution under Section 16805, a statement of conversion or a certificate of conversion under Section 16906, a statement of merger under Section 16915, or an amendment or cancellation of any of the foregoing.

(18) “Transfer” includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

(b) The inclusion of the practice of architecture as a professional limited liability partnership service permitted by this section shall extend only until January 1, 2026.

(c) This section shall remain in effect only until January 1, 2026, and as of that date is repealed. (Added by Stats. 1996, ch. 1003. Amended by Stats. 1998, ch. 504; Stats. 1999, ch. 250; Stats. 2001, ch. 595; Stats. 2004, ch. 254; Stats. 2006, ch. 426; Stats. 2006, ch. 495; Stats. 2010, ch. 634, effective September 30, 2010; Stats. 2011, ch. 291; Stats. 2015, ch. 157; Stats. 2018, ch. 150; Stats. 2019, ch. 497.)

### **§ 16306 Joint and Severable Liability; Personal Liability; Registered Limited Liability Partnerships**

(a) Except as otherwise provided in subdivisions (b) and (c), all partners are liable jointly and severally for all

obligations of the partnership unless otherwise agreed by the claimant or provided by law.

(b) A person admitted as a partner into an existing partnership is not personally liable for any partnership obligation incurred before the person’s admission as a partner.

(c) Notwithstanding any other section of this chapter, and subject to subdivisions (d), (e), (f), and (h), a partner in a registered limited liability partnership is not liable or accountable, directly or indirectly, including by way of indemnification, contribution, assessment, or otherwise, for debts, obligations, or liabilities of or chargeable to the partnership or another partner in the partnership, whether arising in tort, contract, or otherwise, that are incurred, created, or assumed by the partnership while the partnership is a registered limited liability partnership, by reason of being a partner or acting in the conduct of the business or activities of the partnership.

(d) Notwithstanding subdivision (c), all or certain specified partners of a registered limited liability partnership, if the specified partners agree, may be liable in their capacity as partners for all or specified debts, obligations, or liabilities of the registered limited liability partnership if the partners possessing a majority of the interests of the partners in the current profits of the partnership, or a different vote as may be required in the partnership agreement, specifically agreed to the specified debts, obligations, or liabilities in writing, prior to the debt, obligation, or liability being incurred. That specific agreement may be modified or revoked if the partners possessing a majority of the interests of the partners in the current profits of the partnership, or a different vote as may be required in the partnership agreement, agree to the modification or revocation in writing; provided, however, that a modification or revocation shall not affect the liability of a partner for any debts, obligations, or liabilities of a registered limited liability partnership incurred, created, or assumed by the registered limited liability partnership prior to the modification or revocation.

(e) Nothing in subdivision (c) shall be construed to affect the liability of a partner of a registered limited liability partnership to third parties for that partner’s tortious conduct.

(f) The limitation of liability in subdivision (c) shall not apply to claims based upon acts, errors, or omissions arising out of the rendering of professional

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limited liability partnership services of a registered limited liability partnership providing legal services unless that partnership has a currently effective certificate of registration issued by the State Bar.

(g) A partner in a registered limited liability partnership is not a proper party to a proceeding by or against a registered limited liability partnership in which personal liability for partnership debts, obligations, or liabilities is asserted against the partner, unless that partner is personally liable under subdivision (d) or (e).

(h) Nothing in this section shall affect or impair the ability of a partner to act as a guarantor or surety for, provide collateral for or otherwise be liable for, the debts, obligations, or liabilities of a registered limited liability partnership. (Added by Stats. 1996, ch. 1003.)

### **§ 16951 Types of Limited Liability Partnerships to be Recognized**

For purposes of this chapter, the only types of limited liability partnerships that shall be recognized are a registered limited liability partnership and a foreign limited liability partnership, as defined in Section 16101. No registered limited liability partnership or foreign limited liability partnership may render professional limited liability partnership services in this state except through licensed persons. (Added by Stats. 1996, ch. 1003.)

### **§ 16952 Requirements for Name**

The name of a registered limited liability partnership shall contain the words "Registered Limited Liability Partnership" or "Limited Liability Partnership" or one of the abbreviations "L.L.P.," "LLP," "R.L.L.P.," or "RLLP" as the last words or letters of its name. (Added by Stats. 1996, ch. 1003.)

### **§ 16953 Registration; Contents; Fee; Filing; Form; Compliance with Requirements**

(a) To become a registered limited liability partnership, a partnership, other than a limited partnership, shall file with the Secretary of State a registration, executed by one or more partners

authorized to execute a registration, stating all of the following:

- (1) The name of the partnership.
- (2) The street address of its principal office.
- (3) The mailing address of its principal office, if different from the street address.
- (4) The name and street address of the agent for service of process on the limited liability partnership in California in accordance with subdivision (a) of Section 16309.
- (5) A brief statement of the business in which the partnership engages.
- (6) Any other matters that the partnership determines to include.
- (7) That the partnership is registering as a registered limited liability partnership.

(b) The registration shall be accompanied by a fee as set forth in subdivision (a) of Section 12189 of the Government Code.

(c) The Secretary of State shall register as a registered limited liability partnership any partnership that submits a completed registration with the required fee.

(d) The Secretary of State may cancel the filing of the registration if a check or other remittance accepted in payment of the filing fee is not paid upon presentation. Within 90 days of receiving written notification that the item presented for payment has not been honored for payment, the Secretary of State shall give a first written notice of the applicability of this section to the agent for service of process or to the person submitting the instrument. Thereafter, if the amount has not been paid by cashier's check or equivalent, the Secretary of State shall give a second written notice of cancellation and the cancellation shall thereupon be effective. The second notice shall be given 20 days or more after the first notice.

(e) A partnership becomes a registered limited liability partnership at the time of the filing of the initial registration with the Secretary of State or at any later date or time specified in the registration and the payment of the fee required by subdivision (b). A partnership continues as a registered limited liability

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partnership until a notice that it is no longer a registered limited liability partnership has been filed pursuant to subdivision (b) of Section 16954 or, if applicable, until it has been dissolved and finally wound up. The status of a partnership as a registered limited liability partnership and the liability of a partner of the registered limited liability partnership shall not be adversely affected by errors or subsequent changes in the information stated in a registration under subdivision (a) or an amended registration or notice under Section 16954.

(f) The fact that a registration or amended registration pursuant to this section is on file with the Secretary of State is notice that the partnership is a registered limited liability partnership and of those other facts contained therein that are required to be set forth in the registration or amended registration.

(g) The Secretary of State shall provide a form for a registration under subdivision (a), which shall include the form for confirming compliance with the optional security requirement pursuant to subdivision (c) of Section 16956. The Secretary of State shall include with instructional materials provided in conjunction with the form for a registration under subdivision (a) a notice that filing the registration will obligate the limited liability partnership to pay an annual tax for that taxable year to the Franchise Tax Board pursuant to Section 17948 of the Revenue and Taxation Code. That notice shall be updated annually to specify the dollar amount of the tax.

(h) A limited liability partnership providing professional limited liability partnership services in this state shall comply with all statutory and administrative registration or filing requirements of the state board, commission, or other agency that prescribes the rules and regulations governing the particular profession in which the partnership proposes to engage, pursuant to the applicable provisions of the Business and Professions Code relating to that profession. The state board, commission, or other agency shall not disclose, unless compelled by a subpoena or other order of a court of competent jurisdiction, any information it receives in the course of evaluating the compliance of a limited liability partnership with applicable statutory and administrative registration or filing requirements, provided that nothing in this section shall be construed to prevent a state board, commission, or other agency from disclosing the manner in which the limited liability partnership has complied with the requirements of Section 16956, or the compliance or noncompliance by the limited liability

partnership with any other requirements of the state board, commission, or other agency.

(i) An agent designated for service of process may deliver to the Secretary of State, on a form prescribed by the Secretary of State for filing, a signed and acknowledged written statement of resignation as an agent for service of process containing the name of the limited liability partnership and the Secretary of State's file number of the limited liability partnership, the name of the resigning agent for service of process, and a statement that the agent is resigning. On filing of the statement of resignation, the authority of the agent to act in that capacity shall cease and the Secretary of State shall mail or otherwise provide written notice of the filing of the statement of resignation to the limited liability partnership at its principal office.

(j) The resignation of an agent may be effective if, on a form prescribed by the Secretary of State containing the name of the limited liability partnership and Secretary of State's file number for the limited liability partnership and the name of the agent for service of process, the agent disclaims having been properly appointed as the agent.

(k) If an individual who has been designated agent for service of process dies, resigns, or no longer resides in the state or if the corporate agent for that purpose resigns, dissolves, withdraws from the state, forfeits its right to transact intrastate business, has its corporate rights, powers, and privileges suspended, or ceases to exist, the limited liability partnership shall promptly file an amended registration as a limited liability partnership designating a new agent.

(l) The Secretary of State may destroy or otherwise dispose of any statement of resignation filed pursuant to this section after a new registration is filed pursuant to this section replacing the agent for service of process that has resigned. (Added by Stats. 1996, ch. 1003. Amended by Stats. 1999, ch. 1000; Stats. 2001, ch. 425; Stats. 2002, ch. 169; Stats. 2012, ch. 494; Stats. 2014, ch. 834; Stats. 2022, ch. 617.)

### **§ 16954 Amended Registration; Notice of Termination**

(a) The registration of a registered limited liability partnership may be amended by an amended registration executed by one or more partners authorized to execute an amended registration and

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filed with the Secretary of State, as soon as reasonably practical after any information set forth in the registration or previously filed amended registration becomes inaccurate or to add information to the registration or amended registration.

(b) If a registered limited liability partnership ceases to be a registered limited liability partnership, it shall file with the Secretary of State a notice, executed by one or more partners authorized to execute the notice, that it is no longer a registered limited liability partnership. The notice shall state that a final annual tax return, as described by Section 17948.3 of the Revenue and Taxation Code, has been or will be filed with the Franchise Tax Board, as required under Part 10.2 (commencing with Section 18401) of Division 2 of the Revenue and Taxation Code.

(c) An amendment pursuant to subdivision (a) and a notice pursuant to subdivision (b) shall each be accompanied by a fee as set forth in subdivision (c) of Section 12189 of the Government Code.

(d) The Secretary of State shall provide forms for an amended registration under subdivision (a) and a notice under subdivision (b).

(e) A notice of cessation, signed pursuant to subdivision (b), shall be filed with the Secretary of State. The Secretary of State shall notify the Franchise Tax Board of the cessation.

(f) A certificate of merger or the agreement of merger shall have the effect of the filing of a notice of termination for each disappearing registered limited liability partnership. (Added by Stats. 1996, ch. 1003. Amended by Stats. 1999, ch. 1000; Stats. 2006, ch. 773; Stats. 2022, ch. 617.)

### **§ 16955 Conversion of Domestic Partnership; Rights and Obligations**

(a) A domestic partnership, other than a limited partnership, may convert to a registered limited liability partnership by the vote of the partners possessing a majority of the interests of its partners in the current profits of the partnership or by a different vote as may be required in its partnership agreement.

(b) When such a conversion takes effect, all of the following apply:

(1) All property, real and personal, tangible and intangible, of the converting partnership remains vested in the converted registered limited liability partnership.

(2) All debts, obligations, liabilities, and penalties of the converting partnership continue as debts, obligations, liabilities, and penalties of the converted registered limited liability partnership.

(3) Any action, suit, or proceeding, civil or criminal, then pending by or against the converting partnership may be continued as if the conversion had not occurred.

(4) To the extent provided in the agreement of conversion and in this chapter, the partners of a partnership shall continue as partners in the converted registered limited liability partnership.

(5) A partnership that has been converted to a registered limited liability partnership pursuant to this chapter is the same person that existed prior to the conversion. (Added by Stats. 1996, ch. 1003. Amended by Stats. 2017, ch. 561.)

### **§ 16956 Security for Claims Against Limited Liability Partnership; Requirements; Evidence of Compliance**

(a) At the time of registration pursuant to Section 16953, in the case of a registered limited liability partnership, and Section 16959, in the case of a foreign limited liability partnership, and at all times during which those partnerships shall transact intrastate business, every registered limited liability partnership and foreign limited liability partnership, as the case may be, shall be required to provide security for claims against it as follows:

(1) For claims based upon acts, errors, or omissions arising out of the practice of public accountancy, a registered limited liability partnership or foreign limited liability partnership providing accountancy services shall comply with one, or pursuant to subdivision (b) some combination, of the following:

(A) Maintaining a policy or policies of insurance against liability imposed on or against it by law for damages arising out of



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claims; however, the total aggregate limit of liability under the policy or policies of insurance for partnerships with five or fewer licensed persons shall not be less than one million dollars (\$1,000,000), and for partnerships with more than five licensees rendering professional services on behalf of the partnership, an additional one hundred thousand dollars (\$100,000) of insurance shall be obtained for each additional licensee; however, the maximum amount of insurance is not required to exceed five million dollars (\$5,000,000) in any one designated period, less amounts paid in defending, settling, or discharging claims as set forth in this subparagraph. The policy or policies may be issued on a claims-made or occurrence basis, and shall cover: (i) in the case of a claims-made policy, claims initially asserted in the designated period, and (ii) in the case of an occurrence policy, occurrences during the designated period. For purposes of this subparagraph, "designated period" means a policy year or any other period designated in the policy that is not greater than 12 months. The impairment or exhaustion of the aggregate limit of liability by amounts paid under the policy in connection with the settlement, discharge, or defense of claims applicable to a designated period shall not require the partnership to acquire additional insurance coverage for that designated period. The policy or policies of insurance may be in a form reasonably available in the commercial insurance market and may be subject to those terms, conditions, exclusions, and endorsements that are typically contained in those policies. A policy or policies of insurance maintained pursuant to this subparagraph may be subject to a deductible or self-insured retention.

Upon the dissolution and winding up of the partnership, the partnership shall, with respect to any insurance policy or policies then maintained pursuant to this subparagraph, maintain or obtain an extended reporting period endorsement or equivalent provision in the maximum total aggregate limit of liability required to comply with this subparagraph for a minimum of three years if reasonably available from the insurer.

(B) Maintaining in trust or bank escrow, cash, bank certificates of deposit, United States Treasury obligations, bank letters of credit, or bonds of insurance or surety companies as security for payment of liabilities imposed by law for damages arising out of all claims; however, the maximum amount of security for partnerships with five or fewer licensed persons shall not be less than one million dollars (\$1,000,000), and for partnerships with more than five licensees rendering professional services on behalf of the partnership, an additional one hundred thousand dollars (\$100,000) of security shall be obtained for each additional licensee; however, the maximum amount of security is not required to exceed five million dollars (\$5,000,000). The partnership remains in compliance with this section during a calendar year notwithstanding amounts paid during that calendar year from the accounts, funds, Treasury obligations, letters of credit, or bonds in defending, settling, or discharging claims of the type described in this paragraph, provided that the amount of those accounts, funds, Treasury obligations, letters of credit, or bonds was at least the amount specified in the preceding sentence as of the first business day of that calendar year. Notwithstanding the pendency of other claims against the partnership, a registered limited liability partnership or foreign limited liability partnership shall be deemed to be in compliance with this subparagraph as to a claim if within 30 days after the time that a claim is initially asserted through service of a summons, complaint, or comparable pleading in a judicial or administrative proceeding, the partnership has provided the required amount of security by designating and segregating funds in compliance with the requirements of this subparagraph.

(C) Unless the partnership has satisfied subparagraph (D), each partner of a registered limited liability partnership or foreign limited liability partnership providing accountancy services, by virtue of that person's status as a partner, thereby automatically guarantees payment of the difference between the maximum amount of security required for the partnership by this

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paragraph and the security otherwise provided in accordance with subparagraphs (A) and (B), provided that the aggregate amount paid by all partners under these guarantees shall not exceed the difference. Neither withdrawal by a partner nor the dissolution and winding up of the partnership shall affect the rights or obligations of a partner arising prior to withdrawal or dissolution and winding up, and the guarantee provided for in this subparagraph shall apply only to conduct that occurred prior to the withdrawal or dissolution and winding up. Nothing contained in this subparagraph shall affect or impair the rights or obligations of the partners among themselves, or the partnership, including, but not limited to, rights of contribution, subrogation, or indemnification.

(D) Confirming, pursuant to the procedure in subdivision (c), that, as of the most recently completed fiscal year of the partnership, it had a net worth equal to or exceeding ten million dollars (\$10,000,000).

(2) For claims based upon acts, errors, or omissions arising out of the practice of law, a registered limited liability partnership or foreign limited liability partnership providing legal services shall comply with one, or pursuant to subdivision (b) some combination, of the following:

(A) Each registered limited liability partnership or foreign limited liability partnership providing legal services shall maintain a policy or policies of insurance against liability imposed on or against it by law for damages arising out of claims; however, the total aggregate limit of liability under the policy or policies of insurance for partnerships with five or fewer licensed persons shall not be less than one million dollars (\$1,000,000), and for partnerships with more than five licensees rendering professional services on behalf of the partnership, an additional one hundred thousand dollars (\$100,000) of insurance shall be obtained for each additional licensee; however, the maximum amount of

insurance is not required to exceed seven million five hundred thousand dollars (\$7,500,000) in any one designated period, less amounts paid in defending, settling, or discharging claims as set forth in this subparagraph. The policy or policies may be issued on a claims-made or occurrence basis, and shall cover (i) in the case of a claims-made policy, claims initially asserted in the designated period, and (ii) in the case of an occurrence policy, occurrences during the designated period. For purposes of this subparagraph, "designated period" means a policy year or any other period designated in the policy that is not greater than 12 months. The impairment or exhaustion of the aggregate limit of liability by amounts paid under the policy in connection with the settlement, discharge, or defense of claims applicable to a designated period shall not require the partnership to acquire additional insurance coverage for that designated period. The policy or policies of insurance may be in a form reasonably available in the commercial insurance market and may be subject to those terms, conditions, exclusions, and endorsements that are typically contained in those policies. A policy or policies of insurance maintained pursuant to this subparagraph may be subject to a deductible or self-insured retention.

Upon the dissolution and winding up of the partnership, the partnership shall, with respect to any insurance policy or policies then maintained pursuant to this subparagraph, maintain or obtain an extended reporting period endorsement or equivalent provision in the maximum total aggregate limit of liability required to comply with this subparagraph for a minimum of three years if reasonably available from the insurer.

(B) Each registered limited liability partnership or foreign limited liability partnership providing legal services shall maintain in trust or bank escrow, cash, bank certificates of deposit, United States Treasury obligations, bank letters of credit, or bonds of insurance or surety companies as security for payment of liabilities imposed by

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law for damages arising out of all claims; however, the maximum amount of security for partnerships with five or fewer licensed persons shall not be less than one million dollars (\$1,000,000), and for partnerships with more than five licensees rendering professional services on behalf of the partnership, an additional one hundred thousand dollars (\$100,000) of security shall be obtained for each additional licensee; however, the maximum amount of security is not required to exceed seven million five hundred thousand dollars (\$7,500,000). The partnership remains in compliance with this section during a calendar year notwithstanding amounts paid during that calendar year from the accounts, funds, Treasury obligations, letters of credit, or bonds in defending, settling, or discharging claims of the type described in this paragraph, provided that the amount of those accounts, funds, Treasury obligations, letters of credit, or bonds was at least the amount specified in the preceding sentence as of the first business day of that calendar year. Notwithstanding the pendency of other claims against the partnership, a registered limited liability partnership or foreign limited liability partnership shall be deemed to be in compliance with this subparagraph as to a claim if within 30 days after the time that a claim is initially asserted through service of a summons, complaint, or comparable pleading in a judicial or administrative proceeding, the partnership has provided the required amount of security by designating and segregating funds in compliance with the requirement of this subparagraph.

(C) Unless the partnership has satisfied the requirements of subparagraph (D), each partner of a registered limited liability partnership or foreign limited liability partnership providing legal services, by virtue of that person's status as a partner, thereby automatically guarantees payment of the difference between the maximum amount of security required for the partnership by this paragraph and the security otherwise provided in accordance with the provisions of subparagraphs (A) and (B), provided that the aggregate amount paid

by all partners under these guarantees shall not exceed the difference. Neither withdrawal by a partner nor the dissolution and winding up of the partnership shall affect the rights or obligations of a partner arising prior to withdrawal or dissolution and winding up, and the guarantee provided for in this subparagraph shall apply only to conduct that occurred prior to the withdrawal or dissolution and winding up. Nothing contained in this subparagraph shall affect or impair the rights or obligations of the partners among themselves, or the partnership, including, but not limited to, rights of contribution, subrogation, or indemnification.

(D) Confirming, pursuant to the procedure in subdivision (c), that, as of the most recently completed fiscal year of the partnership, it had a net worth equal to or exceeding fifteen million dollars (\$15,000,000).

(3) For claims based upon acts, errors, or omissions arising out of the practice of architecture, a registered limited liability partnership or foreign limited liability partnership providing architectural services shall comply with one, or pursuant to subdivision (b) some combination, of the following:

(A) Maintaining a policy or policies of insurance against liability imposed on or against it by law for damages arising out of claims; however, the total aggregate limit of liability under the policy or policies of insurance for partnerships with five or fewer licensees rendering professional services on behalf of the partnership shall not be less than one million dollars (\$1,000,000), and for partnerships with more than five licensees rendering professional services on behalf of the partnership, an additional one hundred thousand dollars (\$100,000) of liability coverage shall be obtained for each additional licensee; however, the total aggregate limit of liability under the policy or policies of insurance is not required to exceed five million dollars (\$5,000,000). The policy or policies may be issued on a claims-made or occurrence basis, and shall cover: (i)

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in the case of a claims-made policy, claims initially asserted in the designated period, and (ii) in the case of an occurrence policy, occurrences during the designated period. For purposes of this subparagraph, “designated period” means a policy year or any other period designated in the policy that is not greater than 12 months. The impairment or exhaustion of the aggregate limit of liability by amounts paid under the policy in connection with the settlement, discharge, or defense of claims applicable to a designated period shall not require the partnership to acquire additional insurance coverage for that designated period. The policy or policies of insurance may be in a form reasonably available in the commercial insurance market and may be subject to those terms, conditions, exclusions, and endorsements that are typically contained in those policies. A policy or policies of insurance maintained pursuant to this subparagraph may be subject to a deductible or self-insured retention.

Upon the dissolution and winding up of the partnership, the partnership shall, with respect to any insurance policy or policies then maintained pursuant to this subparagraph, maintain or obtain an extended reporting period endorsement or equivalent provision in the maximum total aggregate limit of liability required to comply with this subparagraph for a minimum of three years if reasonably available from the insurer.

(B) Maintaining in trust or bank escrow, cash, bank certificates of deposit, United States Treasury obligations, bank letters of credit, or bonds of insurance or surety companies as security for payment of liabilities imposed by law for damages arising out of all claims; however, the maximum amount of security for partnerships with five or fewer licensees rendering professional services on behalf of the partnership shall not be less than one million dollars (\$1,000,000), and for partnerships with more than five licensees rendering professional services on behalf of the partnership, an additional one hundred thousand dollars

(\$100,000) of security shall be obtained for each additional licensee; however, the maximum amount of security is not required to exceed five million dollars (\$5,000,000). The partnership remains in compliance with this section during a calendar year notwithstanding amounts paid during that calendar year from the accounts, funds, Treasury obligations, letters of credit, or bonds in defending, settling, or discharging claims of the type described in this paragraph, provided that the amount of those accounts, funds, Treasury obligations, letters of credit, or bonds was at least the amount specified in the preceding sentence as of the first business day of that calendar year. Notwithstanding the pendency of other claims against the partnership, a registered limited liability partnership or foreign limited liability partnership shall be deemed to be in compliance with this subparagraph as to a claim if within 30 days after the time that a claim is initially asserted through service of a summons, complaint, or comparable pleading in a judicial or administrative proceeding, the partnership has provided the required amount of security by designating and segregating funds in compliance with the requirements of this subparagraph.

(C) Unless the partnership has satisfied subparagraph (D), each partner of a registered limited liability partnership or foreign limited liability partnership providing architectural services, by virtue of that person’s status as a partner, thereby automatically guarantees payment of the difference between the maximum amount of security required for the partnership by this paragraph and the security otherwise provided in accordance with subparagraphs (A) and (B), provided that the aggregate amount paid by all partners under these guarantees shall not exceed the difference. Neither withdrawal by a partner nor the dissolution and winding up of the partnership shall affect the rights or obligations of a partner arising prior to withdrawal or dissolution and winding up, and the guarantee provided for in this subparagraph shall apply only to conduct that occurred prior to the withdrawal or

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dissolution and winding up. Nothing contained in this subparagraph shall affect or impair the rights or obligations of the partners among themselves, or the partnership, including, but not limited to, rights of contribution, subrogation, or indemnification.

(D) Confirming, pursuant to the procedure in subdivision (c), that, as of the most recently completed fiscal year of the partnership, it had a net worth equal to or exceeding ten million dollars (\$10,000,000).

(4) For claims based upon acts, errors, or omissions arising out of the practice of engineering or the practice of land surveying, a registered limited liability partnership or foreign limited liability partnership providing engineering or land surveying services shall comply with one, or pursuant to subdivision (b) some combination, of the following:

(A) Maintaining a policy or policies of insurance against liability imposed on or against it by law for damages arising out of claims; however, the total aggregate limit of liability under the policy or policies of insurance for partnerships with five or fewer licensees rendering professional services on behalf of the partnership shall not be less than two million dollars (\$2,000,000), and for partnerships with more than five licensees rendering professional services on behalf of the partnership, an additional one hundred thousand dollars (\$100,000) of liability coverage shall be obtained for each additional licensee; however, the total aggregate limit of liability under the policy or policies of insurance is not required to exceed five million dollars (\$5,000,000). The policy or policies may be issued on a claims-made or occurrence basis, and shall cover: (i) in the case of a claims-made policy, claims initially asserted in the designated period, and (ii) in the case of an occurrence policy, occurrences during the designated period. For purposes of this subparagraph, "designated period" means a policy year or any other period designated in the policy that is not greater than 12 months. The impairment or exhaustion of the aggregate

limit of liability by amounts paid under the policy in connection with the settlement, discharge, or defense of claims applicable to a designated period shall not require the partnership to acquire additional insurance coverage for that designated period. The policy or policies of insurance may be in a form reasonably available in the commercial insurance market and may be subject to those terms, conditions, exclusions, and endorsements that are typically contained in those policies. A policy or policies of insurance maintained pursuant to this subparagraph may be subject to a deductible or self-insured retention.

Upon the dissolution and winding up of the partnership, the partnership shall, with respect to any insurance policy or policies then maintained pursuant to this subparagraph, maintain or obtain an extended reporting period endorsement or equivalent provision in the maximum total aggregate limit of liability required to comply with this subparagraph for a minimum of three years if reasonably available from the insurer.

(B) Maintaining in trust or bank escrow, cash, bank certificates of deposit, United States Treasury obligations, bank letters of credit, or bonds of insurance or surety companies as security for payment of liabilities imposed by law for damages arising out of all claims; however, the maximum amount of security for partnerships with five or fewer licensees rendering professional services on behalf of the partnership shall not be less than two million dollars (\$2,000,000), and for partnerships with more than five licensees rendering professional services on behalf of the partnership, an additional one hundred thousand dollars (\$100,000) of security shall be obtained for each additional licensee; however, the maximum amount of security is not required to exceed five million dollars (\$5,000,000). The partnership remains in compliance with this section during a calendar year, notwithstanding amounts paid during that calendar year from the accounts, funds, Treasury obligations, letters of credit, or

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bonds in defending, settling, or discharging claims of the type described in this paragraph, provided that the amount of those accounts, funds, Treasury obligations, letters of credit, or bonds was at least the amount specified in the preceding sentence as of the first business day of that calendar year. Notwithstanding the pendency of other claims against the partnership, a registered limited liability partnership or foreign limited liability partnership shall be deemed to be in compliance with this subparagraph as to a claim if, within 30 days after the time that a claim is initially asserted through service of a summons, complaint, or comparable pleading in a judicial or administrative proceeding, the partnership has provided the required amount of security by designating and segregating funds in compliance with the requirements of this subparagraph.

(C) Unless the partnership has satisfied subparagraph (D), each partner of a registered limited liability partnership or foreign limited liability partnership providing engineering services or land surveying services, by virtue of that person's status as a partner, thereby automatically guarantees payment of the difference between the maximum amount of security required for the partnership by this paragraph and the security otherwise provided in accordance with subparagraphs (A) and (B), provided that the aggregate amount paid by all partners under these guarantees shall not exceed the difference. Neither withdrawal by a partner nor the dissolution and winding up of the partnership shall affect the rights or obligations of a partner arising prior to withdrawal or dissolution and winding up, and the guarantee provided for in this subparagraph shall apply only to conduct that occurred prior to the withdrawal or dissolution and winding up. Nothing contained in this subparagraph shall affect or impair the rights or obligations of the partners among themselves, or the partnership, including, but not limited to, rights of contribution, subrogation, or indemnification.

(D) Confirming, pursuant to the procedure in subdivision (c), that, as of the most

recently completed fiscal year of the partnership, it had a net worth equal to or exceeding ten million dollars (\$10,000,000).

(b) For purposes of satisfying the security requirements of this section, a registered limited liability partnership or foreign limited liability partnership may aggregate the security provided by it pursuant to subparagraphs (A), (B), (C), and (D) of paragraph (1) of subdivision (a), subparagraphs (A), (B), (C), and (D) of paragraph (2) of subdivision (a), subparagraphs (A), (B), (C), and (D) of paragraph (3) of subdivision (a), or subparagraphs (A), (B), (C), and (D) of paragraph (4) of subdivision (a), as the case may be. Any registered limited liability partnership or foreign limited liability partnership intending to comply with the alternative security provisions set forth in subparagraph (D) of paragraph (1) of subdivision (a), subparagraph (D) of paragraph (2) of subdivision (a), subparagraph (D) of paragraph (3) of subdivision (a), or subparagraph (D) of paragraph (4) of subdivision (a), shall furnish the following information to the Secretary of State's office, in the manner prescribed in, and accompanied by all information required by, the applicable section:

### TRANSMITTAL FORM FOR EVIDENCING COMPLIANCE WITH SECTION 16956(a)(1)(D), SECTION 16956(a)(2)(D), SECTION 16956(a)(3)(D), OR SECTION 16956(a)(4)(D) OF THE CALIFORNIA CORPORATIONS CODE

The undersigned hereby confirms the following:

1. \_\_\_\_\_  
(Name of registered or foreign limited liability partnership)
2. \_\_\_\_\_  
(Jurisdiction where partnership is organized.)
3. \_\_\_\_\_  
(Address of principal office)
4. The registered or foreign limited liability partnership chooses to satisfy the requirements of Section 16956 by confirming, pursuant to Section 16956(a)(1)(D), 16956(a)(2)(D), 16956(a)(3)(D), or 16956(a)(4)(D) and pursuant to Section 16956(c), that, as of the most recently completed fiscal year, the partnership had a net worth equal to or exceeding ten million dollars (\$10,000,000), in the case of a partnership providing accountancy services, fifteen million dollars (\$15,000,000) in the

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case of a partnership providing legal services, or ten million dollars (\$10,000,000), in the case of a partnership providing architectural services, engineering services, or land surveying services.

5. \_\_\_\_\_  
(Title of authorized person executing this form)

6. \_\_\_\_\_  
(Signature of authorized person executing this form)

(c) Pursuant to subparagraph (D) of paragraph (1) of subdivision (a), subparagraph (D) of paragraph (2) of subdivision (a), subparagraph (D) of paragraph (3) of subdivision (a), or subparagraph (D) of paragraph (4) of subdivision (a), a registered limited liability partnership or foreign limited liability partnership may satisfy the requirements of this section by confirming that, as of the last day of its most recently completed fiscal year, it had a net worth equal to or exceeding the amount required. In order to comply with this alternative method of meeting the requirements established in this section, a registered limited liability partnership or foreign limited liability partnership shall file an annual confirmation with the Secretary of State's office, signed by an authorized member of the registered limited liability partnership or foreign limited liability partnership, accompanied by a transmittal form as prescribed by subdivision (b). In order to be current in a given year, the partnership form for confirming compliance with the optional security requirement shall be on file within four months of the completion of the fiscal year and, upon being filed, shall constitute full compliance with the financial security requirements for purposes of this section as of the beginning of the fiscal year. A confirmation filed during any particular fiscal year shall continue to be effective for the first four months of the next succeeding fiscal year.

(d) Neither the existence of the requirements of subdivision (a) nor the extent of the registered limited liability partnership's or foreign limited liability partnership's compliance with the alternative requirements in this section shall be admissible in court or in any way be made known to a jury or other trier of fact in determining an issue of liability for, or to the extent of, the damages in question.

(e) Notwithstanding any other provision of this section, if a registered limited liability partnership or foreign limited liability partnership is otherwise in compliance with the terms of this section at the time

that a bankruptcy or other insolvency proceeding is commenced with respect to the registered limited liability partnership or foreign limited liability partnership, it shall be deemed to be in compliance with this section during the pendency of the proceeding. A registered limited liability partnership that has been the subject of a proceeding and that conducts business after the proceeding ends shall thereafter comply with paragraph (1), (2), (3), or (4) of subdivision (a), in order to obtain the limitations on liability afforded by subdivision (c) of Section 16306.

(f) This section shall remain in effect only until January 1, 2026, and as of that date is repealed. (Added by Stats. 1996, ch. 1003. Amended by Stats. 1997, ch. 387; Stats. 1998, ch. 485 and ch. 504; Stats. 2006, ch. 426; Stats. 2007, ch. 80; Stats. 2010, ch. 634; Stats. 2015, ch. 157; Stats. 2018, ch. 150.)

### **§ 16958 Law Governing Foreign Limited Liability Partnership**

(a) (1) The laws of the jurisdiction under which a foreign limited liability partnership is organized shall govern its organization and internal affairs and the liability and authority of its partners, subject to compliance with Section 16956, and

(2) a foreign limited liability partnership may not be denied registration by reason of any difference between those laws and the laws of this state.

(b) The name of a foreign limited liability partnership transacting intrastate business in this state shall contain the words "Registered Limited Liability Partnership" or "Limited Liability Partnership" or one of the abbreviations "L.L.P.," "LLP," "R.L.L.P.," or "RLLP," or such other similar words or abbreviations as may be required or authorized by the laws of the jurisdiction of formation of the foreign limited liability partnership, as the last words or letters of its name. (Added by Stats. 1996, ch. 1003.)

### **§ 16959 Foreign Limited Liability Partnerships Transacting Intrastate Business; Registration and Filing Requirements; Fee; Time of Registration; Form; Penalty; "Transact Intrastate Business" Defined; Resignation of Agent for Service of Process**

(a) (1) Before transacting intrastate business in this state, a foreign limited liability partnership shall

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comply with all statutory and administrative registration or filing requirements of the state board, commission, or agency that prescribes the rules and regulations governing a particular profession in which the partnership proposes to be engaged, pursuant to the applicable provisions of the Business and Professions Code relating to the profession or applicable rules adopted by the governing board. A foreign limited liability partnership that transacts intrastate business in this state shall within 30 days after the effective date of the act enacting this section or the date on which the foreign limited liability partnership first transacts intrastate business in this state, whichever is later, register with the Secretary of State by submitting to the Secretary of State an application for registration as a foreign limited liability partnership, signed by a person with authority to do so under the laws of the jurisdiction of formation of the foreign limited liability partnership, stating the name of the partnership, the street address of its principal office, the mailing address of the principal office if different from the street address, the name and street address of its agent for service of process in this state in accordance with subdivision (a) of Section 16309, a brief statement of the business in which the partnership engages, and any other matters that the partnership determines to include.

(2) Annexed to the application for registration shall be a certificate from an authorized public official of the foreign limited liability partnership's jurisdiction of organization to the effect that the foreign limited liability partnership is in good standing in that jurisdiction, if the laws of that jurisdiction permit the issuance of those certificates, or, in the alternative, a statement by the foreign limited liability partnership that the laws of its jurisdiction of organization do not permit the issuance of those certificates.

(b) The registration shall be accompanied by a fee as set forth in subdivision (b) of Section 12189 of the Government Code.

(c) If the Secretary of State finds that an application for registration conforms to law and all requisite fees have been paid, the Secretary of State shall issue a certificate of registration to transact intrastate business in this state.

(d) The Secretary of State may cancel the filing of the registration if a check or other remittance accepted in payment of the filing fee is not paid upon presentation. Within 90 days of receiving written notification that the item presented for payment has not been honored for payment, the Secretary of State shall give a first written notice of the applicability of this section to the agent for service of process or to the person submitting the instrument. Thereafter, if the amount has not been paid by cashier's check or equivalent, the Secretary of State shall give a second written notice of cancellation and the cancellation shall thereupon be effective. The second notice shall be given 20 days or more after the first notice.

(e) A partnership becomes registered as a foreign limited liability partnership at the time of the filing of the initial registration with the Secretary of State or at any later date or time specified in the registration and the payment of the fee required by subdivision (b). A partnership continues to be registered as a foreign limited liability partnership until a notice that it is no longer so registered as a foreign limited liability partnership has been filed pursuant to Section 16960 or, if applicable, once it has been dissolved and finally wound up. The status of a partnership registered as a foreign limited liability partnership and the liability of a partner of that foreign limited liability partnership shall not be adversely affected by errors or subsequent changes in the information stated in an application for registration under subdivision (a) or an amended registration or notice under Section 16960.

(f) The fact that a registration or amended registration pursuant to Section 16960 is on file with the Secretary of State is notice that the partnership is a foreign limited liability partnership and of those other facts contained therein that are required to be set forth in the registration or amended registration.

(g) The Secretary of State shall provide a form for a registration under subdivision (a), which shall include the form for confirming compliance with the optional security requirement pursuant to subdivision (c) of Section 16956. The Secretary of State shall include with instructional materials, provided in conjunction with the form for registration under subdivision (a), a notice that filing the registration will obligate the limited liability partnership to pay an annual tax for that taxable year to the Franchise Tax Board pursuant



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to Section 17948 of the Revenue and Taxation Code. That notice shall be updated annually to specify the dollar amount of this tax.

(h) A foreign limited liability partnership transacting intrastate business in this state shall not maintain any action, suit, or proceeding in any court of this state until it has registered in this state pursuant to this section.

(i) Any foreign limited liability partnership that transacts intrastate business in this state without registration is subject to a penalty of twenty dollars (\$20) for each day that unauthorized intrastate business is transacted, up to a maximum of ten thousand dollars (\$10,000).

(j) A partner of a foreign limited liability partnership is not liable for the debts or obligations of the foreign limited liability partnership solely by reason of its having transacted business in this state without registration.

(k) A foreign limited liability partnership, transacting business in this state without registration, appoints the Secretary of State as its agent for service of process with respect to causes of action arising out of the transaction of business in this state.

(l) "Transact intrastate business" as used in this section means to repeatedly and successively provide professional limited liability partnership services in this state, other than in interstate or foreign commerce.

(m) Without excluding other activities that may not be considered to be transacting intrastate business, a foreign limited liability partnership shall not be considered to be transacting intrastate business merely because its subsidiary or affiliate transacts intrastate business, or merely because of its status as any one or more of the following:

- (1) A shareholder of a domestic corporation.
- (2) A shareholder of a foreign corporation transacting intrastate business.
- (3) A limited partner of a foreign limited partnership transacting intrastate business.

(4) A limited partner of a domestic limited partnership.

(5) A member or manager of a foreign limited liability company transacting intrastate business.

(6) A member or manager of a domestic limited liability company.

(n) Without excluding other activities that may not be considered to be transacting intrastate business, a foreign limited liability partnership shall not be considered to be transacting intrastate business within the meaning of this subdivision solely by reason of carrying on in this state any one or more of the following activities:

(1) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes.

(2) Holding meetings of its partners or carrying on any other activities concerning its internal affairs.

(3) Maintaining bank accounts.

(4) Maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited liability partnership's securities or maintaining trustees or depositories with respect to those securities.

(5) Effecting sales through independent contractors.

(6) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where those orders require acceptance without this state before becoming binding contracts.

(7) Creating or acquiring evidences of debt or mortgages, liens, or security interest in real or personal property.

(8) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts.

(9) Conducting an isolated transaction that is completed within 180 days and not in the course

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of a number of repeated transactions of a like nature.

(o) A person shall not be deemed to be transacting intrastate business in this state merely because of its status as a partner of a registered limited liability partnership or a foreign limited liability company whether or not registered to transact intrastate business in this state.

(p) The Attorney General may bring an action to restrain a foreign limited liability partnership from transacting intrastate business in this state in violation of this chapter.

(q) Nothing in this section is intended to, or shall, augment, diminish, or otherwise alter existing provisions of law, statutes, or court rules relating to services by a California architect, California public accountant, California engineer, California land surveyor, or California attorney in another jurisdiction, or services by an out-of-state architect, out-of-state public accountant, out-of-state engineer, out-of-state land surveyor, or out-of-state attorney in California.

(r) An agent designated for service of process may deliver to the Secretary of State, on a form prescribed by the Secretary of State for filing, a signed and acknowledged written statement of resignation as an agent for service of process containing the name of the foreign limited liability partnership and Secretary of State's file number of the foreign limited liability partnership, the name of the resigning agent for service of process, and a statement that the agent is resigning. On filing of the statement of resignation, the authority of the agent to act in that capacity shall cease and the Secretary of State shall mail or otherwise provide written notice of the filing of the statement of resignation to the foreign limited liability partnership at its principal office.

(s) The resignation of an agent may be effective if, on a form prescribed by the Secretary of State containing the name of the foreign limited liability partnership and Secretary of State's file number for the foreign limited liability partnership and the name of the agent for service of process, the agent disclaims having been properly appointed as the agent.

(t) If an individual who has been designated agent for service of process dies or resigns or no longer

resides in the state, or if the corporate agent for that purpose resigns, dissolves, withdraws from the state, forfeits its right to transact intrastate business, has its corporate rights, powers, and privileges suspended, or ceases to exist, the foreign limited liability partnership shall promptly file an amended application for registration as a foreign limited liability partnership designating a new agent.

(u) The Secretary of State may destroy or otherwise dispose of any resignation filed pursuant to this section after a new application for registration as a foreign limited liability partnership is filed pursuant to this section replacing the agent for service of process that has resigned.

(v) This section shall remain in effect only until January 1, 2026, and as of that date is repealed. (Added by Stats. 1996, ch. 1003. Amended by Stats. 1998, ch. 504; Stats. 1999, ch. 1000; Stats. 2002, ch. 169; Stats. 2010, ch. 634; Stats. 2012, ch. 494; Stats. 2014, ch. 834; Stats. 2015, ch. 157; Stats. 2018, ch. 150; Stats. 2022, ch. 617.)

## EDUCATION CODE

### § 69740 Definitions

Unless the context requires otherwise, the definitions in this section govern the construction of this article.

(a) "Commission" means the Student Aid Commission.

(b) "Eligible education and training programs" means education and training programs approved by the commission that lead to eligibility for a license to practice law as a licensed attorney.

(c) "Eligible expenses" means reasonable expenses associated with the costs of acquiring an education such as tuition, books, equipment, fees, room and board, and other expenses determined by the commission.

(d) "Eligible participant" means a licensed attorney who has been admitted to the program and is a resident of this state and who can provide proof of residency in this state.

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(e) “Licensed attorney” means an attorney who resides in this state who has successfully passed the California bar examination and has been admitted to practice in this state or has otherwise been licensed to practice law in this state by the State Bar of California.

(f) “Loan repayment” means a loan that is paid in full or in part if the participant renders legal services in this state in a public interest area of the law.

(g) “Participant” means a licensed attorney who has been admitted to the program and has commenced practice as a licensed attorney in this state in a public interest area of the law.

(h) “Program” means the Public Interest Attorney Loan Repayment Program.

(i) “Public interest area of the law” means those areas of the law determined by the commission, in consultation with the advisory committee, to serve the public interest, including, but not necessarily limited to, providing direct legal service at a local (1) legal services organization, (2) prosecuting attorney’s office, (3) child support agency office, or (4) criminal public defender’s office. For the purposes of this article, a “legal services organization” is a legal services provider in California that serves a clientele over 70 percent of whom are low-income persons according to applicable federal income guidelines.

(j) “Required service obligation” means an obligation by the participant to provide legal services in this state in a public interest area of the law as established pursuant to this article. (Added by Stats. 2001, ch. 881.)

### § 69741 Establishment of Program

The Public Interest Attorney Loan Repayment Program is established for licensed attorneys who practice or agree to practice in public interest areas of the law in this state. The program shall be administered by the commission. (Added by Stats. 2001, ch. 881.)

### § 69741.5 Amount of Assistance

(a) Participants in this program are eligible for a maximum of eleven thousand dollars (\$11,000) in loan assistance for four years, as follows:

(1) For the first year, two thousand dollars (\$2,000) in loan repayment assistance.

(2) For the second, third, and fourth years, three thousand dollars (\$3,000) in loan repayment assistance for each year.

(b) Notwithstanding any other provision of law, in any fiscal year, the commission shall award no more than the number of warrants that are authorized in the annual Budget Act for that fiscal year for the assumption of loans pursuant to this article. (Added by Stats. 2001, ch. 881. Amended by Stats. 2006, ch. 79, effective July 19, 2006.)

### § 69742 Eligibility Criteria

(a) The commission shall establish eligibility criteria for participation in the program based upon need and merit. These criteria shall be based on all of the following, which are set forth in order of importance:

(1) The applicant’s need, which shall be based on the applicant’s salary, personal resources, and law school debt.

(2) The applicant’s commitment to public interest law, which shall be determined by examining the applicant’s employment and volunteer history, and taking into consideration a low-income applicant’s need to work while in law school.

(3) The applicant’s declared interest in practicing in areas of the state where the need for public interest attorneys is high.

(4) The applicant’s academic achievements.

(b) The commission shall adopt initial regulations for the program within one year of the effective date of the initial appropriation funding the program. (Added by Stats. 2001, ch. 881.)

### § 69743 Other Loan Repayment Programs

The program is intended to supplement, and not to replace, existing loan repayment programs operated by law schools. Prior to participating in the program, an applicant shall apply for any educational loan assistance from his or her educational institution for which he or she may qualify. Only if an applicant has

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received no loan repayment assistance, or only partial assistance, from other available sources, may he or she apply to the program for assistance in repaying the balance of his or her educational loans. (Added by Stats. 2001, ch. 881.)

### **§ 69743.5 Selection of Participants; Repayment**

The commission shall select, from the qualified applicants, the individuals who are eligible to participate in the program. After each year long period of full time, or full time equivalent, employment in a public interest area of the law, the loan repayment of the eligible participant shall be made to the lender. (Added by Stats. 2001, ch. 881.)

### **§ 69744 Use of Funds**

The commission may use the funds appropriated for the program for the purposes of loan repayments and to defray reasonable administrative costs. The commission shall annually establish the total amount of funding to be awarded for loan repayments. Allocation of funds shall be established based upon the best use of funding for that year, as determined by the commission. (Added by Stats. 2001, ch. 881. Amended by Stats. 2006, ch. 79, effective July 19, 2006.)

### **§ 69745 Loans Which May be Repaid; Length of Repayment**

(a) Loans from both government sources and financial institutions may be repaid by the program. Each participant shall agree to allow the commission access to loan records and to acquire information from lenders necessary to verify eligibility and to determine payments. Loans may not be renegotiated with lenders to accelerate repayment.

(b) Payments shall be made annually to the lender until the loan is repaid, fulfilled, or until the required service obligation is fulfilled and eligibility discontinues, whichever comes first.

(c) If the participant discontinues practicing in a public interest area of the law, payments against the loans of the participant shall cease to be effective on the date that the participant discontinues service. (Added by Stats. 2001, ch. 881.)

### **§ 69746 Commission Not Responsible after Participant's Eligibility Expires**

The commission is not responsible for any outstanding payments on principal and interest to any lender once a participant's eligibility expires. (Added by Stats. 2001, ch. 881.)

### **§ 69746.5 Annual Report to Legislature**

The commission shall submit an annual written report to the Legislature regarding this program. The report shall include, but not necessarily be limited to, all of the following data:

(a) The total number of loan repayment awards made under the program in the immediately preceding fiscal year, classified by the repayment year as described in subdivision (a) of Section 69741.5.

(b) The total amount of funds expended for the purposes of loan repayments, and the total amount of funds expended to defray administrative costs, in the immediately preceding fiscal year.

(c) The annual and cumulative attrition rates of participants, as calculated through the end of the immediately preceding fiscal year.

*[Publisher's Note: The following paragraph relating to the foregoing provisions (§§ 69740-69746.5) concerning the public interest attorney loan repayment program was added by Stats. 2001, ch. 881, but not codified and is provided below for your information.]*

SECTION 1. It is the intent of the Legislature to provide access to legal education and to meet the needs of the State of California in areas of law related to the public interest. The Legislature finds that the high cost of attending law school requires that attorneys command high incomes to repay the financial obligations incurred in obtaining the required training and that, consequently, few attorneys are able to practice in areas of law relating to the public interest because the pay is substantially lower than the pay in other practice areas. The Legislature finds that encouraging outstanding law students and attorneys to practice in areas of the law related to the public interest is essential to ensuring access to legal services in those areas. Therefore, it is the intent of the Legislature in enacting this act to provide for the partial or full

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repayment of educational loans of attorneys who provide legal services in California in a public interest area of the law.

### EVIDENCE CODE

#### § 175 “Person” – Defined

“Person” includes a natural person, firm, association, organization, partnership, business trust, corporation, limited liability company, or public entity. (Added by Stats. 1965, ch. 299. Amended by Stats. 1994, ch. 1010.)

#### § 250 “Writing” – Defined

“Writing” means handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored. (Added by Stats. 1965, ch. 299. Amended by Stats. 2002, ch. 945.)

#### § 351.3 Evidence of Immigration Status in Civil Actions Not Governed by § 351.2

(a) In a civil action not governed by Section 351.2, evidence of a person’s immigration status shall not be disclosed in open court by a party or their attorney unless the judge presiding over the matter first determines that the evidence is admissible in an in camera hearing requested by the party seeking disclosure of the person’s immigration status.

(b) This section does not do any of the following:

(1) Apply to cases in which a person’s immigration status is necessary to prove an element of a claim or an affirmative defense.

(2) Impact otherwise applicable laws governing the relevance of immigration status to liability or the standards applicable to inquiries regarding immigration status in discovery or proceedings in a civil action, including Section 3339 of the Civil Code, Section 7285 of the Government Code, Section 24000 of the Health and Safety Code, and Section 1171.5 of the Labor Code.

(3) Prohibit a person or their attorney from voluntarily revealing the person’s immigration status to the court. (Added by Stats. 2022, ch. 168, eff. Aug. 22, 2022.)

#### § 351.4 Evidence of Immigration Status in Criminal Actions

(a) In a criminal action, evidence of a person’s immigration status shall not be disclosed in open court by a party or their attorney unless the judge presiding over the matter first determines that the evidence is admissible in an in camera hearing requested by the party seeking disclosure of the person’s immigration status.

(b) This section does not do any of the following:

(1) Apply to cases in which a person’s immigration status is necessary to prove an element of an offense or an affirmative defense.

(2) Limit discovery in a criminal action.

(3) Prohibit a person or their attorney from voluntarily revealing the person’s immigration status to the court. (Added by Stats. 2022, ch. 168, eff. Aug. 22, 2022.)

#### § 703.5 Competency to Testify

No person presiding at any judicial or quasi-judicial proceeding, and no arbitrator or mediator, shall be competent to testify, in any subsequent civil proceeding, as to any statement, conduct, decision, or ruling, occurring at or in conjunction with the prior proceeding, except as to a statement or conduct that could (a) give rise to civil or criminal contempt, (b) constitute a crime, (c) be the subject of investigation by the State Bar or Commission on Judicial Performance, or (d) give rise to disqualification proceedings under paragraph (1) or (6) of subdivision (a) of Section 170.1 of the Code of Civil Procedure. However, this section does not apply to a mediator with regard to any mediation under Chapter 11 (commencing with Section 3160) of Part 2 of Division 8 of the Family Code. (Added by Stats. 1979, ch. 205. Amended by Stats. 1980, ch. 290; Stats. 1988, ch. 281; Stats. 1990, ch. 1491; Stats. 1993, ch. 1261; Stats. 1994, ch. 1269.)

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### **§ 911 Refusing to Be or Have Another as a Witness, or Disclosing or Producing any Matter**

Except as otherwise provided by statute:

- (a) No person has a privilege to refuse to be a witness.
- (b) No person has a privilege to refuse to disclose any matter or to refuse to produce any writing, object, or other thing.
- (c) No person has a privilege that another shall not be a witness or shall not disclose any matter or shall not produce any writing, object, or other thing. (Added by Stats. 1965, ch. 299.)

### **§ 912 Privilege, Waiver**

(a) Except as otherwise provided in this section, the right of any person to claim a privilege provided by Section 954 (lawyer-client privilege), 966 (lawyer referral service-client privilege), 980 (privilege for confidential marital communications), 994 (physician-patient privilege), 1014 (psychotherapist-patient privilege), 1033 (privilege of penitent), 1034 (privilege of clergy member), 1035.8 (sexual assault counselor-victim privilege), 1037.5 (domestic violence counselor-victim privilege), or 1038 (human trafficking caseworker-victim privilege) is waived with respect to a communication protected by the privilege if any holder of the privilege, without coercion, has disclosed a significant part of the communication or has consented to disclosure made by anyone. Consent to disclosure is manifested by any statement or other conduct of the holder of the privilege indicating consent to the disclosure, including failure to claim the privilege in any proceeding in which the holder has legal standing and the opportunity to claim the privilege.

(b) Where two or more persons are joint holders of a privilege provided by Section 954 (lawyer-client privilege), 966 (lawyer referral service-client privilege), 994 (physician-patient privilege), 1014 (psychotherapist-patient privilege), 1035.8 (sexual assault counselor-victim privilege), 1037.5 (domestic violence counselor-victim privilege), or 1038 (human trafficking caseworker-victim privilege), a waiver of the right of a particular joint holder of the privilege to claim the privilege does not affect the right of another

joint holder to claim the privilege. In the case of the privilege provided by Section 980 (privilege for confidential marital communications), a waiver of the right of one spouse to claim the privilege does not affect the right of the other spouse to claim the privilege.

(c) A disclosure that is itself privileged is not a waiver of any privilege.

(d) A disclosure in confidence of a communication that is protected by a privilege provided by Section 954 (lawyer-client privilege), 966 (lawyer referral service-client privilege), 994 (physician-patient privilege), 1014 (psychotherapist-patient privilege), 1035.8 (sexual assault counselor-victim privilege), 1037.5 (domestic violence counselor-victim privilege), or 1038 (human trafficking caseworker-victim privilege), when disclosure is reasonably necessary for the accomplishment of the purpose for which the lawyer, lawyer referral service, physician, psychotherapist, sexual assault counselor, domestic violence counselor, or human trafficking caseworker was consulted, is not a waiver of the privilege. (Added by Stats. 1965, ch. 299. Amended by Stats. 1980, ch. 917; Stats. 2002, ch. 72; Stats. 2004, ch. 405; Stats. 2013, ch. 123; Stats. 2014, ch. 913.)

### **§ 913 Comments on, and Inferences from the Exercise of the Privilege**

(a) If in the instant proceeding or on a prior occasion a privilege is or was exercised not to testify with respect to any matter, or to refuse to disclose or to prevent another from disclosing any matter, neither the presiding officer nor counsel may comment thereon, no presumption shall arise because of the exercise of the privilege, and the trier of fact may not draw any inference therefrom as to the credibility of the witness or as to any matter at issue in the proceeding.

(b) The court, at the request of a party who may be adversely affected because an unfavorable inference may be drawn by the jury because a privilege has been exercised, shall instruct the jury that no presumption arises because of the exercise of the privilege and that the jury may not draw any inference therefrom as to the credibility of the witness or as to any matter at issue in the proceeding. (Added by Stats. 1965, ch. 299.)

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### **§ 914 Claim of Privilege, Determination of; Limitations on Punishment for Contempt**

(a) The presiding officer shall determine a claim of privilege in any proceeding in the same manner as a court determines such a claim under Article 2 (commencing with Section 400) of Chapter 4 of Division 3.

(b) No person may be held in contempt for failure to disclose information claimed to be privileged unless he has failed to comply with an order of a court that he disclose such information. This subdivision does not apply to any governmental agency that has constitutional contempt power, nor does it apply to hearings and investigations of the Industrial Accident Commission, nor does it impliedly repeal Chapter 4 (commencing with Section 9400) of Part 1 of Division 2 of Title 2 of the Government Code. If no other statutory procedure is applicable, the procedure prescribed by Section 1991 of the Code of Civil Procedure shall be followed in seeking an order of a court that the person disclose the information claimed to be privileged. (Added by Stats. 1965, ch. 299.)

### **§ 915 Disclosure of Privileged Information in Ruling on Claim of Privilege**

(a) Subject to subdivision (b), the presiding officer may not require disclosure of information claimed to be privileged under this division or attorney work product under subdivision (a) of Section 2018.030 of the Code of Civil Procedure in order to rule on the claim of privilege; provided, however, that in any hearing conducted pursuant to subdivision (c) of Section 1524 of the Penal Code in which a claim of privilege is made and the court determines that there is no other feasible means to rule on the validity of the claim other than to require disclosure, the court shall proceed in accordance with subdivision (b).

(b) When a court is ruling on a claim of privilege under Article 9 (commencing with Section 1040) of Chapter 4 (official information and identity of informer) or under Section 1060 (trade secret) or under subdivision (b) of Section 2018.030 of the Code of Civil Procedure (attorney work product) and is unable to do so without requiring disclosure of the information claimed to be privileged, the court may require the person from whom disclosure is sought or the person authorized to claim the privilege, or both, to disclose

the information in chambers out of the presence and hearing of all persons except the person authorized to claim the privilege and any other persons as the person authorized to claim the privilege is willing to have present. If the judge determines that the information is privileged, neither the judge nor any other person may ever disclose, without the consent of a person authorized to permit disclosure, what was disclosed in the course of the proceedings in chambers. (Added by Stats. 1965, ch. 299. Amended by Stats. 1979, ch. 1034; Stats. 2001, ch. 812; Stats. 2004, ch. 182.)

### **§ 916 Privileged Information—Exclusion Where Persons Authorized to Claim Privilege are Not Present**

(a) The presiding officer, on his own motion or on the motion of any party, shall exclude information that is subject to a claim of privilege under this division if:

(1) The person from whom the information is sought is not a person authorized to claim the privilege; and

(2) There is no party to the proceeding who is a person authorized to claim the privilege.

(b) The presiding officer may not exclude information under this section if:

(1) He is otherwise instructed by a person authorized to permit disclosure; or

(2) The proponent of the evidence establishes that there is no person authorized to claim the privilege in existence. (Added by Stats. 1965, ch. 299.)

### **§ 917 Confidential Communications—Presumptions; Burden of Proof**

(a) If a privilege is claimed on the ground that the matter sought to be disclosed is a communication made in confidence in the course of the lawyer-client, lawyer referral service-client, physician-patient, psychotherapist-patient, clergy-penitent, marital or domestic partnership, sexual assault counselor-victim, domestic violence counselor-victim, or human trafficking caseworker-victim relationship, the communication is

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presumed to have been made in confidence and the opponent of the claim of privilege has the burden of proof to establish that the communication was not confidential.

(b) A communication between persons in a relationship listed in subdivision (a) does not lose its privileged character for the sole reason that it is communicated by electronic means or because persons involved in the delivery, facilitation, or storage of electronic communication may have access to the content of the communication.

(c) For purposes of this section, “electronic” has the same meaning provided in Section 1633.2 of the Civil Code. (Added by Stats. 1965, ch. 299. Amended by Stats. 2002, ch. 72; Stats. 2003, ch. 468; Stats. 2004, ch. 183; Stats. 2006, ch. 689; Stats. 2014, ch. 913; Stats. 2016, ch. 50.)

### **§ 918 Claim of Privilege—Error in Overruling**

A party may predicate error on a ruling disallowing a claim of privilege only if he is the holder of the privilege, except that a party may predicate error on a ruling disallowing a claim of privilege by his spouse under Section 970 or 971. (Added by Stats. 1965, ch. 299.)

### **§ 919 Erroneously Compelled Disclosure—Admissibility; Claim of Privilege; Coercion**

(a) Evidence of a statement or other disclosure of privileged information is inadmissible against a holder of the privilege if:

- (1) A person authorized to claim the privilege claimed it but nevertheless disclosure erroneously was required to be made; or
- (2) The presiding officer did not exclude the privileged information as required by Section 916.

(b) If a person authorized to claim the privilege claimed it, whether in the same or a prior proceeding, but nevertheless disclosure erroneously was required by the presiding officer to be made, neither the failure to refuse to disclose nor the failure to seek review of the order of the presiding officer requiring disclosure indicates consent to the disclosure or constitutes a

waiver and, under these circumstances, the disclosure is one made under coercion. (Added by Stats. 1965, ch. 299. Amended by Stats. 1974, ch. 277.)

### **§ 920 Repeal by Implication of Other Statutes Related to Privilege**

Nothing in this division shall be construed to repeal by implication any other statute relating to privileges. (Added by Stats. 1965, ch. 299.)

### **§ 950 Lawyer Defined**

As used in this article, “lawyer” means a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation. (Added by Stats. 1965, ch. 299, operative January 1, 1967.)

### **§ 951 Client Defined**

As used in this article, “client” means 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 him in his professional capacity, and includes an incompetent (a) who himself so consults the lawyer or (b) whose guardian or conservator so consults the lawyer in behalf of the incompetent. (Added by Stats. 1965, ch. 299, operative January 1, 1967.)

### **§ 952 Confidential Communication Between Client and Lawyer Defined**

As used in this article, “confidential communication between client and lawyer” means information transmitted between a client and his or her lawyer in the course of that relationship and in confidence by a means which, so far as the client is aware, discloses the information to no third persons other than those who are present to further the interest of the client in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the lawyer is consulted, and includes a legal opinion formed and the advice given by the lawyer in the course of that relationship. (Added by Stats. 1965, ch. 299, operative



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January 1, 1967. Amended by Stats. 1967, ch. 650; Stats. 1994, ch. 587; Stats. 2002, ch. 72.)

### **§ 953      Holder of Privilege Defined**

As used in this article, “holder of the privilege” means:

- (a) The client, if the client has no guardian or conservator.
- (b) (1) A guardian or conservator of the client, if the client has a guardian or conservator, except as provided in paragraph (2).  
  
(2) If the guardian or conservator has an actual or apparent conflict of interest with the client, then the guardian or conservator does not hold the privilege.
- (c) The personal representative of the client if the client is dead, including a personal representative appointed pursuant to Section 12252 of the Probate Code.
- (d) A successor, assign, trustee in dissolution, or any similar representative of a firm, association, organization, partnership, business trust, corporation, or public entity that is no longer in existence. (Added by Stats. 1965, ch. 299, operative January 1, 1967. Amended by Stats. 2009, ch. 8. Amended by Stats. 2018, ch. 475.)

### **§ 954      Who May Claim Privilege**

Subject to Section 912 and except as otherwise provided in this article, the client, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between client and lawyer if the privilege is claimed by:

- (a) The holder of the privilege;
- (b) A person who is authorized to claim the privilege by the holder of the privilege; or
- (c) The person who was the lawyer at the time of the confidential communication, but such person may not claim the privilege if there is no holder of the privilege in existence or if he is otherwise instructed by a person authorized to permit disclosure.

The relationship of attorney and client shall exist between a law corporation as defined in Article 10 (commencing with Section 6160) of Chapter 4 of Division 3 of the Business and Professions Code and the persons to whom it renders professional services, as well as between such persons and members of the State Bar employed by such corporation to render services to such persons. The word “persons” as used in this subdivision includes partnerships, corporations, limited liability companies, associations and other groups and entities. (Added by Stats. 1965, ch. 299, operative January 1, 1967. Amended by Stats. 1968, ch. 1375; Stats. 1994, ch. 1010.)

### **§ 955      When Lawyer Must Claim Privilege**

The lawyer who received or made a communication subject to the privilege under this article shall claim the privilege whenever he is present when the communication is sought to be disclosed and is authorized to claim the privilege under subdivision (c) of Section 954. (Added by Stats. 1965, ch. 299, operative January 1, 1967.)

### **§ 956      Services of Lawyer Obtained to Aid in Commission of Crime or Fraud**

- (a) There is no privilege under this article if the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit a crime or a fraud.
- (b) This exception to the privilege granted by this article shall not apply to legal services rendered in compliance with state and local laws on medicinal cannabis or adult-use cannabis, and confidential communications provided for the purpose of rendering those services are confidential communications between client and lawyer, as defined in Section 952, provided the lawyer also advises the client on conflicts with respect to federal law. (Added by Stats. 1965, ch. 299, operative January 1, 1967. Amended by Stats. 2017, ch. 530.)

### **§ 956.5      Prevention of Criminal Act Likely to Result in Death or Substantial Bodily Harm**

There is no privilege under this article if the lawyer reasonably believes that disclosure of any confidential communication relating to representation of a client is

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necessary to prevent a criminal act that the lawyer reasonably believes is likely to result in the death of, or substantial bodily harm to, an individual. (Added by Stats. 1993, ch. 982. Amended by Stats. 2003, ch. 765; Stats. 2004, ch. 183.)

### **§ 957 Parties Claiming Under Deceased Client**

There is no privilege under this article as to a communication relevant to an issue between parties all of whom claim through a deceased client, regardless of whether the claims are by testate or intestate succession, nonprobate transfer, or inter vivos transaction. (Added by Stats. 1965, ch. 299, operative January 1, 1967. Amended by Stats. 2009, ch. 8.)

### **§ 958 Breach of Duty Arising Out of Lawyer-Client Relationship in Issue**

There is no privilege under this article as to a communication relevant to an issue of breach, by the lawyer or by the client, of a duty arising out of the lawyer-client relationship. (Added by Stats. 1965, ch. 299, operative January 1, 1967.)

### **§ 959 Intention or Competence of Client Executing Attested Document in Issue**

There is no privilege under this article as to a communication relevant to an issue concerning the intention or competence of a client executing an attested document of which the lawyer is an attesting witness, or concerning the execution or attestation of such a document. (Added by Stats. 1965, ch. 299, operative January 1, 1967.)

### **§ 960 Intention of Deceased Client With Respect to Writing Affecting Interest in Property in Issue**

There is no privilege under this article as to a communication relevant to an issue concerning the intention of a client, now deceased, with respect to a deed of conveyance, will, or other writing, executed by the client, purporting to affect an interest in property. (Added by Stats. 1965, ch. 299, operative January 1, 1967.)

### **§ 961 Validity of Writing Affecting Interest in Property Executed by Deceased Client in Issue**

There is no privilege under this article as to a communication relevant to an issue concerning the validity of a deed of conveyance, will, or other writing, executed by a client, now deceased, purporting to affect an interest in property. (Added by Stats. 1965, ch. 299, operative January 1, 1967.)

### **§ 962 Two or More Clients Retaining Same Lawyer in Matter of Common Interest**

Where two or more clients have retained or consulted a lawyer upon a matter of common interest, none of them, nor the successor in interest of any of them, may claim a privilege under this article as to a communication made in the course of that relationship when such communication is offered in a civil proceeding between one of such clients (or his successor in interest) and another of such clients (or his successor in interest). (Added by Stats. 1965, ch. 299, operative January 1, 1967.)

### **§ 965 Lawyer Referral Service-Client Privilege—Definitions**

For purposes of this article, the following terms have the following meanings:

(a) “Client” means a person who, directly or through an authorized representative, consults a lawyer referral service for the purpose of retaining, or securing legal services or advice from, a lawyer in his or her professional capacity, and includes an incompetent who consults the lawyer referral service himself or herself or whose guardian or conservator consults the lawyer referral service on his or her behalf.

(b) “Confidential communication between client and lawyer referral service” means information transmitted between a client and a lawyer referral service in the course of that relationship and in confidence by a means that, so far as the client is aware, does not disclose the information to third persons other than those who are present to further the interests of the client in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the lawyer referral service is consulted.

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(c) “Holder of the privilege” means any of the following:

- (1) The client, if the client has no guardian or conservator.
- (2) A guardian or conservator of the client, if the client has a guardian or conservator.
- (3) The personal representative of the client if the client is dead, including a personal representative appointed pursuant to Section 12252 of the Probate Code.
- (4) A successor, assign, trustee in dissolution, or any similar representative of a firm, association, organization, partnership, business trust, corporation, or public entity that is no longer in existence.

(d) “Lawyer referral service” means a lawyer referral service certified under, and operating in compliance with, Section 6155 of the Business and Professions Code or an enterprise reasonably believed by the client to be a lawyer referral service certified under, and operating in compliance with, Section 6155 of the Business and Professions Code. (Added by Stats. 2013, ch. 123.)

### **§ 966      Lawyer Referral Service-Client Privilege**

Subject to Section 912 and except as otherwise provided in this article, the client, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between client and lawyer if the privilege is claimed by:

(a) Subject to Section 912 and except as otherwise provided in this article, the client, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between client and lawyer referral service if the privilege is claimed by any of the following:

- (1) The holder of the privilege.
- (2) A person who is authorized to claim the privilege by the holder of the privilege.

(3) The lawyer referral service or a staff person thereof, but the lawyer referral service or a staff person thereof may not claim the privilege if there is no holder of the privilege in existence or if the lawyer referral service or a staff person thereof is otherwise instructed by a person authorized to permit disclosure.

(b) The relationship of lawyer referral service and client shall exist between a lawyer referral service, as defined in Section 965, and the persons to whom it renders services, as well as between such persons and anyone employed by the lawyer referral service to render services to such persons. The word “persons” as used in this subdivision includes partnerships, corporations, limited liability companies, associations, and other groups and entities. (Added by Stats. 2013, ch. 123.)

### **§ 967      Lawyer Referral Service-Client Privilege— Claiming of Privilege**

A lawyer referral service that has received or made a communication subject to the privilege under this article shall claim the privilege if the communication is sought to be disclosed and the client has not consented to the disclosure. (Added by Stats. 2013, ch. 123.)

### **§ 968      Lawyer Referral Service-Client Privilege— Exceptions to Privilege**

There is no privilege under this article if either of the following applies:

- (a) The services of the lawyer referral service were sought or obtained to enable or aid anyone to commit or plan to commit a crime or a fraud.
- (b) A staff person of the lawyer referral service who receives a confidential communication in processing a request for legal assistance reasonably believes that disclosure of the confidential communication is necessary to prevent a criminal act that the staff person of the lawyer referral service reasonably believes is likely to result in the death of, or substantial bodily harm to, an individual. (Added by Stats. 2013, ch. 123.)

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### **§ 1119 Written or Oral Communications During Mediation Process; Admissibility**

Except as otherwise provided in this chapter:

(a) No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation is admissible or subject to discovery, and disclosure of the evidence shall not be compelled, in any arbitration, administrative adjudication, civil action, or other noncriminal proceeding in which, pursuant to law, testimony can be compelled to be given.

(b) No writing, as defined in Section 250, that is prepared for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation, is admissible or subject to discovery, and disclosure of the writing shall not be compelled, in any arbitration, administrative adjudication, civil action, or other noncriminal proceeding in which, pursuant to law, testimony can be compelled to be given.

(c) All communications, negotiations, or settlement discussions by and between participants in the course of a mediation or a mediation consultation shall remain confidential. (Added by Stats. 1997, ch. 772.)

### **§ 1270 “A Business”**

As used in this article, “a business” includes every kind of business, governmental activity, profession, occupation, calling, or operation of institutions, whether carried on for profit or not. (Added by Stats. 1965, ch. 299.)

### **§ 1271 Business Record**

Evidence of a writing made as a record of an act, condition, or event is not made inadmissible by the hearsay rule when offered to prove the act, condition, or event if:

(a) The writing was made in the regular course of a business;

(b) The writing was made at or near the time of the act, condition, or event;

(c) The custodian or other qualified witness testifies to its identity and the mode of its preparation; and

(d) The sources of information and method and time of preparation were such as to indicate its trustworthiness. (Added by Stats. 1965, ch. 299.)

### **§ 1272 Absence of Entry in Business Records**

Evidence of the absence from the records of a business of a record of an asserted act, condition, or event is not made inadmissible by the hearsay rule when offered to prove the nonoccurrence of the act or event, or the non-existence of the condition, if:

(a) It was the regular course of that business to make records of all such acts, conditions, or events at or near the time of the act, condition, or event and to preserve them; and

(b) The sources of information and method and time of preparation of the records of that business were such that the absence of a record of an act, condition, or event is a trustworthy indication that the act or event did not occur or the condition did not exist. (Added by Stats. 1965, ch. 299.)

### **§ 1552 Printed Representation of Computer Generated Information or Computer Program**

(a) A printed representation of computer information or a computer program is presumed to be an accurate representation of the computer information or computer program that it purports to represent. This presumption is a presumption affecting the burden of producing evidence. If a party to an action introduces evidence that a printed representation of computer information or computer program is inaccurate or unreliable, the party introducing the printed representation into evidence has the burden of proving, by a preponderance of evidence, that the printed representation is an accurate representation of the existence and content of the computer information or computer program that it purports to represent.

(b) Subdivision (a) applies to the printed representation of computer-generated information stored by an automated traffic enforcement system.

(c) Subdivision (a) shall not apply to computer-generated official records certified in accordance with Section 452.5 or 1530. (Added by Stats. 1998, ch. 100. Amended by Stats. 2012, ch. 735.)

**§ 1553 Evidence—Printed Representation of Images Stored on Video or Digital Medium; Burden of Proof**

(a) A printed representation of images stored on a video or digital medium is presumed to be an accurate representation of the images it purports to represent. This presumption is a presumption affecting the burden of producing evidence. If a party to an action introduces evidence that a printed representation of images stored on a video or digital medium is inaccurate or unreliable, the party introducing the printed representation into evidence has the burden of proving, by a preponderance of evidence, that the printed representation is an accurate representation of the existence and content of the images that it purports to represent.

(b) Subdivision (a) applies to the printed representation of video or photographic images stored by an automated traffic enforcement system. (Added by Stats. 1998, ch. 100. Amended by Stats. 2012, ch. 735.)

**§ 1563 Witness Fees**

(a) This article does not require tender or payment of more than one witness fee and one mileage fee or other charge, to a witness or witness' business, unless there is an agreement to the contrary between the witness and the requesting party.

(b) All reasonable costs incurred in a civil proceeding by a witness who is not a party with respect to the production of all or any part of business records requested pursuant to a subpoena duces tecum shall be charged against the party serving the subpoena duces tecum.

(1) "Reasonable costs," as used in this section, includes, but is not limited to, the following specific costs: ten cents (\$0.10) per page for standard reproduction of documents of a size 8 1/2 by 14 inches or less; twenty cents (\$0.20) per page for copying of documents from microfilm; actual costs for the reproduction of oversize documents or the reproduction of documents requiring special processing which are made in response to a subpoena; reasonable clerical costs incurred in locating and making the records available to be billed at the maximum rate of twenty-four dollars (\$24) per hour per person,

computed on the basis of six dollars (\$6) per quarter hour or fraction thereof; actual postage charges; and the actual cost, if any, charged to the witness by a third person for the retrieval and return of records held offsite by that third person.

(2) The requesting party, or the requesting party's deposition officer, shall not be required to pay the reasonable costs or any estimate thereof before the records are available for delivery pursuant to the subpoena, but the witness may demand payment of costs pursuant to this section simultaneous with actual delivery of the subpoenaed records, and until payment is made, the witness is under no obligation to deliver the records.

(3) The witness shall submit an itemized statement for the costs to the requesting party, or the requesting party's deposition officer, setting forth the reproduction and clerical costs incurred by the witness. If the costs exceed those authorized in paragraph (1), or if the witness refuses to produce an itemized statement of costs as required by paragraph (3), upon demand by the requesting party, or the requesting party's deposition officer, the witness shall furnish a statement setting forth the actions taken by the witness in justification of the costs.

(4) The requesting party may petition the court in which the action is pending to recover from the witness all or a part of the costs paid to the witness, or to reduce all or a part of the costs charged by the witness, pursuant to this subdivision, on the grounds that those costs were excessive. Upon the filing of the petition the court shall issue an order to show cause and from the time the order is served on the witness the court has jurisdiction over the witness. The court may hear testimony on the order to show cause and if it finds that the costs demanded and collected, or charged but not collected, exceed the amount authorized by this subdivision, it shall order the witness to remit to the requesting party, or reduce its charge to the requesting party by an amount equal to, the amount of the excess. If the court finds the costs were excessive and charged in bad faith by the witness, the court shall order the witness to remit the full amount of the costs

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demanded and collected, or excuse the requesting party from any payment of costs charged but not collected, and the court shall also order the witness to pay the requesting party the amount of the reasonable expenses incurred in obtaining the order, including attorney's fees. If the court finds the costs were not excessive, the court shall order the requesting party to pay the witness the amount of the reasonable expenses incurred in defending the petition, including attorney's fees.

(5) If a subpoena is served to compel the production of business records and is subsequently withdrawn, or is quashed, modified, or limited on a motion made other than by the witness, the witness shall be entitled to reimbursement pursuant to paragraph (1) for all reasonable costs incurred in compliance with the subpoena to the time that the requesting party has notified the witness that the subpoena has been withdrawn or quashed, modified, or limited. If the subpoena is withdrawn or quashed, if those costs are not paid within 30 days after demand therefor, the witness may file a motion in the court in which the action is pending for an order requiring payment, and the court shall award the payment of expenses and attorney's fees in the manner set forth in paragraph (4).

(6) If the records requested pursuant to a subpoena duces tecum are delivered to the attorney, the attorney's representative or the deposition officer for inspection or photocopying at the witness' place of business, the only fee for complying with the subpoena shall not exceed fifteen dollars (\$15), plus the actual cost, if any, charged to the witness by a third person for retrieval and return of records held offsite by that third person. If the records are retrieved from microfilm, the reasonable costs, as defined in paragraph (1), applies.

(c) If the personal attendance of the custodian of a record or other qualified witness is required pursuant to Section 1564, in a civil proceeding, he or she shall be entitled to the same witness fees and mileage permitted in a case where the subpoena requires the witness to attend and testify before a court in which the action or proceeding is pending and to any additional costs incurred as provided by subdivision (b).

(Added by Stats. 1965, ch. 299, operative January 1, 1967. Amended by Stats. 1972, ch. 396; Stats. 1981, ch. 1014; Stats. 1982, ch. 452; Stats. 1986, ch. 603; Stats. 1987, ch. 19, effective May 12, 1987; Stats. 1997, ch. 442; Stats. 1999, ch. 444; Stats. 2016, ch. 85.)

## FAMILY CODE

### § 1612 Premarital Agreements, Subject Matter

(a) Parties to a premarital agreement may contract with respect to all of the following:

(1) The rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located.

(2) The right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property.

(3) The disposition of property upon separation, marital dissolution, death, or the occurrence or nonoccurrence of any other event.

(4) The making of a will, trust, or other arrangement to carry out the provisions of the agreement.

(5) The ownership rights in and disposition of the death benefit from a life insurance policy.

(6) The choice of law governing the construction of the agreement.

(7) Any other matter, including their personal rights and obligations, not in violation of public policy or a statute imposing a criminal penalty.

(b) The right of a child to support may not be adversely affected by a premarital agreement.

(c) Any provision in a premarital agreement regarding spousal support, including, but not limited to, a waiver of it, is not enforceable if the party against whom enforcement of the spousal support provision is sought was not represented by

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independent counsel at the time the agreement containing the provision was signed, or if the provision regarding spousal support is unconscionable at the time of enforcement. An otherwise unenforceable provision in a premarital agreement regarding spousal support may not become enforceable solely because the party against whom enforcement is sought was represented by independent counsel. (Added by Stats. 1992, ch. 162, operative January 1, 1994. Amended by Stats. 2001, ch. 286.)

### **§ 1615 Premarital Agreements, Enforceability**

(a) A premarital agreement is not enforceable if the party against whom enforcement is sought proves either of the following:

(1) That party did not execute the agreement voluntarily.

(2) The agreement was unconscionable when it was executed and, before execution of the agreement, all of the following applied to that party:

(A) That party was not provided a fair, reasonable, and full disclosure of the property or financial obligations of the other party.

(B) That party did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided.

(C) That party did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party.

(b) An issue of unconscionability of a premarital agreement shall be decided by the court as a matter of law.

(c) For the purposes of subdivision (a), it shall be deemed that a premarital agreement was not executed voluntarily unless the court finds in writing or on the record all of the following:

(1) The party against whom enforcement is sought was represented by independent legal

counsel at the time of signing the agreement or, after being advised to seek independent legal counsel, expressly waived, in a separate writing, representation by independent legal counsel. The advisement to seek independent legal counsel shall be made at least seven calendar days before the final agreement is signed.

(2) One of the following:

(A) For an agreement executed between January 1, 2002, and January 1, 2020, the party against whom enforcement is sought had not less than seven calendar days between the time that party was first presented with the final agreement and advised to seek independent legal counsel and the time the agreement was signed. This requirement does not apply to nonsubstantive amendments that do not change the terms of the agreement.

(B) For an agreement executed on or after January 1, 2020, the party against whom enforcement is sought had not less than seven calendar days between the time that party was first presented with the final agreement and the time the agreement was signed, regardless of whether the party is represented by legal counsel. This requirement does not apply to nonsubstantive amendments that do not change the terms of the agreement.

(3) The party against whom enforcement is sought, if unrepresented by legal counsel, was fully informed of the terms and basic effect of the agreement as well as the rights and obligations the party was giving up by signing the agreement, and was proficient in the language in which the explanation of the party's rights was conducted and in which the agreement was written. The explanation of the rights and obligations relinquished shall be memorialized in writing and delivered to the party prior to signing the agreement. The unrepresented party shall, on or before the signing of the premarital agreement, execute a document declaring that the party received the information required by this paragraph and indicating who provided that information.

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(4) The agreement and the writings executed pursuant to paragraphs (1) and (3) were not executed under duress, fraud, or undue influence, and the parties did not lack capacity to enter into the agreement.

(5) Any other factors the court deems relevant. (Added by Stats. 1992, ch. 162, operative January 1, 1994. Amended by Stats. 2001, ch. 286; Stats. 2019, ch. 193.)

### **§ 2033 Family Law Attorney's Real Property Lien; Notice; Objections**

(a) Either party may encumber the party's interest in community real property to pay reasonable attorney's fees in order to retain or maintain legal counsel in a proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties. This encumbrance shall be known as a "family law attorney's real property lien" and attaches only to the encumbering party's interest in the community real property.

(b) Notice of a family law attorney's real property lien shall be served either personally or on the other party's attorney of record at least 15 days before the encumbrance is recorded. This notice shall contain a declaration signed under penalty of perjury containing all of the following:

- (1) A full description of the real property.
- (2) The party's belief as to the fair market value of the property and documentation supporting that belief.
- (3) Encumbrances on the property as of the date of the declaration.
- (4) A list of community assets and liabilities and their estimated values as of the date of the declaration.
- (5) The amount of the family law attorney's real property lien.

(c) The nonencumbering party may file an ex parte objection to the family law attorney's real property lien. The objection shall include a request to stay the recordation until further notice of the court and shall contain a copy of the notice received. The objection

shall also include a declaration signed under penalty of perjury as to all of the following:

- (1) Specific objections to the family law attorney's real property lien and to the specific items in the notice.
- (2) The objector's belief as to the appropriate items or value and documentation supporting that belief.
- (3) A declaration specifically stating why recordation of the encumbrance at this time would likely result in an unequal division of property or would otherwise be unjust under the circumstances of the case.

(d) Except as otherwise provided by this section, general procedural rules regarding ex parte motions apply.

(e) An attorney for whom a family law attorney's real property lien is obtained shall comply with Rule 3-300 of the Rules of Professional Conduct of the State Bar of California. (Added by Stats. 1993, ch. 219. Amended by Stats. 2019, ch. 115.)

### **§ 8800 Unethical for Attorney to Represent Both Prospective Adopting Parents and Natural Parents—Conflict of Interest**

(a) The Legislature finds and declares that an attorney's ability to effectively represent a client may be seriously impaired when conflict of interest deprives the client of the attorney's undivided loyalty and effort. The Legislature further finds and declares that the relation between attorney and client is a fiduciary relation of the very highest character, and binds the attorney to the most conscientious fidelity.

(b) The Legislature finds that Rule 2-111(A)(2) of the State Bar Rules of Professional Conduct provides that an attorney shall not withdraw from employment until the attorney has taken reasonable steps to avoid foreseeable prejudice to the rights of the client, including giving due notice to the 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.

(c) The Legislature declares that in an independent adoption proceeding, whether or not written consent is



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obtained, multiple representation by an attorney should be avoided whenever a birth parent displays the slightest reason for the attorney to believe any controversy might arise. The Legislature finds and declares that it is the duty of the attorney when a conflict of interest occurs to withdraw promptly from any case, advise the parties to retain independent counsel, refrain from taking positions in opposition to any of these former clients, and thereafter maintain an impartial, fair, and open attitude toward the new attorneys.

(d) Notwithstanding any other law, it is unethical for an attorney to undertake the representation of both the prospective adoptive parents and the birth parents of a child in any negotiations or proceedings in connection with an adoption unless a written consent is obtained from both parties. The written consent shall include all of the following:

(1) A notice to the birth parents, in the form specified in this section, of their right to have an independent attorney advise and represent them in the adoption proceeding and that the prospective adoptive parents may be required to pay the reasonable attorney's fees up to a maximum of five hundred dollars (\$500) for that representation, unless a higher fee is agreed to by the parties.

(2) A notice to the birth parents that they may waive their right to an independent attorney and may be represented by the attorney representing the prospective adoptive parents.

(3) A waiver by the birth parents of representation by an independent attorney.

(4) An agreement that the attorney representing the prospective adoptive parents shall represent the birth parents.

(e) Upon the petition or motion of any party, or upon motion of the court, the court may appoint an attorney to represent a child's birth parent or parents in negotiations or proceedings in connection with the child's adoption.

(f) The birth parent or parents may have an attorney, other than the attorney representing the interests of the prospective adoptive parents, to advise them fully of the adoption procedures and of their legal rights. The birth parent or parents also may retain an attorney

to represent them in negotiations or proceedings in connection with the child's adoption. The court may award attorney's fees and costs for just cause and based upon the ability of the parties to pay those fees and costs.

(g) In the initial communication between the attorney retained by or representing the prospective adoptive parents and the birth parents, or as soon thereafter as reasonable, but before any written consent for dual representation, the attorney shall advise the birth parents of their rights regarding an independent attorney and that it is possible to waive the independent attorney.

(h) The attorney retained by or representing the prospective adoptive parents shall inform the prospective adoptive parents in writing that the birth parent or parents can revoke consent to the adoption pursuant to Section 8814.5 and that any moneys expended in negotiations or proceedings in connection with the child's adoption are not reimbursable. The prospective adoptive parents shall sign a statement to indicate their understanding of this information.

(i) Any written consent to dual representation shall be filed with the court before the filing of the birth parent's consent to adoption. (Added by Stats. 1992, ch. 162. Amended by Stats. 1993, ch. 450, operative January 1, 1995; Stats. 2019, ch. 115.)

*[\*Publisher's Note: Rule 2-111(A)(2) of the California Rules of Professional Conduct has been amended and renumbered; please refer to current rule 3-700.]*

### **§ 8812 Requirements for Payment of Attorneys' Fees, etc., by Prospective Adopting Parents to the Birth Parents**

Any request by a birth parent or birth parents for payment by the prospective adoptive parents of attorney's fees, medical fees and expenses, counseling fees, or living expenses of the birth mother shall be in writing. The birth parent or parents shall, by first-class mail or other agreed upon means to ensure receipt, provide the prospective adoptive parents written receipts for any money provided to the birth parent or birth parents. The prospective adoptive parents shall provide the receipts to the court when the accounting report required pursuant to Section 8610 is filed. (Added by Stats. 1993, ch. 450.)

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### **§ 10000 Family Law Facilitator Act**

This division shall be known and may be cited as the Family Law Facilitator Act. (Added by Stats. 1996, ch. 957.)

### **§ 10001 Family Law Facilitator Act—Legislative Findings and Declaration**

(a) The Legislature finds and declares the following:

(1) Child and spousal support are serious legal obligations. The entry of a child support order is frequently delayed while parents engage in protracted litigation concerning custody and visitation. The current system for obtaining child and spousal support orders is suffering because the family courts are unduly burdened with heavy case loads and do not have sufficient personnel to meet increased demands on the courts.

(2) Reports to the Legislature regarding the family law pilot projects in the Superior Courts of the Counties of Santa Clara and San Mateo indicate that the pilot projects have provided a cost-effective and efficient method for the courts to process family law cases that involve unrepresented litigants with issues concerning child support, spousal support, and health insurance.

(3) The reports to the Legislature further indicate that the pilot projects in both counties have been successful in making the process of obtaining court orders concerning child support, spousal support, and health insurance more accessible to unrepresented parties. Surveys conducted by both counties indicate a high degree of satisfaction with the services provided by the pilot projects.

(4) There is a compelling state interest in having a speedy, conflict-reducing system for resolving issues of child support, spousal support, and health insurance that is cost-effective and accessible to families that cannot afford legal representation.

(b) Therefore, it is the intent of the Legislature to make the services provided in the family law pilot projects in the Counties of Santa Clara and San Mateo available to unrepresented parties in the superior

courts of all California counties. (Added by Stats. 1996, ch. 957.)

### **§ 10002 Family Law Facilitator Office—Superior Court Appointment of Licensed Attorneys as Facilitators**

Each superior court shall maintain an office of the family law facilitator. The office of the family law facilitator shall be staffed by an attorney licensed to practice law in this state who has mediation or litigation experience, or both, in the field of family law. The family law facilitator shall be appointed by the superior court. (Added by Stats. 1996, ch. 957.)

### **§ 10003 Family Law Facilitator Act—Application of Division**

This division shall apply to all actions or proceedings for temporary or permanent child support, spousal support, health insurance, child custody, or visitation in a proceeding for dissolution of marriage, nullity of marriage, legal separation, or exclusive child custody, or pursuant to the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12) or the Domestic Violence Prevention Act (Division 10 (commencing with Section 6200)). (Added by Stats. 1996, ch. 957. Amended by Stats. 1999, ch. 652.)

### **§ 10004 Family Law Facilitator Act—Services Provided**

Services provided by the family law facilitator shall include, but are not limited to, the following: providing educational materials to parents concerning the process of establishing parentage and establishing, modifying, and enforcing child support and spousal support in the courts; distributing necessary court forms and voluntary declarations of paternity; providing assistance in completing forms; preparing support schedules based upon statutory guidelines; and providing referrals to the local child support agency, family court services, and other community agencies and resources that provide services for parents and children. In counties where a family law information center exists, the family law facilitator shall provide assistance on child support issues. (Added by Stats. 1996, ch. 957. Amended by Stats. 1999, ch. 652.)

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### **§ 10005 Family Law Facilitator Act—Additional Duties**

(a) By local rule, the superior court may designate additional duties of the family law facilitator, which may include, but are not limited to, the following:

(1) Meeting with litigants to mediate issues of child support, spousal support, and maintenance of health insurance, subject to Section 10012. Actions in which one or both of the parties are unrepresented by counsel shall have priority.

(2) Drafting stipulations to include all issues agreed to by the parties, which may include issues other than those specified in Section 10003.

(3) If the parties are unable to resolve issues with the assistance of the family law facilitator, prior to or at the hearing, and at the request of the court, the family law facilitator shall review the paperwork, examine documents, prepare support schedules, and advise the judge whether or not the matter is ready to proceed.

(4) Assisting the clerk in maintaining records.

(5) Preparing formal orders consistent with the court's announced order in cases where both parties are unrepresented.

(6) Serving as a special master in proceedings and making findings to the court unless the family law facilitator has served as a mediator in that case.

(7) Providing the services specified in Section 10004 concerning the issues of child custody and visitation as they relate to calculating child support, if funding is provided for that purpose.

(b) If staff and other resources are available and the duties listed in subdivision (a) have been accomplished, the duties of the family law facilitator may also include the following:

(1) Assisting the court with research and any other responsibilities that will enable the court to be responsive to the litigants' needs.

(2) Developing programs for bar and community outreach through day and evening programs, video recordings, and other innovative means that will assist unrepresented and

financially disadvantaged litigants in gaining meaningful access to family court. These programs shall specifically include information concerning underutilized legislation, such as expedited child support orders (Chapter 5 (commencing with Section 3620) of Part 1 of Division 9), and preexisting, court-sponsored programs, such as supervised visitation and appointment of attorneys for children. (Added by Stats. 1996, ch. 957. Amended by Stats. 1997, ch. 599; Stats. 1999, ch. 652; Stats. 2009, ch. 88; Stats. 2019, ch. 115.)

### **§ 10006 Family Law Facilitator Act—Hearing**

The court shall adopt a protocol wherein all litigants, both unrepresented by counsel and represented by counsel, have ultimate access to a hearing before the court. (Added by Stats. 1996, ch. 957.)

### **§ 10007 Family Law Facilitator Act—Cost**

The court shall provide the family law facilitator at no cost to the parties. (Added by Stats. 1996, ch. 957.)

### **§ 10008 Family Law Facilitator Act—Child Support; Services Provided**

(a) Except as provided in subdivision (b), nothing in this chapter shall be construed to apply to a child for whom services are provided or required to be provided by a local child support agency pursuant to Section 17400.

(b) In cases in which the services of the local child support agency are provided pursuant to Section 17400, either parent may utilize the services of the family law facilitator that are specified in Section 10004. In order for a custodial parent who is receiving the services of the local child support agency pursuant to Section 17400 to utilize the services specified in Section 10005 relating to support, the custodial parent must obtain written authorization from the local child support agency. It is not the intent of the Legislature in enacting this section to limit the duties of local child support agencies with respect to seeking child support payments or to in any way limit or supersede other provisions of this code respecting temporary child support. (Added by Stats. 1996, ch. 957. Amended by Stats. 2000, ch. 808, effective September 28, 2000.)

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### **§ 10010 Family Law Facilitator Act–Minimum Standards**

The Judicial Council shall adopt minimum standards for the office of the family law facilitator and any forms or rules of court that are necessary to implement this division. (Added by Stats. 1996, ch. 957.)

### **§ 10011 Family Law Facilitator Act–Funding**

The Director of the State Department of Social Services shall seek approval from the United States Department of Health and Human Services, Office of Child Support Enforcement, to utilize funding under Title IV-D of the Social Security Act for the services provided pursuant to this division. (Added by Stats. 1996, ch. 957.)

### **§ 10012 Family Law Facilitator Act–Separate Meetings with Parties When History of Domestic Violence is Alleged**

(a) In a proceeding in which mediation is required pursuant to paragraph (1) of subdivision (a) of Section 10005, where there has been a history of domestic violence between the parties or where a protective order as defined in Section 6218 is in effect, at the request of the party alleging domestic violence in a written declaration under penalty of perjury or protected by the order, the family law facilitator shall meet with the parties separately and at separate times.

(b) Any intake form that the office of the family law facilitator requires the parties to complete before the commencement of mediation shall state that, if a party alleging domestic violence in a written declaration under penalty of perjury or a party protected by a protective order so requests, the mediator will meet with the parties separately and at separate times. (Added by Stats. 1996, ch. 957.)

### **§ 10013 Family Law Facilitator Act–Notice Regarding Attorney-Client Relationship**

The family law facilitator shall not represent any party. No attorney-client relationship is created between a party and the family law facilitator as a result of any information or services provided to the party by the family law facilitator. The family law facilitator shall give conspicuous notice that no attorney-client relationship exists between the facilitator, its staff, and

the family law litigant. The notice shall include the advice that the absence of an attorney-client relationship means that communications between the party and the family law facilitator are not privileged and that the family law facilitator may provide services to the other party. (Added by Stats. 1999, ch. 652.)

### **§ 10014 Family Law Facilitator Act–Public Comments Prohibited**

A person employed by, or directly supervised by, the family law facilitator shall not make any public comment about a pending or impending proceeding in the court as provided by paragraph (9) of subdivision (B) of Canon 3 of the Code of Judicial Ethics. All persons employed by or directly supervised by the family law facilitator shall be provided a copy of paragraph (9) of subdivision (B) of Canon 3 of the Code of Judicial Ethics, and shall be required to sign an acknowledgment that the person is aware of its provisions. (Added by Stats. 1999, ch. 652. Amended by Stats. 2019, ch. 115.)

### **§ 10015 Family Law Facilitator Act–Judicial Counsel Forms**

The Judicial Council shall create any necessary forms to advise the parties of the types of services provided, that there is no attorney-client relationship, that the family law facilitator is not responsible for the outcome of any case, that the family law facilitator does not represent any party and will not appear in court on the party's behalf, and that the other party may also be receiving information and services from the family law facilitator. (Added by Stats. 1999, ch. 652.)

### **§ 17520 License Applicants; Compliance with Support Orders; License Issuance, Renewal, and Suspension; Review**

(a) As used in this section:

(1) "Applicant" means a person applying for issuance or renewal of a license.

(2) "Board" means an entity specified in Section 101 of the Business and Professions Code, the entities referred to in Sections 1000 and 3600 of the Business and Professions Code, the State Bar of California, the Department of Real Estate, the Department of Motor Vehicles, the Secretary of

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State, the Department of Fish and Wildlife, and any other state commission, department, committee, examiner, or agency that issues a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession, or to the extent required by federal law or regulations, for recreational purposes. This term includes all boards, commissions, departments, committees, examiners, entities, and agencies that issue a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession. The failure to specifically name a particular board, commission, department, committee, examiner, entity, or agency that issues a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession does not exclude that board, commission, department, committee, examiner, entity, or agency from this term.

(3) “Certified list” means a list provided by the local child support agency to the Department of Child Support Services in which the local child support agency verifies, under penalty of perjury, that the names contained therein are support obligors found to be out of compliance with a judgment or order for support in a case being enforced under Title IV-D of the federal Social Security Act.

(4) “Compliance with a judgment or order for support” means that, as set forth in a judgment or order for child or family support, the obligor is no more than 30 calendar days in arrears in making payments in full for current support, in making periodic payments in full, whether court ordered or by agreement with the local child support agency, on a support arrearage, or in making periodic payments in full, whether court ordered or by agreement with the local child support agency, on a judgment for reimbursement for public assistance, or has obtained a judicial finding that equitable estoppel as provided in statute or case law precludes enforcement of the order. The local child support agency is authorized to use this section to enforce orders for spousal support only when the local child support agency is also enforcing a related child support obligation owed to the obligee parent by the same obligor, pursuant to Sections 17400 and 17604.

(5) “License” includes membership in the State Bar of California, and a certificate, credential, permit, registration, or any other authorization issued by a board that allows a person to engage in a business, occupation, or profession, or to operate a commercial motor vehicle, including appointment and commission by the Secretary of State as a notary public. “License” also includes any driver’s license issued by the Department of Motor Vehicles, any commercial fishing license issued by the Department of Fish and Wildlife, and to the extent required by federal law or regulations, any license used for recreational purposes. This term includes all licenses, certificates, credentials, permits, registrations, or any other authorization issued by a board that allows a person to engage in a business, occupation, or profession. The failure to specifically name a particular type of license, certificate, credential, permit, registration, or other authorization issued by a board that allows a person to engage in a business, occupation, or profession, does not exclude that license, certificate, credential, permit, registration, or other authorization from this term.

(6) “Licensee” means a person holding a license, certificate, credential, permit, registration, or other authorization issued by a board, to engage in a business, occupation, or profession, or a commercial driver’s license as defined in Section 15210 of the Vehicle Code, including an appointment and commission by the Secretary of State as a notary public. “Licensee” also means a person holding a driver’s license issued by the Department of Motor Vehicles, a person holding a commercial fishing license issued by the Department of Fish and Wildlife, and to the extent required by federal law or regulations, a person holding a license used for recreational purposes. This term includes all persons holding a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession, and the failure to specifically name a particular type of license, certificate, credential, permit, registration, or other authorization issued by a board does not exclude that person from this term. For licenses issued to an entity that is not an individual person, “licensee” includes an individual who is either listed on the license or who qualifies for the license.

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(b) The local child support agency shall maintain a list of those persons included in a case being enforced under Title IV-D of the federal Social Security Act against whom a support order or judgment has been rendered by, or registered in, a court of this state, and who are not in compliance with that order or judgment. The local child support agency shall submit a certified list with the names, social security numbers, individual taxpayer identification numbers, or other uniform identification numbers, and last known addresses of these persons and the name, address, and telephone number of the local child support agency who certified the list to the department. The local child support agency shall verify, under penalty of perjury, that the persons listed are subject to an order or judgment for the payment of support and that these persons are not in compliance with the order or judgment. The local child support agency shall submit to the department an updated certified list on a monthly basis.

(c) The department shall consolidate the certified lists received from the local child support agencies and, within 30 calendar days of receipt, shall provide a copy of the consolidated list to each board that is responsible for the regulation of licenses, as specified in this section.

(d) On or before November 1, 1992, or as soon thereafter as economically feasible, as determined by the department, all boards subject to this section shall implement procedures to accept and process the list provided by the department, in accordance with this section. Notwithstanding any other law, all boards shall collect social security numbers or individual taxpayer identification numbers from all applicants for the purposes of matching the names of the certified list provided by the department to applicants and licensees and of responding to requests for this information made by child support agencies.

(e) (1) Promptly after receiving the certified consolidated list from the department, and prior to the issuance or renewal of a license, each board shall determine whether the applicant is on the most recent certified consolidated list provided by the department. The board shall have the authority to withhold issuance or renewal of the license of an applicant on the list.

(2) If an applicant is on the list, the board shall immediately serve notice as specified in subdivision (f) on the applicant of the board's intent to withhold issuance or renewal of the

license. The notice shall be made personally or by mail to the applicant's last known mailing address on file with the board. Service by mail shall be complete in accordance with Section 1013 of the Code of Civil Procedure.

(A) The board shall issue a temporary license valid for a period of 150 days to any applicant whose name is on the certified list if the applicant is otherwise eligible for a license.

(B) Except as provided in subparagraph (D), the 150-day time period for a temporary license shall not be extended. Except as provided in subparagraph (D), only one temporary license shall be issued during a regular license term and it shall coincide with the first 150 days of that license term. As this paragraph applies to commercial driver's licenses, "license term" shall be deemed to be 12 months from the date the application fee is received by the Department of Motor Vehicles. A license for the full or remainder of the license term shall be issued or renewed only upon compliance with this section.

(C) In the event that a license or application for a license or the renewal of a license is denied pursuant to this section, any funds paid by the applicant or licensee shall not be refunded by the board.

(D) This paragraph shall apply only in the case of a driver's license, other than a commercial driver's license. Upon the request of the local child support agency or by order of the court upon a showing of good cause, the board shall extend a 150-day temporary license for a period not to exceed 150 extra days.

(3) (A) The department may, when it is economically feasible for the department and the boards to do so as determined by the department, in cases where the department is aware that certain child support obligors listed on the certified lists have been out of compliance with a judgment or order for support for more than four months, provide a supplemental list of these obligors to each board with which the

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department has an interagency agreement to implement this paragraph. Upon request by the department, the licenses of these obligors shall be subject to suspension, provided that the licenses would not otherwise be eligible for renewal within six months from the date of the request by the department. The board shall have the authority to suspend the license of any licensee on this supplemental list.

(B) If a licensee is on a supplemental list, the board shall immediately serve notice as specified in subdivision (f) on the licensee that the license will be automatically suspended 150 days after notice is served, unless compliance with this section is achieved. The notice shall be made personally or by mail to the licensee's last known mailing address on file with the board. Service by mail shall be complete in accordance with Section 1013 of the Code of Civil Procedure.

(C) The 150-day notice period shall not be extended.

(D) In the event that any license is suspended pursuant to this section, any funds paid by the licensee shall not be refunded by the board.

(E) This paragraph shall not apply to licenses subject to annual renewal or annual fee.

(f) Notices shall be developed by each board in accordance with guidelines provided by the department and subject to approval by the department. The notice shall include the address and telephone number of the local child support agency that submitted the name on the certified list, and shall emphasize the necessity of obtaining a release from that local child support agency as a condition for the issuance, renewal, or continued valid status of a license or licenses.

(1) In the case of applicants not subject to paragraph (3) of subdivision (e), the notice shall inform the applicant that the board shall issue a temporary license, as provided in subparagraph (A) of paragraph (2) of subdivision (e), for 150 calendar days if the applicant is otherwise eligible

and that upon expiration of that time period the license will be denied unless the board has received a release from the local child support agency that submitted the name on the certified list.

(2) In the case of licensees named on a supplemental list, the notice shall inform the licensee that the license will continue in its existing status for no more than 150 calendar days from the date of mailing or service of the notice and thereafter will be suspended indefinitely unless, during the 150-day notice period, the board has received a release from the local child support agency that submitted the name on the certified list. Additionally, the notice shall inform the licensee that any license suspended under this section will remain so until the expiration of the remaining license term, unless the board receives a release along with applications and fees, if applicable, to reinstate the license during the license term.

(3) The notice shall also inform the applicant or licensee that if an application is denied or a license is suspended pursuant to this section, any funds paid by the applicant or licensee shall not be refunded by the board. The Department of Child Support Services shall also develop a form that the applicant shall use to request a review by the local child support agency. A copy of this form shall be included with every notice sent pursuant to this subdivision.

(g) (1) Each local child support agency shall maintain review procedures consistent with this section to allow an applicant to have the underlying arrearage and any relevant defenses investigated, to provide an applicant information on the process of obtaining a modification of a support order, or to provide an applicant assistance in the establishment of a payment schedule on arrearages if the circumstances so warrant.

(2) It is the intent of the Legislature that a court or local child support agency, when determining an appropriate payment schedule for arrearages, base its decision on the facts of the particular case and the priority of payment of child support over other debts. The payment schedule shall also recognize that certain expenses may be essential to enable an obligor to be employed. Therefore, in

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reaching its decision, the court or the local child support agency shall consider both of these goals in setting a payment schedule for arrearages.

(h) If the applicant wishes to challenge the submission of their name on the certified list, the applicant shall make a timely written request for review to the local child support agency who certified the applicant's name. A request for review pursuant to this section shall be resolved in the same manner and timeframe provided for resolution of a complaint pursuant to Section 17800. The local child support agency shall immediately send a release to the appropriate board and the applicant, if any of the following conditions are met:

(1) The applicant is found to be in compliance or negotiates an agreement with the local child support agency for a payment schedule on arrearages or reimbursement.

(2) The applicant has submitted a request for review, but the local child support agency will be unable to complete the review and send notice of its findings to the applicant within the time specified in Section 17800.

(3) The applicant has filed and served a request for judicial review pursuant to this section, but a resolution of that review will not be made within 150 days of the date of service of notice pursuant to subdivision (f). This paragraph applies only if the delay in completing the judicial review process is not the result of the applicant's failure to act in a reasonable, timely, and diligent manner upon receiving the local child support agency's notice of findings.

(4) The applicant has obtained a judicial finding of compliance as defined in this section.

(i) An applicant is required to act with diligence in responding to notices from the board and the local child support agency with the recognition that the temporary license will lapse or the license suspension will go into effect after 150 days and that the local child support agency and, where appropriate, the court must have time to act within that period. An applicant's delay in acting, without good cause, which directly results in the inability of the local child support agency to complete a review of the applicant's request or the court to hear the request for judicial review within the 150-day period shall not constitute the diligence

required under this section which would justify the issuance of a release.

(j) Except as otherwise provided in this section, the local child support agency shall not issue a release if the applicant is not in compliance with the judgment or order for support. The local child support agency shall notify the applicant in writing that the applicant may, by filing an order to show cause or notice of motion, request any or all of the following:

(1) Judicial review of the local child support agency's decision not to issue a release.

(2) A judicial determination of compliance.

(3) A modification of the support judgment or order.

The notice shall also contain the name and address of the court in which the applicant shall file the order to show cause or notice of motion and inform the applicant that their name shall remain on the certified list if the applicant does not timely request judicial review. The applicant shall comply with all statutes and rules of court regarding orders to show cause and notices of motion.

This section does not limit an applicant from filing an order to show cause or notice of motion to modify a support judgment or order or to fix a payment schedule on arrearages accruing under a support judgment or order or to obtain a court finding of compliance with a judgment or order for support.

(k) The request for judicial review of the local child support agency's decision shall state the grounds for which review is requested and judicial review shall be limited to those stated grounds. The court shall hold an evidentiary hearing within 20 calendar days of the filing of the request for review. Judicial review of the local child support agency's decision shall be limited to a determination of each of the following issues:

(1) Whether there is a support judgment, order, or payment schedule on arrearages or reimbursement.

(2) Whether the petitioner is the obligor covered by the support judgment or order.

(3) Whether the support obligor is or is not in compliance with the judgment or order of support.



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- (4) (A) The extent to which the needs of the obligor, taking into account the obligor's payment history and the current circumstances of both the obligor and the obligee, warrant a conditional release as described in this subdivision.
- (B) The request for judicial review shall be served by the applicant upon the local child support agency that submitted the applicant's name on the certified list within seven calendar days of the filing of the petition. The court has the authority to uphold the action, unconditionally release the license, or conditionally release the license.
- (C) If the judicial review results in a finding by the court that the obligor is in compliance with the judgment or order for support, the local child support agency shall immediately send a release in accordance with subdivision (l) to the appropriate board and the applicant. If the judicial review results in a finding by the court that the needs of the obligor warrant a conditional release, the court shall make findings of fact stating the basis for the release and the payment necessary to satisfy the unrestricted issuance or renewal of the license without prejudice to a later judicial determination of the amount of support arrearages, including interest, and shall specify payment terms, compliance with which are necessary to allow the release to remain in effect.
- (l) (1) The department shall prescribe release forms for use by local child support agencies. When the obligor is in compliance, the local child support agency shall mail to the applicant and the appropriate board a release stating that the applicant is in compliance. The receipt of a release shall serve to notify the applicant and the board that, for the purposes of this section, the applicant is in compliance with the judgment or order for support. A board that has received a release from the local child support agency pursuant to this subdivision shall process the release within five business days of its receipt.
- (2) When the local child support agency determines subsequent to the issuance of a release that the applicant is once again not in compliance with a judgment or order for support, or with the terms of repayment as described in this subdivision, the local child support agency may notify the board, the obligor, and the department in a format prescribed by the department that the obligor is not in compliance.
- (3) The department may, when it is economically feasible for the department and the boards to develop an automated process for complying with this subdivision, notify the boards in a manner prescribed by the department, that the obligor is once again not in compliance. Upon receipt of this notice, the board shall immediately notify the obligor on a form prescribed by the department that the obligor's license will be suspended on a specific date, and this date shall be no longer than 30 days from the date the form is mailed. The obligor shall be further notified that the license will remain suspended until a new release is issued in accordance with subdivision (h). This section does not limit the obligor from seeking judicial review of suspension pursuant to the procedures described in subdivision (k).
- (m) The department may enter into interagency agreements with the state agencies that have responsibility for the administration of boards necessary to implement this section, to the extent that it is cost effective to implement this section. These agreements shall provide for the receipt by the other state agencies and boards of federal funds to cover that portion of costs allowable in federal law and regulation and incurred by the state agencies and boards in implementing this section. Notwithstanding any other law, revenue generated by a board or state agency shall be used to fund the nonfederal share of costs incurred pursuant to this section. These agreements shall provide that boards shall reimburse the department for the nonfederal share of costs incurred by the department in implementing this section. The boards shall reimburse the department for the nonfederal share of costs incurred pursuant to this section from moneys collected from applicants and licensees.
- (n) Notwithstanding any other law, in order for the boards subject to this section to be reimbursed for the costs incurred in administering its provisions, the

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boards may, with the approval of the appropriate department director, levy on all licensees and applicants a surcharge on any fee or fees collected pursuant to law, or, alternatively, with the approval of the appropriate department director, levy on the applicants or licensees named on a certified list or supplemental list, a special fee.

(o) The process described in subdivision (h) shall constitute the sole administrative remedy for contesting the issuance of a temporary license or the denial or suspension of a license under this section. The procedures specified in the administrative adjudication provisions of the Administrative Procedure Act (Chapter 4.5 (commencing with Section 11400) and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code) shall not apply to the denial, suspension, or failure to issue or renew a license or the issuance of a temporary license pursuant to this section.

(p) In furtherance of the public policy of increasing child support enforcement and collections, on or before November 1, 1995, the State Department of Social Services shall make a report to the Legislature and the Governor based on data collected by the boards and the district attorneys in a format prescribed by the State Department of Social Services. The report shall contain all of the following:

- (1) The number of delinquent obligors certified by district attorneys under this section.
- (2) The number of support obligors who also were applicants or licensees subject to this section.
- (3) The number of new licenses and renewals that were delayed, temporary licenses issued, and licenses suspended subject to this section and the number of new licenses and renewals granted and licenses reinstated following board receipt of releases as provided by subdivision (h) by May 1, 1995.
- (4) The costs incurred in the implementation and enforcement of this section.

(q) A board receiving an inquiry as to the licensed status of an applicant or licensee who has had a license denied or suspended under this section or has been granted a temporary license under this section shall respond only that the license was denied or suspended

or the temporary license was issued pursuant to this section. Information collected pursuant to this section by a state agency, board, or department shall be subject to the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code).

(r) Any rules and regulations issued pursuant to this section by a state agency, board, or department may be adopted as emergency regulations in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of these regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare. The regulations shall become effective immediately upon filing with the Secretary of State.

(s) The department and boards, as appropriate, shall adopt regulations necessary to implement this section.

(t) The Judicial Council shall develop the forms necessary to implement this section, except as provided in subdivisions (f) and (l).

(u) The release or other use of information received by a board pursuant to this section, except as authorized by this section, is punishable as a misdemeanor.

(v) The State Board of Equalization shall enter into interagency agreements with the department and the Franchise Tax Board that will require the department and the Franchise Tax Board to maximize the use of information collected by the State Board of Equalization, for child support enforcement purposes, to the extent it is cost-effective and permitted by the Revenue and Taxation Code.

(w) (1) The suspension or revocation of a driver's license, including a commercial driver's license, under this section shall not subject the licensee to vehicle impoundment pursuant to Section 14602.6 of the Vehicle Code.

(2) Notwithstanding any other law, the suspension or revocation of a driver's license, including a commercial driver's license, under this section shall not subject the licensee to increased costs for vehicle liability insurance.

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(x) If any provision of this section or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(y) All rights to administrative and judicial review afforded by this section to an applicant shall also be afforded to a licensee. (Added by Stats. 1999, ch. 654. Amended by Stats. 2001, ch. 755; Stats. 2013, ch. 352; Stats. 2014, ch. 752; Stats. 2018, ch. 538; Stats. 2019, ch. 115.)

(5) Engage in any act in violation of Section 17200 of the Business and Professions Code.

(6) Knowingly misrepresent, circumvent, or conceal, through subterfuge or device, any material aspect or information regarding a transaction to which the person is a party.

(7) Commit an act that constitutes fraud or dishonest dealings.

(b) This section shall become operative on January 1, 2019. (Added by Stats. 2017, ch. 475, operative January 1, 2019.)

## FINANCIAL CODE

### **§ 22161      Loan Making and Brokering—False, Deceptive or Misleading Advertisements, Statements or Representations**

(a) A person subject to this division shall not do any of the following:

(1) Make a materially false or misleading statement or representation to a borrower about the terms or conditions of that borrower's loan, when making or brokering the loan.

(2) Make a materially false or misleading statement or representation to a property owner about the terms or conditions of an assessment contract.

(3) Advertise, print, display, publish, distribute, or broadcast, or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast in any manner, any statement or representation with regard to the business subject to the provisions of this division, including the rates, terms, or conditions for making or negotiating loans, or for making or negotiating assessment contracts, that is false, misleading, or deceptive, or that omits material information that is necessary to make the statements not false, misleading, or deceptive, or in the case of a licensee, that refers to the supervision of the business by the state or any department or official of the state.

(4) Commit an act in violation of Section 1695.13 of the Civil Code.

## GOVERNMENT CODE

### **§ 6252      Local and State Agency; Public Person, Agency, and Records; Definitions**

As used in this chapter:

(a) "Local agency" includes a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; or any board, commission or agency thereof; other local public agency; or entities that are legislative bodies of a local agency pursuant to subdivisions (c) and (d) of Section 54952.

(b) "Member of the public" means any person, except a member, agent, officer, or employee of a federal, state, or local agency acting within the scope of his or her membership, agency, office, or employment.

(c) "Person" includes any natural person, corporation, partnership, limited liability company, firm, or association.

(d) "Public agency" means any state or local agency.

(e) "Public records" includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. "Public records" in the custody of, or maintained by, the Governor's office means any writing prepared on or after January 6, 1975.

(f) (1) "State agency" means every state office, officer, department, division, bureau, board, and commission or other state body or agency, except

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those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.

(2) Notwithstanding paragraph (1) or any other law, "state agency" shall also mean the State Bar of California, as described in Section 6001 of the Business and Professions Code.

(g) "Writing" means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored. (Added by Stats. 1968, ch. 1473. Amended by Stats. 1970, ch. 575; Stats. 1975, ch. 1246; Stats. 1981, ch. 968; Stats. 1991, ch. 181; Stats. 1994, ch. 1010; Stats. 1998, ch. 620; Stats. 2002, ch. 945; Stats. 2002, ch. 1073; Stats. 2004, ch. 937; Stats. 2015, ch. 537.)

### § 6254 Exemption of Particular Records

Except as provided in Sections 6254.7 and 6254.13, this chapter does not require the disclosure of any of the following records:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, if the public interest in withholding those records clearly outweighs the public interest in disclosure.

(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled.

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(d) Records contained in or related to any of the following:

(1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan

companies, credit unions, and insurance companies.

(2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(4) Information received in confidence by any state agency referred to in paragraph (1).

(e) Geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, that are obtained in confidence from any person.

(f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, the Office of Emergency Services and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes. However, state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (b) of Section 13951, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. However, this subdivision does not require the disclosure of that portion of those investigative files that reflects the analysis or conclusions of the investigating officer.

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Customer lists provided to a state or local police agency by an alarm or security company at the request of the agency shall be construed to be records subject to this subdivision.

Notwithstanding any other provision of this subdivision, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

(1) The full name and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

(2) (A) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name and age of the victim, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3, 288.4, 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime,

information disclosing that the person is a victim of a crime defined in any of the sections of the Penal Code set forth in this subdivision may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

(B) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the names and images of a victim of human trafficking, as defined in Section 236.1 of the Penal Code, and of that victim's immediate family, other than a family member who is charged with a criminal offense arising from the same incident, may be withheld at the victim's request until the investigation or any subsequent prosecution is complete. For purposes of this subdivision, "immediate family" shall have the same meaning as that provided in paragraph (3) of subdivision (b) of Section 422.4 of the Penal Code.

(3) Subject to the restrictions of Section 841.5 of the Penal Code and this subdivision, the current address of every individual arrested by the agency and the current address of the victim of a crime, if the requester declares under penalty of perjury that the request is made for a scholarly, journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator as described in Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code. However, the address of the victim of any crime defined by Section 220, 236.1, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3, 288.4, 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6 of the Penal Code shall remain confidential. Address information obtained pursuant to this paragraph shall not be used directly or indirectly, or furnished to another, to sell a product or service to any individual or group of individuals, and the requester shall execute a declaration to that effect under penalty of perjury. This paragraph shall not be construed to prohibit or limit a scholarly, journalistic, political, or

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government use of address information obtained pursuant to this paragraph.

(4) Notwithstanding any other provision of this subdivision, commencing July 1, 2019, a video or audio recording that relates to a critical incident, as defined in subparagraph (C), may be withheld only as follows:

(A) (i) During an active criminal or administrative investigation, disclosure of a recording related to a critical incident may be delayed for no longer than 45 calendar days after the date the agency knew or reasonably should have known about the incident, if, based on the facts and circumstances depicted in the recording, disclosure would substantially interfere with the investigation, such as by endangering the safety of a witness or a confidential source. If an agency delays disclosure pursuant to this paragraph, the agency shall provide in writing to the requester the specific basis for the agency's determination that disclosure would substantially interfere with the investigation and the estimated date for disclosure.

(ii) After 45 days from the date the agency knew or reasonably should have known about the incident, and up to one year from that date, the agency may continue to delay disclosure of a recording if the agency demonstrates that disclosure would substantially interfere with the investigation. After one year from the date the agency knew or reasonably should have known about the incident, the agency may continue to delay disclosure of a recording only if the agency demonstrates by clear and convincing evidence that disclosure would substantially interfere with the investigation. If an agency delays disclosure pursuant to this clause, the agency shall promptly provide in writing to the requester the specific basis for the agency's determination that the interest in preventing

interference with an active investigation outweighs the public interest in disclosure and provide the estimated date for the disclosure. The agency shall reassess withholding and notify the requester every 30 days. A recording withheld by the agency shall be disclosed promptly when the specific basis for withholding is resolved.

(B) (i) If the agency demonstrates, on the facts of the particular case, that the public interest in withholding a video or audio recording clearly outweighs the public interest in disclosure because the release of the recording would, based on the facts and circumstances depicted in the recording, violate the reasonable expectation of privacy of a subject depicted in the recording, the agency shall provide in writing to the requester the specific basis for the expectation of privacy and the public interest served by withholding the recording and may use redaction technology, including blurring or distorting images or audio, to obscure those specific portions of the recording that protect that interest. However, the redaction shall not interfere with the viewer's ability to fully, completely, and accurately comprehend the events captured in the recording and the recording shall not otherwise be edited or altered.

(ii) Except as provided in clause (iii), if the agency demonstrates that the reasonable expectation of privacy of a subject depicted in the recording cannot adequately be protected through redaction as described in clause (i) and that interest outweighs the public interest in disclosure, the agency may withhold the recording from the public, except that the recording, either redacted as provided in clause (i) or unredacted, shall be disclosed promptly, upon request, to any of the following:

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- (I) The subject of the recording whose privacy is to be protected, or their authorized representative.
  - (II) If the subject is a minor, the parent or legal guardian of the subject whose privacy is to be protected.
  - (III) If the subject whose privacy is to be protected is deceased, an heir, beneficiary, designated immediate family member, or authorized legal representative of the deceased subject whose privacy is to be protected.
  - (iii) If disclosure pursuant to clause (ii) would substantially interfere with an active criminal or administrative investigation, the agency shall provide in writing to the requester the specific basis for the agency's determination that disclosure would substantially interfere with the investigation, and provide the estimated date for the disclosure of the video or audio recording. Thereafter, the recording may be withheld by the agency for 45 calendar days, subject to extensions as set forth in clause (ii) of subparagraph (A).
- (C) For purposes of this paragraph, a video or audio recording relates to a critical incident if it depicts any of the following incidents:
- (i) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.
  - (ii) An incident in which the use of force by a peace officer or custodial officer against a person resulted in death or in great bodily injury.
- (D) An agency may provide greater public access to video or audio recordings than the minimum standards set forth in this paragraph.
- (E) This paragraph does not alter, limit, or negate any other rights, remedies, or obligations with respect to public records regarding an incident other than a critical incident as described in subparagraph (C).
- (F) For purposes of this paragraph, a peace officer does not include any peace officer employed by the Department of Corrections and Rehabilitation.
- (g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination, except as provided for in Chapter 3 (commencing with Section 99150) of Part 65 of Division 14 of Title 3 of the Education Code.
- (h) The contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has been acquired or all of the contract agreement obtained. However, the law of eminent domain shall not be affected by this provision.
- (i) Information required from any taxpayer in connection with the collection of local taxes that is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information.
- (j) Library circulation records kept for the purpose of identifying the borrower of items available in libraries, and library and museum materials made or acquired and presented solely for reference or exhibition purposes. The exemption in this subdivision shall not apply to records of fines imposed on the borrowers.
- (k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.
- (l) Correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's Legal Affairs Secretary. However, public records shall not be transferred to the custody of the Governor's Legal Affairs Secretary to evade the disclosure provisions of this chapter.

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(m) In the custody of or maintained by the Legislative Counsel, except those records in the public database maintained by the Legislative Counsel that are described in Section 10248.

(n) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with the licensing agency to establish their personal qualification for the license, certificate, or permit applied for.

(o) Financial data contained in applications for financing under Division 27 (commencing with Section 44500) of the Health and Safety Code, if an authorized officer of the California Pollution Control Financing Authority determines that disclosure of the financial data would be competitively injurious to the applicant and the data is required in order to obtain guarantees from the United States Small Business Administration. The California Pollution Control Financing Authority shall adopt rules for review of individual requests for confidentiality under this section and for making available to the public those portions of an application that are subject to disclosure under this chapter.

(p) (1) Records of state agencies related to activities governed by Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), and Chapter 12 (commencing with Section 3560) of Division 4, and Chapter 25 (commencing with Section 10420) of Part 1.8 of Division 9 of the Welfare and Institutions Code, that reveal a state agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or that provide instruction, advice, or training to employees who do not have full collective bargaining and representation rights under these chapters. This paragraph shall not be construed to limit the disclosure duties of a state agency with respect to any other records relating to the activities governed by the employee relations acts referred to in this paragraph.

(2) Records of local agencies related to activities governed by Chapter 10 (commencing with Section 3500) of Division 4, that reveal a local agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or that provide instruction, advice, or training to employees who do not have full

collective bargaining and representation rights under that chapter. This paragraph shall not be construed to limit the disclosure duties of a local agency with respect to any other records relating to the activities governed by the employee relations act referred to in this paragraph.

(q) (1) Records of state agencies related to activities governed by Article 2.6 (commencing with Section 14081), Article 2.8 (commencing with Section 14087.5), and Article 2.91 (commencing with Section 14089) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, that reveal the special negotiator's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy, or that provide instruction, advice, or training to employees.

(2) Except for the portion of a contract containing the rates of payment, contracts for inpatient services entered into pursuant to these articles, on or after April 1, 1984, shall be open to inspection one year after they are fully executed. If a contract for inpatient services that is entered into prior to April 1, 1984, is amended on or after April 1, 1984, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after it is fully executed. If the California Medical Assistance Commission enters into contracts with health care providers for other than inpatient hospital services, those contracts shall be open to inspection one year after they are fully executed.

(3) Three years after a contract or amendment is open to inspection under this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other law, the entire contract or amendment shall be open to inspection by the Joint Legislative Audit Committee and the Legislative Analyst's Office. The committee and that office shall maintain the confidentiality of the contracts and amendments until the time a contract or amendment is fully open to inspection by the public.



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(r) Records of Native American graves, cemeteries, and sacred places and records of Native American places, features, and objects described in Sections 5097.9 and 5097.993 of the Public Resources Code maintained by, or in the possession of, the Native American Heritage Commission, another state agency, or a local agency.

(s) A final accreditation report of the Joint Commission on Accreditation of Hospitals that has been transmitted to the State Department of Health Care Services pursuant to subdivision (b) of Section 1282 of the Health and Safety Code.

(t) Records of a local hospital district, formed pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code, or the records of a municipal hospital, formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Part 2 of Division 3 of Title 4 of this code, that relate to any contract with an insurer or nonprofit hospital service plan for inpatient or outpatient services for alternative rates pursuant to Section 10133 of the Insurance Code. However, the record shall be open to inspection within one year after the contract is fully executed.

(u) (1) Information contained in applications for licenses to carry firearms issued pursuant to Section 26150, 26155, 26170, or 26215 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department that indicates when or where the applicant is vulnerable to attack or that concerns the applicant's medical or psychological history or that of members of their family.

(2) The home address and telephone number of prosecutors, public defenders, peace officers, judges, court commissioners, and magistrates that are set forth in applications for licenses to carry firearms issued pursuant to Section 26150, 26155, 26170, or 26215 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department.

(3) The home address and telephone number of prosecutors, public defenders, peace officers, judges, court commissioners, and magistrates that are set forth in licenses to carry firearms issued pursuant to Section 26150, 26155, 26170, or 26215 of the Penal Code by the sheriff of a county

or the chief or other head of a municipal police department.

(v) (1) Records of the Managed Risk Medical Insurance Board and the State Department of Health Care Services related to activities governed by former Part 6.3 (commencing with Section 12695), former Part 6.5 (commencing with Section 12700), Part 6.6 (commencing with Section 12739.5), or Part 6.7 (commencing with Section 12739.70) of Division 2 of the Insurance Code, or Chapter 2 (commencing with Section 15810) or Chapter 4 (commencing with Section 15870) of Part 3.3 of Division 9 of the Welfare and Institutions Code, and that reveal any of the following:

(A) The deliberative processes, discussions, communications, or any other portion of the negotiations with entities contracting or seeking to contract with the board or the department, entities with which the board or the department is considering a contract, or entities with which the board or department is considering or enters into any other arrangement under which the board or the department provides, receives, or arranges services or reimbursement.

(B) The impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff or the department or its staff, or records that provide instructions, advice, or training to their employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts entered into pursuant to former Part 6.3 (commencing with Section 12695), former Part 6.5 (commencing with Section 12700), Part 6.6 (commencing with Section 12739.5), or Part 6.7 (commencing with Section 12739.70) of Division 2 of the Insurance Code, or Chapter 2 (commencing with Section 15810) or Chapter 4 (commencing with Section 15870) of Part 3.3 of Division 9 of the Welfare and Institutions Code, on or after July 1, 1991, shall be open to inspection one year after their effective dates.

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(B) If a contract that is entered into prior to July 1, 1991, is amended on or after July 1, 1991, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after the effective date of the amendment.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto, until the contracts or amendments to the contracts are open to inspection pursuant to paragraph (3).

(w) (1) Records of the Managed Risk Medical Insurance Board related to activities governed by Chapter 8 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Chapter 8 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, on or after January 1, 1993, shall be open to inspection one year after they have been fully executed.

(3) Notwithstanding any other law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto, until the contracts or amendments to the contracts are open to inspection pursuant to paragraph (2).

(x) Financial data contained in applications for registration, or registration renewal, as a service

contractor filed with the Director of Consumer Affairs pursuant to Chapter 20 (commencing with Section 9800) of Division 3 of the Business and Professions Code, for the purpose of establishing the service contractor's net worth, or financial data regarding the funded accounts held in escrow for service contracts held in force in this state by a service contractor.

(y) (1) Records of the Managed Risk Medical Insurance Board and the State Department of Health Care Services related to activities governed by Part 6.2 (commencing with Section 12693) or former Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code or Sections 14005.26 and 14005.27 of, or Chapter 3 (commencing with Section 15850) of Part 3.3 of Division 9 of, the Welfare and Institutions Code, if the records reveal any of the following:

(A) The deliberative processes, discussions, communications, or any other portion of the negotiations with entities contracting or seeking to contract with the board or the department, entities with which the board or department is considering a contract, or entities with which the board or department is considering or enters into any other arrangement under which the board or department provides, receives, or arranges services or reimbursement.

(B) The impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or the department or its staff, or records that provide instructions, advice, or training to employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts entered into pursuant to Part 6.2 (commencing with Section 12693) or former Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code, on or after January 1, 1998, or Sections 14005.26 and 14005.27 of, or Chapter 3 (commencing with Section 15850) of Part 3.3 of Division 9 of, the Welfare and Institutions Code shall be open to inspection one year after their effective dates.

(B) If a contract entered into pursuant to Part 6.2 (commencing with Section 12693) or

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former Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code or Sections 14005.26 and 14005.27 of, or Chapter 3 (commencing with Section 15850) of Part 3.3 of Division 9 of, the Welfare and Institutions Code, is amended, the amendment shall be open to inspection one year after the effective date of the amendment.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto until the contract or amendments to a contract are open to inspection pursuant to paragraph (2) or (3).

(5) The exemption from disclosure provided pursuant to this subdivision for the contracts, deliberative processes, discussions, communications, negotiations, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or the department or its staff, shall also apply to the contracts, deliberative processes, discussions, communications, negotiations, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of applicants pursuant to former Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code or Chapter 3 (commencing with Section 15850) of Part 3.3 of Division 9 of the Welfare and Institutions Code.

(z) Records obtained pursuant to paragraph (2) of subdivision (f) of Section 2891.1 of the Public Utilities Code.

(aa) A document prepared by or for a state or local agency that assesses its vulnerability to terrorist attack or other criminal acts intended to disrupt the public agency's operations and that is for distribution or consideration in a closed session.

(ab) Critical infrastructure information, as defined in Section 131(3) of Title 6 of the United States Code, that is voluntarily submitted to the Office of Emergency Services for use by that office, including the identity of the person who or entity that voluntarily submitted the information. As used in this subdivision, "voluntarily submitted" means submitted in the absence of the office exercising any legal authority to compel access to or submission of critical infrastructure information. This subdivision shall not affect the status of information in the possession of any other state or local governmental agency.

(ac) All information provided to the Secretary of State by a person for the purpose of registration in the Advance Health Care Directive Registry, except that those records shall be released at the request of a health care provider, a public guardian, or the registrant's legal representative.

(ad) The following records of the State Compensation Insurance Fund:

(1) Records related to claims pursuant to Chapter 1 (commencing with Section 3200) of Division 4 of the Labor Code, to the extent that confidential medical information or other individually identifiable information would be disclosed.

(2) Records related to the discussions, communications, or any other portion of the negotiations with entities contracting or seeking to contract with the fund, and any related deliberations.

(3) Records related to the impressions, opinions, recommendations, meeting minutes of meetings or sessions that are lawfully closed to the public, research, work product, theories, or strategy of the fund or its staff, on the development of rates, contracting strategy, underwriting, or competitive strategy pursuant to the powers granted to the fund in Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code.

(4) Records obtained to provide workers' compensation insurance under Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code, including, but not limited to, any medical claims information, policyholder information provided that nothing in

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this paragraph shall be interpreted to prevent an insurance agent or broker from obtaining proprietary information or other information authorized by law to be obtained by the agent or broker, and information on rates, pricing, and claims handling received from brokers.

- (5) (A) Records that are trade secrets pursuant to Section 6276.44, or Article 11 (commencing with Section 1060) of Chapter 4 of Division 8 of the Evidence Code, including without limitation, instructions, advice, or training provided by the State Compensation Insurance Fund to its board members, officers, and employees regarding the fund's special investigation unit, internal audit unit, and informational security, marketing, rating, pricing, underwriting, claims handling, audits, and collections.

(B) Notwithstanding subparagraph (A), the portions of records containing trade secrets shall be available for review by the Joint Legislative Audit Committee, California State Auditor's Office, Division of Workers' Compensation, and the Department of Insurance to ensure compliance with applicable law.

- (6) (A) Internal audits containing proprietary information and the following records that are related to an internal audit:

(i) Personal papers and correspondence of any person providing assistance to the fund when that person has requested in writing that their papers and correspondence be kept private and confidential. Those papers and correspondence shall become public records if the written request is withdrawn, or upon order of the fund.

(ii) Papers, correspondence, memoranda, or any substantive information pertaining to any audit not completed or an internal audit that contains proprietary information.

(B) Notwithstanding subparagraph (A), the portions of records containing proprietary information, or any information specified in subparagraph (A) shall be available for

review by the Joint Legislative Audit Committee, California State Auditor's Office, Division of Workers' Compensation, and the Department of Insurance to ensure compliance with applicable law.

- (7) (A) Except as provided in subparagraph (C), contracts entered into pursuant to Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code shall be open to inspection one year after the contract has been fully executed.

(B) If a contract entered into pursuant to Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code is amended, the amendment shall be open to inspection one year after the amendment has been fully executed.

(C) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(D) Notwithstanding any other law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto until the contract or amendments to a contract are open to inspection pursuant to this paragraph.

(E) This paragraph is not intended to apply to documents related to contracts with public entities that are not otherwise expressly confidential as to that public entity.

(F) For purposes of this paragraph, "fully executed" means the point in time when all of the necessary parties to the contract have signed the contract.

This section does not prevent any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

This section does not prevent any health facility from disclosing to a certified bargaining agent relevant

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financing information pursuant to Section 8 of the National Labor Relations Act (29 U.S.C. Sec. 158). (Added by Stats. 1981, ch. 684. Amended by Stats. 1982, ch. 83, p. 242; Stats. 1982, ch. 1492; Stats. 1982, ch. 1594; Stats. 1983, ch. 200; Stats. 1983, ch. 621; Stats. 1983, ch. 955; Stats. 1983, ch. 1315; Stats. 1984, ch. 1516; Stats. 1985, ch. 103; Stats. 1985, ch. 1218; Stats. 1986, ch. 185; Stats. 1987, ch. 634; Stats. 1987, ch. 635; Stats. 1988, ch. 870; Stats. 1988, ch. 1371; Stats. 1989, ch. 191; Stats. 1990, ch. 1106; Stats. 1991, ch. 278; Stats. 1991, ch. 607; Stats. 1992, ch. 3; Stats. 1992, ch. 72; Stats. 1992, ch. 1128; Stats. 1993, ch. 606; Stats. 1993, ch. 610; Stats. 1993, ch. 611; Stats. 1993, ch. 1265; Stats. 1994, ch. 82; Stats. 1994, ch. 1263; Stats. 1995, ch. 438; Stats. 1995, ch. 777; Stats. 1995, ch. 778; Stats. 1996, ch. 1075; Stats. 1997, ch. 623; Stats. 1998, ch. 485; Stats. 1998, ch. 13; Stats. 1998, ch. 110; Stats. 2000, ch. 184; Stats. 2001, ch. 159; Stats. 2002, ch. 175; Stats. 2003, ch. 230; Stats. 2004, ch. 8; Stats. 2004, ch. 183; Stats. 2004, ch. 228; Stats. 2004, ch. 882; Stats. 2004, ch. 937; Stats. 2005, ch. 22; Stats. 2005, ch. 476; Stats. 2005, ch. 670; Stats. 2006, ch. 538; Stats. 2007, ch. 577; Stats. 2007, ch. 578; Stats. 2008, ch. 344; Stats. 2008, ch. 358; Stats. 2008, ch. 372; Stats. 2010, ch. 178; Stats. 2010, ch. 32; Stats. 2011, ch. 285; Stats. 2012, ch. 697; Stats. 2013, ch. 23; Stats. 2013, ch. 352; Stats. 2014, ch. 31; Stats. 2015, ch. 303; Stats. 2016, ch. 644; Stats. 2017, ch. 560; Stats. 2018, ch. 960; Stats. 2019, ch. 385; Stats. 2021, ch. 116.)

### **§ 6254.3 Disclosure of Public Records; Public Agency Employees**

(a) The home addresses, home telephone numbers, personal cellular telephone numbers, and birth dates of all employees of a public agency shall not be deemed to be public records and shall not be open to public inspection, except that disclosure of that information may be made as follows:

- (1) To an agent, or a family member of the individual to whom the information pertains.
- (2) To an officer or employee of another public agency when necessary for the performance of its official duties.
- (3) To an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and any phone numbers on file with the employer of employees performing law

enforcement-related functions, and the birth date of any employee, shall not be disclosed.

(4) To an agent or employee of a health benefit plan providing health services or administering claims for health services to public agencies and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents.

(b) (1) Unless used by the employee to conduct public business, or necessary to identify a person in an otherwise discloseable communication, the personal email addresses of all employees of a public agency shall not be deemed to be public records and shall not be open to public inspection, except that disclosure of that information may be made as specified in paragraphs (1) to (4), inclusive, of subdivision (a).

(2) This subdivision shall not be construed to limit the public's right to access the content of an employee's personal email that is used to conduct public business, as decided by the California Supreme Court in *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608.

(c) Upon written request of any employee, a public agency shall not disclose the employee's home address, home telephone number, personal cellular telephone number, personal email address, or birth date pursuant to paragraph (3) of subdivision (a) and an agency shall remove the employee's home address, home telephone number, and personal cellular telephone number from any mailing list maintained by the agency, except if the list is used exclusively by the agency to contact the employee. (Added by Stats. 1984, ch. 1657. Amended by Stats. 1992, ch. 463; Stats. 2016, ch. 830; Stats. 2017, ch. 21, eff. June 27, 2017.)

### **§ 6254.5 Disclosures of Public Records; Waiver of Exemptions**

Notwithstanding any other law, if a state or local agency discloses a public record that is otherwise exempt from this chapter, to a member of the public, this disclosure shall constitute a waiver of the exemptions specified in Section 6254 or 6254.7, or other similar provisions of law. For purposes of this section, "agency" includes a member, agent, officer, or employee

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of the agency acting within the scope of his or her membership, agency, office, or employment.

This section, however, shall not apply to disclosures:

(a) Made pursuant to the Information Practices Act (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) or discovery proceedings.

(b) Made through other legal proceedings or as otherwise required by law.

(c) Within the scope of disclosure of a statute that limits disclosure of specified writings to certain purposes.

(d) Not required by law, and prohibited by formal action of an elected legislative body of the local agency that retains the writings.

(e) Made to a governmental agency that agrees to treat the disclosed material as confidential. Only persons authorized in writing by the person in charge of the agency shall be permitted to obtain the information. Any information obtained by the agency shall only be used for purposes that are consistent with existing law.

(f) Of records relating to a financial institution or an affiliate thereof, if the disclosures are made to the financial institution or affiliate by a state agency responsible for the regulation or supervision of the financial institution or affiliate.

(g) Of records relating to a person who is subject to the jurisdiction of the Department of Business Oversight, if the disclosures are made to the person who is the subject of the records for the purpose of corrective action by that person, or, if a corporation, to an officer, director, or other key personnel of the corporation for the purpose of corrective action, or to any other person to the extent necessary to obtain information from that person for the purpose of an investigation by the Department of Business Oversight.

(h) Made by the Commissioner of Business Oversight under Section 450, 452, 8009, or 18396 of the Financial Code.

(i) Of records relating to a person who is subject to the jurisdiction of the Department of Managed Health Care, if the disclosures are made to the person who is the subject of the records for the purpose of corrective action by that person, or, if a corporation, to an officer, director, or other key personnel of the

corporation for the purpose of corrective action, or to any other person to the extent necessary to obtain information from that person for the purpose of an investigation by the Department of Managed Health Care. (Added by Stats. 1981, ch. 968. Amended by Stats. 1983, ch. 101; Stats. 1987, ch. 1453; Stats. 1993, ch. 469; Stats. 1995, ch. 480; Stats. 1996, ch. 1064; Stats. 1999, ch. 525; Stats. 2000, ch. 857; Stats. 2008, ch. 501; Stats. 2014, ch. 401; Stats. 2015, ch. 190; Stats. 2016, ch. 86.)

### **§ 6261 Inspection of State Agencies Expenditures and Disbursements**

Notwithstanding Section 6252, an itemized statement of the total expenditures and disbursements of any agency provided for in Article VI of the California Constitution shall be open for inspection. (Added by Stats. 1975, ch. 1246.)

### **§ 8287 Law Revision Commission Assistance of Board of Trustees**

The Board of Trustees of the State Bar shall assist the commission and the committee in any manner the commission or committee may request within the scope of its powers or duties. (Formerly 10307, added by Stats. 1953, ch. 1445. Renumbered and amended by Stats. 1984, ch. 1335; Stats. 2019, ch. 25.)

**§ 8299.08** (Added by Stats. 2012, ch. 383. Amended by Stats. 2016, ch. 892. Repealed by Stats. 2017, ch. 19.)

### **§ 11121 Definition of State Body**

As used in this article, "state body" means each of the following:

(a) Every state board, or commission, or similar multimember body of the state that is created by statute or required by law to conduct official meetings and every commission created by executive order.

(b) A board, commission, committee, or similar multimember body that exercises any authority of a state body delegated to it by that state body.

(c) An advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body of a state body, if

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created by formal action of the state body or of any member of the state body, and if the advisory body so created consists of three or more persons.

(d) A board, commission, committee, or similar multimember body on which a member of a body that is a state body pursuant to this section serves in his or her official capacity as a representative of that state body and that is supported, in whole or in part, by funds provided by the state body, whether the multimember body is organized and operated by the state body or by a private corporation.

(e) Notwithstanding subdivision (a) of Section 11121.1, the State Bar of California, as described in Section 6001 of the Business and Professions Code. This subdivision shall become operative on April 1, 2016. (Added by Stats. 1967, ch. 1656. Amended by Stats. 1980, ch. 515; Stats. 1981, ch. 968; Stats. 1984, ch. 193; Stats. 1996, ch. 102; Stats. 1996, ch. 1064; Stats. 2001, ch. 243; Stats. 2003, ch. 62; Stats. 2015, ch. 537.)

### **§ 11140 Policy of State**

It is the policy of the State of California that the composition of state boards and commissions shall be broadly reflective of the general public including ethnic minorities and women. (Added by Stats. 1975, ch. 977.)

### **§ 11141 Nomination for Appointments; Compliance with Policy**

In making appointments to state boards and commissions, the Governor and every other appointing authority shall be responsible for nominating a variety of persons of different backgrounds, abilities, interests, and opinions in compliance with the policy expressed in this article. It is not the intent of the Legislature that formulas or specific ratios be utilized in complying with this article. (Added by Stats. 1975, ch. 977.)

### **§ 12011.5 Judicial Vacancies; State Bar Evaluation of Candidates**

(a) In the event of a vacancy in a judicial office to be filled by appointment of the Governor, or in the event that a declaration of candidacy is not filed by a judge and the Governor is required under subdivision (d) of

Section 16 of Article VI of the California Constitution to nominate a candidate, the Governor shall first submit to a designated agency of the State Bar of California the names of all potential appointees or nominees for the judicial office for evaluation of their judicial qualifications.

(b) The membership of the designated agency of the State Bar responsible for evaluation of judicial candidates shall consist of attorney members and public members with the ratio of public members to attorney members determined, to the extent practical, by the ratio established in Section 6013.5 of the Business and Professions Code. It is the intent of this subdivision that the designated agency of the State Bar responsible for evaluation of judicial candidates shall be broadly representative of the ethnic, gender, and racial diversity of the population of California and composed in accordance with Sections 11140 and 11141. The further intent of this subdivision is to establish a selection process for membership on the designated agency of the State Bar responsible for evaluation of judicial candidates under which no member of that agency shall provide inappropriate, multiple representation for purposes of this subdivision. Each member of the designated agency of the State Bar responsible for evaluation of judicial candidates shall complete a minimum of 60 minutes of training in the areas of fairness and bias in the judicial appointments process at an orientation for new members. If the member serves more than one term, the member shall complete an additional 60 minutes of that training during the member's service on the designated agency of the State Bar responsible for evaluation of judicial candidates.

(c) Upon receipt from the Governor of the names of candidates for judicial office and their completed personal data questionnaires, the State Bar shall use appropriate confidential procedures to evaluate and determine the qualifications of each candidate with regard to the candidate's ability to discharge the judicial duties of the office to which the appointment or nomination shall be made. Within 90 days of submission by the Governor of the name of a potential appointee for judicial office, the State Bar shall report, in confidence, to the Governor its recommendation whether the candidate is exceptionally well qualified, well qualified, qualified, or not qualified and the reasons therefor, and may report, in confidence, other information as the State Bar deems pertinent to the qualifications of the candidate.

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(d) In determining the qualifications of a candidate for judicial office, the State Bar shall consider, among other appropriate factors, the candidate's industry, judicial temperament, honesty, objectivity, community respect, integrity, health, ability, and legal experience. The State Bar shall consider legal experience broadly, including, but not limited to, litigation and nonlitigation experience, legal work for a business or nonprofit entity, experience as a law professor or other academic position, legal work in any of the three branches of government, and legal work in dispute resolution.

(e) The State Bar shall establish and promulgate rules and procedures regarding the investigation of the qualifications of candidates for judicial office by the designated agency. These rules and procedures shall establish appropriate, confidential methods for disclosing to the candidate the subject matter of substantial and credible adverse allegations received regarding the candidate's health, physical or mental condition, or moral turpitude that, unless rebutted, would be determinative of the candidate's unsuitability for judicial office. No provision of this section shall be construed as requiring that a rule or procedure be adopted that permits the disclosure to the candidate of information from which the candidate may infer the source, and no information shall either be disclosed to the candidate nor be obtainable by any process that would jeopardize the confidentiality of communications from persons whose opinion has been sought on the candidate's qualifications.

(f) All communications, written, verbal, or otherwise, of and to the Governor, the Governor's authorized agents or employees, including, but not limited to, the Governor's Legal Affairs Secretary and Appointments Secretary, or of and to the State Bar in furtherance of the purposes of this section are absolutely privileged from disclosure and confidential, and any communication made in the discretion of the Governor or the State Bar with a candidate or person providing information in furtherance of the purposes of this section shall not constitute a waiver of the privilege or a breach of confidentiality.

(g) If the Governor has appointed a person to a trial court who has been found not qualified by the designated agency, the State Bar may make public this fact after due notice to the appointee of its intention to do so, but that notice or disclosure shall not constitute a waiver of privilege or breach of confidentiality with respect to communications of or to the State Bar concerning the qualifications of the appointee.

(h) If the Governor has nominated or appointed a person to the Supreme Court or court of appeal in accordance with subdivision (d) of Section 16 of Article VI of the California Constitution, the Commission on Judicial Appointments may invite, or the State Bar's governing board or its designated agency may submit to the commission, its recommendation, and the reasons therefor, but that disclosure shall not constitute a waiver of privilege or breach of confidentiality with respect to communications of or to the State Bar concerning the qualifications of the nominee or appointee.

(i) A person or entity shall not be liable for an injury caused by an act or failure to act, be it negligent, intentional, discretionary, or otherwise, in the furtherance of the purposes of this section, including, but not limited to, providing or receiving information, making recommendations, and giving reasons therefor. As used in this section, the term "State Bar" means its governing board and members thereof, the designated agency of the State Bar and members thereof, and employees and agents of the State Bar.

(j) At any time prior to the receipt of the report from the State Bar specified in subdivision (c) the Governor may withdraw the name of a person submitted to the State Bar for evaluation pursuant to this section.

(k) A candidate for judicial office shall not be appointed until the State Bar has reported to the Governor pursuant to this section, or until 90 days have elapsed after submission of the candidate's name to the State Bar, whichever occurs earlier. The requirement of this subdivision shall not apply to a vacancy in judicial office occurring within the 90 days preceding the expiration of the Governor's term of office, provided, however, that with respect to those vacancies and with respect to nominations pursuant to subdivision (d) of Section 16 of Article VI of the California Constitution, the Governor shall be required to submit any candidate's name to the State Bar in order to provide an opportunity, if time permits, to make an evaluation.

(l) Nothing in this section shall be construed as imposing an additional requirement for an appointment or nomination to judicial office, nor shall anything in this section be construed as adding additional qualifications for the office of a judge.

(m) The Board of Governors of the State Bar shall not conduct or participate in, or authorize a committee, agency, employee, or commission of the State Bar to conduct or participate in, an evaluation, review, or



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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, except an evaluation, review, or report on potential judicial appointees or nominees as authorized by this section.

The provisions of this subdivision shall not be construed to prohibit a member of the State Bar from conducting or participating in an evaluation, review, or report in the member's individual capacity.

(n) (1) Notwithstanding any other provision of this section, but subject to paragraph (2), on or before March 1 of each year for the prior calendar year, all of the following shall occur:

(A) The Governor shall collect and release, on an aggregate statewide basis, all of the following:

(i) Demographic data provided by all judicial applicants relative to ethnicity, race, disability, veteran status, gender, gender identity, and sexual orientation.

(ii) Demographic data relative to ethnicity, race, disability, veteran status, gender, gender identity, and sexual orientation as provided by all judicial applicants, both as to those judicial applicants who have been and those who have not been submitted to the State Bar for evaluation.

(iii) Demographic data relative to ethnicity, race, disability, veteran status, gender, gender identity, and sexual orientation of all judicial appointments or nominations as provided by the judicial appointee or nominee.

(B) The designated agency of the State Bar responsible for evaluation of judicial candidates shall collect and release both of the following on an aggregate statewide basis:

(i) Statewide demographic data provided by all judicial applicants reviewed relative to ethnicity, race, disability, veteran status, gender, gender identity, sexual orientation, and areas of legal practice and employment.

(ii) The statewide summary of the recommendations of the designated agency of the State Bar by ethnicity, race, disability, veteran status, gender, gender identity, sexual orientation, and areas of legal practice and employment.

(C) The Administrative Office of the Courts shall collect and release the demographic data provided by justices and judges described in Article VI of the California Constitution relative to ethnicity, race, disability, veteran status, gender, gender identity, and sexual orientation by specific jurisdiction.

(2) For purposes of subparagraph (A) of paragraph (1), in the year following a general election or recall election that will result in a new Governor taking office prior to March 1, the departing Governor shall provide all of the demographic data collected for the year by that Governor pursuant to this subdivision to the incoming Governor. The incoming Governor shall then be responsible for releasing the provided demographic data, and the demographic data collected by that incoming Governor, if any, prior to the March 1 deadline imposed pursuant to this subdivision.

(3) Demographic data disclosed or released pursuant to this subdivision shall disclose only aggregated statistical data and shall not identify any individual applicant, justice, or judge.

(4) The State Bar and the Administrative Office of the Courts shall use the following ethnic and racial categories: American Indian or Alaska Native, Asian, Black or African American, Hispanic or Latino, Native Hawaiian or other Pacific Islander, White, some other race, and more than one race, as those categories are defined by the United States Census Bureau for the 2010 Census for reporting purposes.

(5) Demographic data disclosed or released pursuant to this subdivision shall also indicate the percentage of respondents who declined to respond.

(6) For purposes of this subdivision, the collection of demographic data relative to disability and veteran status shall be required only for judicial applicants, candidates, appointees, nominees, justices, and judges who apply, or are reviewed, appointed, nominated, or elected, on or after

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January 1, 2014. The release of this demographic data shall begin in 2015.

(7) For purposes of this subdivision, the following terms have the following meanings:

(A) "Disability" includes mental disability and physical disability, as defined in subdivisions (j) and (m) of Section 12926.

(B) "Veteran status" has the same meaning as specified in Section 101(2) of Title 38 of the United States Code.

(o) The Governor and members of judicial selection advisory committees are encouraged to give particular consideration to candidates from diverse backgrounds and cultures reflecting the demographics of California, including candidates with demographic characteristics underrepresented among existing judges and justices.

(p) If any provision of this section other than a provision relating to or providing for confidentiality or privilege from disclosure of any communication or matter, or the application of the provision to any person or circumstances, is held invalid, the remainder of this section, to the extent it can be given effect, or the application of the provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby, and to this extent the provisions of this section are severable. If any other act of the Legislature conflicts with the provisions of this section, this section shall prevail. (Added by Stats. 1979, ch. 534. Amended by Stats. 1984, ch. 16; Stats. 2006, ch. 390; Stats. 2007, ch. 130; Stats. 2007, ch. 722; Stats. 2011, ch. 667; Stats. 2011, ch. 720; Stats. 2012, ch. 162; Stats. 2013, ch. 113; Stats. 2014, ch. 7; Stats. 2021, ch. 50.)

***[Publisher's Note re Government Code § 12011.5: 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" are deemed to refer to the "board of trustees."]***

### **§ 12921 Civil Rights; Employment and Housing without Discrimination**

(a) The opportunity to seek, obtain, and hold employment without discrimination because of race, religious creed, color, national origin, ancestry, physical

disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, reproductive health decisionmaking, or veteran or military status is hereby recognized as and declared to be a civil right.

(b) The opportunity to seek, obtain, and hold housing without discrimination because of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, veteran or military status, genetic information, or any other basis prohibited by Section 51 of the Civil Code is hereby recognized as and declared to be a civil right. (Added by Stats. 1980, ch. 992. Amended by Stats. 1992, ch. 912; Stats. 1992, ch. 913; Stats. 1999, ch. 591; Stats. 1999, ch. 592; Stats. 2010, ch. 524; Stats. 2011, ch. 261; Stats. 2011, ch. 719; Stats. 2013, ch. 691; Stats. 2019, ch. 601; Stats. 2020, ch. 36; Stats. 2022, ch. 630.)

### **§ 19990.6 State Attorneys and Administrative Law Judges; Service on Governmental Bodies**

(a) Service on a local appointed or elected governmental board, commission, committee, or other body or as a local elected official by an attorney employed by the state in a nonelected position or by an administrative law judge, as defined in Section 11475.10, shall not, by itself, be deemed to be inconsistent, incompatible, in conflict with, or inimical to, the duties of the attorney or administrative law judge as a state officer or employee and shall not result in the automatic vacation of either office.

(b) Nothing in this section shall be construed to prohibit an administrative law judge, as defined in Section 11475.10, or an attorney employed by the state in a nonelected position from serving on any other appointed or elected governmental board, commission, committee, or other body, consistent with all applicable conflict of interest statutes and regulations and judicial canons of ethics. (Added by Stats. 2002, ch. 411.)

### **§ 26540 Defending Persons Accused of Crimes**

A district attorney shall not during his incumbency defend or assist in the defense of, or act as counsel for, any person accused of any crime in any county. (Added by Stats. 1947, ch. 424.)

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### **§ 26543 Prohibition Against Acting as Private Counsel in Cases Against State Governmental Agencies**

A district attorney or county counsel shall not during his incumbency act as counsel for any private plaintiff in any action or proceeding in which a city, district, or political subdivision of the State is a party defendant. (Added by Stats. 1953, ch. 422.)

### **§ 26810 Authority of Court Clerk to Photocopy, Microphotocopy, Reproduce, and Store Documents Transferred Under Probate Code Sections 732 and 8200**

(a) The clerk of the superior court may cause the following documents to be photographed, microphotographed, photocopied, electronically imaged, or otherwise reproduced on film and stored in that form:

- (1) A document transferred to the clerk under Section 732 of the Probate Code.
- (2) A will delivered to the clerk of the superior court under Section 8200 of the Probate Code if the clerk has held the will for at least 10 years.

(b) The photograph, microphotograph, photocopy, or electronic image shall be made in a manner that meets the minimum standards or guidelines recommended by the American National Standards Institute or the Association for Information and Image Management. All these photographs, microphotographs, photocopies, and electronic images shall be indexed, and shall be stored in a manner and place that reasonably assures their preservation indefinitely against loss, theft, defacement, or destruction.

(c) Before proof of death of the maker of a document or will referred to in subdivision (a), the photographs, microphotographs, photocopies, and electronic images shall be confidential, and shall be made available only to the maker. After proof of death of the maker of the document or will by a certified copy of the death certificate, the photographs, microphotographs, photocopies, and electronic images shall be public records.

(d) Section 26809 does not apply to a will or other document referred to in subdivision (a), or to the reproduction authorized by this section.

(e) Upon making the reproduction authorized by this section, the clerk of the superior court may destroy the original document. (Added by Stats. 1993, ch. 519.)

### **§ 31000.6 Employment of Legal Counsel to Assist Assessor or Sheriff; Conflicts of Interest**

(a) Upon request of the assessor, auditor-controller, or the sheriff of the county, the board of supervisors shall contract with and employ legal counsel to assist the assessor, auditor-controller, or the sheriff in the performance of his or her duties in any case where the county counsel or the district attorney would have a conflict of interest in representing the assessor, auditor-controller, or the sheriff.

(b) In the event that the board of supervisors does not concur with the assessor, auditor-controller, or the sheriff that a conflict of interest exists, the assessor, auditor-controller, or the sheriff, after giving notice to the county counsel or the district attorney, may initiate an ex parte proceeding before the presiding judge of the superior court. The county counsel or district attorney may file an affidavit in the proceeding in opposition to, or in support of, the assessor's, auditor-controller's, or the sheriff's position.

(c) The presiding superior court judge that determines in any ex parte proceeding that a conflict actually exists, must, if requested by one of the parties, also rule whether representation by the county counsel or district attorney through the creation of an "ethical wall" is appropriate. The factors to be considered in this determination of whether an "ethical wall" should be created are: (1) equal representation, (2) level of support, (3) access to resources, (4) zealous representation, or (5) any other consideration that relates to proper representation.

(d) If a court determines that the action brought by the assessor, auditor-controller, or sheriff is frivolous and in bad faith, the assessor's office, auditor-controller's office, or sheriff's office shall pay their own legal costs and all costs incurred in the action by the opposing party. As used in this section, "bad faith" and "frivolous" have the meaning given in Section 128.5 of the Code of Civil Procedure.

(e) If the presiding judge determines that a conflict of interest does exist, and that representation by the county counsel or district attorney through the creation of an ethical wall is inappropriate, the board of supervisors shall immediately employ legal counsel selected by the presiding judge to assist the assessor, the auditor-

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controller, or the sheriff. The assessor, the auditor-controller, or the sheriff may recommend specific legal counsel for selection by the presiding judge. The board of supervisors may also separately recommend specific legal counsel for selection by the presiding judge. When selecting counsel pursuant to this section, the presiding judge shall consider the counsel compensation rates prevailing in the county for similar work.

(f) As used in this section, “conflict of interest” means a conflict of interest as defined in Rule 3-310 of the Rules of Professional Conduct of the State Bar of California, as construed for public attorneys.

(g) This section shall also apply to any matter brought after an assessor, auditor-controller, or sheriff leaves office if the matter giving rise to the need for independent legal counsel was within the scope of the duties of the assessor, auditor-controller, or sheriff while in office, and the assessor, auditor-controller, or sheriff would have been authorized under this section to request the appointment of independent legal counsel. (Added by Stats. 1966, ch. 147. Amended by Stats. 1971, ch. 1104; Stats. 2001, ch. 41; Stats. 2006, ch. 423; Stats. 2018, ch. 307.)

### **§ 68085.35 High-Frequency Litigant Fees; Deposit and Distribution**

(a) Fees collected under Section 70616.5 shall be deposited in a bank account established by the Administrative Office of the Courts for deposit of fees collected by the courts.

(b) For each one-thousand-dollar (\$1,000) fee listed in subdivision (a), the Administrative Office of the Courts shall distribute specified amounts as follows:

(1) Five hundred dollars (\$500) to the General Fund for use, upon appropriation by the Legislature, by the California Commission on Disability Access.

(2) The remainder of the fee to the Trial Court Trust Fund.

(c) If any of the fees listed in subdivision (a) are reduced or partially waived, the amount of the reduction or partial waiver shall be deducted from the amount to be distributed to each fund in the same proportion as the amount each distribution bears to the total amount of the fee.

(d) No revenue collected pursuant to Section 70616.5 shall be used to supplant existing program funding of

the California Commission on Disability Access. (Added by Stats. 2015, ch. 755, effective Oct. 10, 2015.)

### **§ 68500.3 References to Administrative Office of the Courts**

Any reference to the Administrative Office of the Courts in state law means the Judicial Council. (Added by Stats. 2017, ch. 36.)

### **§ 68903 Contract for Publication of Official Reports**

The official reports shall be published under a contract to be entered into on behalf of state by the Chief Justice of California, the Secretary of State, the Attorney General, the President of the State Bar, and the Reporter of Decisions, who shall serve as secretary. (Added by Stats. 1967, ch. 172.)

### **§ 70660 Fee for Storage**

(a) The fee for receiving and storing each document transferred to the clerk of the superior court under Section 732 of the Probate Code is twenty dollars (\$20).

(b) The superior court may reduce or waive the fee established pursuant to this section under either of the following circumstances: (1) The court has assumed jurisdiction under Article 11 (commencing with Section 6180) of Chapter 4 of Division 3 of the Business and Professions Code over the law practice of the attorney with whom the document is deposited. (2) On a showing of hardship. (Added by Stats. 1993, ch. 519. Amended by Stats. 2001, ch. 824; Stats. 2005, ch. 75.)

### **§ 70661 Fee for Document Search**

The fee for searching a document transferred to the clerk of the superior court under Section 732 of the Probate Code is the same as the fee under subdivision (c) of Section 70627 for searching records or files. (Added by Stats. 1993, ch. 519. Amended by Stats. 2005, ch. 75.)

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### **§ 71622.5 2011 Realignment Legislation— Declaration Regarding Information**

(a) The Legislature hereby declares that due to the need to implement the 2011 Realignment Legislation addressing public safety (Chapter 15 of the Statutes of 2011), it is the intent of the Legislature to afford the courts the maximum flexibility to manage the caseload in the manner that is most appropriate to each court.

(b) Notwithstanding Section 71622, the superior court of any county may appoint as many hearing officers as deemed necessary to conduct parole revocation hearings pursuant to Sections 3000.08 and 3000.09 of the Penal Code and to determine violations of conditions of postrelease supervision pursuant to Section 3455 of the Penal Code, and to perform related duties as authorized by the court. A hearing officer appointed pursuant to this section has the authority to conduct these hearings and to make determinations at those hearings pursuant to applicable law.

(c) (1) A person is eligible to be appointed a hearing officer pursuant to this section if the person meets one of the following criteria:

(A) He or she has been an active member of the State Bar of California for at least 10 years continuously prior to appointment.

(B) He or she is or was a judge of a court of record of California within the last five years, or is currently eligible for the assigned judge program.

(C) He or she is or was a commissioner, magistrate, referee, or hearing officer authorized to perform the duties of a subordinate judicial officer of a court of record of California within the last five years.

(2) The superior court may prescribe additional minimum qualifications for hearing officers appointed pursuant to this section and may prescribe mandatory training for those hearing officers in addition to any training and education that may be required as judges or employees of the superior court.

(d) The manner of appointment of a hearing officer pursuant to this section and compensation to be paid to a hearing officer shall be determined by the court. That

compensation is within the definition of “court operations” pursuant to Section 77003 and California Rules of Court, rule 10.810.

(e) The superior courts of two or more counties may appoint the same person as a hearing officer under this section. (Added by Stats. 2011, ch. 39, effective June 30, 2011, operative Oct. 1, 2011.)

## INSURANCE CODE

### **§ 750 Unlawful to Receive Consideration for Referral of Clients**

(a) Except as provided in Section 750.5, any person acting individually or through his or her employees or agents, who engages in the practice of processing, presenting, or negotiating claims, including claims under policies of insurance, and who offers, delivers, receives, or accepts any rebate, refund, commission, or other consideration, whether in the form of money or otherwise, as compensation or inducement to or from any person for the referral or procurement of clients, cases, patients, or customers, is guilty of a crime.

(b) A violation of subdivision (a) is punishable upon a first conviction 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, or by a fine not exceeding fifty thousand dollars (\$50,000), or by both that imprisonment and fine. A second or subsequent conviction is punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code or by that imprisonment and a fine of fifty thousand dollars (\$50,000).

(c) Nothing in this section shall prohibit a licensed collection or lien agency from receiving a commission on the collection of delinquent debts nor prohibits the agency from paying its employees a commission for obtaining clients seeking collection on delinquent debts.

(d) Nothing in this section is intended to limit, restrict, or in any way apply to, the rebating of commissions by insurance agents or brokers, as authorized by Proposition 103, enacted by the people at the November 8, 1988, general election. (Added by Stats. 1991, ch. 116. Amended by Stats. 1991, ch. 934;

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Stats. 1992, ch. 1352; Stats. 2000, ch. 843; Stats. 2011, ch. 15.)

### **§ 750.4 Exemptions from Section 750**

Section 750 of the Insurance Code, Sections 3215 and 3219 of the Labor Code, and Section 549 of the Penal Code shall not apply to any person, corporation, partnership, association, or firm, that is operating under both of the following circumstances:

- (a) On behalf of an insurer or self-insured person, company, association, or group.
- (b) Pursuant to, and within the scope of, a certificate of consent issued pursuant to Section 3702.1 of the Labor Code or pursuant to, and within the scope of, a license issued pursuant to Article 3 (commencing with Section 14020) of Chapter 1 of Division 5. (Added by Stats. 1991, ch. 116; Amended by Stats 1991, ch. 934; Stats. 1993, ch. 120; Stats. 2006, ch. 538.)

### **§ 750.5 Permissible Acts for Attorneys and Law Firms under Section 750**

Nothing in Section 750 of the Insurance Code, Section 549 of the Penal Code, or Section 3215 of the Labor Code shall be construed to prevent an attorney or law firm from the following:

- (a) Dividing fees for legal services with a lawyer under circumstances expressly permitted by Rule 2-200 of the Rules of Professional Conduct of the State Bar.
- (b) Offering or giving an incidental nonmonetary gift or gratuity to a person who has made a recommendation resulting in the employment of the attorney or law firm, provided that the gift or gratuity was not offered in consideration of any promise, agreement, or understanding that the gift or gratuity would be forthcoming or that referrals would be made or encouraged in the future.
- (c) Offering or giving a bonus to an employee who has made a referral or recommendation resulting in the employment of the attorney or law firm, provided that the bonus was not offered in consideration of any promise, agreement, or understanding that the bonus would be forthcoming or that referrals or recommendations would be made or encouraged in the

future. (Added by Stats. 1991, ch. 116. Amended by Stats. 1993, ch. 120.)

### **§ 1724 Prohibition Against Sharing a Commission Between an Attorney and an Insurance Agent, Broker or Solicitor**

An agent, broker, or solicitor who is not an active member of the State Bar of California may not share a commission or other compensation with an active member of the State Bar of California. For purposes of this section, "commission or other compensation" means pecuniary or nonpecuniary compensation of any kind relating to the sale or renewal of an insurance policy or certificate or an annuity, including, but not limited to, a bonus, gift, prize, award, or finder's fee. (Added by Stats. 2003, ch. 547.)

### **§ 1871 Legislative Intent**

The Legislature finds and declares as follows:

- (a) The business of insurance involves many transactions that have the potential for abuse and illegal activities. There are numerous law enforcement agencies on the state and local levels charged with the responsibility for investigating and prosecuting fraudulent activity. This chapter is intended to permit the full utilization of the expertise of the commissioner and the department so that they may more effectively investigate and discover insurance frauds, halt fraudulent activities, and assist and receive assistance from federal, state, local, and administrative law enforcement agencies in the prosecution of persons who are parties in insurance frauds.
- (b) Insurance fraud is a particular problem for automobile policyholders; fraudulent activities account for 15 to 20 percent of all auto insurance payments. Automobile insurance fraud is the biggest and fastest growing segment of insurance fraud and contributes substantially to the high cost of automobile insurance with particular significance in urban areas.
- (c) Prevention of automobile insurance fraud will significantly reduce the incidence of severity and automobile insurance claim payments and will therefore produce a commensurate reduction in automobile insurance premiums.

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(d) Workers' compensation fraud harms employers by contributing to the increasingly high cost of workers' compensation insurance and self insurance and harms employees by undermining the perceived legitimacy of all workers' compensation claims.

(e) Prevention of workers' compensation insurance fraud may reduce the number of workers' compensation claims and claim payments thereby producing a commensurate reduction in workers' compensation costs. Prevention of workers' compensation insurance fraud will assist in restoring confidence and faith in the workers' compensation system, and will facilitate expedient and full compensation for employees injured at the workplace.

(f) The actions of employers who fraudulently underreport payroll or fail to report payroll for all employees to their insurance company in order to pay a lower workers' compensation premium result in significant additional premium costs and an unfair burden to honest employers and their employees.

(g) The actions of employers who fraudulently fail to secure the payment of workers' compensation as required by Section 3700 of the Labor Code harm employees, cause unfair competition for honest employers, and increase costs to taxpayers.

(h) Health insurance fraud is a particular problem for health insurance policyholders. Although there are no precise figures, it is believed that fraudulent activities account for billions of dollars annually in added health care costs nationally. Health care fraud causes losses in premium dollars and increases health care costs unnecessarily. (Added by Stats. 1989, ch. 1119. Amended by Stats. 1991, ch. 116; Stats. 1991, ch. 1008; Stats. 1995, ch. 885; Stats. 2001, ch. 159; Stats. 2002, ch. 6; Stats. 2004, ch. 635.)

### **§ 1871.1 Investigation of Fraudulent Claims, Access to Public Records**

Insurers and their agents, while they are investigating suspected fraud claims, shall have access to all relevant public records that are required to be open for inspection under Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, and any regulations thereunder. This section restates existing law, and the Legislature does not intend to grant insurers or their agents access to public records other than to those public

records available to them under existing law. (Added by Stats. 1993, ch. 323.)

### **§ 1871.4 Unlawful to Make False or Fraudulent Statements or Representations for Purpose of Obtaining or Denying Compensation; Penalties**

(a) It is unlawful to do any of the following:

(1) Make or cause to be made a knowingly false or fraudulent material statement or material representation for the purpose of obtaining or denying any compensation, as defined in Section 3207 of the Labor Code.

(2) Present or cause to be presented a knowingly false or fraudulent written or oral material statement in support of, or in opposition to, a claim for compensation for the purpose of obtaining or denying any compensation, as defined in Section 3207 of the Labor Code.

(3) Knowingly assist, abet, conspire with, or solicit a person in an unlawful act under this section.

(4) Make or cause to be made a knowingly false or fraudulent statement with regard to entitlement to benefits with the intent to discourage an injured worker from claiming benefits or pursuing a claim.

For the purposes of this subdivision, "statement" includes, but is not limited to, a notice, proof of injury, bill for services, payment for services, hospital or doctor records, X-ray, test results, medical-legal expense as defined in Section 4620 of the Labor Code, other evidence of loss, injury, or expense, or payment.

(5) Make or cause to be made a knowingly false or fraudulent material statement or material representation for the purpose of obtaining or denying any of the benefits or reimbursement provided in the Return-to-Work Program established under Section 139.48 of the Labor Code.

(6) Make or cause to be made a knowingly false or fraudulent material statement or material representation for the purpose of discouraging an employer from claiming any of the benefits or reimbursement provided in the Return-to-Work

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Program established under Section 139.48 of the Labor Code.

(b) Every person who violates subdivision (a) shall be punished by imprisonment in a county jail for one year, or pursuant to subdivision (h) of Section 1170 of the Penal Code, for two, three, or five years, or by a fine not exceeding one hundred fifty thousand dollars (\$150,000) or double the value of the fraud, whichever is greater, or by both that imprisonment and fine. Restitution shall be ordered, including restitution for any medical evaluation or treatment services obtained or provided. The court shall determine the amount of restitution and the person or persons to whom the restitution shall be paid. A person convicted under this section may be charged the costs of investigation at the discretion of the court.

(c) A person who violates subdivision (a) and who has a prior felony conviction of that subdivision, of former Section 556, of former Section 1871.1, or of Section 548 or 550 of the Penal Code, shall receive a two-year enhancement for each prior conviction in addition to the sentence provided in subdivision (b).

The existence of any fact that would subject a person to a penalty enhancement shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(d) This section may not be construed to preclude the applicability of any other provision of criminal law that applies or may apply to a transaction. (Added by Stats. 1991, ch. 116. Amended by Stats. 1991, ch. 934; Stats. 1992, ch. 675; Stats. 1993, ch. 120; Stats. 1995, ch. 574; Stats. 2002, ch. 6; Stats. 2004, ch. 635; Stats. 2011, ch. 15.)

### **§ 1871.5 Ineligibility to Receive or Retain Compensation, Conviction of Workers' Compensation Fraud**

Any person convicted of workers' compensation fraud pursuant to Section 1871.4 or Section 550 of the Penal Code shall be ineligible to receive or retain any compensation, as defined in Section 3207 of the Labor Code, where that compensation was owed or received as a result of a violation of Section 1871.4 or Section 550 of the Penal Code for which the recipient of the

compensation was convicted. (Added by Stats. 1993, ch. 120.)

### **§ 1871.6 Provisions of Section 1871.4 Do Not Limit Applicability of Section 781 of the Penal Code**

The provisions of Section 781 of the Penal Code are applicable to any prosecutions for violations of Section 1871.4. This section is declaratory of existing law and shall not be interpreted to limit the applicability of Section 781 of the Penal Code to any other criminal provisions. (Added by Stats. 1993, ch. 120.)

### **§ 1871.7 Unlawful Solicitation of Business**

(a) It is unlawful to knowingly employ runners, cappers, steerers, or other persons to procure clients or patients to perform or obtain services or benefits pursuant to Division 4 (commencing with Section 3200) of the Labor Code or to procure clients or patients to perform or obtain services or benefits under a contract of insurance or that will be the basis for a claim against an insured individual or his or her insurer.

(b) Every person who violates any provision of this section or Section 549, 550, or 551 of the Penal Code shall be subject, in addition to any other penalties that may be prescribed by law, to a civil penalty of not less than five thousand dollars (\$5,000) nor more than ten thousand dollars (\$10,000), plus an assessment of not more than three times the amount of each claim for compensation, as defined in Section 3207 of the Labor Code or pursuant to a contract of insurance. The court shall have the power to grant other equitable relief, including temporary injunctive relief, as is necessary to prevent the transfer, concealment, or dissipation of illegal proceeds, or to protect the public. The penalty prescribed in this paragraph shall be assessed for each fraudulent claim presented to an insurance company by a defendant and not for each violation.

(c) The penalties set forth in subdivision (b) are intended to be remedial rather than punitive, and shall not preclude, nor be precluded by, a criminal prosecution for the same conduct. If the court finds, after considering the goals of disgorging unlawful profit, restitution, compensating the state for the costs of investigation and prosecution, and alleviating the social costs of increased insurance rates due to fraud, that such a penalty would be punitive and would



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preclude, or be precluded by, a criminal prosecution, the court shall reduce that penalty appropriately.

(d) The district attorney or commissioner may bring a civil action under this section. Before the commissioner may bring that action, the commissioner shall be required to present the evidence obtained to the appropriate local district attorney for possible criminal or civil filing. If the district attorney elects not to pursue the matter due to insufficient resources, then the commissioner may proceed with the action.

(e) (1) Any interested persons, including an insurer, may bring a civil action for a violation of this section for the person and for the State of California. The action shall be brought in the name of the state. The action may be dismissed only if the court and the district attorney or the commissioner, whichever is participating, give written consent to the dismissal and their reasons for consenting.

(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the district attorney and commissioner. The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The local district attorney or commissioner may elect to intervene and proceed with the action within 60 days after he or she receives both the complaint and the material evidence and information. If more than one governmental entity elects to intervene, the district attorney shall have precedence.

(3) The district attorney or commissioner may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2). The motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until 20 days after the complaint is unsealed and served upon the defendant.

(4) Before the expiration of the 60-day period or any extensions obtained under paragraph (3), the district attorney or commissioner shall either:

(A) Proceed with the action, in which case the action shall be conducted by the district attorney or commissioner.

(B) Notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

(5) When a person or governmental agency brings an action under this section, no person other than the district attorney or commissioner may intervene or bring a related action based on the facts underlying the pending action unless that action is authorized by another statute or common law.

(f) (1) If the district attorney or commissioner proceeds with the action, he or she shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. That person shall have the right to continue as a party to the action, subject to the limitations set forth in paragraph (2).

(2) (A) The district attorney or commissioner may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the district attorney or commissioner of the filing of the motion, and the court has provided the person with an opportunity for a hearing on the motion.

(B) The district attorney or commissioner may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, the hearing may be held in camera.

(C) Upon a showing by the district attorney or commissioner that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the district attorney's or commissioner's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion,

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impose limitations on the person's participation, including, but not limited to, the following:

- (i) Limiting the number of witnesses the person may call.
- (ii) Limiting the length of the testimony of those witnesses.
- (iii) Limiting the person's cross-examination of witnesses.
- (iv) Otherwise limiting the participation by the person in the litigation.

(D) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

(3) If the district attorney or commissioner elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the district attorney or commissioner so requests, he or she shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts, at the district attorney's or commissioner's expense. When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the district attorney or commissioner to intervene at a later date upon a showing of good cause.

(4) If at any time both a civil action for penalties and equitable relief pursuant to this section and a criminal action are pending against a defendant for substantially the same conduct, whether brought by the government or a private party, the civil action shall be stayed until the criminal action has been concluded at the trial court level. The stay shall not preclude the court from granting or enforcing temporary equitable relief during the pendency of the actions. Whether or not the district attorney or commissioner proceeds with the action, upon a showing by the district attorney

or commissioner that certain actions of discovery by the person initiating the action would interfere with a law enforcement or governmental agency investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay discovery for a period of not more than 180 days. A hearing on a request for the stay shall be conducted in camera. The court may extend the 180-day period upon a further showing in camera that the agency has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(5) Notwithstanding subdivision (e), the district attorney or commissioner may elect to pursue its claim through any alternate remedy available to the district attorney or commissioner.

(g) (1) (A) (i) If the district attorney proceeds with an action brought by a person under subdivision (e), that person shall, subject to subparagraph (B), receive at least 30 percent but not more than 40 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action.

(ii) If the commissioner has brought an action or has proceeded with an action brought by another person under this section on or after January 1, 2006, the commissioner shall be entitled to attorney's fees and costs in addition to any judgment, regardless of the date that judgment is entered. The court shall determine and award the commissioner the amount of reasonable attorney's fees, including, but not limited to, reasonable fees for time expended by attorneys employed by the department and for costs incurred. Any attorney's fees or costs awarded to the commissioner and collected shall be deposited in the Insurance Fund. In cases in which the commissioner has intervened, the commissioner and the person bringing the claim may stipulate to an allocation.

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The court may allocate the funds pursuant to the stipulation if, after the court's ruling on objection by the district attorney, if any, the court finds it is in the interests of justice to follow the stipulation.

(iii) If the commissioner has proceeded with an action, if there is no stipulation regarding allocation, and if a judgment has been obtained or a settlement has been reached with the defendants, the court shall determine the allocation, upon motion of the commissioner or the person bringing the action, according to the following priority:

(I) The person bringing the action, regardless of whether that person paid money to the defendants as part of the acts alleged in the complaint, shall first receive the amount the court determines is reasonable for attorney's fees, costs, and expenses that the court determines to have been necessarily incurred.

(II) The commissioner shall receive the amount the court determines for reasonable attorney's fees and costs.

(III) If the person bringing the suit has paid moneys to the defendants as part of the acts alleged in the complaint, that person shall receive the amount paid to the defendants.

(IV) At least 30 percent, but not more than 40 percent, of the remaining assets or moneys, shall be allocated to the person bringing the action, depending upon the extent to which the person substantially contributed to the prosecution of the action.

(iv) Those portions of a judgment or settlement not distributed pursuant to

this subdivision shall be paid to the General Fund of the state and, upon appropriation by the Legislature, shall be apportioned between the Department of Justice and the Department of Insurance for enhanced fraud investigation and prevention efforts.

(B) Where the action is one that the court finds to be based primarily on disclosures of specific information, other than information provided by the person bringing the action, relating to allegations or transactions in a criminal, civil, or administrative hearing, in a legislative or administrative report, hearing, audit, or investigation, or from the news media, the court may award those sums that it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation.

(C) Any payment to a person under subparagraph (A) or under subparagraph (B) shall be made from the proceeds. The person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorney's fees and costs. All of those expenses, fees, and costs shall be awarded against the defendant.

(2) (A) If the district attorney or commissioner does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount that the court decides is reasonable for collecting the civil penalty and damages. Except as provided in subparagraph (B), the amount shall not be less than 40 percent and not more than 50 percent of the proceeds of the action or settlement and shall be paid out of the proceeds. That person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorney's fees and costs. All of those attorney's fees and costs shall be imposed against the defendant. The parties shall serve the commissioner and the local

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district attorney with complete copies of any and all settlement agreements, and terms and conditions, for actions brought under this article at least 10 days prior to filing any motion for allocation with the court under this paragraph. The court may allocate the funds pursuant to the settlement agreement if, after the court's ruling on objection by the commissioner or the local district attorney, if any, the court finds it is in the interests of justice to follow the settlement agreement.

(B) If the person bringing the action, as a result of a violation of this section has paid money to the defendant or to an attorney acting on behalf of the defendant in the underlying claim, then he or she shall be entitled to up to double the amount paid to the defendant or the attorney if that amount is greater than 50 percent of the proceeds. That person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorney's fees and costs. All of those expenses, fees, and costs shall be awarded against the defendant.

(3) If a local district attorney has proceeded with an action under this section, one-half of the penalties not awarded to a private party, as well as any costs awarded shall go to the treasurer of the appropriate county. Those funds shall be used to investigate and prosecute fraud, augmenting existing budgets rather than replacing them. All remaining funds shall go to the state and be deposited in the General Fund and, when appropriated by the Legislature, shall be apportioned between the Department of Justice and the Department of Insurance for enhanced fraud investigation and prevention efforts.

(4) Whether or not the district attorney or commissioner proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of this section, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. The dismissal shall not prejudice the right of the district attorney or commissioner to continue the action on behalf of the state.

(5) If the district attorney or commissioner does not proceed with the action, and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorney's fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(h) (1) In no event may a person bring an action under subdivision (e) that is based upon allegations or transactions that are the subject of a civil suit or an administrative civil money penalty proceeding in which the Attorney General, district attorney, or commissioner is already a party.

(2) (A) No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing in a legislative or administrative report, hearing, audit, or investigation, or from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

(B) For purposes of this paragraph, "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the district attorney or commissioner before filing an action under this section that is based on the information.

(i) Except as provided in subdivision (j), the district attorney or commissioner is not liable for expenses that a person incurs in bringing an action under this section.

(j) In civil actions brought under this section in which the commissioner or a district attorney is a party, the court shall retain discretion to impose sanctions otherwise allowed by law, including the ability to order a party to pay expenses as provided in Sections 128.5 and 1028.5 of the Code of Civil Procedure.

(k) Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf

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of the employee or others in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee whole. That relief shall include reinstatement with the same seniority status the employee would have had but for the discrimination, two times the amount of backpay, interest on the backpay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees. An employee may bring an action in the appropriate superior court for the relief provided in this subdivision. The remedies under this section are in addition to any other remedies provided by existing law.

(l) (1) An action pursuant to this section may not be filed more than three years after the discovery of the facts constituting the grounds for commencing the action.

(2) Notwithstanding paragraph (1) no action may be filed pursuant to this section more than eight years after the commission of the act constituting a violation of this section or a violation of Section 549, 550, or 551 of the Penal Code. (Added by Stats. 1993, ch. 120. Amended by Stats. 1994, ch. 1247; Stats. 1995, ch. 574; Stats. 1999, ch. 885; Stats. 2005, ch. 380; Stats. 2010, ch. 400.)

### **§ 1872 Creation of Bureau of Fraudulent Claims**

There is created within the department the Fraud Division to enforce the provisions of Sections 549, and 550 of the Penal Code, and to administer the provisions of Article 3 (commencing with Section 1873). (Added by Stats. 1989, ch. 1119. Amended by Stats. 1991, ch. 116; Stats. 1991, ch. 934; Stats. 1992, ch. 675; Stats. 2005, ch. 717.)

### **§ 1872.8 Annual Special Purpose Assessment; Distribution of Proceeds; Duties of Bureau of Fraudulent Claims**

(a) An insurer doing business in this state shall pay an annual special purpose assessment to be determined by the commissioner, but not to exceed one dollar (\$1) annually, for each vehicle insured under an insurance policy it issues in this state, in order

to fund increased investigation and prosecution of fraudulent automobile insurance claims and economic automobile theft. Thirty-four percent of those funds received from ninety-five cents (\$0.95) of the special purpose assessment per insured vehicle shall be distributed to the Fraud Division for enhanced investigative efforts, 15 percent of that ninety-five cents (\$0.95) shall be deposited in the Motor Vehicle Account for appropriation to the Department of the California Highway Patrol for enhanced prevention and investigative efforts to deter economic automobile theft, and 51 percent of that ninety-five cents (\$0.95) shall be distributed to district attorneys for purposes of investigation and prosecution of automobile insurance fraud cases, including fraud involving economic automobile theft.

(b) (1) The commissioner shall award funds to district attorneys according to population. The commissioner may alter this distribution formula as necessary to achieve the most effective distribution of funds. A local district attorney desiring a portion of those funds shall submit to the commissioner an application detailing the proposed use of any moneys that may be provided. The application shall include a detailed accounting of assessment funds received and expended in prior years, including, at a minimum, all of the following:

(A) The amount of funds received and expended.

(B) The uses to which those funds were put, including payment of salaries and expenses, purchase of equipment and supplies, and other expenditures by type.

(C) The results achieved as a consequence of expenditures made, including the number of investigations, arrests, complaints filed, convictions, and the amounts originally claimed in cases prosecuted compared to payments actually made in those cases.

(D) Other relevant information as the commissioner may reasonably require. A district attorney who fails to submit an application by the deadline set by the commissioner shall be subject to loss of distribution of the moneys. The commissioner may consider recommendations and advice of the Fraud Division and the Commissioner of

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the California Highway Patrol in allocating moneys to local district attorneys. A district attorney that receives funds shall submit an annual report to the commissioner, which may be made public, as to the success of the program administered. The report shall provide information and statistics on the number of active investigations, arrests, indictments, and convictions. Both the application for moneys and the distribution of moneys shall be public documents. The commissioner shall conduct a fiscal audit of the programs administered under this subdivision at least once every three years. The costs of a fiscal audit shall be shared equally between the department and the district attorney. Information submitted to the commissioner pursuant to this section concerning criminal investigations, whether active or inactive, shall be confidential. If the commissioner determines that a district attorney is unable or unwilling to investigate and prosecute automobile insurance fraud claims as provided by this subdivision or Section 1874.8, the commissioner may discontinue the distribution of funds allocated for that county and may redistribute those funds to other eligible district attorneys.

(2) The Department of the California Highway Patrol shall submit to the commissioner, for informational purposes only, a report detailing the department's proposed use of funds under this section and an annual report in the same format as required of district attorneys under paragraph (1).

(c) The remaining five cents (\$0.05) shall be spent for enhanced automobile insurance fraud investigation by the Fraud Division.

(d) Except for funds to be deposited in the Motor Vehicle Account for allocation to the Department of the California Highway Patrol for purposes of the Motor Vehicle Theft Prevention Act (Chapter 5 (commencing with Section 10900) of Division 4 of the Vehicle Code), the funds received under this section shall be deposited in the Insurance Fund and be expended and distributed when appropriated by the Legislature.

(e) In the course of its investigations, the Fraud Division shall pursue aggressively all reported incidents of probable fraud and, in addition, shall forward to the appropriate disciplinary body the names of individuals licensed under the Business and Professions Code who are suspected of actively engaging in fraudulent activity along with all relevant supporting evidence.

(f) As used in this section, "economic automobile theft" means automobile theft perpetrated for financial gain, including, but not limited to, the following:

(1) Theft of a motor vehicle for financial gain.

(2) Reporting that a motor vehicle has been stolen for the purpose of filing a false insurance claim.

(3) Engaging in any act prohibited by Chapter 3.5 (commencing with Section 10801) of Division 4 of the Vehicle Code.

(4) Switching of vehicle identification numbers to obtain title to a stolen motor vehicle. (Added by Stats. 1989, ch. 1119; Amended by Stats. 1991, ch. 1222; Stats. 1994, ch. 1247; Stats. 1994, ch. 1248, Stats. 1997, ch. 364; Stats. 1997, ch. 501; Stats. 1999, ch. 885; Stats. 2005, ch. 717; Stats. 2007, ch. 100; Stats. 2007, ch. 335; Stats. 2008, ch. 179.)

### **§ 1872.83 Reporting Incidents of Fraud to Appropriate Disciplinary Body**

(a) The commissioner shall ensure that the Fraud Division aggressively pursues all reported incidents of probable workers' compensation fraud, as defined in Sections 11760 and 11880, and in subdivision (a) of Section 1871.4, and in Section 549 of the Penal Code, and forwards to the appropriate disciplinary body the names, along with all supporting evidence, of any individuals licensed under the Business and Professions Code who are suspected of actively engaging in fraudulent activity. The Fraud Division shall forward to the Insurance Commissioner or the Director of Industrial Relations, as appropriate, the name, along with all supporting evidence, of any insurer, as defined in subdivision (c) of Section 1877.1, suspected of actively engaging in the fraudulent denial of claims.

(b) To fund increased investigation and prosecution of workers' compensation fraud, and of willful failure to

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secure payment of workers' compensation, in violation of Section 3700.5 of the Labor Code, there shall be an annual assessment as follows:

(1) The aggregate amount of the assessment shall be determined by the Fraud Assessment Commission, which is hereby established. The commission shall be composed of seven members consisting of two representatives of organized labor, two representatives of self-insured employers, one representative of insured employers, one representative of workers' compensation insurers, and the President of the State Compensation Insurance Fund, or his or her designee. The Governor shall appoint members representing organized labor, self-insured employers, insured employers, and insurers. The term of office of members of the commission shall be four years, and a member shall hold office until the appointment of a successor. The President of the State Compensation Insurance Fund shall be an ex officio, voting member of the commission. Members of the commission shall receive one hundred dollars (\$100) for each day of actual attendance at commission meetings and other official commission business, and shall also receive their actual and necessary traveling expenses incurred in the performance of commission duties. Payment of per diem and travel expenses shall be made from the Workers' Compensation Fraud Account in the Insurance Fund, established in paragraph (4), upon appropriation by the Legislature.

(2) In determining the aggregate amount of the assessment, the Fraud Assessment Commission shall consider the advice and recommendations of the Fraud Division and the commissioner.

(3) The aggregate amount of the assessment shall be collected by the Director of Industrial Relations pursuant to Section 62.6 of the Labor Code. The Fraud Assessment Commission shall annually advise the Director of Industrial Relations, not later than March 15, of the aggregate amount to be assessed for the next fiscal year.

(4) The amount collected, together with the fines collected for violations of the unlawful acts specified in Sections 1871.4, 11760, and 11880, Section 3700.5 of the Labor Code, and Section 549 of the Penal Code, shall be deposited in the

Workers' Compensation Fraud Account in the Insurance Fund, which is hereby created, and may be used, upon appropriation by the Legislature, only for enhanced investigation and prosecution of workers' compensation fraud and of willful failure to secure payment of workers' compensation as provided in this section.

(c) For each fiscal year, the total amount of revenues derived from the assessment pursuant to subdivision (b) shall, together with amounts collected pursuant to fines imposed for unlawful acts described in Sections 1871.4, 11760, and 11880, Section 3700.5 of the Labor Code, and Section 549 of the Penal Code, not be less than three million dollars (\$3,000,000). Any funds appropriated by the Legislature pursuant to subdivision (b) that are not expended in the fiscal year for which they have been appropriated, and that have not been allocated under subdivision (f), shall be applied to satisfy for the immediately following fiscal year the minimum total amount required by this subdivision. In no case may that money be transferred to the General Fund.

(d) After incidental expenses, at least 40 percent of the funds to be used for the purposes of this section shall be provided to the Fraud Division of the Department of Insurance for enhanced investigative efforts, and at least 40 percent of the funds shall be distributed to district attorneys, pursuant to a determination by the commissioner with the advice and consent of the division and the Fraud Assessment Commission, as to the most effective distribution of moneys for purposes of the investigation and prosecution of workers' compensation fraud cases and cases relating to the willful failure to secure the payment of workers' compensation. Each district attorney seeking a portion of the funds shall submit to the commissioner an application setting forth in detail the proposed use of any funds provided. A district attorney receiving funds pursuant to this subdivision shall submit an annual report to the commissioner with respect to the success of his or her efforts. Upon receipt, the commissioner shall provide copies to the Fraud Division and the Fraud Assessment Commission of any application, annual report, or other documents with respect to the allocation of money pursuant to this subdivision. Both the application for moneys and the distribution of moneys shall be public documents. Information submitted to the commissioner pursuant to this section concerning criminal investigations, whether active or inactive, shall be confidential.

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(e) If a district attorney is determined by the commissioner to be unable or unwilling to investigate and prosecute workers' compensation fraud claims or claims relating to the willful failure to secure the payment of workers' compensation, the commissioner shall discontinue distribution of funds allocated for that county and may redistribute those funds according to this subdivision.

(1) The commissioner shall promptly determine whether any other county could assert jurisdiction to prosecute the fraud claims or claims relating to the willful failure to secure the payment of workers' compensation that would have been brought in the nonparticipating county, and if so, the commissioner may award funds to conduct the prosecutions redirected pursuant to this subdivision. These funds may be in addition to any other fraud prosecution funds or claims relating to the willful failure to secure the payment of workers' compensation prosecution otherwise awarded under this section. Any district attorney receiving funds pursuant to this subdivision shall first agree that the funds shall be used solely for investigating and prosecuting those cases of workers' compensation fraud or claims relating to the willful failure to secure the payment of workers' compensation that are redirected pursuant to this subdivision and submit an annual report to the commissioner with respect to the success of the district attorney's efforts. The commissioner shall keep the Fraud Assessment Commission fully informed of all reallocations of funds under this paragraph.

(2) If the commissioner determines that no district attorney is willing or able to investigate and prosecute the workers' compensation fraud claims or claims relating to the willful failure to secure the payment of workers' compensation arising in the nonparticipating county, the commissioner, with the advice and consent of the Fraud Assessment Commission, may award to the Attorney General some or all of the funds previously awarded to the nonparticipating county. Before the commissioner may award any funds, the Attorney General shall submit to the commissioner an application setting forth in detail his or her proposed use of any funds provided and agreeing that any funds awarded shall be used solely for investigating and prosecuting those cases of workers' compensation fraud or claims

relating to the willful failure to secure the payment of workers' compensation that are redirected pursuant to this subdivision. The Attorney General shall submit an annual report to the commissioner with respect to the success of the fraud prosecution efforts of his or her office.

(3) Neither the Attorney General nor any district attorney shall be required to relinquish control of any investigation or prosecution undertaken pursuant to this subdivision unless the commissioner determines that satisfactory progress is no longer being made on the case or the case has been abandoned.

(4) A county that has become a nonparticipating county due to the inability or unwillingness of its district attorney to investigate and prosecute workers' compensation fraud or the willful failure to secure the payment of workers' compensation shall not become eligible to receive funding under this section until it has submitted a new application that meets the requirements of subdivision (d) and the applicable regulations.

(f) If in any fiscal year the Fraud Division does not use all of the funds made available to it under subdivision (d), any remaining funds may be distributed to district attorneys pursuant to a determination by the commissioner in accordance with the same procedures set forth in subdivision (d).

(g) The commissioner shall adopt rules and regulations to implement this section in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). Included in the rules and regulations shall be the criteria for redistributing funds to district attorneys and the Attorney General. The adoption of the rules and regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare.

(h) The department shall report to the Governor, the Legislature, to the committees of the Senate and Assembly having jurisdiction over insurance, and the Fraud Assessment Commission on the activities of the Fraud Division and district attorneys supported by the funds provided by this section in the annual report submitted pursuant to Section 12922.



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The annual report shall include, but is not limited to, all of the following information for the department and each district attorney's office:

- (1) All allocations, distributions, and expenditures of funds.
  - (2) The number of search warrants issued.
  - (3) The number of arrests and prosecutions, and the aggregate number of parties involved in each.
  - (4) The number of convictions and the names of all convicted fraud perpetrators.
  - (5) The estimated value of all assets frozen, penalties assessed, and restitutions made for each conviction.
  - (6) Any additional items necessary to fully inform the Fraud Assessment Commission and the Legislature of the fraud fighting efforts financed through this section.
- (i) In order to meet the requirements of subdivision (g), the department shall submit a biannual information request to those district attorneys who have applied for and received funding through the annual assessment process under this section.
- (j) Assessments levied or collected to fight workers' compensation fraud and insurance fraud are not taxes. Those funds are entrusted to the state to fight fraud and the willful failure to secure the payment of workers' compensation by funding state and local investigation and prosecution efforts. Accordingly, any funds resulting from assessments, fees, penalties, fines, restitution, or recovery of costs of investigation and prosecution deposited in the Insurance Fund shall not be deemed "unexpended" funds for any purpose and, if remaining in that account at the end of any fiscal year, shall be applied as provided in subdivision (f) and to offset or augment subsequent years' program funding.
- (k) The Bureau of State Audits shall evaluate the effectiveness of the efforts of the Fraud Assessment Commission, the Fraud Division, the Department of Insurance, and the Department of Industrial Relations, as well as local law enforcement agencies, including district attorneys, in identifying, investigating, and prosecuting workers' compensation fraud and the willful failure to secure payment of workers'

compensation. The report shall specifically identify areas of deficiencies. Included in this report shall be recommendations on whether the current program provides the appropriate levels of accountability for those responsible for the allocation and expenditure of funds raised from the assessment provided in this section. The Bureau of State Audits shall submit a report to the Chairperson of the Senate Committee on Labor and Industrial Relations and the Chairperson of the Assembly Committee on Insurance on or before May 1, 2004. (Added by Stats. 1991, ch. 116. Amended by Stats. 1991, ch. 934; Stats. 1994, ch. 301; Stats. 1995, ch. 885, ch. 886; Stats. 1997, ch. 364; Stats. 2001, ch. 159; Stats. 2002, ch. 6; Stats. 2005, ch. 717; Stats. 2006, ch. 405.)

### **§ 1872.95 Medical & Chiropractic Boards and State Bar; Investigation of Motor Vehicle or Disability Insurance Fraud by Licensees**

(a) Within existing resources, the Medical Board of California, the Board of Chiropractic Examiners, and the State Bar shall each designate employees to investigate and report on possible fraudulent activities relating to workers' compensation, motor vehicle insurance, or disability insurance by licensees of the board or the bar. Those employees shall actively cooperate with the Fraud Division in the investigation of those activities.

(b) The Medical Board of California and the Board of Chiropractic Examiners shall each report annually, on or before March 1, to the committees of the Senate and Assembly having jurisdiction over insurance on their activities established pursuant to subdivision (a) for the previous year. The State Bar shall include this report in its Annual Discipline Report on or before April 30. That report shall specify, at a minimum, the number of cases investigated, the number of cases forwarded to the Fraud Division or other law enforcement agencies, the outcome of all cases listed in the report, and any other relevant information concerning those cases or general activities conducted under subdivision (a) for the previous year. The report shall include information regarding activities conducted in connection with cases of suspected automobile insurance fraud. (Added by Stats. 1991, ch. 1222. Another §1872.95, added by Stats. 1991, ch. 1008, was renumbered §1872.96 and amended by Stats. 1992, ch. 427; Stats. 1995, ch. 167;

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Stats. 1999, ch. 885; Stats. 2005, ch. 717; Stats. 2018, ch. 659.)

### **§ 1877.5 Insurer Communications Under this Article are Privileged; Immunity from Civil Liability**

No insurer, agent authorized by an insurer to act on its behalf, or licensed rating organization who furnishes information, written or oral, pursuant to this article, and no authorized governmental agency or its employees who (a) furnishes or receives information, written or oral, pursuant to this article, or (b) assists in any investigation of a suspected violation of Section 1871.1, 1871.4, 11760, or 11880, or of Section 549 of the Penal Code, or of Section 3215 or 3219 of the Labor Code conducted by an authorized governmental agency, shall be subject to any civil liability in a cause or action of any kind where the insurer, authorized agent, licensed rating organization, or authorized governmental agency acts in good faith, without malice, and reasonably believes that the action taken was warranted by the then known facts, obtained by reasonable efforts. Nothing in this chapter is intended to, nor does in any way or manner, abrogate or lessen the existing common law or statutory privileges and immunities of an insurer, agent authorized by that insurer to act on its behalf, licensed rating organization, or any authorized governmental agency or its employees. (Added by Stats. 1991, ch. 116. Amended by Stats. 1991, ch. 934; Stats. 1993, ch. 120; Stats. 2004, ch. 636.)

## INTERNAL REVENUE CODE

### **§ 6041 Information at Source**

#### **(a) Payments of \$600 or more.—**

All persons engaged in a trade or business and making payment in the course of such trade or business to another person, of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income (other than payments to which section 6042(a)(1), 6044(a)(1), 6047(e), 6049(a), or 6050N(a) applies, and other than payments with respect to which a statement is required under the authority of section 6042(a)(2), 6044(a)(2), or 6045), of \$600 or more in any taxable year, or, in the case of such payments made by

the United States, the officers or employees of the United States having information as to such payments and required to make returns in regard thereto by the regulations hereinafter provided for, shall render a true and accurate return to the Secretary, under such regulations and in such form and manner and to such extent as may be prescribed by the Secretary, setting forth the amount of such gains, profits, and income, and the name and address of the recipient of such payment.

#### **(b) Collection of foreign items.—**

In the case of collections of items (not payable in the United States) of interest upon the bonds of foreign countries and interest upon the bonds of and dividends from foreign corporations by any person undertaking as a matter of business or for profit the collection of foreign payments of such interest or dividends by means of coupons, checks, or bills of exchange, such person shall make a return according to the forms or regulations prescribed by the Secretary, setting forth the amount paid and the name and address of the recipient of each such payment.

#### **(c) Recipient to furnish name and address.—**

When necessary to make effective the provisions of this section, the name and address of the recipient of income shall be furnished upon demand of the person paying the income.

#### **(d) Statements to be furnished to persons with respect to whom information is required.—**

Every person required to make a return under subsection (a) shall furnish to each person with respect to whom such a return is required a written statement showing—

(1) the name, address, and phone number of the information contact of the person required to make such return, and

(2) the aggregate amount of payments to the person required to be shown on the return.

The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made. To the extent provided in regulations prescribed by

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the Secretary, this subsection shall also apply to persons required to make returns under subsection (b).

(e) Section does not apply to certain tips.—

This section shall not apply to tips with respect to which section 6053(a) (relating to reporting of tips) applies.

(f) Section does not apply to certain health arrangements.—

This section shall not apply to any payment for medical care (as defined in section 213(d)) made under—

(1) a flexible spending arrangement (as defined in section 106(c)(2)), or

(2) a health reimbursement arrangement which is treated as employer-provided coverage under an accident or health plan for purposes of section 106.

(g) Nonqualified deferred compensation.—

Subsection (a) shall apply to—

(1) any deferrals for the year under a nonqualified deferred compensation plan (within the meaning of section 409A(d)), whether or not paid, except that this paragraph shall not apply to deferrals which are required to be reported under section 6051 (a)(13) (without regard to any de minimis exception), and

(2) any amount includible under section 409A and which is not treated as wages under section 3401(a).

[(h) Repealed. Pub.L. 112-9, § 3(a), Apr. 14, 2011, 125 Stat. 36]

[(i), (j) Repealed. Pub.L. 112-9, § 2(a), Apr. 14, 2011, 125 Stat. 36]

(Aug. 16, 1954, c. 736, 68A Stat. 745; Oct. 16, 1962, Pub.L. 87-834, § 19(f), 76 Stat. 1058; Oct. 4, 1976, Pub.L. 94-455, Title XIX, § 1906(b)(13)(A), 90 Stat. 1834; Nov. 6, 1978, Pub.L. 95-600, Title V, § 501(b), 92 Stat. 2878; Aug. 13, 1981, Pub. L. 97-34, Title VII, § 723(b)(1), 95 Stat. 344; Sept. 3, 1982, Pub.L. 97-248, Title III, § 309(b)(1), 96 Stat. 595; July 18, 1984, Pub. L. 98-369, Div. A, Title VII, § 722(h)(4)(B), 98 Stat. 976; Oct. 22, 1986, Pub.L. 99-514, Title XV, §§ 1501(c)(1), 1523(b)(2), 100 Stat. 2736, 2748; July 30, 1996, Pub.L. 104-168,

Title XII, § 1201(a)(1), 110 Stat. 1469; Dec. 8, 2003, Pub.L. 108-173, Title XII, § 1203(a), 117 Stat. 2480; Oct. 22, 2004, Pub.L. 108-357, Title VIII, § 885(b)(3), 118 Stat. 1640; Mar. 23, 2010, Pub.L. 111-148, Title IX, § 9006(a), (b), 124 Stat. 855; Sept. 27, 2010, Pub.L. 111-240, Title II, § 2101(a), 124 Stat. 2561; Apr. 14, 2011, Pub.L. 112-9, §§ 2(a), (b), 3(a), 125 Stat. 36.)

### § 6045 Returns of Brokers

(a) General rule.—

Every person doing business as a broker shall, when required by the Secretary, make a return, in accordance with such regulations as the Secretary may prescribe, showing the name and address of each customer, with such details regarding gross proceeds and such other information as the Secretary may by forms or regulations require with respect to such business.

(b) Statements to be furnished to customers.—

Every person required to make a return under subsection (a) shall furnish to each customer whose name is required to be set forth in such return a written statement showing—

(1) the name, address, and phone number of the information contact of the person required to make such return, and

(2) the information required to be shown on such return with respect to such customer.

The written statement required under the preceding sentence shall be furnished to the customer on or before February 15 of the year following the calendar year for which the return under subsection (a) was required to be made. In the case of a consolidated reporting statement (as defined in regulations) with respect to any customer, any statement which would otherwise be required to be furnished on or before January 31 of a calendar year with respect to any item reportable to the taxpayer shall instead be required to be furnished on or before February 15 of such calendar year if furnished with such consolidated reporting statement.

(c) Definitions.—

For purposes of this section—

(1) Broker.—

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The term “broker” includes—

- (A) a dealer,
- (B) a barter exchange, and
- (C) any other person who (for a consideration) regularly acts as a middleman with respect to property or services.

A person shall not be treated as a broker with respect to activities consisting of managing a farm on behalf of another person.

(2) Customer.—

The term “customer” means any person for whom the broker has transacted any business.

(3) Barter exchange.—

The term “barter exchange” means any organization of members providing property or services who jointly contract to trade or barter such property or services.

(4) Person.—

The term “person” includes any governmental unit and any agency or instrumentality thereof.

(d) Statements required in case of certain substitute payments.—

If any broker—

- (1) transfers securities of a customer for use in a short sale or similar transaction, and
- (2) receives (on behalf of the customer) a payment in lieu of—
  - (A) a dividend,
  - (B) tax-exempt interest, or
  - (C) such other items as the Secretary may prescribe by regulations,

during the period such short sale or similar transaction is open, the broker shall furnish such customer a written statement (in the manner as the Secretary shall prescribe by regulations) identifying such payment as being in lieu of the dividend, tax-exempt interest, or such other item. The written statement required under the preceding sentence shall be furnished on or before

February 15 of the year following the calendar year in which the payment was made. The Secretary may prescribe regulations which require the broker to make a return which includes the information contained in such written statement.

(e) Return required in the case of real estate transactions.—

(1) In general.—

In the case of a real estate transaction, the real estate reporting person shall file a return under subsection (a) and a statement under subsection (b) with respect to such transaction.

(2) Real estate reporting person.—

For purposes of this subsection, the term “real estate reporting person” means any of the following persons involved in a real estate transaction in the following order:

- (A) the person (including any attorney or title company) responsible for closing the transaction,
- (B) the mortgage lender,
- (C) the seller’s broker,
- (D) the buyer’s broker, or
- (E) such other person designated in regulations prescribed by the Secretary.

Any person treated as a real estate reporting person under the preceding sentence shall be treated as a broker for purposes of subsection (c)(1).

(3) Prohibition of separate charge for filing return.—

It shall be unlawful for any real estate reporting person to separately charge any customer for complying with any requirement of paragraph (1). Nothing in this paragraph shall be construed to prohibit the real estate reporting person from taking into account its cost of complying with such requirement in establishing its charge (other than a separate charge for complying with such requirement) to any customer for performing services in the case of a real estate transaction.

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### (4) Additional information required.—

In the case of a real estate transaction involving a residence, the real estate reporting person shall include the following information on the return under subsection (a) and on the statement under subsection (b):

(A) The portion of any real property tax which is treated as a tax imposed on the purchaser by reason of section 164(d)(1)(B).

(B) Whether or not the financing (if any) of the seller was federally-subsidized indebtedness (as defined in section 143(m)(3)).

### (5) Exception for sales or exchanges of certain principal residences.—

#### (A) In general.—

Paragraph (1) shall not apply to any sale or exchange of a residence for \$250,000 or less if the person referred to in paragraph (2) receives written assurance in a form acceptable to the Secretary from the seller that—

(i) such residence is the principal residence (within the meaning of section 121) of the seller,

(ii) if the Secretary requires the inclusion on the return under subsection (a) of information as to whether there is federally subsidized mortgage financing assistance with respect to the mortgage on residences, that there is no such assistance with respect to the mortgage on such residence, and

(iii) the full amount of the gain on such sale or exchange is excludable from gross income under section 121.

If such assurance includes an assurance that the seller is married, the preceding sentence shall be applied by substituting “\$500,000” for “\$250,000.”

The Secretary may by regulation increase the dollar amounts under this subparagraph if the Secretary determines that such an

increase will not materially reduce revenues to the Treasury.

#### (B) Seller.—

For purposes of this paragraph, the term “seller” includes the person relinquishing the residence in an exchange.

### (f) Return required in the case of payments to attorneys.—

#### (1) In general.—

Any person engaged in a trade or business and making a payment (in the course of such trade or business) to which this subsection applies shall file a return under subsection (a) and a statement under subsection (b) with respect to such payment.

#### (2) Application of subsection.—

##### (A) In general.—

This subsection shall apply to any payment to an attorney in connection with legal services (whether or not such services are performed for the payor).

##### (B) Exception.—

This subsection shall not apply to the portion of any payment which is required to be reported under section 6041(a) (or would be so required but for the dollar limitation contained therein) or section 6051.

### (g) Additional information required in the case of securities transactions, etc.—

#### (1) In general.—

If a broker is otherwise required to make a return under subsection (a) with respect to the gross proceeds of the sale of a covered security, the broker shall include in such return the information described in paragraph (2).

#### (2) Additional information required.—

##### (A) In general.—

The information required under paragraph (1) to be shown on a return with respect to a covered security of a customer shall include

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the customer's adjusted basis in such security and whether any gain or loss with respect to such security is long-term or short-term (within the meaning of section 1222).

### (B) Determination of adjusted basis.—

For purposes of subparagraph (A)—

#### (i) In general.—

The customer's adjusted basis shall be determined—

(I) in the case of any security (other than any stock for which an average basis method is permissible under section 1012), in accordance with the first-in first-out method unless the customer notifies the broker by means of making an adequate identification of the stock sold or transferred, and

(II) in the case of any stock for which an average basis method is permissible under section 1012, in accordance with the broker's default method unless the customer notifies the broker that he elects another acceptable method under section 1012 with respect to the account in which such stock is held.

#### (ii) Exception for wash sales.—

Except as otherwise provided by the Secretary, the customer's adjusted basis shall be determined without regard to section 1091 (relating to loss from wash sales of stock or securities) unless the transactions occur in the same account with respect to identical securities.

#### (iii) Treatment of uncorrected de minimis errors

Except as otherwise provided by the Secretary, the customer's adjusted basis shall be determined by treating any incorrect dollar amount which is

not required to be corrected by reason of section 6721(c)(3) or section 6722(c)(3) as the correct amount.

### (3) Covered security.—

For purposes of this subsection—

#### (A) In general—

The term “covered security” means any specified security acquired on or after the applicable date if such security—

(i) was acquired through a transaction in the account in which such security is held, or

(ii) was transferred to such account from an account in which such security was a covered security, but only if the broker received a statement under section 6045A with respect to the transfer.

#### (B) Specified security.—

The term “specified security” means—

(i) any share of stock in a corporation,

(ii) any note, bond, debenture, or other evidence of indebtedness,

(iii) any commodity, or contract or derivative with respect to such commodity, if the Secretary determines that adjusted basis reporting is appropriate for purposes of this subsection, and

(iv) any other financial instrument with respect to which the Secretary determines that adjusted basis reporting is appropriate for purposes of this subsection.

#### (C) Applicable date.—

The term “applicable date” means—

(i) January 1, 2011, in the case of any specified security which is stock in a

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corporation (other than any stock described in clause (ii)),

(ii) January 1, 2012, in the case of any stock for which an average basis method is permissible under section 1012, and

(iii) January 1, 2013, or such later date determined by the Secretary in the case of any other specified security.

### (4) Treatment of S corporations.—

In the case of the sale of a covered security acquired by an S corporation (other than a financial institution) after December 31, 2011, such S corporation shall be treated in the same manner as a partnership for purposes of this section.

### (5) Special rules for short sales.—

In the case of a short sale, reporting under this section shall be made for the year in which such sale is closed.

### (6) Special rule for certain stock held in connection with dividend reinvestment plan.—

For purposes of this subsection, stock acquired before January 1, 2012, in connection with a dividend reinvestment plan shall be treated as stock described in clause (ii) of paragraph (3)(C) (unless the broker with respect to such stock elects not to have this paragraph apply with respect to such stock).

### (h) Application to options on securities.—

#### (1) Exercise of option.—

For purposes of this section, if a covered security is acquired or disposed of pursuant to the exercise of an option that was granted or acquired in the same account as the covered security, the amount received with respect to the grant or paid with respect to the acquisition of such option shall be treated as an adjustment to gross proceeds or as an adjustment to basis, as the case may be.

#### (2) Lapse or closing transaction.—

In the case of the lapse (or closing transaction (as defined in section 1234(b)(2)(A))) of an option on a specified security or the exercise of a cash-settled option on a specified security, reporting under subsections (a) and (g) with respect to such option shall be made for the calendar year which includes the date of such lapse, closing transaction, or exercise.

#### (3) Prospective application.—

Paragraphs (1) and (2) shall not apply to any option which is granted or acquired before January 1, 2013.

#### (4) Definitions.—

For purposes of this subsection, the terms “covered security” and “specified security” shall have the meanings given such terms in subsection (g)(3).

(Aug. 16, 1954, c. 736, 68A Stat. 747; Oct. 4, 1976, Pub.L. 94-455, Title XIX, § 1906(b)(13)(A), 90 Stat. 1834; Sept. 3, 1982, Pub.L. 97-248, Title III, § 311(a)(1), 96 Stat. 600; July 18, 1984, Pub.L. 98-369, Div. A, Title I, § 150(a), Title VII, § 714(e)(1), 98 Stat. 690, 961; Oct. 22, 1986, Pub.L. 99-514, Title XV, §§ 1501(c)(4), 1521(a), 100 Stat. 2737, 2746; Nov. 10, 1988, Pub.L. 100-647, Title I, § 1015(e)(1)(A), (2)(A), (3), Title IV, § 4005(g)(3), 102 Stat. 3569, 3570, 3650; Dec. 19, 1989, Pub.L. 101-239, Title VII, § 7814(c)(1), 103 Stat. 2413; Nov. 5, 1990, Pub.L. 101-508, Title XI, § 11704(a)(25), 104 Stat. 1388-519; Oct. 24, 1992, Pub.L. 102-486, Title XIX, § 1939(a), 106 Stat. 3034; July 30, 1996, Pub.L. 104-168, Title XII, § 1201(a)(5), 110 Stat. 1469; Aug. 20, 1996, Pub.L. 104-188, Title I, § 1704(o)(1), 110 Stat. 1886; Aug. 5, 1997, Pub.L. 105-34, Title III, § 312(c), Title X, § 1021(a), 111 Stat. 839, 922; Dec. 21, 2005, Pub.L. 109-135, Title IV, § 412(xx), 119 Stat. 2640; Oct. 3, 2008, Pub.L. 110-343, Div. B, Title IV, § 403(a), 122 Stat. 3854; Dec. 19, 2014, Pub.L. 113-295 Title II, § 210(f)(4), 128 Stat. 4032; Dec. 18, 2015, Pub.L. 114-113, Title II, § 202(c), 129 Stat. 3077.)

## § 6050I Returns Relating to Cash Received in Trade or Business

### (a) Cash receipts of more than \$10,000.—

Any person—

(1) who is engaged in a trade or business, and

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(2) who, in the course of such trade or business, receives more than \$10,000 in cash in 1 transaction (or 2 or more related transactions),

shall make the return described in subsection (b) with respect to such transactions (or related transactions) at such time as the Secretary may by regulations prescribe.

(b) Form and manner of returns.—

A return is described in this subsection if such return—

- (1) is in such form as the Secretary may prescribe,
- (2) contains—
  - (A) the name, address, and TIN of the person from whom the cash was received,
  - (B) the amount of cash received,
  - (C) the date and nature of the transaction, and
  - (D) such other information as the Secretary may prescribe.

(c) Exceptions.—

(1) Cash received by financial institutions.—

Subsection (a) shall not apply to—

(A) cash received in a transaction reported under title 31, United States Code, if the Secretary determines that reporting under this section would duplicate the reporting to the Treasury under title 31, United States Code, or

(B) cash received by any financial institution (as defined in subparagraphs (A), (B), (C), (D), (E), (F), (G), (J), (K), (R), and (S) of section 5312(a)(2) of title 31, United States Code).

(2) Transactions occurring outside the United States.—

Except to the extent provided in regulations prescribed by the Secretary, subsection (a) shall

not apply to any transaction if the entire transaction occurs outside the United States.

(d) Cash includes foreign currency and certain monetary instruments.—

For purposes of this section, the term “cash” includes—

- (1) foreign currency, and
- (2) to the extent provided in regulations prescribed by the Secretary, any monetary instrument (whether or not in bearer form) with a face amount of not more than \$10,000.

Paragraph (2) shall not apply to any check drawn on the account of the writer in a financial institution referred to in subsection (c)(1)(B).

(e) Statements to be furnished to persons with respect to whom information is required.—

Every person required to make a return under subsection (a) shall furnish to each person whose name is required to be set forth in such return a written statement showing—

- (1) the name, address, and phone number of the information contact of the person required to make such return, and
- (2) the aggregate amount of cash described in subsection (a) received by the person required to make such return.

The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.

(f) Structuring transactions to evade reporting requirements prohibited.—

(1) In general.—

No person shall for the purpose of evading the return requirements of this section—

- (A) cause or attempt to cause a trade or business to fail to file a return required under this section.
- (B) cause or attempt to cause a trade or business to file a return required under this



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section that contains a material omission or misstatement of fact, or

(C) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more trades or businesses.

### (2) Penalties.—

A person violating paragraph (1) of this subsection shall be subject to the same civil and criminal sanctions applicable to a person which fails to file or completes a false or incorrect return under this section.

### (g) Cash received by criminal court clerks.—

#### (1) In general.—

Every clerk of a Federal or State criminal court who receives more than \$10,000 in cash as bail for any individual charged with a specified criminal offense shall make a return described in paragraph (2) (at such time as the Secretary may by regulations prescribe) with respect to the receipt of such bail.

#### (2) Return.—

A return is described in this paragraph if such return—

(A) is in such form as the Secretary may prescribe, and

(B) contains—

(i) the name, address, and TIN of—

(I) the individual charged with the specified criminal offense, and

(II) each person posting the bail (other than a person licensed as a bail bondsman),

(ii) the amount of cash received,

(iii) the date the cash was received, and

(iv) such other information as the Secretary may prescribe.

### (3) Specified criminal offense.—

For purposes of this subsection, the term “specified criminal offense” means—

(A) any Federal criminal offense involving a controlled substance,

(B) racketeering (as defined in section 1951, 1952, or 1955 of title 18, United States Code),

(C) money laundering (as defined in section 1956 or 1957 of such title), and

(D) any State criminal offense substantially similar to an offense described in subparagraph (A), (B), or (C).

### (4) Information to Federal prosecutors.—

Each clerk required to include on a return under paragraph (1) the information described in paragraph (2)(B) with respect to an individual described in paragraph (2)(B)(i)(I) shall furnish (at such time as the Secretary may by regulations prescribe) a written statement showing such information to the United States Attorney for the jurisdiction in which such individual resides and the jurisdiction in which the specified criminal offense occurred.

### (5) Information to payors of bail.—

Each clerk required to make a return under paragraph (1) shall furnish (at such time as the Secretary may by regulations prescribe) to each person whose name is required to be set forth in such return by reason of paragraph (2)(B)(i)(II) a written statement showing—

(A) the name and address of the clerk’s office required to make the return, and

(B) the aggregate amount of cash described in paragraph (1) received by such clerk.

(Added Pub.L. 98-369, Div. A, Title I, §146(a), July 18, 1984, 98 Stat. 685, and amended Pub.L. 99-514, Title XV §1501(c)(12), Oct. 22, 1986, 100 Stat. 2739; Pub.L. 100-690, Title VII, §7601(a)(1), Nov. 18, 1988, 102 Stat. 4503; Pub.L. 101-508, Title XI, §11318(a), (c), Nov. 5, 1990, 104 Stat. 1388-458, 1388-459; Pub. L. 103-322,

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Title II, §20415(a), (b)(3), Sept. 13, 1994, 108 Stat. 1832, 1833; Pub.L. 104-168, Title XII, §1201(a)(9), July 30, 1996, 110 Stat. 1469.)

### **§ 6050W Returns Relating to Payments Made in Settlement of Payment Card and for Third Party Network Transactions**

(a) In general.—

Each payment settlement entity shall make a return for each calendar year setting forth—

- (1) the name, address, and TIN of each participating payee to whom one or more payments in settlement of reportable payment transactions are made, and
- (2) the gross amount of the reportable payment transactions with respect to each such participating payee.

Such return shall be made at such time and in such form and manner as the Secretary may require by regulations.

(b) Payment settlement entity.—

For purposes of this section—

(1) In general.—

The term “payment settlement entity” means—

- (A) in the case of a payment card transaction, the merchant acquiring entity, and
- (B) in the case of a third party network transaction, the third party settlement organization.

(2) Merchant acquiring entity.—

The term “merchant acquiring entity” means the bank or other organization which has the contractual obligation to make payment to participating payees in settlement of payment card transactions.

(3) Third party settlement organization.—

The term “third party settlement organization” means the central organization which has the

contractual obligation to make payment to participating payees of third party network transactions.

(4) Special rules related to intermediaries.—

For purposes of this section—

(A) Aggregated payees.—

In any case where reportable payment transactions of more than one participating payee are settled through an intermediary—

- (i) such intermediary shall be treated as the participating payee for purposes of determining the reporting obligations of the payment settlement entity with respect to such transactions, and
- (ii) such intermediary shall be treated as the payment settlement entity with respect to the settlement of such transactions with the participating payees.

(B) Electronic payment facilitators.—

In any case where an electronic payment facilitator or other third party makes payments in settlement of reportable payment transactions on behalf of the payment settlement entity, the return under subsection (a) shall be made by such electronic payment facilitator or other third party in lieu of the payment settlement entity.

(c) Reportable payment transaction.—

For purposes of this section—

(1) In general.—

The term “reportable payment transaction” means any payment card transaction and any third party network transaction.

(2) Payment card transaction.—

The term “payment card transaction” means any transaction in which a payment card is accepted as payment.

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### (3) Third party network transaction.—

The term “third party network transaction” means any transaction which is settled through a third party payment network.

### (d) Other definitions.—

For purposes of this section—

#### (1) Participating payee.—

##### (A) In general.—

The term “participating payee” means—

(i) in the case of a payment card transaction, any person who accepts a payment card as payment, and

(ii) in the case of a third party network transaction, any person who accepts payment from a third party settlement organization in settlement of such transaction.

##### (B) Exclusion of foreign persons.—

Except as provided by the Secretary in regulations or other guidance, such term shall not include any person with a foreign address. Notwithstanding the preceding sentence, a person with only a foreign address shall not be treated as a participating payee with respect to any payment settlement entity solely because such person receives payments from such payment settlement entity in dollars.

##### (C) Inclusion of governmental units.—

The term “person” includes any governmental unit (and any agency or instrumentality thereof).

#### (2) Payment card.—

The term “payment card” means any card which is issued pursuant to an agreement or arrangement which provides for—

(A) one or more issuers of such cards,

(B) a network of persons unrelated to each other, and to the issuer, who agree to accept such cards as payment, and

(C) standards and mechanisms for settling the transactions between the merchant acquiring entities and the persons who agree to accept such cards as payment.

The acceptance as payment of any account number or other indicia associated with a payment card shall be treated for purposes of this section in the same manner as accepting such payment card as payment.

#### (3) Third party payment network.—

The term “third party payment network” means any agreement or arrangement—

(A) which involves the establishment of accounts with a central organization by a substantial number of persons who—

(i) are unrelated to such organization,

(ii) provide goods or services, and

(iii) have agreed to settle transactions for the provision of such goods or services pursuant to such agreement or arrangement,

(B) which provides for standards and mechanisms for settling such transactions, and

(C) which guarantees persons providing goods or services pursuant to such agreement or arrangement that such persons will be paid for providing such goods or services.

Such term shall not include any agreement or arrangement which provides for the issuance of payment cards.

#### (e) Exception for de minimis payments by third party settlement organizations.—

A third party settlement organization shall be required to report any information under subsection (a) with respect to third party network transactions of any participating payee only if—

(1) the amount which would otherwise be reported under subsection (a)(2) with respect to such transactions exceeds \$20,000, and

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(2) the aggregate number of such transactions exceeds 200.

(f) Statements to be furnished to persons with respect to whom information is required.—

Every person required to make a return under subsection (a) shall furnish to each person with respect to whom such a return is required a written statement showing—

(1) the name, address, and phone number of the information contact of the person required to make such return, and

(2) the gross amount of the reportable payment transactions with respect to the person required to be shown on the return.

The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made. Such statement may be furnished electronically, and if so, the email address of the person required to make such return may be shown in lieu of the phone number.

(g) Regulations.—

The Secretary may prescribe such regulations or other guidance as may be necessary or appropriate to carry out this section, including rules to prevent the reporting of the same transaction more than once. (Added Pub.L. 110-289, Div. C, Title III, § 3091(a), July 30, 2008, 122 Stat. 2908. Amended by Pub.L. 115-123, Div. D, Title II, § 41117, February 9, 2018, 132 Stat. 64.)

## LABOR CODE

### **§ 98.6 Discrimination, Discharge, or Refusal to Hire for Exercise of Employee Rights; Reinstatement and Reimbursement; Refusal to Reinstate as Misdemeanor; Applicability**

(a) A person shall not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against any employee or applicant for employment because the employee or applicant engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of

Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or because the employee or applicant for employment has filed a bona fide complaint or claim or instituted or caused to be instituted any proceeding under or relating to his or her rights that are under the jurisdiction of the Labor Commissioner, made a written or oral complaint that he or she is owed unpaid wages, or because the employee has initiated any action or notice pursuant to Section 2699, or has testified or is about to testify in a proceeding pursuant to that section, or because of the exercise by the employee or applicant for employment on behalf of himself, herself, or others of any rights afforded him or her.

(b) (1) Any employee who is discharged, threatened with discharge, demoted, suspended, retaliated against, subjected to an adverse action, or in any other manner discriminated against in the terms and conditions of his or her employment because the employee engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or because the employee has made a bona fide complaint or claim to the division pursuant to this part, or because the employee has initiated any action or notice pursuant to Section 2699 shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by those acts of the employer.

(2) An employer who willfully refuses to hire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure, arbitration, or hearing authorized by law, is guilty of a misdemeanor.

(3) In addition to other remedies available, an employer who violates this section is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) per employee for each violation of this section, to be awarded to the employee or employees who suffered the violation.

(c) (1) Any applicant for employment who is refused employment, who is not selected for a training program leading to employment, or who in any other manner is discriminated against in the terms and conditions of any offer of employment because the applicant engaged in any conduct delineated in this chapter, including

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the conduct described in subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or because the applicant has made a bona fide complaint or claim to the division pursuant to this part, or because the employee has initiated any action or notice pursuant to Section 2699 shall be entitled to employment and reimbursement for lost wages and work benefits caused by the acts of the prospective employer.

(2) This subdivision shall not be construed to invalidate any collective bargaining agreement that requires an applicant for a position that is subject to the collective bargaining agreement to sign a contract that protects either or both of the following as specified in subparagraphs (A) and (B), nor shall this subdivision be construed to invalidate any employer requirement of an applicant for a position that is not subject to a collective bargaining agreement to sign an employment contract that protects either or both of the following:

(A) An employer against any conduct that is actually in direct conflict with the essential enterprise-related interests of the employer and where breach of that contract would actually constitute a material and substantial disruption of the employer's operation.

(B) A firefighter against any disease that is presumed to arise in the course and scope of employment, by limiting his or her consumption of tobacco products on and off the job.

(d) The provisions of this section creating new actions or remedies that are effective on January 1, 2002, to employees or applicants for employment do not apply to any state or local law enforcement agency, any religious association or corporation specified in subdivision (d) of Section 12926 of the Government Code, except as provided in Section 12926.2 of the Government Code, or any person described in Section 1070 of the Evidence Code.

(e) An employer, or a person acting on behalf of the employer, shall not retaliate against an employee because the employee is a family member of a person who has, or is perceived to have, engaged in any conduct delineated in this chapter.

(f) For purposes of this section, "employer" or "a person acting on behalf of the employer" includes, but is not limited to, a client employer as defined in paragraph (1) of subdivision (a) of Section 2810.3 and an employer listed in subdivision (b) of Section 6400.

(g) Subdivisions (e) and (f) shall not apply to claims arising under subdivision (k) of Section 96 unless the lawful conduct occurring during nonwork hours away from the employer's premises involves the exercise of employee rights otherwise covered under subdivision (a). (Added by Stats. 1978, ch. 1250. Amended by Stats. 2001, ch. 820; Stats. 2004, ch. 221; Stats. 2005, ch. 22; Stats. 2013, ch. 577; Stats. 2013, ch. 732; Stats. 2014, ch. 79; Stats. 2015, ch. 792.)

### **§ 139.32 Financial Interests Disclosure; Prohibited Referrals; Penalties; Exemptions**

(a) For the purpose of this section, the following definitions apply:

(1) "Financial interest in another entity" means, subject to subdivision (h), either of the following:

(A) Any type of ownership, interest, debt, loan, lease, compensation, remuneration, discount, rebate, refund, dividend, distribution, subsidy, or other form of direct or indirect payment, whether in money or otherwise, between the interested party and the other entity to which the employee is referred for services.

(B) An agreement, debt instrument, or lease or rental agreement between the interested party and the other entity that provides compensation based upon, in whole or in part, the volume or value of the services provided as a result of referrals.

(2) "Interested party" means any of the following:

(A) An injured employee.

(B) The employer of an injured employee, and, if the employer is insured, its insurer.

(C) A claims administrator, which includes, but is not limited to, a self-administered workers' compensation insurer, a self-administered self-insured employer, a self-

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administered joint powers authority, a self-administered legally uninsured employer, a third-party claims administrator for an insurer, a self-insured employer, a joint powers authority, or a legally uninsured employer or a subsidiary of a claims administrator.

(D) An attorney-at-law or law firm that is representing or advising an employee regarding a claim for compensation under Division 4 (commencing with Section 3200).

(E) A representative or agent of an interested party, including either of the following:

(i) An employee of an interested party.

(ii) Any individual acting on behalf of an interested party, including the immediate family of the interested party or of an employee of the interested party. For purposes of this clause, immediate family includes spouses, children, parents, and spouses of children.

(F) A provider of any medical services or products.

(3) "Services" means, but is not limited to, any of the following:

(A) A determination regarding an employee's eligibility for compensation under Division 4 (commencing with Section 3200), that includes both of the following:

(i) A determination of a permanent disability rating under Section 4660.

(ii) An evaluation of an employee's future earnings capacity resulting from an occupational injury or illness.

(B) Services to review the itemization of medical services set forth on a medical bill submitted under Section 4603.2.

(C) Copy and document reproduction services.

(D) Interpreter services.

(E) Medical services, including the provision of any medical products such as surgical hardware or durable medical equipment.

(F) Transportation services.

(G) Services in connection with utilization review pursuant to Section 4610.

(b) All interested parties shall disclose any financial interest in any entity providing services.

(c) Except as otherwise permitted by law, it is unlawful for an interested party other than a claims administrator or a network service provider to refer a person for services provided by another entity, or to use services provided by another entity, if the other entity will be paid for those services pursuant to Division 4 (commencing with Section 3200) and the interested party has a financial interest in the other entity.

(d) (1) It is unlawful for an interested party to enter into an arrangement or scheme, such as a cross-referral arrangement, that the interested party knows, or should know, has a purpose of ensuring referrals by the interested party to a particular entity that, if the interested party directly made referrals to that other entity, would be in violation of this section.

(2) It is unlawful for an interested party to offer, deliver, receive, or accept any rebate, refund, commission, preference, patronage, dividend, discount, or other consideration, whether in the form of money or otherwise, as compensation or inducement to refer a person for services.

(e) A claim for payment shall not be presented by an entity to any interested party, individual, third-party payer, or other entity for any services furnished pursuant to a referral prohibited under this section.

(f) An insurer, self-insurer, or other payer shall not knowingly pay a charge or lien for any services resulting from a referral for services or use of services in violation of this section.

(g) (1) A violation of this section shall be misdemeanor. If an interested party is a corporation, any director or officer of the corporation who knowingly concurs in a violation

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of this section shall be guilty of a misdemeanor. The appropriate licensing authority for any person subject to this section shall review the facts and circumstances of any conviction pursuant to this section and take appropriate disciplinary action if the licensee has committed unprofessional conduct, provided that the appropriate licensing authority may act on its own discretion independent of the initiation or completion of a criminal prosecution. Violations of this section are also subject to civil penalties of up to fifteen thousand dollars (\$15,000) for each offense, which may be enforced by the Insurance Commissioner, Attorney General, or a district attorney.

(2) For an interested party, a practice of violating this section shall constitute a general business practice that discharges or administers compensation obligations in a dishonest manner, which shall be subject to a civil penalty under subdivision (e) of Section 129.5.

(3) For an interested party who is an attorney, a violation of subdivision (b) or (c) shall be referred to the Board of Governors of the State Bar of California, which shall review the facts and circumstances of any violation pursuant to subdivision (b) or (c) and take appropriate disciplinary action if the licensee has committed unprofessional conduct.

(4) Any determination regarding an employee's eligibility for compensation shall be void if that service was provided in violation of this section.

(h) The following arrangements between an interested party and another entity do not constitute a "financial interest in another entity" for purposes of this section:

(1) A loan between an interested party and another entity, if the loan has commercially reasonable terms, bears interest at the prime rate or a higher rate that does not constitute usury, and is adequately secured, and the loan terms are not affected by either the interested party's referral of any employee or the volume of services provided by the entity that receives the referral.

(2) A lease of space or equipment between an interested party and another entity, if the lease is written, has commercially reasonable terms,

has a fixed periodic rent payment, has a term of one year or more, and the lease payments are not affected by either the interested party's referral of any person or the volume of services provided by the entity that receives the referral.

(3) An interested party's ownership of the corporate investment securities of another entity, including shares, bonds, or other debt instruments that were purchased on terms that are available to the general public through a licensed securities exchange or NASDAQ.

(i) The prohibitions described in this section do not apply to any of the following:

(1) Services performed by, or determinations of compensation issues made by, employees of an interested party in the course of that employment.

(2) A referral for legal services if that referral is not prohibited by the Rules of Professional Conduct of the State Bar.

(3) A physician's referral that is exempted by Section 139.31 from the prohibitions prescribed by Section 139.3. (Added by Stats. 2012, ch. 363.)

*[Publisher's Note re Labor Code § 139.32: 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" are deemed to refer to the "board of trustees."]*

### **§ 139.45 Promulgation of Regulations re False or Misleading Advertising; Definitions**

(a) In promulgating regulations pursuant to Sections 139.4 and 139.43, the administrative director shall take particular care to preclude any advertisements with respect to industrial injuries or illnesses that are false or mislead the public with respect to workers' compensation. In promulgating rules with respect to advertising, the State Bar and physician licensing boards shall also take particular care to achieve the same goal.

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(b) For purposes of subdivision (a), false or misleading advertisements shall include advertisements that do any of the following:

- (1) Contain an untrue statement.
- (2) Contain any matter, or present or arrange any matter in a manner or format that is false, deceptive, or that tends to confuse, deceive, or mislead.
- (3) Omit any fact necessary to make the statement made, in the light of the circumstances under which the statement is made, not misleading.
- (4) Are transmitted in any manner that involves coercion, duress, compulsion, intimidation, threats, or vexatious or harassing conduct.
- (5) Entice a person to respond by the offering of any consideration, including a good or service but excluding free medical evaluations or treatment, that would be provided either at no charge or for less than market value. No free medical evaluation or treatment shall be offered for the purpose of defrauding any entity. (Added by Stats. 1991, ch. 116. Amended by Stats. 1992, ch. 1352; Stats. 2004, ch. 639.)

### **§ 244 Violation of Rights to Report Suspected Immigration Status of Employee or Family Member**

(a) An individual is not required to exhaust administrative remedies or procedures in order to bring a civil action under any provision of this code, unless that section under which the action is brought expressly requires exhaustion of an administrative remedy. This subdivision shall not be construed to affect the requirements of Section 2699.3.

(b) Reporting or threatening to report an employee's, former employee's, or prospective employee's suspected citizenship or immigration status, or the suspected citizenship or immigration status of a family member of the employee, former employee, or prospective employee, to a federal, state, or local agency because the employee, former employee, or prospective employee exercises a right under the provisions of this code, the Government Code, or the Civil Code constitutes an adverse action for purposes of establishing a violation of an employee's, former

employee's, or prospective employee's rights. As used in this subdivision, "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.)

### **§ 1102.5 Employee's Right to Disclose Information to Government or Law Enforcement Agency; Employer Prohibited from Retaliation; Civil Penalty; Confidential Communications**

(a) An employer, or any person acting on behalf of the employer, shall not make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency, to a person with authority over the employee, or to another employee who has authority to investigate, discover, or correct the violation or noncompliance, or from providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

(b) An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

(c) An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a



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violation of or noncompliance with a local, state, or federal rule or regulation.

(d) An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for having exercised their rights under subdivision (a), (b), or (c) in any former employment.

(e) A report made by an employee of a government agency to their employer is a disclosure of information to a government or law enforcement agency pursuant to subdivisions (a) and (b).

(f) In addition to other penalties, an employer that is a corporation or limited liability company is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation of this section.

(g) This section does not apply to rules, regulations, or policies that implement, or to actions by employers against employees who violate, the confidentiality of the lawyer-client privilege of Article 3 (commencing with Section 950) of, or the physician-patient privilege of Article 6 (commencing with Section 990) of, Chapter 4 of Division 8 of the Evidence Code, or trade secret information.

(h) An employer, or a person acting on behalf of the employer, shall not retaliate against an employee because the employee is a family member of a person who has, or is perceived to have, engaged in any acts protected by this section.

(i) For purposes of this section, “employer” or “a person acting on behalf of the employer” includes, but is not limited to, a client employer as defined in paragraph (1) of subdivision (a) of Section 2810.3 and an employer listed in subdivision (b) of Section 6400.

(j) The court is authorized to award reasonable attorney’s fees to a plaintiff who brings a successful action for a violation of these provisions. (Added by Stats. 1984, ch. 1083. Amended by Stats. 2003, ch. 484; Stats. 2013, ch. 577; Stats. 2013, ch. 732; Stats. 2013, ch. 781; Stats. 2015, ch. 792; Stats. 2020, ch. 344.)

### § 5430 Short title

This chapter shall be known and may be cited as the Workers’ Compensation Truth in Advertising Act of 1992. (Added by Stats. 1992, ch. 904.)

### § 5431 Purpose

The purpose of this chapter is to assure truthful and adequate disclosure of all material and relevant information in the advertising which solicits persons to file workers’ compensation claims or to engage or consult counsel or a medical care provider or clinic to consider a workers’ compensation claim. (Added by Stats. 1992, ch. 904.)

### § 5432 Advertisement to Solicit Workers’ Compensation Claims; Mandatory Notice or Statement

(a) Any advertisement which solicits persons to file workers’ compensation claims or to engage or consult counsel or a medical care provider or clinic to consider a workers’ compensation claim in any newspaper, magazine, circular, form letter, or open publication, published, distributed, or circulated in this state, or on any billboard, card, label, transit advertisement or other written advertising medium shall state at the top or bottom on the front side or surface of the document in a least 12-point roman boldface type font, except for any billboard which shall be in type whose letters are 12 inches in height or any transit advertisement which shall be in type whose letters are seven inches in height and for any television announcement which shall be in 12-point roman boldface type font and appear in a dark background and remain on the screen for a minimum of five seconds and for any radio announcement which shall be read at an understandable pace with no loud music or sound effects, or both, to compete for the listener’s attention, the following:

#### NOTICE

Making a false or fraudulent workers’ compensation claim is a felony subject to up to 5 years in prison or a fine of up to \$50,000 or double the value of the fraud, whichever is greater, or by both imprisonment and fine.

(b) Any television or radio announcement published or disseminated in this state which solicits persons to file workers’ compensation claims or to engage or consult counsel to consider a workers’ compensation claim under this code shall include the following spoken statement by the announcer of the advertisement:

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“Making a false or fraudulent workers’ compensation claim is a felony subject to up to 5 years in prison or a fine of up to \$50,000 or double the value of the fraud, whichever is greater, or by both imprisonment and fine.”

(c) This chapter does not supersede or repeal any regulation which governs advertising under this code and those regulations shall continue to be in force in addition to this chapter.

(d) For purposes of subdivisions (a) and (b), the notice or statement shall be written or spoken in English. In those cases where the preponderance of the listening or reading public receives information other than in the English language, the written notice or spoken statement shall be in those other languages. (Added by Stats. 1992, ch. 904.)

### **§ 5433      Advertisements and Lead Generating Devices; Mandatory Disclosure; Deceptive or Misleading Names or Advertising Techniques**

(a) Any advertisement or other device designed to produce leads based on a response from a person to file a workers’ compensation claim or to engage or consult counsel or a medical care provider or clinic shall disclose that an agent may contact the individual if that is the fact. In addition, an individual who makes contact with a person as a result of acquiring that individual’s name from a lead generating device shall disclose that fact in the initial contact with that person.

(b) No person shall solicit persons to file a workers’ compensation claim or to engage or consult counsel or a medical care provider or clinic to consider a workers’ compensation claim through the use of a true or fictitious name which is deceptive or misleading with regard to the status, character, or proprietary or representative capacity of the entity or person, or to the true purpose of the advertisement.

(c) For purposes of this section, an advertisement includes a solicitation in any newspaper, magazine, circular, form letter, or open publication, published, distributed, or circulated in this state, or on any billboard, card, label, transit advertisement, or other written advertising medium, and includes envelopes, stationery, business cards, or other material designed to encourage the filing of a workers’ compensation claim.

(d) Advertisements shall not employ words, initials, letters, symbols, or other devices which are so similar to those used by governmental agencies, a nonprofit or charitable institution, or other entity that they could have the capacity or tendency to mislead the public. Examples of misleading materials include, but are not limited to, those that imply any of the following:

(1) The advertisement is in some way provided by or is endorsed by a governmental agency or charitable institution.

(2) The advertiser is the same as, is connected with, or endorsed by a governmental agency or charitable institution.

(e) Advertisements may not use the name of a state or political subdivision thereof in an advertising solicitation.

(f) Advertisements may not use any name, service mark, slogan, symbol, or any device in any manner which implies that the advertiser, or any person or entity associated with the advertiser, or that any agency who may call upon the person in response to the advertisement, is connected with a governmental agency.

(g) Advertisements may not imply that the reader, listener, or viewer may lose a right or privilege or benefits under federal, state, or local law if he or she fails to respond to the advertisement. (Added by Stats. 1992, ch. 904. Amended by Stats. 1998, ch. 485; Stats. 1999, ch. 83.)

### **§ 5434      Violation; Misdemeanor**

(a) Any advertiser who violates Section 5431 or 5432 is guilty of a misdemeanor.

(b) For the purposes of this chapter, “advertiser” means any person who provides workers’ compensation claims services which are described in the written or broadcast advertisements, any person to whom persons solicited by the advertisements are directed to for inquiries or the provision of workers’ compensation claims related services, or any person paying for the preparation, broadcast, printing, dissemination, or placement of the advertisements. (Added by Stats. 1992, ch. 904.)

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### PENAL CODE

#### **§ 76 Threats Against Public Officials, Appointees, Judges, Staff or Their Families; Intent and Ability to Carry Out Threat; Punishment**

(a) Every person who knowingly and willingly threatens the life of, or threatens serious bodily harm to, any elected public official, county public defender, county clerk, exempt appointee of the Governor, judge, or Deputy Commissioner of the Board of Prison Terms, or the staff, immediate family, or immediate family of the staff of any elected public official, county public defender, county clerk, exempt appointee of the Governor, judge, or Deputy Commissioner of the Board of Prison Terms, with the specific intent that the statement is to be taken as a threat, and the apparent ability to carry out that threat by any means, is guilty of a public offense, punishable as follows:

(1) Upon a first conviction, the offense is punishable by a fine not exceeding five thousand dollars (\$5,000), or by imprisonment in the state prison, or in a county jail not exceeding one year, or by both that fine and imprisonment.

(2) If the person has been convicted previously of violating this section, the previous conviction shall be charged in the accusatory pleading, and if the previous conviction is found to be true by the jury upon a jury trial, or by the court upon a court trial, or is admitted by the defendant, the offense is punishable by imprisonment in the state prison.

(b) Any law enforcement agency that has knowledge of a violation of this section involving a constitutional officer of the state, a Member of the Legislature, or a member of the judiciary shall immediately report that information to the Department of the California Highway Patrol.

(c) For purposes of this section, the following definitions shall apply:

(1) "Apparent ability to carry out that threat" includes the ability to fulfill the threat at some future date when the person making the threat is an incarcerated prisoner with a stated release date.

(2) "Serious bodily harm" includes serious physical injury or serious traumatic condition.

(3) "Immediate family" means a spouse, parent, or child, or anyone who has regularly resided in the household for the past six months.

(4) "Staff of a judge" means court officers and employees, including commissioners, referees, and retired judges sitting on assignment.

(5) "Threat" means a verbal or written threat or a threat implied by a pattern of conduct or a combination of verbal or written statements and conduct made with the intent and the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her immediate family.

(d) As for threats against staff or immediate family of staff, the threat must relate directly to the official duties of the staff of the elected public official, county public defender, county clerk, exempt appointee of the Governor, judge, or Deputy Commissioner of the Board of Prison Terms in order to constitute a public offense under this section.

(e) A threat must relate directly to the official duties of a Deputy Commissioner of the Board of Prison Terms in order to constitute a public offense under this section. (Added by Stats. 1982, ch. 1405. Amended by Stats. 1984, ch. 627; Stats. 1992, ch. 887; Stats. 1993, ch. 134; Stats. 1994, ch. 820; Stats. 1995, ch. 354; Stats. 1996, ch. 305; Stats. 1998, ch. 606; Stats. 2000, ch. 233; Stats. 2004, ch. 512.)

#### **§ 118 Perjury Defined; Proof**

(a) Every person who, having taken an oath that he or she will testify, declare, depose, or certify truly before any competent tribunal, officer, or person, in any of the cases in which the oath may by law of the State of California be administered, willfully and contrary to the oath, states as true any material matter which he or she knows to be false, and every person who testifies, declares, deposes, or certifies under penalty of perjury in any of the cases in which the testimony, declarations, depositions, or certification is permitted by law of the State of California under penalty of perjury and willfully states as true any material matter which he or she knows to be false, is guilty of perjury.

This subdivision is applicable whether the statement, or the testimony, declaration, deposition, or certification

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is made or subscribed within or without the State of California.

(b) No person shall be convicted of perjury where proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant. Proof of falsity may be established by direct or indirect evidence. (Enacted 1872. Amended by Stats. 1955, ch. 873; Stats. 1957, ch. 1612; Stats. 1980, ch. 889; Stats. 1989, ch. 897; Stats. 1990, ch. 950.)

### **§ 118a False Affidavit as to Perjurious Testimony; Subsequent Testimony**

Any person who, in any affidavit taken before any person authorized to administer oaths, swears, affirms, declares, deposes, or certifies that he will testify, declare, depose, or certify before any competent tribunal, officer, or person, in any case then pending or thereafter to be instituted, in any particular manner, or to any particular fact, and in such affidavit willfully and contrary to such oath states as true any material matter which he knows to be false, is guilty of perjury. In any prosecution under this section, the subsequent testimony of such person, in any action involving the matters in such affidavit contained, which is contrary to any of the matters in such affidavit contained, shall be prima facie evidence that the matters in such affidavit were false. (Added by Stats. 1905, ch. 485.)

### **§ 126 Punishment**

Perjury is punishable by imprisonment pursuant to subdivision (h) of Section 1170 for two, three or four years. (Enacted 1872. Amended by Stats. 1976, ch. 1139; Stats. 2011, ch. 15.)

### **§ 127 Subornation of Perjury—Definition, Punishment**

Every person who willfully procures another person to commit perjury is guilty of subornation of perjury, and is punishable in the same manner as he would be if personally guilty of the perjury so procured. (Enacted 1872.)

### **§ 128 Procuring the Execution of an Innocent Person; Punishment**

Every person who, by willful perjury or subornation of perjury procures the conviction and execution of any innocent person, is punishable by death or life imprisonment without possibility of parole. The penalty shall be determined pursuant to Sections 190.3 and 190.4. (Enacted 1872. Amended by Stats. 1977, ch. 316.)

### **§ 132 Offering False Evidence**

Every person who upon any trial, proceeding, inquiry, or investigation whatever, authorized or permitted by law, offers in evidence, as genuine or true, any book, paper, document, record, or other instrument in writing, knowing the same to have been forged or fraudulently altered or ante dated, is guilty of felony. (Enacted 1872.)

*[Publisher's Note: The following two sections concerning separate matters are both numbered § 132.5.]*

### **§ 132.5 Witnessing Crimes, Consideration for Providing Information; Violations; Penalties**

(a) A person who is a witness to an event or occurrence that he or she knows, or reasonably should know, is a crime or who has personal knowledge of facts that he or she knows, or reasonably should know, may require that person to be called as a witness in a criminal prosecution shall not accept or receive, directly or indirectly, any payment or benefit in consideration for providing information obtained as a result of witnessing the event or occurrence or having personal knowledge of the facts.

(b) A violation of this section is a misdemeanor and shall be punished by imprisonment in a county jail for not exceeding six months, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(c) Upon conviction under this section, in addition to the penalty described in subdivision (b), any compensation received in violation of this section shall be forfeited by the defendant and deposited in the Victim Restitution Fund.

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(d) This section shall not apply if more than one year has elapsed from the date of any criminal act related to the information that is provided under subdivision (a) unless prosecution has commenced for that criminal act. If prosecution has commenced, this section shall remain applicable until the final judgment in the action.

(e) This section shall not apply to any of the following circumstances:

(1) Lawful compensation paid to expert witnesses, investigators, employees, or agents by a prosecutor, law enforcement agency, or an attorney employed to represent a person in a criminal matter.

(2) Lawful compensation provided to an informant by a prosecutor or law enforcement agency.

(3) Compensation paid to a publisher, editor, reporter, writer, or other person connected with or employed by a newspaper, magazine, or other publication or a television or radio news reporter or other person connected with a television or radio station, for disclosing information obtained in the ordinary course of business.

(4) Statutorily authorized rewards offered by governmental agencies for information leading to the arrest and conviction of specified offenders.

(5) Lawful compensation provided to a witness participating in the Witness Protection Program established pursuant to Title 7.5 (commencing with Section 14020) of Part 4.

(f) For purposes of this section, "information" does not include a photograph, videotape, audiotape, or any other direct recording of events or occurrences. (Added by Stats. 1994, ch. 869. Amended by Stats. 2002, ch. 210; Stats. 2003, ch. 62.)

*[Publisher's Note: The previous and the following section concerning separate matters are both numbered § 132.5.]*

### **§ 132.5 Witnesses, Findings and Declarations of the Legislature; Prohibitions on Recovering Money for Information; Offenses, Exceptions**

(a) The Legislature supports and affirms the constitutional right of every person to communicate on

any subject. This section is intended to preserve the right of every accused person to a fair trial, the right of the people to due process of law, and the integrity of judicial proceedings. This section is not intended to prevent any person from disseminating any information or opinion. The Legislature hereby finds and declares that the disclosure for valuable consideration of information relating to crimes by prospective witnesses can cause the loss of credible evidence in criminal trials and threatens to erode the reliability of verdicts. The Legislature further finds and declares that the disclosure for valuable consideration of information relating to crimes by prospective witnesses creates an appearance of injustice that is destructive of public confidence.

(b) A person who is a witness to an event or occurrence that he or she knows is a crime or who has personal knowledge of facts that he or she knows or reasonably should know may require that person to be called as a witness in a criminal prosecution shall not accept or receive, directly or indirectly, any money or its equivalent in consideration for providing information obtained as a result of witnessing the event or occurrence or having personal knowledge of the facts.

(c) A person who is a witness to an event or occurrence that he or she reasonably should know is a crime shall not accept or receive, directly or indirectly, any money or its equivalent in consideration for providing information obtained as a result of his or her witnessing the event or occurrence.

(d) The Attorney General or the district attorney of the county in which an alleged violation of subdivision (c) occurs may institute a civil proceeding. Where a final judgment is rendered in the civil proceeding, the defendant shall be punished for the violation of subdivision (c) by a fine equal to 150 percent of the amount received or contracted for by the person.

(e) A violation of subdivision (b) is a misdemeanor punishable by imprisonment for a term not exceeding six months in a county jail, a fine not exceeding three times the amount of compensation requested, accepted, or received, or both the imprisonment and fine.

(f) This section does not apply if more than one year has elapsed from the date of any criminal act related to the information that is provided under subdivision (b) or (c) unless prosecution has commenced for that criminal act. If prosecution has commenced, this section shall remain applicable until the final judgment in the action.

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(g) This section does not apply to any of the following circumstances:

(1) Lawful compensation paid to expert witnesses, investigators, employees, or agents by a prosecutor, law enforcement agency, or an attorney employed to represent a person in a criminal matter.

(2) Lawful compensation provided to an informant by a prosecutor or law enforcement agency.

(3) Compensation paid to a publisher, editor, reporter, writer, or other person connected with or employed by a newspaper, magazine, or other publication or a television or radio news reporter or other person connected with a television or radio station, for disclosing information obtained in the ordinary course of business.

(4) Statutorily authorized rewards offered by governmental agencies or private reward programs offered by victims of crimes for information leading to the arrest and conviction of specified offenders.

(5) Lawful compensation provided to a witness participating in the Witness Relocation and Assistance Program established pursuant to Title 7.5 (commencing with Section 14020) of Part 4.

(h) For purposes of this section, “information” does not include a photograph, videotape, audiotape, or any other direct recording of an event or occurrence.

(i) For purposes of this section, “victims of crimes” shall be construed in a manner consistent with Section 28 of Article I of the California Constitution, and shall include victims, as defined in subdivision (3) of Section 136. (Added by Stats. 1994, ch. 870. Amended by Stats. 1995, ch. 53; Stats. 2002, ch. 210; Stats. 2003, ch. 62; Stats. 2015, ch. 303.)

**[Publisher’s Note: The previous two sections concerning separate matters are both numbered §132.5.]**

### § 133 Deceiving a Witness

Every person who practices any fraud or deceit, or knowingly makes or exhibits any false statement, representation, token, or writing, to any witness or person about to be called as a witness upon any trial,

proceeding, inquiry, or investigation whatever, authorized by law, with intent to affect the testimony of such witness, is guilty of a misdemeanor. (Enacted 1872.)

### § 134 Preparing False Evidence

Every person guilty of preparing any false or ante dated book, paper, record, instrument in writing, or other matter or thing, with intent to produce it, or allow it to be produced for any fraudulent or deceitful purpose, as genuine or true, upon any trial, proceeding, or inquiry whatever, authorized by law, is guilty of felony. (Enacted 1872.)

### § 135 Destroying Evidence

A person who, knowing that any book, paper, record, instrument in writing, digital image, video recording owned by another, or other matter or thing, is about to be produced in evidence upon a trial, inquiry, or investigation, authorized by law, willfully destroys, erases, or conceals the same, with the intent to prevent it or its contents from being produced, is guilty of a misdemeanor. (Enacted 1872. Amended by Stats. 2015, ch. 463.)

### § 135.5 Tampering with Evidence in a Disciplinary Proceeding Against a Public Safety Officer

Any person who knowingly alters, tampers with, conceals, or destroys relevant evidence in any disciplinary proceeding against a public safety officer, for the purpose of harming that public safety officer, is guilty of a misdemeanor. (Added by Stats. 1998, ch. 759.)

### § 136 Definitions

As used in this chapter:

(1) “Malice” means an intent to vex, annoy, harm, or injure in any way another person, or to thwart or interfere in any manner with the orderly administration of justice.

(2) “Witness” means any natural person, (i) having knowledge of the existence or

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nonexistence of facts relating to any crime, or (ii) whose declaration under oath is received or has been received as evidence for any purpose, or (iii) who has reported any crime to any peace officer, prosecutor, probation or parole officer, correctional officer or judicial officer, or (iv) who has been served with a subpoena issued under the authority of any court in the state, or of any other state or of the United States, or (v) who would be believed by any reasonable person to be an individual described in subparagraphs (i) to (iv), inclusive.

(3) "Victim" means any natural person with respect to whom there is reason to believe that any crime as defined under the laws of this state or any other state or of the United States is being or has been perpetrated or attempted to be perpetrated. (Added by Stats. 1980, ch. 686.)

### **§ 136.1 Intimidation of Witnesses and Victims; Offenses; Penalties; Enhancement; Aggravation**

(a) Except as provided in subdivision (c), any person who does any of the following is guilty of a public offense and shall be punished by imprisonment in a county jail for not more than one year or in the state prison:

(1) Knowingly and maliciously prevents or dissuades any witness or victim from attending or giving testimony at any trial, proceeding, or inquiry authorized by law.

(2) Knowingly and maliciously attempts to prevent or dissuade any witness or victim from attending or giving testimony at any trial, proceeding, or inquiry authorized by law.

(3) For purposes of this section, evidence that the defendant was a family member who interceded in an effort to protect the witness or victim shall create a presumption that the act was without malice.

(b) Except as provided in subdivision (c), every person who attempts to prevent or dissuade another person who has been the victim of a crime or who is witness to a crime from doing any of the following is guilty of a public offense and shall be punished by imprisonment in a county jail for not more than one year or in the state prison:

(1) Making any report of that victimization to any peace officer or state or local law enforcement officer or probation or parole or correctional officer or prosecuting agency or to any judge.

(2) Causing a complaint, indictment, information, probation or parole violation to be sought and prosecuted, and assisting in the prosecution thereof.

(3) Arresting or causing or seeking the arrest of any person in connection with that victimization.

(c) Every person doing any of the acts described in subdivision (a) or (b) knowingly and maliciously under any one or more of the following circumstances, is guilty of a felony punishable by imprisonment in the state prison for two, three, or four years under any of the following circumstances:

(1) Where the act is accompanied by force or by an express or implied threat of force or violence, upon a witness or victim or any third person or the property of any victim, witness, or any third person.

(2) Where the act is in furtherance of a conspiracy.

(3) Where the act is committed by any person who has been convicted of any violation of this section, any predecessor law hereto or any federal statute or statute of any other state which, if the act prosecuted was committed in this state, would be a violation of this section.

(4) Where the act is committed by any person for pecuniary gain or for any other consideration acting upon the request of any other person. All parties to such a transaction are guilty of a felony.

(d) Every person attempting the commission of any act described in subdivisions (a), (b), and (c) is guilty of the offense attempted without regard to success or failure of the attempt. The fact that no person was injured physically, or in fact intimidated, shall be no defense against any prosecution under this section.

(e) Nothing in this section precludes the imposition of an enhancement for great bodily injury where the injury inflicted is significant or substantial.

(f) The use of force during the commission of any offense described in subdivision (c) shall be considered

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a circumstance in aggravation of the crime in imposing a term of imprisonment under subdivision (b) of Section 1170. (Added by Stats. 1980, ch. 686. Amended by Stats. 1982, ch. 1098, Stats. 1990, ch. 350, Stats. 1997, ch. 500.)

### **§ 136.2      Witness or Victim—Good Cause Belief of Harm to, Intimidation of, or Dissuasion of; Court Order; Violation of Orders**

(a) (1) Upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, a court with jurisdiction over a criminal matter may issue orders, including, but not limited to, the following:

(A) An order issued pursuant to Section 6320 of the Family Code.

(B) An order that a defendant shall not violate any provision of Section 136.1.

(C) An order that a person before the court other than a defendant, including, but not limited to, a subpoenaed witness or other person entering the courtroom of the court, shall not violate any provision of Section 136.1.

(D) An order that a person described in this section shall have no communication whatsoever with a specified witness or a victim, except through an attorney under reasonable restrictions that the court may impose.

(E) An order calling for a hearing to determine if an order described in subparagraphs (A) to (D), inclusive, should be issued.

(F) (i) An order that a particular law enforcement agency within the jurisdiction of the court provide protection for a victim, witness, or both, or for immediate family members of a victim or a witness who reside in the same household as the victim or witness or within reasonable proximity of the victim's or witness' household, as determined by the court. The order

shall not be made without the consent of the law enforcement agency except for limited and specified periods of time and upon an express finding by the court of a clear and present danger of harm to the victim or witness or immediate family members of the victim or witness.

(ii) For purposes of this paragraph, "immediate family members" include the spouse, children, or parents of the victim or witness.

(G) (i) An order protecting a victim or witness of violent crime from all contact by the defendant, or contact, with the intent to annoy, harass, threaten, or commit acts of violence, by the defendant. The court or its designee shall transmit orders made under this paragraph to law enforcement personnel within one business day of the issuance, modification, extension, or termination of the order, pursuant to subdivision (a) of Section 6380 of the Family Code. It is the responsibility of the court to transmit the modification, extension, or termination orders made under this paragraph to the same agency that entered the original protective order into the California Restraining and Protective Order System.

(ii) (I) If a court does not issue an order pursuant to clause (i) when the defendant is charged with a crime involving domestic violence as defined in Section 13700 of this code or in Section 6211 of the Family Code, the court, on its own motion, shall consider issuing a protective order upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, that provides as follows:

(ia) The defendant shall not own, possess, purchase, receive, or attempt to



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purchase or receive, a firearm while the protective order is in effect.

(ib) The defendant shall relinquish ownership or possession of any firearms, pursuant to Section 527.9 of the Code of Civil Procedure.

(II) Every person who owns, possesses, purchases, or receives, or attempts to purchase or receive, a firearm while this protective order is in effect is punishable pursuant to Section 29825.

(iii) An order issued, modified, extended, or terminated by a court pursuant to this subparagraph shall be issued on forms adopted by the Judicial Council of California that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

(iv) A protective order issued under this subparagraph may require the defendant to be placed on electronic monitoring if the local government, with the concurrence of the county sheriff or the chief probation officer with jurisdiction, adopts a policy to authorize electronic monitoring of defendants and specifies the agency with jurisdiction for this purpose. If the court determines that the defendant has the ability to pay for the monitoring program, the court shall order the defendant to pay for the monitoring. If the court determines that the defendant does not have the ability to pay for the electronic monitoring, the court may order electronic monitoring to be paid for by the local government that adopted the policy to authorize

electronic monitoring. The duration of electronic monitoring shall not exceed one year from the date the order is issued. The electronic monitoring shall not be in place if the protective order is not in place.

(2) For purposes of this subdivision, a minor who was not a victim of, but who was physically present at the time of, an act of domestic violence, is a witness and is deemed to have suffered harm within the meaning of paragraph (1).

(b) A person violating an order made pursuant to subparagraphs (A) to (G), inclusive, of paragraph (1) of subdivision (a) may be punished for any substantive offense described in Section 136.1, or for a contempt of the court making the order. A finding of contempt shall not be a bar to prosecution for a violation of Section 136.1. However, a person held in contempt shall be entitled to credit for punishment imposed therein against a sentence imposed upon conviction of an offense described in Section 136.1. A conviction or acquittal for a substantive offense under Section 136.1 shall be a bar to a subsequent punishment for contempt arising out of the same act.

(c) (1) (A) Notwithstanding subdivision (e), an emergency protective order issued pursuant to Chapter 2 (commencing with Section 6250) of Part 3 of Division 10 of the Family Code or Section 646.91 shall have precedence in enforcement over any other restraining or protective order, provided the emergency protective order meets all of the following requirements:

(i) The emergency protective order is issued to protect one or more individuals who are already protected persons under another restraining or protective order.

(ii) The emergency protective order restrains the individual who is the restrained person in the other restraining or protective order specified in clause (i).

(iii) The provisions of the emergency protective order are more restrictive in relation to the restrained person than

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are the provisions of the other restraining or protective order specified in clause (i).

(B) An emergency protective order that meets the requirements of subparagraph (A) shall have precedence in enforcement over the provisions of any other restraining or protective order only with respect to those provisions of the emergency protective order that are more restrictive in relation to the restrained person.

(2) Except as described in paragraph (1), a no-contact order, as described in Section 6320 of the Family Code, shall have precedence in enforcement over any other restraining or protective order.

(d) (1) A person subject to a protective order issued under this section shall not own, possess, purchase, or receive, or attempt to purchase or receive, a firearm while the protective order is in effect.

(2) The court shall order a person subject to a protective order issued under this section to relinquish ownership or possession of any firearms, pursuant to Section 527.9 of the Code of Civil Procedure.

(3) A person who owns, possesses, purchases, or receives, or attempts to purchase or receive, a firearm while the protective order is in effect is punishable pursuant to Section 29825.

(e) (1) When the defendant is charged with a crime involving domestic violence, as defined in Section 13700 of this code or in Section 6211 of the Family Code, or a violation of Section 261, 261.5, or former Section 262, or a crime that requires the defendant to register pursuant to subdivision (c) of Section 290, including, but not limited to, commercial sexual exploitation of a minor in violation of Section 236.1, the court shall consider issuing the above-described orders on its own motion. All interested parties shall receive a copy of those orders. In order to facilitate this, the court's records of all criminal cases involving domestic violence or a violation of Section 261, 261.5, or former Section 262, or a crime that requires the defendant to register pursuant to subdivision (c) of Section 290, including, but not

limited to, commercial sexual exploitation of a minor in violation of Section 236.1, shall be marked to clearly alert the court to this issue.

(2) When a complaint, information, or indictment charging a crime involving domestic violence, as defined in Section 13700 or in Section 6211 of the Family Code, or a violation of Section 261, 261.5, or former Section 262, or a crime that requires the defendant to register pursuant to subdivision (c) of Section 290, including, but not limited to, commercial sexual exploitation of a minor in violation of Section 236.1, has been issued, except as described in subdivision (c), a restraining order or protective order against the defendant issued by the criminal court in that case has precedence in enforcement over a civil court order against the defendant.

(3) Custody and visitation with respect to the defendant and the defendant's minor children may be ordered by a family or juvenile court consistent with the protocol established pursuant to subdivision (f), but if ordered after a criminal protective order has been issued pursuant to this section, the custody and visitation order shall make reference to, and, if there is not an emergency protective order that has precedence in enforcement pursuant to paragraph (1) of subdivision (c), or a no-contact order, as described in Section 6320 of the Family Code, acknowledge the precedence of enforcement of, an appropriate criminal protective order. On or before July 1, 2014, the Judicial Council shall modify the criminal and civil court forms consistent with this subdivision.

(f) On or before January 1, 2003, the Judicial Council shall promulgate a protocol, for adoption by each local court in substantially similar terms, to provide for the timely coordination of all orders against the same defendant and in favor of the same named victim or victims. The protocol shall include, but shall not be limited to, mechanisms for ensuring appropriate communication and information sharing between criminal, family, and juvenile courts concerning orders and cases that involve the same parties, and shall permit a family or juvenile court order to coexist with a criminal court protective order subject to the following conditions:

(1) An order that permits contact between the restrained person and the person's children shall

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provide for the safe exchange of the children and shall not contain language either printed or handwritten that violates a “no-contact order” issued by a criminal court.

(2) The safety of all parties shall be the courts’ paramount concern. The family or juvenile court shall specify the time, day, place, and manner of transfer of the child, as provided in Section 3100 of the Family Code.

(g) On or before January 1, 2003, the Judicial Council shall modify the criminal and civil court protective order forms consistent with this section.

(h) (1) When a complaint, information, or indictment charging a crime involving domestic violence, as defined in Section 13700 or in Section 6211 of the Family Code, has been filed, the court may consider, in determining whether good cause exists to issue an order under subparagraph (A) of paragraph (1) of subdivision (a), the underlying nature of the offense charged, and the information provided to the court pursuant to Section 273.75.

(2) When a complaint, information, or indictment charging a violation of Section 261, 261.5, or former Section 262, or a crime that requires the defendant to register pursuant to subdivision (c) of Section 290, including, but not limited to, commercial sexual exploitation of a minor in violation of Section 236.1, has been filed, the court may consider, in determining whether good cause exists to issue an order under paragraph (1) of subdivision (a), the underlying nature of the offense charged, the defendant’s relationship to the victim, the likelihood of continuing harm to the victim, any current restraining order or protective order issued by a civil or criminal court involving the defendant, and the defendant’s criminal history, including, but not limited to, prior convictions for a violation of Section 261, 261.5, or former Section 262, a crime that requires the defendant to register pursuant to subdivision (c) of Section 290, including, but not limited to, commercial sexual exploitation of a minor in violation of Section 236.1, any other forms of violence, or a weapons offense.

(i) (1) When a criminal defendant has been convicted of a crime involving domestic violence as defined in Section 13700 or in Section 6211 of

the Family Code, a violation of subdivision (a), (b), or (c) of Section 236.1 prohibiting human trafficking, Section 261, 261.5, former Section 262, subdivision (a) of Section 266h, or subdivision (a) of Section 266i, a violation of Section 186.22, or a crime that requires the defendant to register pursuant to subdivision (c) of Section 290, the court, at the time of sentencing, shall consider issuing an order restraining the defendant from any contact with a victim of the crime. The order may be valid for up to 10 years, as determined by the court. This protective order may be issued by the court regardless of whether the defendant is sentenced to the state prison or a county jail or subject to mandatory supervision, or whether imposition of sentence is suspended and the defendant is placed on probation. It is the intent of the Legislature in enacting this subdivision that the duration of a restraining order issued by the court be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of a victim and the victim’s immediate family.

(2) When a criminal defendant has been convicted of a crime involving domestic violence as defined in Section 13700 or in Section 6211 of the Family Code, a violation of Section 261, 261.5, or former Section 262, a violation of Section 186.22, or a crime that requires the defendant to register pursuant to subdivision (c) of Section 290, the court, at the time of sentencing, shall consider issuing an order restraining the defendant from any contact with a percipient witness to the crime if it can be established by clear and convincing evidence that the witness has been harassed, as defined in paragraph (3) of subdivision (b) of Section 527.6 of the Code of Civil Procedure, by the defendant.

(3) An order under this subdivision may include provisions for electronic monitoring if the local government, upon receiving the concurrence of the county sheriff or the chief probation officer with jurisdiction, adopts a policy authorizing electronic monitoring of defendants and specifies the agency with jurisdiction for this purpose. If the court determines that the defendant has the ability to pay for the monitoring program, the court shall order the defendant to pay for the monitoring. If the court determines that the

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defendant does not have the ability to pay for the electronic monitoring, the court may order the electronic monitoring to be paid for by the local government that adopted the policy authorizing electronic monitoring. The duration of the electronic monitoring shall not exceed one year from the date the order is issued.

(j) For purposes of this section, “local government” means the county that has jurisdiction over the protective order. (Added by Stats. 1980, ch. 686. Amended by Stats. 1988, ch. 182; Stats. 1989, ch. 1378; Stats. 1990, ch. 935; Stats. 1996, ch. 904; Stats. 1997, ch. 48; Stats. 1997, ch. 847; Stats. 1998, ch. 187; Stats. 1999, ch. 83; Stats. 1999, ch. 661; Stats. 2001, ch. 698; Stats. 2003, ch. 498; Stats. 2005, ch. 132; Stats. 2005, ch. 465; Stats. 2005, ch. 631; Stats. 2005, ch. 702; Stats. 2008, ch. 86; Stats. 2010, ch. 178; Stats. 2011, ch. 155; Stats. 2012, ch. 513; Stats. 2013, ch. 76; Stats. 2013, ch. 263; Stats. 2013, ch. 291; Stats. 2014, ch. 71; Stats. 2014, ch. 638; Stats. 2014, ch. 665; Stats. 2014, ch. 673; Stats. 2015, ch. 60; Stats. 2016, ch. 86; Stats. 2017, ch. 270; Stats. 2018, ch. 805; Stats. 2019, ch. 256; Stats. 2021, ch. 626; Stats. 2022, ch. 87.)

### **§ 136.3 Court Order to Protect the Address or Location of a Protected Party**

(a) The court shall order that any party enjoined pursuant to Section 136.2 be prohibited from taking any action to obtain the address or location of a protected party or a protected party’s family members, caretakers, or guardian, unless there is good cause not to make that order.

(b) The Judicial Council shall promulgate forms necessary to effectuate this section. (Added by Stats. 2005, ch. 472.)

### **§ 136.5 Intent to Use Deadly Weapon to Intimidate Witness; Offense; Penalty**

Any person who has upon his person a deadly weapon with the intent to use such weapon to commit a violation of Section 136.1 is guilty of an offense punishable by imprisonment in the county jail for not more than one year, or in the state prison. (Added by Stats. 1982, ch. 1101.)

### **§ 136.7 Revealing Names and Addresses of Witnesses or Victims by Sexual Offender with the Intent that Another Prisoner will Initiate Harassing Correspondence**

(a) Every person imprisoned in a county jail or the state prison who has been convicted of a sexual offense, including, but not limited to, a violation of Section 243.4, 261, 261.5, 264.1, 266, 266a, 266b, 266c, 266f, 285, 286, 287, 288, or 289, or former Section 262 or 288a, who knowingly reveals the name and address of a witness or victim to that offense to any other prisoner with the intent that the other prisoner will intimidate or harass the witness or victim through the initiation of unauthorized correspondence with the witness or victim, is guilty of a public offense, punishable by imprisonment in the county jail not to exceed one year, or by imprisonment pursuant to subdivision (h) of Section 1170.

(b) This section shall not prevent the interviewing of witnesses. (Added by Stats. 1987, ch. 520. Amended by Stats. 2011, ch. 15; Stats. 2018, ch. 423; Stats. 2021, ch. 626.)

### **§ 137 Influencing the Testimony or Information Given to Law Enforcement Officials**

(a) Every person who gives or offers, or promises to give, to any witness, person about to be called as a witness, or person about to give material information pertaining to a crime to a law enforcement official, any bribe, upon any understanding or agreement that the testimony of such witness or information given by such person shall be thereby influenced is guilty of a felony.

(b) Every person who attempts by force or threat of force or by the use of fraud to induce any person to give false testimony or withhold true testimony or to give false material information pertaining to a crime to, or withhold true material information pertaining to a crime from, a law enforcement official is guilty of a felony, punishable by imprisonment in the state prison for two, three, or four years.

As used in this subdivision, “threat of force” means a credible threat of unlawful injury to any person or damage to the property of another which is communicated to a person for the purpose of inducing him to give false testimony or withhold true testimony or to give false material information pertaining to a

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crime to, or to withhold true material information pertaining to a crime from, a law enforcement official.

(c) Every person who knowingly induces another person to give false testimony or withhold true testimony not privileged by law or to give false material information pertaining to a crime to, or to withhold true material information pertaining to a crime from, a law enforcement official is guilty of a misdemeanor.

(d) At the arraignment, on a showing of cause to believe this section may be violated, the court, on motion of a party, shall admonish the person who there is cause to believe may violate this section and shall announce the penalties and other provisions of this section.

(e) As used in this section "law enforcement official" includes any district attorney, deputy district attorney, city attorney, deputy city attorney, the Attorney General or any deputy attorney general, or any peace officer included in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(f) The provisions of subdivision (c) shall not apply to an attorney advising a client or to a person advising a member of his or her family. (Enacted 1872. Amended by Code Am. 1873-74, ch. 614; Stats. 1970, ch. 353; Stats. 1977, ch. 67; Stats. 1979, ch. 944; Stats. 1980, ch. 1126.)

### **§ 138 Witnesses—Offering or Accepting Bribes**

(a) Every person who gives or offers or promises to give to any witness or person about to be called as a witness, any bribe upon any understanding or agreement that the person shall not attend upon any trial or other judicial proceeding, or every person who attempts by means of any offer of a bribe to dissuade any person from attending upon any trial or other judicial proceeding, is guilty of a felony.

(b) Every person who is a witness, or is about to be called as such, who receives, or offers to receive, any bribe, upon any understanding that his or her testimony shall be influenced thereby, or that he or she will absent himself or herself from the trial or proceeding upon which his or her testimony is required, is guilty of a felony. (Enacted 1872. Amended by Code Am. 1873-74, ch. 614; Stats. 1987, ch. 828.)

### **§ 141 Intentional Alteration of Evidence with Intent to Charge Person with a Crime; By Peace Officer or Prosecuting Attorney**

(a) Except as provided in subdivisions (b) and (c), a person who knowingly, willfully, intentionally, and wrongfully alters, modifies, plants, places, manufactures, conceals, or moves any physical matter, digital image, or video recording, with specific intent that the action will result in a person being charged with a crime or with the specific intent that the physical matter will be wrongfully produced as genuine or true upon a trial, proceeding, or inquiry, is guilty of a misdemeanor.

(b) A peace officer who knowingly, willfully, intentionally, and wrongfully alters, modifies, plants, places, manufactures, conceals, or moves any physical matter, digital image, or video recording, with specific intent that the action will result in a person being charged with a crime or with the specific intent that the physical matter, digital image, or video recording will be concealed or destroyed, or fraudulently represented as the original evidence upon a trial, proceeding, or inquiry, is guilty of a felony punishable by two, three, or five years in the state prison.

(c) A prosecuting attorney who intentionally and in bad faith alters, modifies, or withholds any physical matter, digital image, video recording, or relevant exculpatory material or information, knowing that it is relevant and material to the outcome of the case, with the specific intent that the physical matter, digital image, video recording, or relevant exculpatory material or information will be concealed or destroyed, or fraudulently represented as the original evidence upon a trial, proceeding, or inquiry, is guilty of a felony punishable by imprisonment pursuant to subdivision (h) of Section 1170 for 16 months, or two or three years.

(d) This section does not preclude prosecution under both this section and any other law. (Added by Stats. 2000, ch. 620. Amended by Stats. 2015, ch. 463; Stats. 2016, ch. 879.)

### **§ 158 Common Barratry Defined; Punishment**

Common barratry is the practice of exciting groundless judicial proceedings, and is punishable by imprisonment in the county jail not exceeding six months and by fine not exceeding one thousand

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dollars (\$1,000). (Enacted in 1872. Amended by Stats. 1983, ch. 1092.)

### § 166 Contempt Constituting Misdemeanor

(a) Except as provided in subdivisions (b), (c), and (d), a person guilty of any of the following contempts of court is guilty of a misdemeanor:

(1) Disorderly, contemptuous, or insolent behavior committed during the sitting of a court of justice, in the immediate view and presence of the court, and directly tending to interrupt its proceedings or to impair the respect due to its authority.

(2) Behavior specified in paragraph (1) that is committed in the presence of a referee, while actually engaged in a trial or hearing, pursuant to the order of a court, or in the presence of a jury while actually sitting for the trial of a cause, or upon an inquest or other proceeding authorized by law.

(3) A breach of the peace, noise, or other disturbance directly tending to interrupt the proceedings of the court.

(4) Willful disobedience of the terms, as written, of a process or court order or out-of-state court order, lawfully issued by a court, including orders pending trial.

(5) Resistance willfully offered by a person to the lawful order or process of a court.

(6) The contumacious and unlawful refusal of a person to be sworn as a witness or, when so sworn, the like refusal to answer a material question.

(7) The publication of a false or grossly inaccurate report of the proceedings of a court.

(8) Presenting to a court having power to pass sentence upon a prisoner under conviction, or to a member of the court, an affidavit, testimony, or representation of any kind, verbal or written, in aggravation or mitigation of the punishment to be imposed upon the prisoner, except as provided in this code.

(9) Willful disobedience of the terms of an injunction that restrains the activities of a criminal street gang or any of its members, lawfully issued by a court, including an order pending trial.

(b) (1) A person who is guilty of contempt of court under paragraph (4) of subdivision (a) by willfully contacting a victim by telephone or mail, social media, electronic communication, or electronic communication device, or directly, and who has been previously convicted of a violation of Section 646.9 shall be punished by imprisonment in a county jail for not more than one year, by a fine of no more than five thousand dollars (\$5,000), or by both that fine and imprisonment.

(2) For the purposes of sentencing under this subdivision, each contact shall constitute a separate violation of this subdivision.

(3) The present incarceration of a person who makes contact with a victim in violation of paragraph (1) is not a defense to a violation of this subdivision.

(4) For purposes of this subdivision, the following definitions shall apply:

(A) "Social media" has the same definition as in Section 632.01.

(B) "Electronic communication" has the same definition as in Section 646.9.

(C) "Electronic communication device" has the same definition as in Section 646.9.

(c) (1) Notwithstanding paragraph (4) of subdivision (a), a willful and knowing violation of a protective order or stay-away court order described as follows shall constitute contempt of court, a misdemeanor, punishable by imprisonment in a county jail for not more than one year, by a fine of not more than one thousand dollars (\$1,000), or by both that imprisonment and fine:

(A) An order issued pursuant to Section 136.2.

(B) An order issued pursuant to paragraph (2) of subdivision (a) of Section 1203.097.

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- (C) An order issued after a conviction in a criminal proceeding involving elder or dependent adult abuse, as defined in Section 368.
- (D) An order issued pursuant to Section 1201.3.
- (E) An order described in paragraph (3).
- (F) An order issued pursuant to subdivision (j) of Section 273.5.
- (2) If a violation of paragraph (1) results in a physical injury, the person shall be imprisoned in a county jail for at least 48 hours, whether a fine or imprisonment is imposed, or the sentence is suspended.
- (3) Paragraphs (1) and (2) apply to the following court orders:
- (A) An order issued pursuant to Section 6320 or 6389 of the Family Code.
- (B) An order excluding one party from the family dwelling or from the dwelling of the other.
- (C) An order enjoining a party from specified behavior that the court determined was necessary to effectuate the orders described in paragraph (1).
- (4) A second or subsequent conviction for a violation of an order described in paragraph (1) occurring within seven years of a prior conviction for a violation of any of those orders and involving an act of violence or "a credible threat" of violence, as provided in subdivision (c) of Section 139, is punishable by imprisonment in a county jail not to exceed one year, or in the state prison for 16 months or two or three years.
- (5) The prosecuting agency of each county shall have the primary responsibility for the enforcement of the orders described in paragraph (1).
- (d) (1) A person who owns, possesses, purchases, or receives a firearm knowing that person is prohibited from doing so by the provisions of a protective order as defined in Section 136.2 of this code, Section 6218 of the Family Code, or Section 527.6 or 527.8 of the Code of Civil Procedure, shall be punished under Section 29825.
- (2) A person subject to a protective order described in paragraph (1) shall not be prosecuted under this section for owning, possessing, purchasing, or receiving a firearm to the extent that firearm is granted an exemption pursuant to subdivision (h) of Section 6389 of the Family Code.
- (e) (1) If probation is granted upon conviction of a violation of subdivision (c), the court shall impose probation consistent with Section 1203.097.
- (2) If probation is granted upon conviction of a violation of subdivision (c), the conditions of probation may include, in lieu of a fine, one or both of the following requirements:
- (A) That the defendant make payments to a domestic violence shelter-based program up to a maximum of one thousand dollars (\$1,000).
- (B) That the defendant provide restitution to reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.
- (3) For an order to pay a fine, make payments to a domestic violence shelter-based program, or pay restitution as a condition of probation under this subdivision or subdivision (c), the court shall make a determination of the defendant's ability to pay. An order to make payments to a domestic violence shelter-based program, shall not be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support.
- (4) If the injury to a married person is caused, in whole or in part, by the criminal acts of the person's spouse in violation of subdivision (c), the community property shall not be used to discharge the liability of the offending spouse for restitution to the injured spouse required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse and dependents required by this subdivision, until all separate property of the offending spouse is exhausted.

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(5) A person violating an order described in subdivision (c) may be punished for any substantive offenses described under Section 136.1 or 646.9. A finding of contempt shall not be a bar to prosecution for a violation of Section 136.1 or 646.9. However, a person held in contempt for a violation of subdivision (c) shall be entitled to credit for any punishment imposed as a result of that violation against a sentence imposed upon conviction of an offense described in Section 136.1 or 646.9. A conviction or acquittal for a substantive offense under Section 136.1 or 646.9 shall be a bar to a subsequent punishment for contempt arising out of the same act. (Enacted 1872. Amended by Stats. 1993, ch. 345; Stats. 1993, ch. 583; Stats. 1996, ch. 904; Stats. 1996, ch. 1077; Stats. 1999, ch. 662; Stats. 2002, ch. 830; Stats. 2008, ch. 152; Stats. 2009, ch. 140; Stats. 2010, ch. 178; Stats. 2010, ch. 677; Stats. 2011, ch. 285; Stats. 2011, ch. 296; Stats. 2011, ch. 181; Stats. 2013, ch. 76; Stats. 2013, ch. 291; Stats. 2014, ch. 99; Stats. 2015, ch. 279; Stats. 2016, ch. 342; Stats. 2021, ch. 704.)

### **§ 506 Misappropriation of the Property of Another by One Controlling or Intrusted with the Property**

Every trustee, banker, merchant, broker, attorney, agent, assignee in trust, executor, administrator, or collector, or person otherwise intrusted with or having in his control property for the use of any other person, who fraudulently appropriates it to any use or purpose not in the due and lawful execution of his trust, or secretes it with a fraudulent intent to appropriate it to such use or purpose, and any contractor who appropriates money paid to him for any use or purpose, other than for that which he received it, is guilty of embezzlement, and the payment of laborers and materialmen for work performed or material furnished in the performance of any contract is hereby declared to be the use and purpose to which the contract price of such contract, or any part thereof, received by the contractor shall be applied. (Enacted 1872. Amended by Stats. 1907, ch. 490; Stats. 1919, ch. 518.)

### **§ 506a Account or Debt Collectors; Definition; Prosecution; Punishment**

Any person who, acting as collector, or acting in any capacity in or about a business conducted for the collection of accounts or debts owing by another person, and who violates Section 506 of the Penal Code, shall be deemed to be an agent or person as defined in Section 506, and subject for a violation of Section 506, to be prosecuted, tried, and punished in accordance therewith and with law; and “collector” means every such person who collects, or who has in his or her possession or under his or her control property or money for the use of any other person, whether in his or her own name and mixed with his or her own property or money, or otherwise, or whether he or she has any interest, direct or indirect, in or to such property or money, or any portion thereof, and who fraudulently appropriates to his or her own use, or the use of any person other than the true owner, or person entitled thereto, or secretes that property or money, or any portion thereof, or interest therein not his or her own, with a fraudulent intent to appropriate it to any use or purpose not in the due and lawful execution of his or her trust. (Added by Stats. 1917, ch. 603. Amended by Stats. 1987, ch. 828.)

### **§ 549 Penalties for Referrals with Intent to Violate Insurance Code Section 1871.1 or 1871.4**

Any firm, corporation, partnership, or association, or any person acting in his or her individual capacity, or in his or her capacity as a public or private employee, who solicits, accepts, or refers any business to or from any individual or entity with the knowledge that, or with reckless disregard for whether, the individual or entity for or from whom the solicitation or referral is made, or the individual or entity who is solicited or referred, intends to violate Section 550 of this code or Section 1871.4 of the Insurance Code is guilty of a crime, punishable upon a first conviction by imprisonment in the county jail for not more than one year or by imprisonment pursuant to subdivision (h) of Section 1170 for 16 months, two years, or three years, or by a fine not exceeding fifty thousand dollars (\$50,000) or double the amount of the fraud, whichever is greater, or by both that imprisonment and fine. A second or subsequent conviction is punishable by imprisonment pursuant to subdivision (h) of Section 1170 or by that imprisonment and a fine of fifty thousand dollars (\$50,000). Restitution shall be ordered, including



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restitution for any medical evaluation or treatment services obtained or provided. The court shall determine the amount of restitution and the person or persons to whom the restitution shall be paid. (Added by Stats. 1991, ch. 116. Amended by Stats. 1991, ch. 934; Stats. 1992, ch. 1352; Stats. 1993, ch. 589; Stats. 1994, ch. 841; Stats. 1994, ch. 1031; Stats. 2000, ch. 843; Stats. 2003-2004, 4th Ex.Sess., ch. 2; Stats. 2011, ch. 15.)

### **§ 550      Fraudulent Insurance Claims; Felony Violations**

(a) It is unlawful to do any of the following, or to aid, abet, solicit, or conspire with any person to do any of the following:

- (1) Knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss or injury, including payment of a loss or injury under a contract of insurance.
- (2) Knowingly present multiple claims for the same loss or injury, including presentation of multiple claims to more than one insurer, with an intent to defraud.
- (3) Knowingly cause or participate in a vehicular collision, or any other vehicular accident, for the purpose of presenting any false or fraudulent claim.
- (4) Knowingly present a false or fraudulent claim for the payments of a loss for theft, destruction, damage, or conversion of a motor vehicle, a motor vehicle part, or contents of a motor vehicle.
- (5) Knowingly prepare, make, or subscribe any writing, with the intent to present or use it, or to allow it to be presented, in support of any false or fraudulent claim.
- (6) Knowingly make or cause to be made any false or fraudulent claim for payment of a health care benefit.
- (7) Knowingly submit a claim for a health care benefit that was not used by, or on behalf of, the claimant.
- (8) Knowingly present multiple claims for payment of the same health care benefit with an intent to defraud.

(9) Knowingly present for payment any undercharges for health care benefits on behalf of a specific claimant unless any known overcharges for health care benefits for that claimant are presented for reconciliation at that same time.

(10) For purposes of paragraphs (6) to (9), inclusive, a claim or a claim for payment of a health care benefit also means a claim or claim for payment submitted by or on the behalf of a provider of any workers' compensation health benefits under the Labor Code.

(b) It is unlawful to do, or to knowingly assist or conspire with any person to do, any of the following:

(1) Present or cause to be presented any written or oral statement as part of, or in support of or opposition to, a claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contains any false or misleading information concerning any material fact.

(2) Prepare or make any written or oral statement that is intended to be presented to any insurer or any insurance claimant in connection with, or in support of or opposition to, any claim or payment or other benefit pursuant to an insurance policy, knowing that the statement contains any false or misleading information concerning any material fact.

(3) Conceal, or knowingly fail to disclose the occurrence of, an event that affects any person's initial or continued right or entitlement to any insurance benefit or payment, or the amount of any benefit or payment to which the person is entitled.

(4) Prepare or make any written or oral statement, intended to be presented to any insurer or producer for the purpose of obtaining a motor vehicle insurance policy, that the person to be the insured resides or is domiciled in this state when, in fact, that person resides or is domiciled in a state other than this state.

(c) (1) Every person who violates paragraph (1), (2), (3), (4), or (5) of subdivision (a) is guilty of a felony punishable by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or five years, and by a fine not exceeding fifty

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thousand dollars (\$50,000), or double the amount of the fraud, whichever is greater.

(2) Every person who violates paragraph (6), (7), (8), or (9) of subdivision (a) is guilty of a public offense.

(A) When the claim or amount at issue exceeds nine hundred fifty dollars (\$950), the offense is punishable by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or five years, or by a fine not exceeding fifty thousand dollars (\$50,000) or double the amount of the fraud, whichever is greater, or by both that imprisonment and fine, or by imprisonment in a county jail not to exceed one year, by a fine of not more than ten thousand dollars (\$10,000), or by both that imprisonment and fine.

(B) When the claim or amount at issue is nine hundred fifty dollars (\$950) or less, the offense is punishable by imprisonment in a county jail not to exceed six months, or by a fine of not more than one thousand dollars (\$1,000), or by both that imprisonment and fine, unless the aggregate amount of the claims or amount at issue exceeds nine hundred fifty dollars (\$950) in any 12-consecutive-month period, in which case the claims or amounts may be charged as in subparagraph (A).

(3) Every person who violates paragraph (1), (2), (3), or (4) of subdivision (b) shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or five years, or by a fine not exceeding fifty thousand dollars (\$50,000) or double the amount of the fraud, whichever is greater, or by both that imprisonment and fine, or by imprisonment in a county jail not to exceed one year, or by a fine of not more than ten thousand dollars (\$10,000), or by both that imprisonment and fine.

(4) Restitution shall be ordered for a person convicted of violating this section, including restitution for any medical evaluation or treatment services obtained or provided. The court shall determine the amount of restitution and the person or persons to whom the restitution shall be paid.

(d) Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of a sentence be suspended for, any adult person convicted of felony violations of this section who previously has been convicted of felony violations of this section or Section 548, or of Section 1871.4 of the Insurance Code, or former Section 556 of the Insurance Code, or former Section 1871.1 of the Insurance Code as an adult under charges separately brought and tried two or more times. The existence of any fact that would make a person ineligible for probation under this subdivision shall be alleged in the information or indictment, and either admitted by the defendant in an open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

Except when the existence of the fact was not admitted or found to be true or the court finds that a prior felony conviction was invalid, the court shall not strike or dismiss any prior felony convictions alleged in the information or indictment.

This subdivision does not prohibit the adjournment of criminal proceedings pursuant to Division 3 (commencing with Section 3000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(e) Except as otherwise provided in subdivision (f), any person who violates subdivision (a) or (b) and who has a prior felony conviction of an offense set forth in either subdivision (a) or (b), in Section 548, in Section 1871.4 of the Insurance Code, in former Section 556 of the Insurance Code, or in former Section 1871.1 of the Insurance Code shall receive a two-year enhancement for each prior felony conviction in addition to the sentence provided in subdivision (c). The existence of any fact that would subject a person to a penalty enhancement shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury. Any person who violates this section shall be subject to appropriate orders of restitution pursuant to Section 13967 of the Government Code.

(f) Any person who violates paragraph (3) of subdivision (a) and who has two prior felony

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convictions for a violation of paragraph (3) of subdivision (a) shall receive a five-year enhancement in addition to the sentence provided in subdivision (c). The existence of any fact that would subject a person to a penalty enhancement shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(g) Except as otherwise provided in Section 12022.7, any person who violates paragraph (3) of subdivision (a) shall receive a two-year enhancement for each person other than an accomplice who suffers serious bodily injury resulting from the vehicular collision or accident in a violation of paragraph (3) of subdivision (a).

(h) This section shall not be construed to preclude the applicability of any other provision of criminal law or equitable remedy that applies or may apply to any act committed or alleged to have been committed by a person.

(i) Any fine imposed pursuant to this section shall be doubled if the offense was committed in connection with any claim pursuant to any automobile insurance policy in an auto insurance fraud crisis area designated by the Insurance Commissioner pursuant to Article 4.6 (commencing with Section 1874.90) of Chapter 12 of Part 2 of Division 1 of the Insurance Code. (Added by Stats. 1992, ch. 675. Amended by Stats. 1993, ch. 120; Stats. 1993, ch. 605; Stats. 1994, ch. 841; Stats. 1994, ch. 1008; Stats. 1995, ch. 573; Stats. 1995, ch. 574; Stats. 1998, ch. 189; Stats. 1999, ch. 83; Stats. 2000, ch. 867; Stats. 2003-2004, 4th Ex.Sess., ch. 2; Stats. 2009-2010, 3rd Ex.Sess., ch. 28; Stats. 2011, ch. 15.)

### **§ 551 Unlawful Consideration for Referring Insured to an Automotive Repair Dealer**

(a) It is unlawful for any automotive repair dealer, contractor, or employees or agents thereof to offer to any insurance agent, broker, or adjuster any fee, commission, profit sharing, or other form of direct or indirect consideration for referring an insured to an automotive repair dealer or its employees or agents for vehicle repairs covered under a policyholder's automobile physical damage or automobile collision coverage, or to a contractor or its employees or agents

for repairs to or replacement of a structure covered by a residential or commercial insurance policy.

(b) Except in cases in which the amount of the repair or replacement claim has been determined by the insurer and the repair or replacement services are performed in accordance with that determination or in accordance with provided estimates that are accepted by the insurer, it is unlawful for any automotive repair dealer, contractor, or employees or agents thereof to knowingly offer or give any discount intended to offset a deductible required by a policy of insurance covering repairs to or replacement of a motor vehicle or residential or commercial structure. This subdivision does not prohibit an advertisement for repair or replacement services at a discount as long as the amount of the repair or replacement claim has been determined by the insurer and the repair or replacement services are performed in accordance with that determination or in accordance with provided estimates that are accepted by the insurer.

(c) A violation of this section is a public offense. Where the amount at issue exceeds nine hundred fifty dollars (\$950), the offense is punishable by imprisonment pursuant to subdivision (h) of Section 1170 for 16 months, or two or three years, by a fine of not more than ten thousand dollars (\$10,000), or by both that imprisonment and fine; or by imprisonment in a county jail not to exceed one year, by a fine of not more than one thousand dollars (\$1,000), or by both that imprisonment and fine. In all other cases, the offense is punishable by imprisonment in a county jail not to exceed six months, by a fine of not more than one thousand dollars (\$1,000), or by both that imprisonment and fine.

(d) Every person who, having been convicted of subdivision (a) or (b), or Section 7027.3 or former Section 9884.75 of the Business and Professions Code and having served a term therefor in any penal institution or having been imprisoned therein as a condition of probation for that offense, is subsequently convicted of subdivision (a) or (b), upon a subsequent conviction of one of those offenses, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 for 16 months, or two or three years, by a fine of not more than ten thousand dollars (\$10,000), or by both that imprisonment and fine; or by imprisonment in a county jail not to exceed one

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year, by a fine of not more than one thousand dollars (\$1,000), or by both that imprisonment and fine.

(e) For purposes of this section:

(1) “Automotive repair dealer” means a person who, for compensation, engages in the business of repairing or diagnosing malfunctions of motor vehicles.

(2) “Contractor” has the same meaning as set forth in Section 7026 of the Business and Professions Code. (Added by Stats. 1992, ch. 675. Amended by Stats. 1993, ch. 462; Stats. 1995, ch. 373; Stats. 2009-2010, 3rd Ex.Sess., ch. 28; Stats. 2011, ch. 15.)

### **§ 633.05 City Attorney—Evidence Obtained by Overhearing or Recording Communications That Could be Lawfully Overheard or Recorded**

(a) Nothing in Section 632, 632.5, 632.6, or 632.7 prohibits a city attorney acting under authority of Section 41803.5 of the Government Code, provided that authority is granted prior to January 1, 2012, or any person acting pursuant to the direction of one of those city attorneys acting within the scope of his or her authority, from overhearing or recording any communication that they could lawfully overhear or record.

(b) Nothing in Section 632, 632.5, 632.6, or 632.7 renders inadmissible any evidence obtained by the above-named persons by means of overhearing or recording any communication that they could lawfully overhear or record. (Added by Stats. 2011, ch. 659.)

### **§ 646 Soliciting Personal Injury Claims with the Intent of Suing Out of State; Offense; Punishment**

It is unlawful for any person with the intent, or for the purpose of instituting a suit thereon outside of this state, to seek or solicit the business of collecting any claim for damages for personal injury sustained within this state, or for death resulting therefrom, with the intention of instituting suit thereon outside of this state, in cases where such right of action rests in a resident of this state, or his legal representative, and is against a person, copartnership, or corporation subject to personal service within this state.

Any person violating any of the provisions of this section is guilty of a misdemeanor, and is punishable by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), by imprisonment in the county jail not less than 30 days nor more than six months, or by both fine and imprisonment at the discretion of the court but within said limits. (Added by Stats. 1953, ch. 32. Amended by Stats. 1983, ch. 1092.)

### **§ 936.5 Special Counsel and Special Investigators—Superior Court Judge May Employ**

(a) When requested to do so by the grand jury of any county, the presiding judge of the superior court may employ special counsel and special investigators, whose duty it shall be to investigate and present the evidence of the investigation to the grand jury.

(b) Prior to the appointment, the presiding judge shall conduct an evidentiary hearing and find that a conflict exists that would prevent the local district attorney, the county counsel, and the Attorney General from performing such investigation. Notice of the hearing shall be given to each of them unless he or she is a subject of the investigation. The finding of the presiding judge may be appealed by the district attorney, the county counsel, or the Attorney General. The order shall be stayed pending the appeal made under this section.

(c) The authority to appoint is contingent upon the certification by the auditor-comptroller of the county, that the grand jury has funds appropriated to it sufficient to compensate the special counsel and investigator for services rendered pursuant to the court order. In the absence of a certification the court has no authority to appoint. In the event the county board of supervisors or a member thereof is under investigation, the county has an obligation to appropriate the necessary funds. (Added by Stats. 1980, ch. 290.)

**§ 939.22** (Added by Stats. 2011, ch. 667, and repealed by its own terms, as of January 1, 2017.)

### **§ 987.2 Assigned Counsel and Public Defenders—Compensation; Multi-County Representation; Recovery of Costs**

(a) In any case in which a person, including a person who is a minor, desires but is unable to employ counsel,

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and in which counsel is assigned in the superior court to represent the person in a criminal trial, proceeding, or appeal, the following assigned counsel shall receive a reasonable sum for compensation and for necessary expenses, the amount of which shall be determined by the court, to be paid out of the general fund of the county:

- (1) In a county or city and county in which there is no public defender.
  - (2) In a county of the first, second, or third class where there is no contract for criminal defense services between the county and one or more responsible attorneys.
  - (3) In a case in which the court finds that, because of a conflict of interest or other reasons, the public defender has properly refused.
  - (4) In a county of the first, second, or third class where attorneys contracted by the county are unable to represent the person accused.
- (b) The sum provided for in subdivision (a) may be determined by contract between the court and one or more responsible attorneys after consultation with the board of supervisors as to the total amount of compensation and expenses to be paid, which shall be within the amount of funds allocated by the board of supervisors for the cost of assigned counsel in those cases.
- (c) In counties that utilize an assigned private counsel system as either the primary method of public defense or as the method of appointing counsel in cases where the public defender is unavailable, the county, the courts, or the local county bar association working with the courts are encouraged to do all of the following:
- (1) Establish panels that shall be open to members of the State Bar of California.
  - (2) Categorize attorneys for panel placement on the basis of experience.
  - (3) Refer cases to panel members on a rotational basis within the level of experience of each panel, except that a judge may exclude an individual attorney from appointment to an individual case for good cause.
  - (4) Seek to educate those panel members through an approved training program.

(d) In a county of the first, second, or third class, the court shall first utilize the services of the public defender to provide criminal defense services for indigent defendants. In the event that the public defender is unavailable and the county and the courts have contracted with one or more responsible attorneys or with a panel of attorneys to provide criminal defense services for indigent defendants, the court shall utilize the services of the county-contracted attorneys prior to assigning any other private counsel. Nothing in this subdivision shall be construed to require the appointment of counsel in any case in which the counsel has a conflict of interest. In the interest of justice, a court may depart from that portion of the procedure requiring appointment of a county-contracted attorney after making a finding of good cause and stating the reasons therefor on the record.

(e) In a county of the first, second, or third class, the court shall first utilize the services of the public defender to provide criminal defense services for indigent defendants. In the event that the public defender is unavailable and the county has created a second public defender and contracted with one or more responsible attorneys or with a panel of attorneys to provide criminal defense services for indigent defendants, and if the quality of representation provided by the second public defender is comparable to the quality of representation provided by the public defender, the court shall next utilize the services of the second public defender and then the services of the county-contracted attorneys prior to assigning any other private counsel. Nothing in this subdivision shall be construed to require the appointment of counsel in any case in which the counsel has a conflict of interest. In the interest of justice, a court may depart from that portion of the procedure requiring appointment of the second public defender or a county-contracted attorney after making a finding of good cause and stating the reasons therefor on the record.

(f) In any case in which counsel is assigned as provided in subdivision (a), that counsel appointed by the court and any court-appointed licensed private investigator shall have the same rights and privileges to information as the public defender and the public defender investigator. It is the intent of the Legislature in enacting this subdivision to equalize any disparity that exists between the ability of private, court-appointed counsel and investigators, and public defenders and public defender investigators, to represent their clients. This subdivision is not intended

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to grant to private investigators access to any confidential Department of Motor Vehicles' information not otherwise available to them. This subdivision is not intended to extend to private investigators the right to issue subpoenas.

(g) Notwithstanding any other provision of this section, where an indigent defendant is first charged in one county and establishes an attorney-client relationship with the public defender, defense services contract attorney, or private attorney, and where the defendant is then charged with an offense in a second or subsequent county, the court in the second or subsequent county may appoint the same counsel as was appointed in the first county to represent the defendant when all of the following conditions are met:

- (1) The offense charged in the second or subsequent county would be joinable for trial with the offense charged in the first if it took place in the same county, or involves evidence which would be cross-admissible.
- (2) The court finds that the interests of justice and economy will be best served by unitary representation.
- (3) Counsel appointed in the first county consents to the appointment.

(h) The county may recover costs of public defender services under Chapter 6 (commencing with Section 4750) of Title 5 of Part 3 for any case subject to Section 4750.

(i) Counsel shall be appointed to represent, in a misdemeanor case, a person who desires but is unable to employ counsel, when it appears that the appointment is necessary to provide an adequate and effective defense for the defendant. Appointment of counsel in an infraction case is governed by Section 19.6.

(j) As used in this section, "county of the first, second, or third class" means the county of the first class, county of the second class, and county of the third class as provided by Sections 28020, 28022, 28023, and 28024 of the Government Code.

(k) This section shall become operative on July 1, 2021. (Added by Stats. 2020, ch. 92, operative July 1, 2021.)

### **§ 1050      Precedence of Criminal Cases; Procedures for Continuances**

(a) The welfare of the people of the State of California requires that all proceedings in criminal cases shall be set for trial and heard and determined at the earliest possible time. To this end, the Legislature finds that the criminal courts are becoming increasingly congested with resulting adverse consequences to the welfare of the people and the defendant. Excessive continuances contribute substantially to this congestion and cause substantial hardship to victims and other witnesses. Continuances also lead to longer periods of presentence confinement for those defendants in custody and the concomitant overcrowding and increased expenses of local jails. It is therefore recognized that the people, the defendant, and the victims and other witnesses have the right to an expeditious disposition, and to that end it shall be the duty of all courts and judicial officers and of all counsel, both for the prosecution and the defense, to expedite these proceedings to the greatest degree that is consistent with the ends of justice. In accordance with this policy, criminal cases shall be given precedence over, and set for trial and heard without regard to the pendency of, any civil matters or proceedings. In further accordance with this policy, death penalty cases in which both the prosecution and the defense have informed the court that they are prepared to proceed to trial shall be given precedence over, and set for trial and heard without regard to the pendency of, other criminal cases and any civil matters or proceedings, unless the court finds in the interest of justice that it is not appropriate.

(b) To continue any hearing in a criminal proceeding, including the trial, (1) a written notice shall be filed and served on all parties to the proceeding at least two court days before the hearing sought to be continued, together with affidavits or declarations detailing specific facts showing that a continuance is necessary and (2) within two court days of learning that he or she has a conflict in the scheduling of any court hearing, including a trial, an attorney shall notify the calendar clerk of each court involved, in writing, indicating which hearing was set first. A party shall not be deemed to have been served within the meaning of this section until that party actually has received a copy of the documents to be served, unless the party, after receiving actual notice of the request for continuance, waives the right to have the documents served in a timely manner. Regardless of the proponent of the

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motion, the prosecuting attorney shall notify the people's witnesses and the defense attorney shall notify the defense's witnesses of the notice of motion, the date of the hearing, and the witnesses' right to be heard by the court.

(c) Notwithstanding subdivision (b), a party may make a motion for a continuance without complying with the requirements of that subdivision. However, unless the moving party shows good cause for the failure to comply with those requirements, the court may impose sanctions as provided in Section 1050.5.

(d) When a party makes a motion for a continuance without complying with the requirements of subdivision (b), the court shall hold a hearing on whether there is good cause for the failure to comply with those requirements. At the conclusion of the hearing, the court shall make a finding whether good cause has been shown and, if it finds that there is good cause, shall state on the record the facts proved that justify its finding. A statement of the finding and a statement of facts proved shall be entered in the minutes. If the moving party is unable to show good cause for the failure to give notice, the motion for continuance shall not be granted.

(e) Continuances shall be granted only upon a showing of good cause. Neither the convenience of the parties nor a stipulation of the parties is in and of itself good cause.

(f) At the conclusion of the motion for continuance, the court shall make a finding whether good cause has been shown and, if it finds that there is good cause, shall state on the record the facts proved that justify its finding. A statement of facts proved shall be entered in the minutes.

(g) (1) When deciding whether or not good cause for a continuance has been shown, the court shall consider the general convenience and prior commitments of all witnesses, including peace officers. Both the general convenience and prior commitments of each witness also shall be considered in selecting a continuance date if the motion is granted. The facts as to inconvenience or prior commitments may be offered by the witness or by a party to the case.

(2) For purposes of this section, "good cause" includes, but is not limited to, those cases involving murder, as defined in subdivision (a) of

Section 187, allegations that stalking, as defined in Section 646.9, a violation of one or more of the sections specified in subdivision (a) of Section 11165.1 or Section 11165.6, or domestic violence as defined in Section 13700, or a case being handled in the Career Criminal Prosecution Program pursuant to Sections 999b through 999h, or a hate crime, as defined in Title 11.6 (commencing with Section 422.6) of Part 1, has occurred and the prosecuting attorney assigned to the case has another trial, preliminary hearing, or motion to suppress in progress in that court or another court. A continuance under this paragraph shall be limited to a maximum of 10 additional court days.

(3) Only one continuance per case may be granted to the people under this subdivision for cases involving stalking, hate crimes, or cases handled under the Career Criminal Prosecution Program. Any continuance granted to the people in a case involving stalking or handled under the Career Criminal Prosecution Program shall be for the shortest time possible, not to exceed 10 court days.

(h) Upon a showing that the attorney of record at the time of the defendant's first appearance in the superior court on an indictment or information is a Member of the Legislature of this state and that the Legislature is in session or that a legislative interim committee of which the attorney is a duly appointed member is meeting or is to meet within the next seven days, the defendant shall be entitled to a reasonable continuance not to exceed 30 days.

(i) A continuance shall be granted only for that period of time shown to be necessary by the evidence considered at the hearing on the motion. Whenever any continuance is granted, the court shall state on the record the facts proved that justify the length of the continuance, and those facts shall be entered in the minutes.

(j) Whenever it shall appear that any court may be required, because of the condition of its calendar, to dismiss an action pursuant to Section 1382, the court must immediately notify the Chair of the Judicial Council.

(k) This section shall not apply when the preliminary examination is set on a date less than 10 court days from the date of the defendant's arraignment on the

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complaint, and the prosecution or the defendant moves to continue the preliminary examination to a date not more than 10 court days from the date of the defendant's arraignment on the complaint.

(l) This section is directory only and does not mandate dismissal of an action by its terms. (Added by Stats. 1927, ch. 600. Amended by Stats. 1945, ch. 1512; Stats. 1959, ch. 1693; Stats. 1977, ch. 316; Stats. 1977, ch. 1152; Stats. 1977, ch. 1257; Stats. 1982, ch. 952; Stats. 1985, ch. 949; Stats. 1986, ch. 1172; Stats. 1987, ch. 461; Stats. 1989, ch. 897; Stats. 1997, ch. 69; Stats. 1998, ch. 61; Stats. 1998, ch. 931; Stats. 1998, ch. 931; Stats. 1999, ch. 382; Stats. 1999, ch. 580; Stats. 2000, ch. 268; Stats. 2002, ch. 784; Stats. 2002, ch. 788; Stats. 2003, ch. 133.)

### **§ 1050.5 Sanctions for Failure to Comply With Notice Requirements for Continuances**

(a) When, pursuant to subdivision (c) of Section 1050, the court imposes sanctions for failure to comply with the provisions of subdivision (b) of Section 1050, the court may impose one or both of the following sanctions when the moving party is the prosecuting or defense attorney:

- (1) A fine not exceeding one thousand dollars (\$1,000) upon counsel for the moving party.
- (2) The filing of a report with an appropriate disciplinary committee.

(b) The authority to impose sanctions provided for by this section shall be in addition to any other authority or power available to the court, except that the court or magistrate shall not dismiss the case. (Added by Stats. 1985, ch. 949. Amended by Stats. 2003, ch. 133.)

### **§ 1424 Disqualification of the District Attorney**

(a) (1) Notice of a motion to disqualify a district attorney from performing an authorized duty shall be served on the district attorney and the Attorney General at least 10 court days before the motion is heard. The notice of motion shall contain a statement of the facts setting forth the grounds for the claimed disqualification and the legal authorities relied upon by the moving party and shall be supported by affidavits of witnesses

who are competent to testify to the facts set forth in the affidavit. The district attorney or the Attorney General, or both, may file affidavits in opposition to the motion and may appear at the hearing on the motion and may file with the court hearing the motion a written opinion on the disqualification issue. The judge shall review the affidavits and determine whether or not an evidentiary hearing is necessary. The motion may not be granted unless the evidence shows that a conflict of interest exists that would render it unlikely that the defendant would receive a fair trial. An order recusing the district attorney from any proceeding may be reviewed by extraordinary writ or may be appealed by the district attorney or the Attorney General. The order recusing the district attorney shall be stayed pending any review authorized by this section. If the motion is brought at or before the preliminary hearing, it may not be renewed in the trial court on the basis of facts that were raised or could have been raised at the time of the original motion.

(2) An appeal from an order of recusal or from a case involving a charge punishable as a felony shall be made pursuant to Chapter 1 (commencing with Section 1235) of Title 9, regardless of the court in which the order is made. An appeal from an order of recusal in a misdemeanor case shall be made pursuant to Chapter 2 (commencing with Section 1466) of Title 11, regardless of the court in which the order is made.

- (b) (1) Notice of a motion to disqualify a city attorney or city prosecutor from performing an authorized duty involving a criminal matter shall be served on the city attorney or city prosecutor and the district attorney at least 10 court days before the motion is heard. The notice of motion shall set forth a statement of the facts relevant to the claimed disqualification and the legal authorities relied on by the moving party. The district attorney may appear at the hearing on the motion and may file with the court hearing the motion a written opinion on the disqualification issue. The motion may not be granted unless the evidence shows that a conflict of interest exists that would render it unlikely that the defendant would receive a fair trial.
- (2) An order recusing the city attorney or city prosecutor from a proceeding may be appealed by



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the city attorney or city prosecutor or the district attorney. The order recusing the city attorney or city prosecutor shall be stayed pending an appeal authorized by this section. An appeal from an order of disqualification in a misdemeanor case shall be made pursuant to Chapter 2 (commencing with Section 1466) of Title 11.

- (c) Motions to disqualify the city attorney or city prosecutor and the district attorney shall be separately made. (Added by Stats. 1996, ch. 91. Amended by Stats. 1998, ch. 931; Stats. 1999, ch. 363; Stats. 2017, ch. 299.)

### **§ 1424.5 Deliberate and Intentional Withholding of Relevant, Material Exculpatory Evidence or Information**

- (a) (1) Upon receiving information that a prosecuting attorney may have deliberately and intentionally withheld relevant, material exculpatory evidence or information in violation of law, a court may make a finding, supported by clear and convincing evidence, that a violation occurred. If the court finds such a violation, the court shall inform the State Bar of California of that violation if the prosecuting attorney acted in bad faith and the impact of the withholding 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.
- (2) A court may hold a hearing to consider whether a violation occurred pursuant to paragraph (1).
- (b) (1) If a court finds, pursuant to subdivision (a), that a violation occurred in bad faith, the court may disqualify an individual prosecuting attorney from a case.
- (2) Upon a determination by a court to disqualify an individual prosecuting attorney pursuant to paragraph (1), the defendant or his or her counsel may file and serve a notice of a motion pursuant to Section 1424 to disqualify the prosecuting attorney's office if there is sufficient evidence that other employees of the prosecuting attorney's office knowingly and in bad faith participated in or sanctioned the intentional withholding of the relevant, material exculpatory

evidence or information and that withholding is part of a pattern and practice of violations.

- (c) This section does not limit the authority or discretion of, or any requirement placed upon, the court or other individuals to make reports to the State Bar of California regarding the same conduct, or otherwise limit other available legal authority, requirements, remedies, or actions. (Added by Stats. 2015, ch. 467. Amended by Stats. 2016, ch. 59.)

### **§ 1524 Search Warrant; Special Master; Attorney Work Product**

- (a) A search warrant may be issued upon any of the following grounds:

- (1) When the property was stolen or embezzled.
- (2) When the property or things were used as the means of committing a felony.
- (3) When the property or things are in the possession of any person with the intent to use them as a means of committing a public offense, or in the possession of another to whom that person may have delivered them for the purpose of concealing them or preventing them from being discovered.
- (4) When the property or things to be seized consist of an item or constitute evidence that tends to show a felony has been committed, or tends to show that a particular person has committed a felony.
- (5) When the property or things to be seized consist of evidence that tends to show that sexual exploitation of a child, in violation of Section 311.3, or possession of matter depicting sexual conduct of a person under 18 years of age, in violation of Section 311.11, has occurred or is occurring.
- (6) When there is a warrant to arrest a person.
- (7) When a provider of electronic communication service or remote computing service has records or evidence, as specified in Section 1524.3, showing that property was stolen or embezzled constituting a misdemeanor, or that property or things are in the possession of any person with the intent to use them as a means of committing a

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misdemeanor public offense, or in the possession of another to whom that person may have delivered them for the purpose of concealing them or preventing their discovery.

(8) When the property or things to be seized include an item or evidence that tends to show a violation of Section 3700.5 of the Labor Code, or tends to show that a particular person has violated Section 3700.5 of the Labor Code.

(9) When the property or things to be seized include a firearm or other deadly weapon at the scene of, or at the premises occupied or under the control of the person arrested in connection with, a domestic violence incident involving a threat to human life or a physical assault as provided in Section 18250. This section does not affect warrantless seizures otherwise authorized by Section 18250.

(10) When the property or things to be seized include a firearm or other deadly weapon that is owned by, or in the possession of, or in the custody or control of, a person described in subdivision (a) of Section 8102 of the Welfare and Institutions Code.

(11) When the property or things to be seized include a firearm that is owned by, or in the possession of, or in the custody or control of, a person who is subject to the prohibitions regarding firearms pursuant to Section 6389 of the Family Code, if a prohibited firearm is possessed, owned, in the custody of, or controlled by a person against whom a protective order has been issued pursuant to Section 6218 of the Family Code, the person has been lawfully served with that order, and the person has failed to relinquish the firearm as required by law.

(12) When the information to be received from the use of a tracking device constitutes evidence that tends to show that either a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code has been committed or is being committed, tends to show that a particular person has committed a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code, or is committing a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor

violation of the Public Resources Code, or will assist in locating an individual who has committed or is committing a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code. A tracking device search warrant issued pursuant to this paragraph shall be executed in a manner meeting the requirements specified in subdivision (b) of Section 1534.

(13) When a sample of the blood of a person constitutes evidence that tends to show a violation of Section 23140, 23152, or 23153 of the Vehicle Code and the person from whom the sample is being sought has refused an officer's request to submit to, or has failed to complete, a blood test as required by Section 23612 of the Vehicle Code, and the sample will be drawn from the person in a reasonable, medically approved manner. This paragraph is not intended to abrogate a court's mandate to determine the propriety of the issuance of a search warrant on a case-by-case basis.

(14) Beginning January 1, 2016, the property or things to be seized are firearms or ammunition or both that are owned by, in the possession of, or in the custody or control of a person who is the subject of a gun violence restraining order that has been issued pursuant to Division 3.2 (commencing with Section 18100) of Title 2 of Part 6, if a prohibited firearm or ammunition or both is possessed, owned, in the custody of, or controlled by a person against whom a gun violence restraining order has been issued, the person has been lawfully served with that order, and the person has failed to relinquish the firearm as required by law.

(15) Beginning January 1, 2018, the property or things to be seized include a firearm that is owned by, or in the possession of, or in the custody or control of, a person who is subject to the prohibitions regarding firearms pursuant to Section 29800 or 29805, and the court has made a finding pursuant to subdivision (c) of Section 29810 that the person has failed to relinquish the firearm as required by law.

(16) When the property or things to be seized are controlled substances or a device, contrivance, instrument, or paraphernalia used for unlawfully using or administering a controlled substance

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pursuant to the authority described in Section 11472 of the Health and Safety Code.

(17) (A) When all of the following apply:

(i) A sample of the blood of a person constitutes evidence that tends to show a violation of subdivision (b), (c), (d), (e), or (f) of Section 655 of the Harbors and Navigation Code.

(ii) The person from whom the sample is being sought has refused an officer's request to submit to, or has failed to complete, a blood test as required by Section 655.1 of the Harbors and Navigation Code.

(iii) The sample will be drawn from the person in a reasonable, medically approved manner.

(B) This paragraph is not intended to abrogate a court's mandate to determine the propriety of the issuance of a search warrant on a case-by-case basis.

(18) When the property or things to be seized consists of evidence that tends to show that a violation of paragraph (1), (2), or (3) of subdivision (j) of Section 647 has occurred or is occurring.

(19) (A) When the property or things to be seized are data, from a recording device installed by the manufacturer of a motor vehicle, that constitutes evidence that tends to show the commission of a felony or misdemeanor offense involving a motor vehicle, resulting in death or serious bodily injury to any person. The data accessed by a warrant pursuant to this paragraph shall not exceed the scope of the data that is directly related to the offense for which the warrant is issued.

(B) For the purposes of this paragraph, "recording device" has the same meaning as defined in subdivision (b) of Section 9951 of the Vehicle Code. The scope of the data accessible by a warrant issued pursuant to this paragraph shall be limited to the information described in subdivision (b) of Section 9951 of the Vehicle Code.

(C) For the purposes of this paragraph, "serious bodily injury" has the same meaning as defined in paragraph (4) of subdivision (f) of Section 243 of the Penal Code.

(20) When the property or things to be seized consists of evidence that tends to show that a violation of Section 647.9 has occurred or is occurring. Evidence to be seized pursuant to this paragraph shall be limited to evidence of a violation of Section 647.9 and shall not include evidence of a violation of a departmental rule or guideline that is not a public offense under California law.

(b) The property, things, person, or persons described in subdivision (a) may be taken on the warrant from any place, or from any person in whose possession the property or things may be.

(c) Notwithstanding subdivision (a) or (b), a search warrant shall not be issued for any documentary evidence in the possession or under the control of any person who is a lawyer as defined in Section 950 of the Evidence Code, a physician as defined in Section 990 of the Evidence Code, a psychotherapist as defined in Section 1010 of the Evidence Code, or a member of the clergy as defined in Section 1030 of the Evidence Code, and who is not reasonably suspected of engaging or having engaged in criminal activity related to the documentary evidence for which a warrant is requested unless the following procedure has been complied with:

(1) At the time of the issuance of the warrant, the court shall appoint a special master in accordance with subdivision (d) to accompany the person who will serve the warrant. Upon service of the warrant, the special master shall inform the party served of the specific items being sought and that the party shall have the opportunity to provide the items requested. If the party, in the judgment of the special master, fails to provide the items requested, the special master shall conduct a search for the items in the areas indicated in the search warrant.

(2) (A) If the party who has been served states that an item or items should not be disclosed, they shall be sealed by the special master and taken to court for a hearing.

(B) At the hearing, the party searched shall be entitled to raise any issues that may be

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raised pursuant to Section 1538.5 as well as a claim that the item or items are privileged, as provided by law. The hearing shall be held in the superior court. The court shall provide sufficient time for the parties to obtain counsel and make motions or present evidence. The hearing shall be held within three days of the service of the warrant unless the court makes a finding that the expedited hearing is impracticable. In that case, the matter shall be heard at the earliest possible time.

(C) If an item or items are taken to court for a hearing, any limitations of time prescribed in Chapter 2 (commencing with Section 799) of Title 3 of Part 2 shall be tolled from the time of the seizure until the final conclusion of the hearing, including any associated writ or appellate proceedings.

(3) The warrant shall, whenever practicable, be served during normal business hours. In addition, the warrant shall be served upon a party who appears to have possession or control of the items sought. If, after reasonable efforts, the party serving the warrant is unable to locate the person, the special master shall seal and return to the court, for determination by the court, any item that appears to be privileged as provided by law.

- (d) (1) As used in this section, a "special master" is an attorney who is a member in good standing of the California State Bar and who has been selected from a list of qualified attorneys that is maintained by the State Bar particularly for the purposes of conducting the searches described in this section. These attorneys shall serve without compensation. A special master shall be considered a public employee, and the governmental entity that caused the search warrant to be issued shall be considered the employer of the special master and the applicable public entity, for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, relating to claims and actions against public entities and public employees. In selecting the special master, the court shall make every reasonable effort to ensure that the person selected has no relationship with any of the parties involved in the pending matter. Information obtained by the special master shall

be confidential and may not be divulged except in direct response to inquiry by the court.

(2) In any case in which the magistrate determines that, after reasonable efforts have been made to obtain a special master, a special master is not available and would not be available within a reasonable period of time, the magistrate may direct the party seeking the order to conduct the search in the manner described in this section in lieu of the special master.

(e) Any search conducted pursuant to this section by a special master may be conducted in a manner that permits the party serving the warrant or that party's designee to accompany the special master as the special master conducts the search. However, that party or that party's designee may not participate in the search nor shall they examine any of the items being searched by the special master except upon agreement of the party upon whom the warrant has been served.

(f) As used in this section, "documentary evidence" includes, but is not limited to, writings, documents, blueprints, drawings, photographs, computer printouts, microfilms, x-rays, files, diagrams, ledgers, books, tapes, audio and video recordings, films, and papers of any type or description.

(g) No warrant shall issue for any item or items described in Section 1070 of the Evidence Code.

(h) No warrant shall issue for any item or items that pertain to an investigation into a prohibited violation, as defined in Section 629.51.

(i) Notwithstanding any other law, no claim of attorney work product as described in Chapter 4 (commencing with Section 2018.010) of Title 4 of Part 4 of the Code of Civil Procedure shall be sustained where there is probable cause to believe that the lawyer is engaging or has engaged in criminal activity related to the documentary evidence for which a warrant is requested unless it is established at the hearing with respect to the documentary evidence seized under the warrant that the services of the lawyer were not sought or obtained to enable or aid anyone to commit or plan to commit a crime or a fraud.

(j) Nothing in this section is intended to limit an attorney's ability to request an in-camera hearing

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pursuant to the holding of the Supreme Court of California in *People v. Superior Court (Laff)* (2001) 25 Cal.4th 703.

(k) In addition to any other circumstance permitting a magistrate to issue a warrant for a person or property in another county, when the property or things to be seized consist of any item or constitute evidence that tends to show a violation of Section 530.5, the magistrate may issue a warrant to search a person or property located in another county if the person whose identifying information was taken or used resides in the same county as the issuing court.

(l) This section shall not be construed to create a cause of action against any foreign or California corporation, its officers, employees, agents, or other specified persons for providing location information. (Enacted in 1872. Amended by Stats. 1899, ch. 72; Stats. 1957, ch. 1884; Stats. 1978, ch. 1054; Stats. 1979, ch. 1034; Stats. 1980, ch. 441; Stats. 1982, ch. 438; Stats. 1996, ch. 1078; Stats. 1996, ch. 1079; Stats. 2002, ch. 864; Stats. 2002, ch. 1059; Stats. 2003, ch. 137; Stats. 2004, ch. 182; Stats. 2003-2004 Ex.Sess., ch. 2, effective March 1, 2005; Stats. 2005, ch. 279; Stats. 2005, ch. 294; Stats. 2006, ch. 538; Stats. 2009, ch. 450; Stats. 2009, ch. 473; Stats. 2010, ch. 178; Stats. 2012, ch. 818; Stats. 2013, ch. 317; Stats. 2014, ch. 872; Stats. 2015, ch. 124; Initiative Measure (Prop. 63, § 10.1, approved Nov. 8, 2016, eff. Nov. 9, 2016); Stats. 2017, ch. 342; Stats. 2019, ch. 196; Stats. 2020, ch. 219; Stats. 2022, ch. 627.)

### **§ 1525 Search Warrant; Probable Cause**

A search warrant cannot be issued but upon probable cause, supported by affidavit, naming or describing the person to be searched or searched for, and particularly describing the property, thing, or things and the place to be searched.

The application shall specify when applicable, that the place to be searched is in the possession or under the control of an attorney, physician, psychotherapist or clergyman. (Enacted 1872. Amended by Stats. 1979, ch. 1034; Stats. 1996, ch. 1078.)

### **§ 5065.5 Sale of Crime Story by Convicted Criminal Offender; Notification of California Department of Corrections and Rehabilitation and Notification of Victim**

(a) A person or entity that enters into a contract with a criminal offender for the sale of the story of a crime for which the offender was convicted shall notify the California Department of Corrections and Rehabilitation that the parties have entered into a contract for sale of the offender's story if both of the following conditions are met:

(1) The offender's conviction was for any offense specified in paragraph (1), except voluntary manslaughter, (2), (3), (4), (5), (6), (7), (9), (16), (17), (20), (22), (25), (34), or (35) of subdivision (c) of Section 1192.7.

(2) Subdivision (b) of Section 340.3 of the Code of Civil Procedure does not preclude commencement of a civil action against the criminal offender.

(b) Within 90 days of being notified, the California Department of Corrections and Rehabilitation shall notify the victim, or if the victim cannot be reasonably notified, a member of the victim's immediate family, who has requested notification of the existence of a contract described by this section.

(c) For purposes of this section, "member of the victim's immediate family" means a spouse, child, parent, sibling, grandchild, or grandparent. (Added by Stats. 2015, ch. 465. Amended by Stats. 2016, ch. 86.)

### **§ 14150 Alternative Dispute Resolution Programs**

The Legislature hereby finds and declares:

(a) Over the last 10 years, criminal case filings, including misdemeanor filings, have been increasing faster than any other type of filing in California's courts. Between 1981 and 1991, nontraffic misdemeanor and infraction filings in municipal and justice courts increased by 35 percent.

(b) These misdemeanor cases add to the workload which is now straining the California court system. In addition, many of these cases are ill-suited to

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complete resolution through the criminal justice system because they involve underlying disputes which may result in continuing conflict and criminal conduct within the community.

(c) Many victims of misdemeanor criminal conduct feel excluded from the criminal justice process. Although they were the direct victims of the offenders' criminal conduct, the process does not currently provide them with a direct role in holding the offender accountable for this conduct.

(d) Community conflict resolution programs utilizing alternative dispute resolution (ADR) processes such as mediation and arbitration have been effectively used in California and elsewhere to resolve conflicts involving conduct that could be charged as a misdemeanor. These programs can assist in reducing the number of cases burdening the court system. By utilizing ADR processes, these programs also provide an opportunity for direct participation by the victims of the conduct, thereby increasing victims' satisfaction with the criminal justice process. In addition, by bringing the parties together, these programs may reduce conflict within the community by facilitating the settlement of disputes which are causing repeated misdemeanor criminal conduct and may increase compliance with restitution agreements by encouraging the offender to accept personal responsibility.

(e) As of the effective date of this section, the San Francisco and Contra Costa district attorney offices refer between 1,000 and 1,500 cases per year involving conduct which could be charged as a misdemeanor to California Community Dispute Services, which provides ADR services. Between 70 and 75 percent of these cases are successfully resolved through the ADR process, and the rate of compliance with the agreements reached is between 80 and 93 percent.

(f) The State of New York has developed a substantial statewide alternative dispute resolution program in which 65 percent of the cases using the services are of a criminal nature. These cases are referred to arbitration, conciliation, and mediation. Of the criminal misdemeanor cases that were mediated, 82 percent reached an agreement through the mediation process.

(g) It is in the public interest for community dispute resolution programs to be established to provide ADR

services in cases involving conduct which could be charged as a misdemeanor and for district attorneys and courts to be authorized to refer cases to these programs. (Added by Stats. 1992, ch. 696.)

### **§ 14151 District Attorney Establishment of Program Providing Alternative Dispute Resolution**

The district attorney may establish a community conflict resolution program pursuant to this title to provide alternative dispute resolution (ADR) services, such as mediation, arbitration, or a combination of both mediation and arbitration (med-arb) in cases, including those brought by a city prosecutor, involving conduct which could be charged as a misdemeanor. The district attorney may contract with a private entity to provide these services and may establish minimum training requirements for the neutral persons conducting the ADR processes. (Added by Stats. 1992, ch. 696.)

### **§ 14152 District Attorney Referral of Potential Misdemeanor Cases**

(a) The district attorney may refer cases involving conduct which could be charged as a misdemeanor to the community conflict resolution program. In determining whether to refer a case to the community conflict resolution program, the district attorney shall consider, but is not limited to considering, all of the following:

- (1) The nature of the conduct in question.
- (2) The nature of the relationship between the alleged victim and the person alleged to have committed the conduct.
- (3) Whether referral to the community conflict resolution program is likely to help resolve underlying issues which are likely to result in additional conduct which could be the subject of criminal charges.

(b) No case where there has been a history of child abuse, sexual assault, or domestic violence, as that term is defined in Section 6211 of the Family Code, between the alleged victim and the person alleged to have committed the conduct, or where a protective

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order, as defined in Section 6218 of the Family Code, is in effect, shall be referred to the community conflict resolution program. (Added by Stats. 1992, ch. 696. Amended by Stats. 1993, ch. 219.)

### **§ 14153 Consent to Participate in Alternative Dispute Resolution**

Both the alleged victim and the person alleged to have committed the conduct shall knowingly and voluntarily consent to participate in the ADR process conducted by the community conflict resolution program. (Added by Stats. 1992, ch. 696.)

### **§ 14154 Court Referral of Misdemeanor Cases**

In a county in which the district attorney has established a community conflict resolution program, the superior court may, with the consent of the district attorney and the defendant, refer misdemeanor cases, including those brought by a city prosecutor, to that program. In determining whether to refer a case to the community conflict resolution program, the court shall consider, but is not limited to considering, all of the following:

- (a) The factors listed in Section 14152.
- (b) Any other referral criteria established by the district attorney for the program.

The court shall not refer any case to the community conflict resolution program which was previously referred to that program by the district attorney. (Added by Stats. 1992, ch. 696. Amended by Stats. 1998, ch. 931; Stats. 2002, ch. 784.)

### **§ 14155 Referral of Case Back to District Attorney or Court; Recommendation for Prosecution or Dismissal**

- (a) If the alleged victim or the person alleged to have committed the conduct does not agree to participate in the community conflict resolution program or the case is not resolved through the ADR process provided by that program, the community conflict resolution program shall promptly refer the case back to the district attorney or to the court that made the referral for appropriate action.

- (b) If the community conflict resolution program determines that a case referred to it prior to the filing of a complaint has been resolved through that referral, the program shall recommend to the district attorney that the case not be prosecuted.

- (c) If a case referred to the community conflict resolution program after the filing of a complaint but prior to adjudication is resolved through that referral, the court may dismiss the action pursuant to Section 1378 or 1385. (Added by Stats. 1992, ch. 696.)

### **§ 14156 Effect of Title on Other Programs**

It is the intent of the Legislature that neither this title nor any other provision of law be construed to preempt other precomplaint or pretrial diversion programs. It is also the intent of the Legislature that this title not preempt other posttrial diversion programs. (Added by Stats. 1992, ch. 696.)

## POLITICAL REFORM ACT

### **§ 82011 Code Reviewing Body**

“Code reviewing body” means all of the following:

- (a) The commission, with respect to the conflict of interest code of a state agency other than an agency in the judicial branch of government, or any local government agency with jurisdiction in more than one county.
- (b) The board of supervisors, with respect to the conflict of interest code of any county agency other than the board of supervisors, or any agency of the judicial branch of government, and of any local government agency, other than a city agency, with jurisdiction wholly within the county.
- (c) The city council, with respect to the conflict of interest code of any city agency other than the city council.
- (d) The Attorney General, with respect to the conflict of interest code of the commission.
- (e) The Chief Justice of California or the Chief Justice’s designee, with respect to the conflict of interest code of the members of the Judicial Council,

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Commission on Judicial Performance, and Board of Governors of the State Bar of California.

(f) The Board of Governors of the State Bar of California with respect to the conflict of interest code of the State Bar of California.

(g) The Chief Justice of California, the administrative presiding judges of the courts of appeal, and the presiding judges of superior courts, or their designees, with respect to the conflict of interest code of any agency of the judicial branch of government subject to the immediate administrative supervision of that court.

(h) The Judicial Council of California, with respect to the conflict of interest code of any state agency within the judicial branch of government not included under subdivisions (e), (f), and (g). (Added by initiative measure adopted June 4, 1974, effective January 7, 1975. Amended by Stats. 1980, ch. 779; Stats. 1984, ch. 727, effective July 1, 1985; Stats. 1985, ch. 775; Stats. 1995, ch. 587; Stats. 2003, ch. 62; Stats. 2021, ch. 50.)

**[Publisher's Note re Political Reform Act § 82011:** *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" are deemed to refer to the "board of trustees."*]

### § 82019 Designated Employee

(a) "Designated employee" means any officer, employee, member, or consultant of any agency whose position with the agency:

(1) Is exempt from the state civil service system by virtue of subdivision (a), (c), (d), (e), (f), (g), or (m) of Section 4 of Article VII of the Constitution, unless the position is elective or solely secretarial, clerical, or manual.

(2) Is elective, other than an elective state office.

(3) Is designated in a Conflict of Interest Code because the position entails the making or participation in the making of decisions which may

foreseeably have a material effect on any financial interest.

(4) Is involved as a state employee at other than a clerical or ministerial level in the functions of negotiating or signing any contract awarded through competitive bidding, in making decisions in conjunction with the competitive bidding process, or in negotiating, signing, or making decisions on contracts executed pursuant to Section 10122 of the Public Contract Code.

(b) (1) "Designated employee" does not include an elected state officer, any unsalaried member of any board or commission which serves a solely advisory function, any public official specified in Section 87200, and also does not include any unsalaried member of a nonregulatory committee, section, commission, or other such entity of the State Bar of California.

(2) "Designated employee" does not include a federal officer or employee serving in an official federal capacity on a state or local government agency. The state or local government agency shall annually obtain, and maintain in its files for public inspection, a copy of any public financial disclosure report filed by the federal officer or employee pursuant to federal law. (Added by initiative measure adopted June 4, 1974, effective January 7, 1975. Amended by Stats. 1979, ch. 674; Stats. 1983, ch. 1108, effective September 28, 1983; Stats. 1984, ch. 727, effective July 1, 1985; Stats. 1985, ch. 611; Stats. 2004, ch. 484.)

### § 82041 Local Government Agency

"Local government agency" means a county, city or district of any kind including school district, or any other local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency of the foregoing. (Added by initiative measure adopted June 4, 1974, effective January 7, 1975. Amended by Stats. 1984, ch. 727, effective July 1, 1985.)

### § 82048 Public Official

(a) "Public official" means every member, officer, employee or consultant of a state or local government agency.



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(b) Notwithstanding subdivision (a), “public official” does not include the following:

- (1) A judge or court commissioner in the judicial branch of government.
- (2) A member of the Board of Governors and designated employees of the State Bar of California.
- (3) A member of the Judicial Council.
- (4) A member of the Commission on Judicial Performance, provided that the member is subject to the provisions of Article 2.5 (commencing with Section 6035) of Chapter 4 of Division 3 of the Business and Professions Code as provided in Section 6038 of that article.
- (5) A federal officer or employee serving in an official federal capacity on a state or local government agency. (Added by initiative measure adopted June 4, 1974, effective January 7, 1975. Amended by Stats. 1984, ch. 727; effective July 1, 1985; Stats. 2004, ch. 484; Stats. 2021, ch. 50.)

**[Publisher’s Note re Political Reform Act § 82048:** 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” are deemed to refer to the “board of trustees.”]

### § 82049 State Agency

“State agency” means every state office, department, division, bureau, board and commission, and the Legislature. (Added by initiative measure adopted June 4, 1974. Amended by Stats. 1984, ch. 727, effective July 1, 1985.)

### § 87311.5 Applicability of Administrative Procedure Act: Local Procedures

(a) Notwithstanding the provisions of Section 87311, the review of the Conflict of Interest Code of an agency in the judicial branch of government shall not be subject to the provisions of the Administrative Procedure Act [Gov. Code, 11370 et seq.]. The review

and preparation of Conflict of Interest Codes by these agencies shall be carried out under procedures which guarantee to officers, employees, members, and consultants of the agency and to residents of the jurisdiction adequate notice and a fair opportunity to present their views.

(b) Conflict of Interest Codes of the Judicial Council, the Commission on Judicial Performance, and the Board of Governors and designated employees of the State Bar of California shall not be subject to the provisions of subdivision (c) of Section 87302. (Added by Stats. 1984, ch. 727, effective July 1, 1985.)

**[Publisher’s Note re Political Reform Act § 87311.5:** 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” are deemed to refer to the “board of trustees.”]

### § 91013 Late Filing of Statement of Economic Interest; Penalties

(a) If any person files an original statement or report after any deadline imposed by this act, the person shall, in addition to any other penalties or remedies established by this act, be liable in the amount of ten dollars (\$10) per day after the deadline until the statement or report is filed, to the officer with whom the statement or report is required to be filed. Liability need not be enforced by the filing officer if on an impartial basis the filing officer determines that the late filing was not willful and that enforcement of the liability will not further the purposes of the act, except that no liability shall be waived if a statement or report is not filed within 30 days for a statement of economic interest, other than a candidate’s statement filed pursuant to Section 87201, five days for a campaign statement required to be filed 12 days before an election, and 10 days for all other statements or reports, after the filing officer has sent specific written notice of the filing requirement.

(b) If any person files a copy of a statement or report after any deadline imposed by this act, the person shall, in addition to any other penalties or remedies established by this chapter, be liable in the amount of

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ten dollars (\$10) per day, starting 10 days, or 5 days in the case of a campaign statement required to be filed 12 days before an election, after the officer has sent specific written notice of the filing requirement and until the statement is filed.

(c) The officer shall deposit any funds received under this section into the general fund of the jurisdiction of which the filing officer is an officer. Liability under this section shall not exceed the cumulative amount stated in the late statement or report, or one hundred dollars (\$100), whichever is greater. (Added by initiative measure June 4, 1974, effective January 7, 1975. Amended by Stats. 1975, ch. 915, effective September 20, 1975; Stats. 1977, ch. 555; Stats. 1985, ch. 1200; Stats. 1993, ch. 1140; Stats. 2021, ch. 50.)

### § 91013.5 Collection of Unpaid Penalties

(a) In addition to any other available remedies, the commission or the filing officer may bring a civil action and obtain a judgment in superior court for the purpose of collecting any unpaid monetary penalties, fees, or civil penalties imposed pursuant to this title. The action may be filed as a small claims, limited civil, or unlimited civil case, depending on the jurisdictional amount. The venue for this action shall be in the county where the monetary penalties, fees, or civil penalties were imposed by the commission or the filing officer. In order to obtain a judgment in a proceeding under this section, the commission or filing officer shall show, following the procedures and rules of evidence as applied in ordinary civil actions, all of the following:

(1) That the monetary penalties, fees, or civil penalties were imposed following the procedures set forth in this title and implementing regulations.

(2) That the defendant or defendants in the action were notified, by actual or constructive notice, of the imposition of the monetary penalties, fees, or civil penalties.

(3) That a demand for payment has been made by the commission or the filing officer and full payment has not been received.

(b) A civil action brought pursuant to subdivision (a) shall be commenced within four years after the date on which the monetary penalty, fee, or civil penalty was

imposed. (Added by Stats. 1984, ch. 670. Amended by Stats. 2004, ch. 483.)

### § 91013.7 Application for Judgment to Collect Penalties

(a) If the time for judicial review of a final Commission order or decision has lapsed, or if all means of judicial review of the order or decision have been exhausted, the Commission may apply to the clerk of the court for a judgment to collect the penalties imposed by the order or decision, or the order as modified in accordance with a decision on judicial review.

(b) The application, which shall include a certified copy of the order or decision, or the order as modified in accordance with a decision on judicial review, and proof of service of the order or decision, constitutes a sufficient showing to warrant issuance of the judgment to collect the penalties. The clerk of the court shall enter the judgment immediately in conformity with the application.

(c) An application made pursuant to this section shall be made to the clerk of the superior court in the county where the monetary penalties, fees, or civil penalties were imposed by the Commission.

(d) A judgment entered in accordance with this section has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in a civil action and may be enforced in the same manner as any other judgment of the court in which it is entered.

(e) The Commission may bring an application pursuant to this section only within four years after the date on which the monetary penalty, fee, or civil penalty was imposed.

(f) The remedy available under this section is in addition to those available under Section 91013.5 or any other law. (Added by Stats. 2013, ch. 645.)

## PROBATE CODE

### § 86 Undue Influence Defined

“Undue influence” has the same meaning as defined in Section 15610.70 of the Welfare and Institutions

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Code. It is the intent of the Legislature that this section supplement the common law meaning of undue influence without superseding or interfering with the operation of that law. (Added by Stats. 2013, ch. 668.)

### **§ 700 Definitions for This Chapter**

Unless the provision or context otherwise requires, the definitions in this chapter govern the construction of this part. (Added by Stats. 1993, ch. 519.)

### **§ 701 Attorney Defined**

“Attorney” means an individual licensed to practice law in this state. (Added by Stats. 1993, ch. 519.)

### **§ 702 Deposit Defined**

“Deposit” means delivery of a document by a depositor to an attorney for safekeeping or authorization by a depositor for an attorney to retain a document for safekeeping. (Added by Stats. 1993, ch. 519.)

### **§ 703 Depositor Defined**

“Depositor” means a natural person who deposits the person’s document with an attorney. (Added by Stats. 1993, ch. 519.)

### **§ 704 Document Defined**

“Document” means any of the following:

- (a) A signed original will, declaration of trust, trust amendment, or other document modifying a will or trust.
- (b) A signed original power of attorney.
- (c) A signed original nomination of conservator.
- (d) Any other signed original instrument that the attorney and depositor agree in writing to make subject to this part. (Added by Stats. 1993, ch. 519.)

### **§ 710 Preservation of Documents Transferred to Attorney**

If a document is deposited with an attorney, the attorney, and a successor attorney that accepts transfer of the document, shall use ordinary care for preservation of the document on and after July 1, 1994, whether or not consideration is given, and shall hold the document in a safe, vault, safe deposit box, or other secure place where it will be reasonably protected against loss or destruction. (Added by Stats. 1993, ch. 519.)

### **§ 711 Notice of Loss or Destruction of Document**

If a document deposited with an attorney is lost or destroyed, the attorney shall give notice of the loss or destruction to the depositor by one of the following methods:

- (a) By delivering pursuant to Section 1215 the notice to the depositor’s last known address.
- (b) By the method most likely to give the depositor actual notice. (Added by Stats. 1993, ch. 519. Amended by Stats. 2017, ch. 319.)

### **§ 712 Liability for Lost or Destroyed Document**

Notwithstanding failure of an attorney to satisfy the standard of care required by Section 710 or 716, the attorney is not liable for loss or destruction of the document if the depositor has actual notice of the loss or destruction and a reasonable opportunity to replace the document, and the attorney offers without charge either to assist the depositor in replacing the document, or to prepare a substantially similar document and assist in its execution. (Added by Stats. 1993, ch. 519.)

### **§ 713 No Duty as to Content of Document; Provision of Legal Services Arising from Document Retention**

The acceptance by an attorney of a document for deposit imposes no duty on the attorney to do either of the following:

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(a) Inquire into the content, validity, invalidity, or completeness of the document, or the correctness of any information in the document.

(b) Provide continuing legal services to the depositor or to any beneficiary under the document. This subdivision does not affect the duty, if any, of the drafter of the document to provide continuing legal services to any person. (Added by Stats. 1993, ch. 519.)

### **§ 714 Attorney Compensation for Preservation of Documents; No Lien Rights Created**

(a) If so provided in a written agreement signed by the depositor, an attorney may charge the depositor for compensation and expenses incurred in safekeeping or delivery of a document deposited with the attorney.

(b) No lien arises for the benefit of an attorney on a document deposited with the attorney, whether before or after its transfer, even if provided by agreement. (Added by Stats. 1993, ch. 519.)

### **§ 715 Notice and Acknowledgment of Deposit, Form and Content**

An attorney may give written notice to a depositor, and obtain written acknowledgment from the depositor, in the following form:

#### NOTICE AND ACKNOWLEDGMENT

To:

\_\_\_\_\_  
(Name of Depositor)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, State, and ZIP)

\_\_\_\_\_  
(Electronic Address)

I have accepted your will or other estate planning document for safekeeping. I must use ordinary care for preservation of the document.

You must keep me advised of any change in your addresses shown above. If you do not and I cannot return this document to you when necessary, I will no longer be required to use ordinary care for

preservation of the document, and I may transfer it to another attorney, or I may transfer it to the clerk of the superior court of the county of your last known domicile, and give notice of the transfer to the State Bar of California.

\_\_\_\_\_  
(Signature of Attorney)

\_\_\_\_\_  
(Address of Attorney)

\_\_\_\_\_  
(City, State, and ZIP)

My addresses shown above are correct. I understand that I must keep you advised of any change in these addresses.

\_\_\_\_\_  
(Dated)

\_\_\_\_\_  
(Signature of depositor)

(Added by Stats. 1993, ch. 519. Amended by Stats. 2017, ch. 319.)

### **§ 716 Preservation and Standard of Care—Effect of Compliance with Section 715**

Notwithstanding Section 710, if an attorney has given written notice to the depositor, and has obtained written acknowledgment from the depositor, in substantially the form provided in Section 715, and the requirements of subdivision (a) of Section 732 are satisfied, the attorney, and a successor attorney that accepts transfer of a document, shall use at least slight care for preservation of a document deposited with the attorney. (Added by Stats. 1993, ch. 519.)

### **§ 720 Termination of Deposit**

A depositor may terminate a deposit on demand, in which case the attorney shall deliver the document to the depositor. (Added by Stats. 1993, ch. 519.)

### **§ 730 Termination of Deposit—Attorney**

An attorney with whom a document has been deposited, or to whom a document has been transferred pursuant to this article, may terminate the deposit only as provided in this article. (Added by Stats. 1993, ch. 519.)

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### § 731 Termination of Deposit—Methods

An attorney may terminate the deposit by one of the following methods:

- (a) Personal delivery of the document to the depositor.
- (b) Mailing the document to the depositor's last known address, by registered or certified mail with return receipt requested, and receiving a signed receipt.
- (c) The method agreed on by the depositor and attorney. (Added by Stats. 1993, ch. 519.)

### § 732 Termination of Deposit After Notice to Reclaim Mailed, Methods of Transfer

- (a) An attorney may terminate a deposit under this section if the attorney has delivered notice pursuant to Section 1215 to reclaim the document to the depositor's last known address and the depositor has failed to reclaim the document within 90 days after delivery.
- (b) Subject to subdivision (f), an attorney may terminate a deposit under this section by transferring the document to another attorney. All documents transferred under this subdivision shall be transferred to the same attorney.
- (c) Subject to subdivision (f), if an attorney is deceased, lacks legal capacity, or is no longer an active member of the State Bar, a deposit may be terminated under this section by transferring the document to the clerk of the superior court of the county of the depositor's last known domicile. The attorney shall advise the clerk that the document is being transferred pursuant to this section.
- (d) An attorney may not accept a fee or compensation from a transferee for transferring a document under this section. An attorney may charge a fee for receiving a document under this section.
- (e) Transfer of a document by an attorney under this section is not a waiver or breach of any privilege or confidentiality associated with the document, and is not a violation of the rules of professional conduct. If the document is privileged under Article 3 (commencing with Section 950) of Chapter 4 of Division

8 of the Evidence Code, the document remains privileged after the transfer.

- (f) If the document is a will and the attorney has actual notice that the depositor has died, the attorney may terminate a deposit only as provided in Section 734. (Added by Stats. 1993, ch. 519. Amended by Stats. 2017, ch. 319.)

### § 733 Notice to State Bar of Transfers Under Section 732

(a) An attorney transferring one or more documents under Section 732 shall deliver notice pursuant to Section 1215 of the transfer to the State Bar of California. The notice shall contain all of the following information:

- (1) The name of the depositor.
- (2) The date of the transfer.
- (3) The name, address, and State Bar number of the transferring attorney.
- (4) Whether any documents are transferred to an attorney, and the name, address, and State Bar number of the attorney to whom the documents are transferred.
- (5) Whether any documents are transferred to a superior court clerk.

(b) The State Bar shall record only one notice of transfer for each transferring attorney. The State Bar shall prescribe the form for the notice of transfer. On request by any person, the State Bar shall give that person information in the notice of transfer. At its sole election, the State Bar may give the information orally or in writing. (Added by Stats. 1993, ch. 519. Amended by Stats. 2017, ch. 319.)

### § 734 Termination of Deposit, Death of Depositor

- (a) In cases not governed by subdivision (b) or (c), after the death of the depositor an attorney may terminate a deposit by personal delivery of the document to the depositor's personal representative.
- (b) If the document is a will and the attorney has actual notice that the depositor has died but does not

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have actual notice that a personal representative has been appointed for the depositor, an attorney may terminate a deposit only as provided in Section 8200.

(c) If the document is a trust, after the death of the depositor an attorney may terminate a deposit by personal delivery of the document either to the depositor's personal representative or to the trustee named in the document. (Added by Stats. 1993, ch. 519.)

### **§ 735 Termination of Deposit—Death or Incapacity of Attorney**

(a) If the attorney is deceased or lacks legal capacity, a deposit may be terminated as provided in this article by the attorney's law partner, by a shareholder of the attorney's law corporation, or by a lawyer or nonlawyer employee of the attorney's firm, partnership, or corporation.

(b) If the attorney lacks legal capacity and there is no person to act under subdivision (a), a deposit may be terminated by the conservator of the attorney's estate or by an attorney in fact acting under a durable power of attorney. A conservator of the attorney's estate may act without court approval.

(c) If the attorney is deceased and there is no person to act under subdivision (a), a deposit may be terminated by the attorney's personal representative.

(d) If a person authorized under this section terminates a deposit as provided in Section 732, the person shall give the notice required by Section 733. (Added by Stats. 1993, ch. 519.)

### **§ 2468 Disabled Attorney—Petition for Appointment of Practice Administrator; Notice and Hearing, Contents, Compensation, Termination**

(a) The conservator of the estate of a disabled attorney who was engaged in the practice of law at the time of his or her disability, or other person interested in the estate, may bring a petition seeking the appointment of an active member of the State Bar of California to take control of the files and assets of the practice of the disabled member.

(b) The petition may be filed and heard on such notice that the court determines is in the best interests of the persons interested in the estate of the disabled member. If the petition alleges that the immediate appointment of a practice administrator is required to safeguard the interests of the estate, the court may dispense with notice provided that the conservator is the petitioner or has joined in the petition or has otherwise waived notice of hearing on the petition.

(c) The petition shall indicate the powers sought for the practice administrator from the list of powers set forth in Section 6185 of the Business and Professions Code. These powers shall be specifically listed in the order appointing the practice administrator.

(d) The petition shall allege the value of the assets that are to come under the control of the practice administrator, including but not limited by the amount of funds in all accounts used by the disabled member. The court shall require the filing of a surety bond in the amount of the value of the personal property to be filed with the court by the practice administrator. No action may be taken by the practice administrator unless a bond has been duly filed with the court.

(e) The practice administrator shall not be the attorney representing the conservator.

(f) The court shall appoint the attorney nominated by the disabled member in a writing, including but not limited to the disabled member's will, unless the court concludes that the appointment of the nominated person would be contrary to the best interests of the estate or would create a conflict of interest with any of the clients of the disabled member.

(g) The practice administrator shall be compensated only upon order of the court making the appointment for his or her reasonable and necessary services. The law practice shall be the source of the compensation for the practice administrator unless the assets are insufficient, in which case, the compensation of the practice administrator shall be charged against the assets of the estate as a cost of administration. The practice administrator shall also be entitled to reimbursement of his or her costs.

(h) Upon conclusion of the services of the practice administrator, the practice administrator shall render an accounting and petition for its approval by the superior court making the appointment. Upon

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settlement of the accounting, the practice administrator shall be discharged and the surety on his or her bond exonerated.

(i) If the court appointing the practice administrator determines upon petition that the disabled attorney has recovered his or her capacity to resume his or her law practice, the appointment of a practice administrator shall forthwith terminate and the disabled attorney shall be restored to his or her practice.

(j) For purposes of this section, the person appointed to take control of the practice of the disabled member shall be referred to as the “practice administrator” and the conservatee shall be referred to as the “disabled member.” (Added by Stats. 1998, ch. 683.)

### **§ 2586 Court Examination of Estate Plan of a Conservatee**

(a) As used in this section, “estate plan of the conservatee” includes, but is not limited to, the conservatee’s will, any trust of which the conservatee is the settlor or beneficiary, any power of appointment created by or exercisable by the conservatee, and any contract, transfer, or joint ownership arrangement with provisions for payment or transfer of benefits or interests at the conservatee’s death to another or others which the conservatee may have originated.

(b) Notwithstanding Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code (lawyer-client privilege), the court, in its discretion, may order that any person having possession of any document constituting all or part of the estate plan of the conservatee shall deliver the document to the court for examination by the court, and, in the discretion of the court, by the attorneys for the persons who have appeared in the proceedings under this article, in connection with the petition filed under this article.

(c) Unless the court otherwise orders, no person who examines any document produced pursuant to an order under this section shall disclose the contents of the document to any other person. If that disclosure is made, the court may adjudge the person making the disclosure to be in contempt of court.

(d) For good cause, the court may order that a document constituting all or part of the estate plan of

the conservatee, whether or not produced pursuant to an order under this section, shall be delivered for safekeeping to the custodian designated by the court. The court may impose those conditions it determines are appropriate for holding and safeguarding the document. The court may authorize the conservator to take any action a depositor may take under Part 15 (commencing with Section 700) of Division 2. (Added by Stats. 1990, ch. 79, operative July 1, 1991. Amended by Stats. 1993, ch. 519.)

### **§ 2620.2 Failure to File Account by Conservator or Guardian; Court Appointed Counsel**

(a) Whenever the conservator or guardian has failed to file an accounting as required by Section 2620, the court shall require that written notice be given to the conservator or guardian and the attorney of record for the conservatorship or guardianship directing the conservator or guardian to file an accounting and to set the accounting for hearing before the court within 30 days of the date of the notice or, if the conservator or guardian is a public agency, within 45 days of the date of the notice. The court may, upon cause shown, grant an additional 30 days to file the accounting.

(b) Failure to file the accounting within the time specified under subdivision (a), or within 45 days of actual receipt of the notice, whichever is later, shall constitute a contempt of the authority of the court as described in Section 1209 of the Code of Civil Procedure.

(c) If the conservator or guardian does not file an accounting with all appropriate supporting documentation and set the accounting for hearing as required by Section 2620, the court shall do one or more of the following and shall report that action to the bureau established pursuant to Section 6510 of the Business and Professions Code:

(1) Remove the conservator or guardian as provided under Article 1 (commencing with Section 2650) of Chapter 9 of Part 4 of Division 4.

(2) Issue and serve a citation requiring a guardian or conservator who does not file a required accounting to appear and show cause why the guardian or conservator should not be punished for contempt. If the guardian or conservator purposely evades personal service of

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the citation, the guardian or conservator shall be immediately removed from office.

(3) Suspend the powers of the conservator or guardian and appoint a temporary conservator or guardian, who shall take possession of the assets of the conservatorship or guardianship, investigate the actions of the conservator or guardian, and petition for surcharge if this is in the best interests of the ward or conservatee. Compensation for the temporary conservator or guardian, and counsel for the temporary conservator or guardian, shall be treated as a surcharge against the conservator or guardian, and if unpaid shall be considered a breach of condition of the bond.

(4) (A) Appoint legal counsel to represent the ward or conservatee if the court has not suspended the powers of the conservator or guardian and appoint a temporary conservator or guardian pursuant to paragraph (3). Compensation for the counsel appointed for the ward or conservatee shall be treated as a surcharge against the conservator or guardian, and if unpaid shall be considered a breach of a condition on the bond, unless for good cause shown the court finds that counsel for the ward or conservatee shall be compensated according to Section 1470. The court shall order the legal counsel to do one or more of the following:

(i) Investigate the actions of the conservator or guardian, and petition for surcharge if this is in the best interests of the ward or conservatee.

(ii) Recommend to the court whether the conservator or guardian should be removed.

(iii) Recommend to the court whether money or other property in the estate should be deposited pursuant to Section 2453, 2453.5, 2454, or 2455, to be subject to withdrawal only upon authorization of the court.

(B) After resolution of the matters for which legal counsel was appointed in subparagraph (A), the court shall terminate

the appointment of legal counsel, unless the court determines that continued representation of the ward or conservatee and the estate is necessary and reasonable.

(5) If the conservator or guardian is exempt from the licensure requirements of Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code, upon ex parte application or any notice as the court may require, extend the time to file the accounting, not to exceed an additional 30 days after the expiration of the deadline described in subdivision (a), where the court finds there is good cause and that the estate is adequately bonded. After expiration of any extensions, if the accounting has not been filed, the court shall take action as described in paragraphs (1) to (3), inclusive.

(d) Subdivision (c) does not preclude the court from additionally taking any other appropriate action in response to a failure to file a proper accounting in a timely manner. (Added by Stats. 1990, ch. 79. Amended by Stats. 1991, ch. 1019; Stats. 1992, ch. 572, Stats. 2001, ch. 359; Stats. 2002, ch. 664; Stats. 2006, ch. 493; Stats. 2007, ch. 553.)

### **§ 2645 Attorney Guardian or Conservator, Compensation for Legal Services Performed**

(a) No attorney who is a guardian or conservator shall receive any compensation from the guardianship or conservatorship estate for legal services performed for the guardian or conservator unless the court specifically approves the right to the compensation and finds that it is to the advantage, benefit, and best interests of the ward or conservatee.

(b) No parent, child, sibling, or spouse of a person who is a guardian or conservator, and no law partnership or corporation whose partner, shareholder, or employee is serving as a guardian or conservator shall receive any compensation for legal services performed for the guardian or conservator unless the court specifically approves the right to the compensation and finds that it is to the advantage, benefit, and best interests of the ward or conservatee.

(c) This section shall not apply if the guardian or conservator is related by blood or marriage to, or is a cohabiting with, the ward or conservatee.



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(d) After full disclosure of the relationships of all persons to receive compensation for legal services under this section, the court may, in its discretion and at any time, approve the right to that compensation, including any time during the pendency of any of the following orders:

- (1) An order appointing the guardian or conservator.
- (2) An order approving the general plan under Section 1831.
- (3) An order settling any account of the guardian or conservator.
- (4) An order approving a separate petition, with notice given under Section 2581. (Added by Stats. 1993, ch. 293.)

### **§ 9764 Deceased Attorney–Petition for Appointment of Practice Administrator; Notice and Hearing, Contents, Compensation, Termination**

(a) The personal representative of the estate of a deceased attorney who was engaged in a practice of law at the time of his or her death or other person interested in the estate may bring a petition for appointment of an active member of the State Bar of California to take control of the files and assets of the practice of the deceased member.

(b) The petition may be filed and heard on such notice that the court determines is in the best interests of the estate of the deceased member. If the petition alleges that the immediate appointment of a practice administrator is required to safeguard the interests of the estate, the court may dispense with notice only if the personal representative is the petitioner or has joined in the petition or has otherwise waived notice of hearing on the petition.

(c) The petition shall indicate the powers sought for the practice administrator from the list of powers set forth in Section 6185 of the Business and Professions Code. These powers shall be specifically listed in the order appointing the practice administrator.

(d) The petition shall allege the value of the assets that are to come under the control of the practice administrator, including, but not limited by the amount of funds in all accounts used by the deceased member.

The court shall require the filing of a surety bond in the amount of the value of the personal property to be filed with the court by the practice administrator. No action may be taken by the practice administrator unless a bond has been fully filed with the court.

(e) The practice administrator shall not be the attorney representing the personal representative.

(f) The court shall appoint the attorney nominated by the deceased member in a writing, including, but not limited to, the deceased member's will, unless the court concludes that the appointment of the nominated person would be contrary to the best interests of the estate or would create a conflict of interest with any of the clients of the deceased member.

(g) The practice administrator shall be compensated only upon order of the court making the appointment for his or her reasonable and necessary services. The law practice shall be the source of the compensation for the practice administrator unless the assets are insufficient in which case, the compensation of the practice administrator shall be charged against the assets of the estate as a cost of administration. The practice administrator shall also be entitled to reimbursement of his or her costs.

(h) Upon conclusion of the services of the practice administrator, the practice administrator shall render an accounting and petition for its approval by the superior court making the appointment. Upon settlement of the accounting, the practice administrator shall be discharged and the surety on his or her bond exonerated.

(i) For the purposes of this section, the person appointed to take control of the practice of the deceased member shall be referred to as the "practice administrator" and the decedent shall be referred to as the "deceased member." (Added by Stats. 1998, ch. 682.)

### **§ 9880 Purchases or Interests Prohibited**

Except as provided in this chapter, neither the personal representative nor the personal representative's attorney may do any of the following:

(a) Purchase any property of the estate or any claim against the estate, directly or indirectly.

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(b) Be interested in any such purchase. (Added by Stats. 1990, ch. 79, operative July 1, 1991.)

### **§ 9881 Orders Authorizing Purchase; Requirements**

Upon a petition filed under Section 9883, the court may make an order under this section authorizing the personal representative or the personal representative's attorney to purchase property of the estate if all of the following requirements are satisfied:

(a) Written consent to the purchase is signed by (1) each known heir whose interest in the estate would be affected by the proposed purchase and (2) each known devisee whose interest in the estate would be affected by the proposed purchase.

(b) The written consents are filed with the court.

(c) The purchase is shown to be to the advantage of the estate. (Added by Stats. 1990, ch. 79, operative July 1, 1991.)

### **§ 9882 Orders Authorizing Purchase; Will Authorization**

Upon a petition filed under Section 9883, the court may make an order under this section authorizing the personal representative or the personal representative's attorney to purchase property of the estate if the will of the decedent authorizes the personal representative or the personal representative's attorney to purchase the property. (Added by Stats. 1990, ch. 79, operative July 1, 1991.)

### **§ 9883 Petitions; Confirmation of Sale; Notice of Hearing; Orders; Conveyance**

(a) The personal representative may file a petition requesting that the court make an order under Section 9881 or 9882. The petition shall set forth the facts upon which the request for the order is based.

(b) If court confirmation of the sale is required, the court may make its order under Section 9881 or 9882 at the time of the confirmation.

(c) Notice of the hearing on the petition shall be given as provided in Section 1220 to all of the following persons:

(1) Each person listed in Section 1220.

(2) Each known heir whose interest in the estate would be affected by the proposed purchase.

(3) Each known devisee whose interest in the estate would be affected by the proposed purchase.

(d) If the court is satisfied that the purchase should be authorized, the court shall make an order authorizing the purchase upon the terms and conditions specified in the order, and the personal representative may execute a conveyance or transfer according to the terms of the order. Unless otherwise provided in the will or in the order of the court, the sale of the property shall be made in the same manner as the sale of other estate property of the same nature. (Added by Stats. 1990, ch. 79, operative July 1, 1991.)

### **§ 9884 Purchases Pursuant to Contract**

This chapter does not prohibit the purchase of property of the estate by the personal representative or the personal representative's attorney pursuant to a contract in writing made during the lifetime of the decedent if the contract is one that can be specifically enforced and the requirements of Part 19 (commencing with Section 850) of Division 2 are satisfied. (Added by Stats. 1990, ch. 79, operative July 1, 1991. Amended by Stats. 2003, ch. 32.)

### **§ 9885 Options to Purchase**

This chapter does not prevent the exercise by the personal representative or the personal representative's attorney of an option to purchase property of the estate given in the will of the decedent if the requirements of Chapter 17 (commencing with Section 9980) are satisfied. (Added by Stats. 1990, ch. 79, operative July 1, 1991.)

### **§ 10804 Estate Attorney Acting as Personal Representative—Court Approval of Compensation**

Notwithstanding any provision in the decedent's will, a personal representative who is an attorney shall be entitled to receive the personal representative's compensation as provided in this part, but shall not receive compensation for services as the attorney for the personal representative unless the court specifically

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approves the right to the compensation in advance and finds that the arrangement is to the advantage, benefit, and best interests of the decedent's estate. (Added by Stats. 1990, ch. 79, operative July 1, 1991. Amended by Stats. 1993, ch. 293; Stats. 1996, ch. 563; Stats. 2001, ch. 699.)

### **§ 12252 Subsequent Administration of Estate—Appointment of Personal Representative, Notice**

If subsequent administration of an estate is necessary after the personal representative has been discharged because other property is discovered or because it becomes necessary or proper for any other cause, both of the following shall apply:

(a) The court shall appoint as personal representative the person entitled to appointment in the same order as is directed in relation to an original appointment, except that the person who served as personal representative at the time of the order of discharge has priority.

(b) Notice of hearing of the appointment shall be given as provided in Section 1220 to the person who served as personal representative at the time of the order of discharge and to other interested persons. If property has been distributed to the State of California, a copy of any petition for subsequent appointment of a personal representative and the notice of hearing shall be given as provided in Section 1220 to the Controller. (Added by Stats. 1990, ch. 79. Amended by Stats. 2007, ch. 388; Stats. 2009, ch. 8.)

### **§ 15642 Grounds for Removal of a Trustee**

(a) A trustee may be removed in accordance with the trust instrument, by the court on its own motion, or on petition of a settlor, cotrustee, or beneficiary under Section 17200.

(b) The grounds for removal of a trustee by the court include the following:

- (1) Where the trustee has committed a breach of the trust.
- (2) Where the trustee is insolvent or otherwise unfit to administer the trust.
- (3) Where hostility or lack of cooperation among cotrustees impairs the administration of the trust.

(4) Where the trustee fails or declines to act.

(5) Where the trustee's compensation is excessive under the circumstances.

(6) Where the sole trustee is a person described in subdivision (a) of Section 21380, whether or not the person is the transferee of a donative transfer by the transferor, unless, based upon any evidence of the intent of the settlor and all other facts and circumstances, which shall be made known to the court, the court finds that it is consistent with the settlor's intent that the trustee continue to serve and that this intent was not the product of fraud or undue influence. Any waiver by the settlor of this provision is against public policy and shall be void. This paragraph shall not apply to instruments that became irrevocable on or before January 1, 1994. This paragraph shall not apply if any of the following conditions are met:

(A) The settlor is related by blood or marriage to, or is a cohabitant with, any one or more of the trustees, the person who drafted or transcribed the instrument, or the person who caused the instrument to be transcribed.

(B) The instrument is reviewed by an independent attorney who (1) counsels the settlor about the nature of their intended trustee designation and (2) signs and delivers to the settlor and the designated trustee a certificate in substantially the following form:

#### **"CERTIFICATE OF INDEPENDENT REVIEW**

I, (attorney's name), have reviewed (name of instrument) and have counseled my client, (name of client), fully and privately on the nature and legal effect of the designation as trustee of (name of trustee), contained in that instrument. I am so disassociated from the interest of the person named as trustee as to be in a position to advise my client impartially and confidentially as to the consequences of the designation. On the basis of this counsel, I conclude that the designation of a person who would otherwise be subject to removal under paragraph (6) of

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subdivision (b) of Section 15642 of the Probate Code is clearly the settlor's intent and that intent is not the product of fraud or undue influence.

\_\_\_\_\_  
(Name of Attorney)

\_\_\_\_\_  
(Date)

This independent review and certification may occur either before or after the instrument has been executed, and if it occurs after the date of execution, the named trustee shall not be subject to removal under this paragraph. Any attorney whose written engagement signed by the client is expressly limited to the preparation of a certificate under this subdivision, including the prior counseling, shall not be considered to otherwise represent the client.

(C) After full disclosure of the relationships of the persons involved, the instrument is approved pursuant to an order under Article 10 (commencing with Section 2580) of Chapter 6 of Part 4 of Division 4.

(7) If, as determined under Part 17 (commencing with Section 810) of Division 2, the trustee is substantially unable to manage the trust's financial resources or is otherwise substantially unable to execute properly the duties of the office. When the trustee holds the power to revoke the trust, substantial inability to manage the trust's financial resources or otherwise execute properly the duties of the office may not be proved solely by isolated incidents of negligence or improvidence.

(8) If the trustee is substantially unable to resist fraud or undue influence. When the trustee holds the power to revoke the trust, substantial inability to resist fraud or undue influence may not be proved solely by isolated incidents of negligence or improvidence.

(9) For other good cause.

(c) If, pursuant to paragraph (6) of subdivision (b), the court finds that the designation of the trustee was not consistent with the intent of the settlor or was the product of fraud or undue influence, the person being removed as trustee shall bear all costs of the proceeding, including reasonable attorney's fees.

(d) If the court finds that the petition for removal of the trustee was filed in bad faith and that removal would be contrary to the settlor's intent, the court may order that the person or persons seeking the removal of the trustee bear all or any part of the costs of the proceeding, including reasonable attorney's fees.

(e) If it appears to the court that trust property or the interests of a beneficiary may suffer loss or injury pending a decision on a petition for removal of a trustee and any appellate review, the court may, on its own motion or on petition of a cotrustee or beneficiary, compel the trustee whose removal is sought to surrender trust property to a cotrustee or to a receiver or temporary trustee. The court may also suspend the powers of the trustee to the extent the court deems necessary.

(f) For purposes of this section, the term "related by blood or marriage" shall include persons within the seventh degree. (Added by Stats. 1990, ch. 79, operative July 1, 1991. Amended by Stats. 1993, ch. 293; Stats. 1995, ch. 730; Stats. 2006, ch. 84; Stats. 2010, ch. 620; Stats. 2020, ch. 36.)

### § 15686 Trustee's Fee

(a) As used in this section, "trustee's fee" includes, but is not limited to, the trustee's periodic base fee, rate of percentage compensation, minimum fee, hourly rate, and transaction charge, but does not include fees for extraordinary services.

(b) A trustee shall not charge an increased trustee's fee for administration of a particular trust unless the trustee first gives at least 60 days' written notice of that increased fee to all of the following persons:

(1) Each beneficiary who is entitled to an account under Section 16062.

(2) Each beneficiary who was given the last preceding account.

(3) Each beneficiary who has made a written request to the trustee for notice of an increased trustee's fee and has given an address for receiving notice.

(c) If a beneficiary files a petition under Section 17200 for review of the increased trustee's fee or for removal of the trustee and serves a copy of the petition on the trustee before the expiration of the 60-day

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period, the increased trustee's fee does not take effect as to that trust until otherwise ordered by the court or the petition is dismissed. (Stats. 1990, ch. 79. Amended by Stats. 1992, ch. 178; Stats. 2017, ch. 319.)

### **§ 15687 Attorney Acting as Trustee— Compensation for Legal Services Performed**

(a) Notwithstanding any provision of a trust to the contrary, a trustee who is an attorney may receive only (1) the trustee's compensation provided in the trust or otherwise provided in this article or (2) compensation for legal services performed for the trustee, unless the trustee obtains approval for the right to dual compensation as provided in subdivision (d).

(b) No parent, child, sibling, or spouse of a person who is a trustee, and no law partnership or corporation whose partner, shareholder, or employee is serving as a trustee shall receive any compensation for legal services performed for the trustee unless the trustee waives trustee compensation or unless the trustee obtains approval for the right to dual compensation as provided in subdivision (d).

(c) This section shall not apply if the trustee is related by blood or marriage to, or is a cohabiting with, the settlor.

(d) After full disclosure of the nature of the compensation and relationship of the trustee to all persons receiving compensation under this section, the trustee may obtain approval for dual compensation by either of the following:

(1) An order pursuant to paragraph (21) of subdivision (b) of Section 17200.

(2) Giving 30 days' advance written notice to the persons entitled to notice under Section 17203. Within that 30-day period, any person entitled to notice may object to the proposed action by written notice to the trustee or by filing a petition pursuant to paragraph (21) of subdivision (b) of Section 17200. If the trustee receives this objection during that 30-day period and if the trustee wishes dual compensation, the trustee shall file a petition for approval pursuant to paragraph (21) of subdivision (b) of Section 17200.

(e) Any waiver of the requirements of this section is against public policy and shall be void.

(f) This section applies to services rendered on or after January 1, 1994. (Added by Stats. 1993, ch. 293. Amended by Stats. 1995, ch. 730.)

### **§ 15688 Public Guardian Appointed as Trustee; Authorized Payments**

Notwithstanding any other provision of this article and the terms of the trust, a public guardian or public administrator who is appointed as a trustee of a trust pursuant to Section 15660.5 shall be paid from the trust property for all of the following:

(a) Reasonable expenses incurred in the administration of the trust.

(b) Compensation for services of the public guardian or public administrator and the attorney of the public guardian or public administrator, as follows:

(1) If the public guardian or public administrator is appointed as trustee of a trust that provides for the outright distribution of the entire trust estate, compensation for the public guardian or public administrator, and any attorney for the public guardian or public administrator, shall be calculated as that provided to a personal representative and attorney pursuant to Part 7 (commencing with Section 10800) of Division 7, based on the fair market value of the assets as of the date of the appointment, provided that the minimum amount of compensation for the public guardian or the public administrator shall be one thousand dollars (\$1,000). Additionally, the minimum amount of compensation for the attorney for the public guardian or the public administrator, if any, shall be one thousand dollars (\$1,000).

(2) For a trust other than that described in paragraph (1), the public guardian or public administrator shall be compensated as provided in Section 15680. Compensation shall be consistent with compensation allowed for professional fiduciaries or corporate fiduciaries providing comparable services.

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(3) Except as provided in paragraph (1), reasonable compensation for the attorney for the public guardian or public administrator.

(c) An annual bond fee in the amount of twenty-five dollars (\$25) plus one-fourth of 1 percent of the amount of the trust assets greater than ten thousand dollars (\$10,000). The amount charged shall be deposited in the county treasury. (Added by Stats. 1997, ch. 93. Amended by Stats. 2008; ch. 237.)

### **§ 17200 Trusts—Existence of; Petitions to Appoint a Practice Administrator for a Deceased or Disabled Member**

(a) Except as provided in Section 15800, a trustee or beneficiary of a trust may petition the court under this chapter concerning the internal affairs of the trust or to determine the existence of the trust.

(b) Proceedings concerning the internal affairs of a trust include, but are not limited to, proceedings for any of the following purposes:

- (1) Determining questions of construction of a trust instrument.
- (2) Determining the existence or nonexistence of any immunity, power, privilege, duty, or right.
- (3) Determining the validity of a trust provision.
- (4) Ascertaining beneficiaries and determining to whom property shall pass or be delivered upon final or partial termination of the trust, to the extent the determination is not made by the trust instrument.
- (5) Settling the accounts and passing upon the acts of the trustee, including the exercise of discretionary powers.
- (6) Instructing the trustee.
- (7) Compelling the trustee to do any of the following:
  - (A) Provide a copy of the terms of the trust.
  - (B) Provide information about the trust under Section 16061 if the trustee has failed to provide the requested information within 60 days after the beneficiary's reasonable

written request, and the beneficiary has not received the requested information from the trustee within the six months preceding the request.

(C) Account to the beneficiary, subject to the provisions of Section 16064, if the trustee has failed to submit a requested account within 60 days after written request of the beneficiary and no account has been made within six months preceding the request.

- (8) Granting powers to the trustee.
- (9) Fixing or allowing payment of the trustee's compensation or reviewing the reasonableness of the trustee's compensation.
- (10) Appointing or removing a trustee.
- (11) Accepting the resignation of a trustee.
- (12) Compelling redress of a breach of the trust by any available remedy.
- (13) Approving or directing the modification or termination of the trust.
- (14) Approving or directing the combination or division of trusts.
- (15) Amending or conforming the trust instrument in the manner required to qualify a decedent's estate for the charitable estate tax deduction under federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust as required by final regulations and rulings of the United States Internal Revenue Service.
- (16) Authorizing or directing transfer of a trust or trust property to or from another jurisdiction.
- (17) Directing transfer of a testamentary trust subject to continuing court jurisdiction from one county to another.
- (18) Approving removal of a testamentary trust from continuing court jurisdiction.
- (19) Reforming or excusing compliance with the governing instrument of an organization pursuant to Section 16105.

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(20) Determining the liability of the trust for any debts of a deceased settlor. However, nothing in this paragraph shall provide standing to bring an action concerning the internal affairs of the trust to a person whose only claim to the assets of the decedent is as a creditor.

(21) Determining petitions filed pursuant to Section 15687 and reviewing the reasonableness of compensation for legal services authorized under that section. In determining the reasonableness of compensation under this paragraph, the court may consider, together with all other relevant circumstances, whether prior approval was obtained pursuant to Section 15687.

(22) If a member of the State Bar of California has transferred the economic interest of his or her practice to a trustee and if the member is a deceased member under Section 9764, a petition may be brought to appoint a practice administrator. The procedures, including, but not limited to, notice requirements, that apply to the appointment of a practice administrator for a deceased member shall apply to the petition brought under this section.

(23) If a member of the State Bar of California has transferred the economic interest of his or her practice to a trustee and if the member is a disabled member under Section 2468, a petition may be brought to appoint a practice administrator. The procedures, including, but not limited to, notice requirements, that apply to the appointment of a practice administrator for a disabled member shall apply to the petition brought under this section.

(c) The court may, on its own motion, set and give notice of an order to show cause why a trustee who is a professional fiduciary, and who is required to be licensed under Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code, should not be removed for failing to hold a valid, unexpired unsuspended license. (Added by Stats. 1990, ch. 79. Amended by Stats. 1991, ch. 992; Stats. 1993, ch. 293; Stats. 1996, ch. 862; Stats. 1997, ch. 724; Stats. 1998, ch. 682; Stats. 1999, ch. 175; Stats. 2003, ch. 629; Stats. 2010, ch. 621.)

**§ 21350** (Added by Stats. 1993, ch. 293. Repealed by Stats. 2011, ch. 296, operative January 1, 2014.)

**§ 21350.5** (Added by Stats. 1995, ch. 730. Repealed by Stats. 2011, ch. 296, operative January 1, 2014.)

**§ 21351** (Added by Stats. 1993, ch. 293. Repealed by Stats. 2011, ch. 296, operative January 1, 2014.)

**§ 21352** (Added by Stats. 1993, ch. 293. Repealed by Stats. 2011, ch. 296, operative January 1, 2014.)

**§ 21353** (Added by Stats. 1993, ch. 293. Repealed by Stats. 2011, ch. 296, operative January 1, 2014.)

**§ 21354** (Added by Stats. 1993, ch. 293. Repealed by Stats. 2011, ch. 296, operative January 1, 2014.)

**§ 21355** (Added by Stats. 1993, ch. 293. Repealed by Stats. 2011, ch. 296, operative January 1, 2014.)

**§ 21356** (Added by Stats. 1995, ch. 730. Repealed by Stats. 2011, ch. 296, operative January 1, 2014.)

### **§ 21360 Application of Definitions**

The definitions in this chapter govern the construction of this part. (Added by Stats. 2010, ch. 620.)

### **§ 21362 “Care Custodian” and “Health and Social Services”—Defined**

(a) “Care custodian” means a person who provides health or social services to a dependent adult, except that “care custodian” does not include a person who provided services without remuneration if the person had a personal relationship with the dependent adult (1) at least 90 days before providing those services, (2) at least six months before the dependent adult's death, and (3) before the dependant adult was admitted to hospice care, if the dependent adult was admitted to hospice care. As used in this subdivision, “remuneration” does not include the donative transfer at issue under this chapter or the reimbursement of expenses.

(b) For the purposes of this section, “health and social services” means services provided to a dependent adult because of the person's dependent condition, including, but not limited to, the administration of

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medicine, medical testing, wound care, assistance with hygiene, companionship, housekeeping, shopping, cooking, and assistance with finances. (Added by Stats. 2010, ch. 620.)

### § 21364 “Cohabitant”–Defined

“Cohabitant” has the meaning provided in Section 13700 of the Penal Code. (Added by Stats. 2010, ch. 620.)

### § 21366 “Dependent Adult”–Defined

“Dependent adult” means a person who, at the time of executing the instrument at issue under this part, was a person described in either of the following:

(a) The person was 65 years of age or older and satisfied one or both of the following criteria:

(1) The person was unable to provide properly for his or her personal needs for physical health, food, clothing, or shelter.

(2) Due to one or more deficits in the mental functions listed in paragraphs (1) to (4), inclusive, of subdivision (a) of Section 811, the person had difficulty managing his or her own financial resources or resisting fraud or undue influence.

(b) The person was 18 years of age or older and satisfied one or both of the following criteria:

(1) The person was unable to provide properly for his or her personal needs for physical health, food, clothing, or shelter.

(2) Due to one or more deficits in the mental functions listed in paragraphs (1) to (4), inclusive, of subdivision (a) of Section 811, the person had substantial difficulty managing his or her own financial resources or resisting fraud or undue influence. (Added by Stats. 2010, ch. 620.)

### § 21368 “Domestic Partner”–Defined

“Domestic partner” has the meaning provided in Section 297 of the Family Code. (Added by Stats. 2010, ch. 620.)

### § 21370 “Independent Attorney”–Defined

“Independent attorney” means an attorney who has no legal, business, financial, professional, or personal relationship with the beneficiary of a donative transfer at issue under this part, and who would not be appointed as a fiduciary or receive any pecuniary benefit as a result of the operation of the instrument containing the donative transfer at issue under this part. (Added by Stats. 2010, ch. 620.)

### § 21374 “Related by Blood or Affinity” and “Spouse or Domestic Partner”–Defined

(a) A person who is “related by blood or affinity” to a specified person means any of the following persons:

(1) A spouse or domestic partner of the specified person.

(2) A relative within a specified degree of kinship to the specified person or within a specified degree of kinship to the spouse or domestic partner of the specified person.

(3) The spouse or domestic partner of a person described in paragraph (2).

(b) For the purposes of this section, “spouse or domestic partner” includes a predeceased spouse or predeceased domestic partner.

(c) In determining a relationship under this section, Sections 6406 and 6407, and Chapter 2 (commencing with Section 6450) of Part 2 of Division 6, are applicable. (Added by Stats. 2010, ch. 620.)

### § 21380 Presumption of Fraud or Undue Influence; Costs and Attorney’s Fees

(a) A provision of an instrument making a donative transfer to any of the following persons is presumed to be the product of fraud or undue influence:

(1) The person who drafted the instrument.

(2) A person who transcribed the instrument or caused it to be transcribed and who was in a fiduciary relationship with the transferor when the instrument was transcribed.



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- (3) A care custodian of a transferor who is a dependent adult, but only if the instrument was executed during the period in which the care custodian provided services to the transferor, or within 90 days before or after that period.
- (4) A care custodian who commenced a marriage, cohabitation, or domestic partnership with a transferor who is a dependent adult while providing services to that dependent adult, or within 90 days after those services were last provided to the dependent adult, if the donative transfer occurred, or the instrument was executed, less than six months after the marriage, cohabitation, or domestic partnership commenced.
- (5) A person who is related by blood or affinity, within the third degree, to any person described in paragraphs (1) to (3), inclusive.
- (6) A cohabitant or employee of any person described in paragraphs (1) to (3), inclusive.
- (7) A partner, shareholder, or employee of a law firm in which a person described in paragraph (1) or (2) has an ownership interest.
- (b) The presumption created by this section is a presumption affecting the burden of proof. The presumption may be rebutted by proving, by clear and convincing evidence, that the donative transfer was not the product of fraud or undue influence.
- (c) Notwithstanding subdivision (b), with respect to a donative transfer to the person who drafted the donative instrument, or to a person who is related to, or associated with, the drafter as described in paragraph (5), (6), or (7) of subdivision (a), the presumption created by this section is conclusive.
- (d) If a beneficiary is unsuccessful in rebutting the presumption, the beneficiary shall bear all costs of the proceeding, including reasonable attorney's fees. (Added by Stats. 2010, ch. 620. Amended by Stats. 2017, ch. 56; Stats. 2019, ch. 10.)

### **§ 21382 Inapplicability of Section 21380 to Specified Instruments or Transfers**

Section 21380 does not apply to any of the following instruments or transfers:

- (a) Except as provided in paragraph (4) of subdivision (a) of Section 21380, a donative transfer to a person who is related by blood or affinity, within the fourth degree, to the transferor or is the cohabitant of the transferor.
- (b) An instrument that is drafted or transcribed by a person who is related by blood or affinity, within the fourth degree, to the transferor or is the cohabitant of the transferor.
- (c) An instrument that is approved pursuant to an order under Article 10 (commencing with Section 2580) of Chapter 6 of Part 4 of Division 4, after full disclosure of the relationships of the persons involved.
- (d) A donative transfer to a federal, state, or local public entity, an entity that qualifies for an exemption from taxation under Section 501(c)(3) or 501(c)(19) of the Internal Revenue Code, or a trust holding the transferred property for the entity.
- (e) A donative transfer of property valued at five thousand dollars (\$5,000) or less, if the total value of the transferor's estate equals or exceeds the amount stated in Section 13100.
- (f) An instrument executed outside of California by a transferor who was not a resident of California when the instrument was executed. (Added by Stats. 2010, ch. 620. Amended by Stats. 2019, ch. 10.)

### **§ 21384 Donative Transfer Not Subject to Section 21380; Certificate of Independent Review**

- (a) A donative transfer is not subject to Section 21380 if the instrument is reviewed by an independent attorney who counsels the transferor, out of the presence of any heir or proposed beneficiary, about the nature and consequences of the intended transfer, including the effect of the intended transfer on the transferor's heirs and on any beneficiary of a prior donative instrument, attempts to determine if the intended transfer is the result of fraud or undue influence, and signs and delivers to the transferor an original certificate in substantially the following form:

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### “CERTIFICATE OF INDEPENDENT REVIEW

I, (attorney's name), have reviewed (name of instrument) and have counseled the transferor, (name of transferor), on the nature and consequences of any transfers of property to (name of person described in Section 21380 of the Probate Code) that would be made by the instrument.

I am an “independent attorney” as defined in Section 21370 of the Probate Code and am in a position to advise the transferor independently, impartially, and confidentially as to the consequences of the transfer.

On the basis of this counsel, I conclude that the transfers to (name of person described in Section 21380 of the Probate Code) that would be made by the instrument are not the product of fraud or undue influence.

\_\_\_\_\_  
(Name of Attorney)

\_\_\_\_\_  
(Date)

(b) An attorney whose written engagement, signed by the transferor, is expressly limited solely to compliance with the requirements of this section, shall not be considered to otherwise represent the transferor as a client.

(c) An attorney who drafts an instrument can review and certify the same instrument pursuant to this section, but only as to a donative transfer to a care custodian. In all other circumstances, an attorney who drafts an instrument may not review and certify the instrument.

(d) If the certificate is prepared by an attorney other than the attorney who drafted the instrument that is under review, a copy of the signed certification shall be provided to the drafting attorney. (Added by Stats. 2010, ch. 620. Amended by Stats. 2017, ch. 56.)

### **§ 21386 Donative Transfer that Fail Under this Part**

If a donative transfer fails under this part, the instrument making the donative transfer shall operate as if the beneficiary had predeceased the transferor without spouse, domestic partner, or issue. (Added by Stats. 2010, ch. 620. Amended by Stats. 2017, ch. 56.)

### **§ 21388 Property Transfers; Liability; Notice**

(a) A person is not liable for transferring property pursuant to an instrument that is subject to the presumption created under this part, unless the person is served with notice, prior to transferring the property, that the instrument has been contested under this part.

(b) A person who is served with notice that an instrument has been contested under this part is not liable for failing to transfer property pursuant to the instrument, unless the person is served with notice that the validity of the transfer has been conclusively determined by a court. (Added by Stats. 2010, ch. 620.)

### **§ 21390 Disqualification Despite Contrary Provision**

This part applies notwithstanding a contrary provision in the instrument. (Added by Stats. 2010, ch. 620.)

### **§ 21392 Effective Date**

(a) This part shall apply to instruments that become irrevocable on or after January 1, 2011. For the purposes of this section, an instrument that is otherwise revocable or amendable shall be deemed to be irrevocable if, on or after January 1, 2011, the transferor by reason of incapacity was unable to change the disposition of the transferor's property and did not regain capacity before the date of the transferor's death.

(b) It is the intent of the Legislature that this part supplement the common law on fraud and undue influence, without superseding or interfering in the operation of that law. Nothing in this part precludes an action to contest a donative transfer under the common law or under any other applicable law. This subdivision is declarative of existing law. (Added by Stats. 2010, ch. 620. Amended by Stats. 2017, ch. 56.)

## **PUBLIC CONTRACT CODE**

### **§ 10353.5 Legal Services Contract**

(a) Any contract for legal services shall contain the following provisions:

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- (1) The contractor shall agree to adhere to legal cost and billing guidelines designated by the state agency.
  - (2) The contractor shall adhere to litigation plans designated by the state agency.
  - (3) The contractor shall adhere to case phasing of activities designated by the state agency.
  - (4) The contractor shall submit and adhere to legal budgets as designated by the state agency.
  - (5) The contractor shall maintain legal malpractice insurance in an amount not less than the amount designated by the state agency.
  - (6) The contractor shall submit to legal bill audits and law firm audits if requested by the state agency. The audits may be conducted by employees or designees of the state agency or by any legal cost control providers retained by the state agency for that purpose.
- (b) A contractor may be required to submit to a legal cost and utilization review, as determined by the state agency.
- (c) As used in this section, the following definitions apply:
- (1) "Legal bill audits," means an evaluation and analysis of the reasonableness of particular legal bills submitted to a state agency for reimbursement.
  - (2) "Law firm audit," means a review of law firm files applicable to legal services provided to a state agency for a particular time period.
  - (3) "Legal cost and utilization review," means a review performed by the state agency or its legal cost provider of the utilization and billing practices of a contractor for the purpose of developing or revising guidelines to be followed prospectively by the contractor in representing the state agency.
  - (4) "Contract for legal service," shall include any contract between a state agency and any law firm, professional corporation, law firm partnership, or individual attorney to perform legal work on behalf of the state agency.

(5) "Legal cost control provider," means any corporation, professional corporation, partnership, or sole proprietorship which possesses the following qualifications:

- (A) Maintains an office in the state.
- (B) Is authorized to do business in the state.
- (C) Has existed as a legal cost control provider for at least two complete, successive years, as evidenced by filings of tax returns.
- (D) All legal cost control services are provided by attorneys.
- (E) All attorneys providing the legal cost control services are admitted to practice in this state.
- (F) All attorneys have been admitted to practice in this state for a minimum of five years prior to the performance of any legal cost control services for any state agency.
- (G) Any legal cost control provider shall maintain professional liability insurance in the amount designated by the state agency. (Added by Stats. 1992, ch. 734.)

## PUBLIC RESOURCES CODE

### § 40432 Legal Representative

The Attorney General shall represent the board and the state in litigation concerning affairs of the board, unless the Attorney General represents another state agency that is a party to the action. In that case, the Attorney General may represent the board with the written consent of the board and the other state agency, the board may contract for the services of private counsel, subject to Section 11040 of the Government Code, or the legal counsel of the board may represent the board. Sections 11041, 11042, and 11043 of the Government Code are not applicable to the board. (Added by Stats. 1989, ch. 1095. Amended by Stats. 2002, ch. 396, operative September 6, 2002.)

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### VEHICLE CODE

#### **§ 12801.2 Prohibited Financial Compensation for Filling Out Original Driver's License Application for Another; Violations; Civil Penalties**

- (a) A person shall not receive financial compensation for the sole purpose of filling out an original driver's license application for another person.
- (b) A person in violation of this section is subject to a civil penalty of not more than two thousand five hundred dollars (\$2,500) for each offense. Actions for relief pursuant to this section may be commenced in a court of competent jurisdiction by the Attorney General, or by the district attorney, county counsel, or city attorney of the location in which the violation occurred.
- (c) Section 40000.1 does not apply to a violation of this section. (Added by Stats. 2014, ch. 447.)

### WATER CODE

#### **§ 186 Powers of Board Necessary for Exercise of its Duties; Employment of Legal Counsel and Other Persons; Organization; Representation by Attorney General**

- (a) The board shall have any powers, and may employ any legal counsel and other personnel and assistance, that may be necessary or convenient for the exercise of its duties authorized by law.
- (b) For the purpose of administration, the board shall organize itself, with the approval of the Governor, in the manner it deems necessary properly to segregate and conduct the work of the board. The work of the board shall be divided into at least two divisions, known as the Division of Water Rights and the Division of Water Quality. The board shall appoint a deputy director or division chief for each division, who shall supervise the work of the division and act as technical adviser to the board on functions under his or her jurisdiction.
- (c) The Attorney General shall represent the board, or any affected regional water quality control board, or both the board and the regional board, and the state in

litigation concerning affairs of the board, or a regional board, or both, unless the Attorney General represents another state agency that is a party to the action. In that case, the Attorney General may represent the board, the regional board, or both, with the written consent of the board and the other state agency, the board may contract for the services of private counsel to represent the board, the regional board, or both, subject to Section 11040 of the Government Code, or the legal counsel of the board may represent the board, the regional board, or both. Sections 11041, 11042, and 11043 of the Government Code are not applicable to the board. The legal counsel of the board shall advise and furnish legal services, except representation in litigation, to the regional boards upon their request. (Formerly §196 added by Stats. 1956, ch. 52. Renumbered to §186 by Stats. 1957, ch. 1932. Amended by Stats. 1967, ch. 284; Stats. 1969, ch. 482; Stats. 1971, ch. 794; Stats. 2002, ch. 396; Stats. 2010, ch. 288.)

### WELFARE AND INSTITUTIONS CODE

#### **§ 15610.07 Abuse of an Elder or a Dependent Adult; Defined**

- (a) "Abuse of an elder or a dependent adult" means any of the following:
- (1) Physical abuse, neglect, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering.
  - (2) The deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering.
  - (3) Financial abuse, as defined in Section 15610.30.
- (b) This section shall become operative on July 1, 2016. (Added by Stats. 1994, ch. 594. Amended by Stats. 1997, ch. 663; Stats. 1998, ch. 946; Stats. 2015, ch. 285.)

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### § 15610.17 Care Custodian

“Care custodian” means an administrator or an employee of any of the following public or private facilities or agencies, or persons providing care or services for elders or dependent adults, including members of the support staff and maintenance staff:

- (a) Twenty-four-hour health facilities, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.
- (b) Clinics.
- (c) Home health agencies.
- (d) Agencies providing publicly funded in home supportive services, nutrition services, or other home and community-based support services.
- (e) Adult day health care centers and adult day care.
- (f) Secondary schools that serve 18- to 22-year-old dependent adults and postsecondary educational institutions that serve dependent adults or elders.
- (g) Independent living centers.
- (h) Camps.
- (i) Alzheimer’s Disease day care resource centers.
- (j) Community care facilities, as defined in Section 1502 of the Health and Safety Code, and residential care facilities for the elderly, as defined in Section 1569.2 of the Health and Safety Code.
- (k) Respite care facilities.
- (l) Foster homes.
- (m) Vocational rehabilitation facilities and work activity centers.
- (n) Designated area agencies on aging.
- (o) Regional centers for persons with developmental disabilities.
- (p) State Department of Social Services and State Department of Health Services licensing divisions.
- (q) County welfare departments.

(r) Offices of patients’ rights advocates and clients’ rights advocates, including attorneys.

(s) The office of the long-term care ombudsman.

(t) Offices of public conservators, public guardians, and court investigators.

(u) Any protection or advocacy agency or entity that is designated by the Governor to fulfill the requirements and assurances of the following:

(1) The federal Developmental Disabilities Assistance and Bill of Rights Act of 2000, contained in Chapter 144 (commencing with Section 15001) of Title 42 of the United States Code, for protection and advocacy of the rights of persons with developmental disabilities.

(2) The Protection and Advocacy for the Mentally Ill Individuals Act of 1986, as amended, contained in Chapter 114 (commencing with Section 10801) of Title 42 of the United States Code, for the protection and advocacy of the rights of persons with mental illness.

(v) Humane societies and animal control agencies.

(w) Fire departments.

(x) Offices of environmental health and building code enforcement.

(y) Any other protective, public, sectarian, mental health, or private assistance or advocacy agency or person providing health services or social services to elders or dependent adults. (Added by Stats. 1994, ch. 594. Amended by Stats. 1998, ch. 946; Stats. 2002, ch. 54.)

### § 15610.30 “Financial Abuse” of Elder or Dependent Adult—Defined

(a) “Financial abuse” of an elder or dependent adult occurs when a person or entity does any of the following:

(1) Takes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.

## SELECTED STATUTES REGARDING DUTIES OF ATTORNEYS AND DISCIPLINE

(2) Assists in taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.

(3) Takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining, real or personal property of an elder or dependent adult by undue influence, as defined in Section 15610.70.

(b) A person or entity shall be deemed to have taken, secreted, appropriated, obtained, or retained property for a wrongful use if, among other things, the person or entity takes, secretes, appropriates, obtains, or retains the property and the person or entity knew or should have known that this conduct is likely to be harmful to the elder or dependent adult.

(c) For purposes of this section, a person or entity takes, secretes, appropriates, obtains, or retains real or personal property when an elder or dependent adult is deprived of any property right, including by means of an agreement, donative transfer, or testamentary bequest, regardless of whether the property is held directly by a representative of an elder or dependent adult.

(d) For purposes of this section, “representative” means a person or entity that is either of the following:

(1) A conservator, trustee, or other representative of the estate of an elder or dependent adult.

(2) An attorney in fact of an elder or dependent adult who acts within the authority of the power of attorney. (Added by Stats. 1994, ch. 594. Amended by Stats. 1997, ch. 724; Stats. 1998, ch. 946; Stats. 2000, ch. 813; Stats. 2000, ch. 442; Stats. 2008, ch. 475; Stats. 2013, ch. 688.)

### § 15610.67 “Serious Bodily Injury”—Defined

“Serious bodily injury” means an injury involving extreme physical pain, substantial risk of death, or protracted loss or impairment of function of a bodily member, organ, or of mental faculty, or requiring medical intervention, including, but not limited to, hospitalization, surgery, or physical rehabilitation. (Added by Stats. 2012, ch. 659.)

### § 15610.70 “Undue Influence”—Defined

(a) “Undue influence” means excessive persuasion that causes another person to act or refrain from acting by overcoming that person’s free will and results in inequity. In determining whether a result was produced by undue influence, all of the following shall be considered:

(1) The vulnerability of the victim. Evidence of vulnerability may include, but is not limited to, incapacity, illness, disability, injury, age, education, impaired cognitive function, emotional distress, isolation, or dependency, and whether the influencer knew or should have known of the alleged victim’s vulnerability.

(2) The influencer’s apparent authority. Evidence of apparent authority may include, but is not limited to, status as a fiduciary, family member, care provider, health care professional, legal professional, spiritual adviser, expert, or other qualification.

(3) The actions or tactics used by the influencer. Evidence of actions or tactics used may include, but is not limited to, all of the following:

(A) Controlling necessities of life, medication, the victim’s interactions with others, access to information, or sleep.

(B) Use of affection, intimidation, or coercion.

(C) Initiation of changes in personal or property rights, use of haste or secrecy in effecting those changes, effecting changes at inappropriate times and places, and claims of expertise in effecting changes.

(4) The equity of the result. Evidence of the equity of the result may include, but is not limited to, the economic consequences to the victim, any divergence from the victim’s prior intent or course of conduct or dealing, the relationship of the value conveyed to the value of any services or consideration received, or the appropriateness of the change in light of the length and nature of the relationship.

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(b) Evidence of an inequitable result, without more, is not sufficient to prove undue influence. (Added by Stats. 2013, ch. 668.)

### **§ 15657.03 Abused Elder or Dependent Adult—Protective Orders**

(a) (1) An elder or dependent adult who has suffered abuse, as defined in Section 15610.07, may seek protective orders as provided in this section.

(2) A petition may be brought on behalf of an abused elder or dependent adult by a conservator or a trustee of the elder or dependent adult, an attorney-in-fact of an elder or dependent adult who acts within the authority of a power of attorney, a person appointed as a guardian ad litem for the elder or dependent adult, or other person legally authorized to seek the relief.

(3) (A) A petition under this section may be brought on behalf of an elder or dependent adult by a county adult protective services agency in either of the following circumstances:

(i) If the elder or dependent adult has suffered abuse as defined in subdivision (b) and has an impaired ability to appreciate and understand the circumstances that place the elder or dependent at risk of harm.

(ii) If the elder or dependent adult has provided written authorization to a county adult protective services agency to act on that person's behalf.

(B) In the case of a petition filed pursuant to clause (i) of subparagraph (A) by a county adult protective services agency, a referral shall be made to the public guardian consistent with Section 2920 of the Probate Code prior to or concurrent with the filing of the petition, unless a petition for appointment of a conservator has already been filed with the probate court by the public guardian or another party.

(C) A county adult protective services agency shall be subject to any confidentiality

restrictions that otherwise apply to its activities under law and shall disclose only those facts as necessary to establish reasonable cause for the filing of the petition, including, in the case of a petition filed pursuant to clause (i) of subparagraph (A), to establish the agency's belief that the elder or dependent adult has suffered abuse and has an impaired ability to appreciate and understand the circumstances that place the elder or dependent adult at risk, and as may be requested by the court in determining whether to issue an order under this section.

(b) For purposes of this section:

(1) "Abuse" has the meaning set forth in Section 15610.07.

(2) "Conservator" means the legally appointed conservator of the person or estate of the petitioner, or both.

(3) "Petitioner" means the elder or dependent adult to be protected by the protective orders and, if the court grants the petition, the protected person.

(4) "Protective order" means an order that includes any of the following restraining orders, whether issued ex parte, after notice and hearing, or in a judgment:

(A) An order enjoining a party from abusing, intimidating, molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, including, but not limited to, making annoying telephone calls as described in Section 653m of the Penal Code, destroying personal property, contacting, either directly or indirectly, by mail or otherwise, or coming within a specified distance of, or disturbing the peace of, the petitioner, and, in the discretion of the court, on a showing of good cause, of other named family or household members or a conservator, if any, of the petitioner. On a showing of good cause, in an order issued pursuant to this subparagraph in connection with an animal owned, possessed, leased, kept, or held by the petitioner, or residing in the residence or

## SELECTED STATUTES REGARDING DUTIES OF ATTORNEYS AND DISCIPLINE

household of the petitioner, the court may do either or both of the following:

(i) Grant the petitioner exclusive care, possession, or control of the animal.

(ii) Order the respondent to stay away from the animal and refrain from taking, transferring, encumbering, concealing, molesting, attacking, striking, threatening, harming, or otherwise disposing of the animal.

(B) An order excluding a party from the petitioner's residence or dwelling, except that this order shall not be issued if legal or equitable title to, or lease of, the residence or dwelling is in the sole name of the party to be excluded, or is in the name of the party to be excluded and any other party besides the petitioner.

(C) An order enjoining a party from specified behavior that the court determines is necessary to effectuate orders described in subparagraph (A) or (B).

(5) "Respondent" means the person against whom the protective orders are sought and, if the petition is granted, the restrained person.

(c) An order may be issued under this section, with or without notice, to restrain any person for the purpose of preventing a recurrence of abuse, if a declaration shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse of the petitioning elder or dependent adult.

(d) Upon filing a petition for protective orders under this section, the petitioner may obtain a temporary restraining order in accordance with Section 527 of the Code of Civil Procedure, except to the extent this section provides a rule that is inconsistent. The temporary restraining order may include any of the protective orders described in paragraph (4) of subdivision (b). However, the court may issue an ex parte order excluding a party from the petitioner's residence or dwelling only on a showing of all of the following:

(1) Facts sufficient for the court to ascertain that the party who will stay in the dwelling has a right under color of law to possession of the premises.

(2) That the party to be excluded has assaulted or threatens to assault the petitioner, other named family or household member of the petitioner, or a conservator of the petitioner.

(3) That physical or emotional harm would otherwise result to the petitioner, other named family or household member of the petitioner, or a conservator of the petitioner.

(e) A request for the issuance of a temporary restraining order without notice under this section shall be granted or denied on the same day that the petition is submitted to the court, unless the petition is filed too late in the day to permit effective review, in which case the order shall be granted or denied on the next day of judicial business in sufficient time for the order to be filed that day with the clerk of the court.

(f) Within 21 days, or, if good cause appears to the court, 25 days, from the date that a request for a temporary restraining order is granted or denied, a hearing shall be held on the petition. If no request for temporary orders is made, the hearing shall be held within 21 days, or, if good cause appears to the court, 25 days, from the date that the petition is filed.

(g) The respondent may file a response that explains or denies the alleged abuse.

(h) The court may issue, upon notice and a hearing, any of the orders set forth in paragraph (4) of subdivision (b). The court may issue, after notice and hearing, an order excluding a person from a residence or dwelling if the court finds that physical or emotional harm would otherwise result to the petitioner, other named family or household member of the petitioner, or conservator of the petitioner.

(i) (1) In the discretion of the court, an order issued after notice and a hearing under this section may have a duration of not more than five years, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. These orders may be renewed upon the request of a party, either for five years or permanently, without a showing of any further abuse since the issuance of the original order, subject to



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termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. The request for renewal may be brought at any time within the three months before the expiration of the order.

(2) The failure to state the expiration date on the face of the form creates an order with a duration of three years from the date of issuance.

(3) If an action is filed for the purpose of terminating or modifying a protective order prior to the expiration date specified in the order by a party other than the protected party, the party who is protected by the order shall be given notice, pursuant to subdivision (b) of Section 1005 of the Code of Civil Procedure, of the proceeding by personal service or, if the protected party has satisfied the requirements of Chapter 3.1 (commencing with Section 6205) of Division 7 of Title 1 of the Government Code, by service on the Secretary of State. If the party who is protected by the order cannot be notified prior to the hearing for modification or termination of the protective order, the court shall deny the motion to modify or terminate the order without prejudice or continue the hearing until the party who is protected can be properly noticed and may, upon a showing of good cause, specify another method for service of process that is reasonably designed to afford actual notice to the protected party. The protected party may waive the right to notice if that party is physically present in court and does not challenge the sufficiency of the notice.

(j) In a proceeding under this section, a support person may accompany a party in court and, if the party is not represented by an attorney, may sit with the party at the table that is generally reserved for the party and the party's attorney. The support person is present to provide moral and emotional support for a person who alleges to be a victim of abuse. The support person is not present as a legal adviser and may not provide legal advice. The support person may assist the person who alleges to be a victim of abuse in feeling more confident that the alleged abuse victim will not be injured or threatened by the other party during the proceedings if the person who alleges to be a victim of abuse and the other party are required to be present in close proximity. This subdivision does not preclude the court from exercising its discretion to remove the

support person from the courtroom if the court believes the support person is prompting, swaying, or influencing the party assisted by the support person.

(k) Upon the filing of a petition for protective orders under this section, the respondent shall be personally served with a copy of the petition, notice of the hearing or order to show cause, temporary restraining order, if any, and any declarations in support of the petition. Service shall be made at least five days before the hearing. The court may, on motion of the petitioner or on its own motion, shorten the time for service on the respondent.

(l) A notice of hearing under this section shall notify the respondent that if the respondent not attend the hearing, the court may make orders against the respondent that could last up to five years.

(m) The respondent shall be entitled, as a matter of course, to one continuance, for a reasonable period, to respond to the petition.

(n) (1) Either party may request a continuance of the hearing, which the court shall grant on a showing of good cause. The request may be made in writing before or at the hearing or orally at the hearing. The court may also grant a continuance on its own motion.

(2) If the court grants a continuance, any temporary restraining order that has been granted shall remain in effect until the end of the continued hearing, unless otherwise ordered by the court. In granting a continuance, the court may modify or terminate a temporary restraining order.

(o) (1) If a respondent, named in an order issued under this section after a hearing, has not been served personally with the order but has received actual notice of the existence and substance of the order through personal appearance in court to hear the terms of the order from the court, no additional proof of service is required for enforcement of the order.

(2) If the respondent named in a temporary restraining order is personally served with the order and notice of hearing with respect to a restraining order or protective order based on the temporary restraining order, but the respondent does not appear at the hearing, either personally

## SELECTED STATUTES REGARDING DUTIES OF ATTORNEYS AND DISCIPLINE

or by an attorney, and the terms and conditions of the restraining order or protective order issued at the hearing are identical to the temporary restraining order, except for the duration of the order, then the restraining order or protective order issued at the hearing may be served on the respondent by first-class mail sent to the respondent at the most current address for the respondent that is available to the court.

(3) The Judicial Council form for temporary orders issued pursuant to this subdivision shall contain a statement in substantially the following form:

"If you have been personally served with a temporary restraining order and notice of hearing, but you do not appear at the hearing either in person or by a lawyer, and a restraining order that is the same as this temporary restraining order except for the expiration date is issued at the hearing, a copy of the order will be served on you by mail at the following address: \_\_\_\_.

If that address is not correct or you wish to verify that the temporary restraining order was converted to a restraining order at the hearing without substantive change and to find out the duration of that order, contact the clerk of the court."

(p) (1) Information on a protective order relating to elder or dependent adult abuse issued by a court pursuant to this section shall be transmitted to the Department of Justice in accordance with either paragraph (2) or (3).

(2) The court shall order the petitioner or the attorney for the petitioner to deliver a copy of an order issued under this section, or a reissuance, extension, modification, or termination of the order, and any subsequent proof of service, by the close of the business day on which the order, reissuance, extension, modification, or termination was made, to each law enforcement agency having jurisdiction over the residence of the petitioner, and to any additional law enforcement agencies within the court's discretion as are requested by the petitioner.

(3) Alternatively, the court or its designee shall transmit, within one business day, to law enforcement personnel all information required

under subdivision (b) of Section 6380 of the Family Code regarding any order issued under this section, or a reissuance, extension, modification, or termination of the order, and any subsequent proof of service, by either one of the following methods:

(A) Transmitting a physical copy of the order or proof of service to a local law enforcement agency authorized by the Department of Justice to enter orders into the California Law Enforcement Telecommunications System (CLETS).

(B) With the approval of the Department of Justice, entering the order or proof of service into CLETS directly.

(4) Each appropriate law enforcement agency shall make available information as to the existence and current status of these orders to law enforcement officers responding to the scene of reported abuse.

(5) An order issued under this section shall, on request of the petitioner, be served on the respondent, whether or not the respondent has been taken into custody, by any law enforcement officer who is present at the scene of reported abuse involving the parties to the proceeding. The petitioner shall provide the officer with an endorsed copy of the order and a proof of service, which the officer shall complete and send to the issuing court.

(6) Upon receiving information at the scene of an incident of abuse that a protective order has been issued under this section, or that a person who has been taken into custody is the respondent to that order, if the protected person cannot produce an endorsed copy of the order, a law enforcement officer shall immediately attempt to verify the existence of the order.

(7) If the law enforcement officer determines that a protective order has been issued, but not served, the officer shall immediately notify the respondent of the terms of the order and where a written copy of the order can be obtained, and the officer shall at that time also enforce the order. The law enforcement officer's oral notice of the terms of the order shall constitute service of the order and is sufficient notice for the purposes

## SELECTED STATUTES REGARDING DUTIES OF ATTORNEYS AND DISCIPLINE

- of this section and for the purposes of Section 273.6 of the Penal Code.
- (q) This section does not preclude either party from representation by private counsel or from appearing on the party's own behalf.
- (r) There shall not be a filing fee for a petition, response, or paper seeking the reissuance, modification, or enforcement of a protective order filed in a proceeding brought pursuant to this section.
- (s) Pursuant to paragraph (4) of subdivision (b) of Section 6103.2 of the Government Code, a petitioner shall not be required to pay a fee for law enforcement to serve an order issued under this section.
- (t) The prevailing party in an action brought under this section may be awarded court costs and attorney's fees, if any.
- (u) (1) A person subject to a protective order under this section shall not own, possess, purchase, receive, or attempt to receive a firearm or ammunition while the protective order is in effect.
- (2) The court shall order a person subject to a protective order issued under this section to relinquish any firearms that the person owns or possesses pursuant to Section 527.9 of the Code of Civil Procedure.
- (3) Every person who owns, possesses, purchases, or receives, or attempts to purchase or receive a firearm or ammunition while subject to a protective order issued under this section is punishable pursuant to Section 29825 of the Penal Code.
- (4) This subdivision does not apply in a case in which a protective order issued under this section was made solely on the basis of financial abuse unaccompanied by force, threat, harassment, intimidation, or any other form of abuse.
- (v) In a proceeding brought under paragraph (3) of subdivision (a), all of the following apply:
- (1) Upon the filing of a petition for a protective order, the elder or dependent adult on whose behalf the petition has been filed shall receive a copy of the petition, a notice of the hearing, and any declarations submitted in support of the petition. The elder or dependent adult shall receive this information at least five days before the hearing. The court may, on motion of the petitioner or on its own motion, shorten the time for provision of this information to the elder or dependent adult.
- (2) The adult protective services agency shall make reasonable efforts to assist the elder or dependent adult to attend the hearing and provide testimony to the court, if that person wishes to do so. If the elder or dependent adult does not attend the hearing, the agency shall provide information to the court at the hearing regarding the reasons why the elder or dependent adult is not in attendance.
- (3) Upon the filing of a petition for a protective order and upon issuance of an order granting the petition, the county adult protective services agency shall take all reasonable steps to provide for the safety of the elder or dependent adult, pursuant to Chapter 13 (commencing with Section 15750), which may include, but are not limited to, facilitating the location of alternative accommodations for the elder or dependent adult, if needed.
- (w) Willful disobedience of a temporary restraining order or restraining order after hearing granted under this section is punishable pursuant to Section 273.6 of the Penal Code.
- (x) This section does not apply to any action or proceeding governed by Title 1.6C (commencing with Section 1788) of Part 4 of Division 3 of the Civil Code, Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, or Division 10 (commencing with Section 6200) of the Family Code. This section does not preclude a petitioner's right to use other existing civil remedies.
- (y) The Judicial Council shall develop forms, instructions, and rules relating to matters governed by this section. The petition and response forms shall be simple and concise, and shall be used by parties in actions brought pursuant to this section.
- (z) (1) When issuing a protective order pursuant to this section for abuse involving acts described in paragraph (1) or (2) of subdivision (a) of Section 15610.07, after notice and a hearing, the court may, if appropriate, also issue an order requiring

## SELECTED STATUTES REGARDING DUTIES OF ATTORNEYS AND DISCIPLINE

the restrained party to participate in mandatory clinical counseling or anger management courses provided by a counselor, psychologist, psychiatrist, therapist, clinical social worker, or other mental or behavioral health professional licensed in the state to provide those services.

(2) The Judicial Council shall revise or promulgate forms as necessary to effectuate this subdivision on or before January 1, 2021.

(aa) This section shall remain in effect only until January 1, 2023, and as of that date is repealed. (Added by Stats. 2015, ch. 285, operative July 1, 2016. Amended by Stats. 2016, ch. 86; Stats. 2019, ch. 628; Stats. 2021, ch. 273.)

### **§ 15657.1 Attorney's Fees; Factors**

The award of attorney's fees pursuant to subdivision (a) of Section 15657 shall be based on all factors relevant to the value of the services rendered, including, but not limited to, the factors set forth in Rule 4-200 of the Rules of Professional Conduct of the State Bar of California, and all of the following:

(a) The value of the abuse-related litigation in terms of the quality of life of the elder or dependent adult, and the results obtained.

(b) Whether the defendant took reasonable and timely steps to determine the likelihood and extent of liability.

(c) The reasonableness and timeliness of any written offer in compromise made by a party to the action. (Added by Stats. 1991, ch. 774. Amended by Stats. 1994, ch. 594.)

## APPENDIX 1

### SUPREME COURT OF CALIFORNIA ORDER S158605

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#### ORDER REGARDING THE STATE BAR IOLTA PROGRAM

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Pursuant to this court's inherent authority, and based upon a recommendation of the Board of Governors of the State Bar of California, this court's order entitled "Order Pursuant to Statutes 1981, Chapter 789," filed December 31, 1982, is rescinded effective December 31, 2007. Effective January 1, 2008, members of the State Bar are ordered to maintain IOLTA accounts that comply with Business and Professions Code 6210 et seq. To assist this court in evaluating the necessity for a rule of court, as the State Bar has recommended, to implement recent legislative changes to the IOLTA program, the State Bar of California is ordered to prepare for this court's consideration an analysis of and recommendations for implementing these legislative changes. (Supreme Court Order, January 3, 2008.)

**[PUBLISHER'S NOTES:** (1) *The above Supreme Court order refers to Business & Professions Code sections 6210 et seq. Refer to Publication 250, Volume 1, pages 161-168 for these code sections. See also, State Bar IOLTA rules, Title 2, Division 5 of the Rules of the State Bar, provided in the following pages of this Appendix A.\** (2) *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" are deemed to refer to the "board of trustees."]*

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\* This footnote provides the text of the 1982 Supreme Court order rescinded by the above 2008 Supreme Court order.

#### SUPREME COURT ORDER PURSUANT TO STATUTES 1981, CHAPTER 789 (Authorization for State Bar Members to Establish Interest-Bearing Trust Accounts)

The court having considered in bank the draft order proposed by the Board of Governors of the State Bar of California, it is hereby ordered pursuant to Business and Professions Code section 6212, subdivision (a) (Stats. 1981, ch. 789) that members of the State Bar, law firms or law corporations of which they are members are authorized to establish interest-bearing trust accounts with a bank, savings and loan, or other financial institution regulated by a federal or state agency, which can accept such deposits, pay interest thereon, and insure such deposits by an agency of the federal government, and if such depository should have a notice of withdrawal requirement, the required notice does not exceed 30 days. (Supreme Court order, December 31, 1982.)

## APPENDIX 1

### EXCERPT FROM RULES OF THE STATE BAR

#### TITLE 2.

#### RIGHTS AND RESPONSIBILITIES OF LICENSEES

##### Division 5.

##### Trust Accounts

#### Chapter 1. Global Provisions

##### **Rule 2.100 Definitions**

(A) A “Chargeable fee” is a per-check charge, per-deposit charge, fee in lieu of minimum balance, federal deposit insurance fee, or sweep fee.

(B) A “Client” is a person or a group of persons that has engaged the attorney or firm for a common purpose.

(C) “Comparably conservative” in Business and Professions Code 6213(j) includes, but is not limited to, securities issued by Government Sponsored Enterprises.

(D) An “Exempt Account” is exempt from IOLTA requirements because it does not meet the productivity criteria established by the Legal Services Trust Fund Commission.

(E) “Funds” are monies held in a fiduciary capacity by a licensee for the benefit of a client or a third party.

(F) An “IOLTA account” is an Interest on Lawyers’ Trust Account as defined in Business and Professions Code section 6213(j).

(G) An “IOLTA-eligible institution” is an eligible institution as defined in 6213(k) that meets the requirements of these rules, State Bar guidelines, and the State Bar Act.

(H) “IOLTA funds” are the interest or dividends generated by IOLTA accounts.

(I) A “licensee” is a licensee and a licensee’s law firm.

(J) A “licensee business expense” is an expense that a licensee incurs in the ordinary course of business, such as charges for check printing, deposit stamps,

insufficient fund charges, collection charges, wire transfer fees, fees for cash management, and any other fee that is not a chargeable fee.

*Rule 2.100 adopted effective January 12, 2008; amended effective January 25, 2019.*

#### Chapter 2. Licensees’ Duties

##### **Rule 2.110 Funds to be held in an IOLTA account**

(A) Licensees must establish IOLTA accounts for funds that cannot earn income for the client or third party in excess of the costs incurred to secure such income because the funds are nominal in amount or held for a short period of time. In determining whether funds can earn income in excess of costs, a licensee must consider the following factors:

- (1) the amount of the funds to be deposited;
- (2) the expected duration of the deposit, including the likelihood of delay in resolving the matter for which the funds are held;
- (3) the rates of interest or dividends at eligible institutions where the funds are to be deposited;
- (4) the cost of establishing and administering non-IOLTA accounts for the client or third party’s benefit, including service charges, the costs of the licensee’s services, and the costs of preparing any tax reports required for income earned on the funds;
- (5) the capability of eligible institutions or the licensee to calculate and pay income to individual clients or third parties;
- (6) any other circumstances that affect the ability of the funds to earn a net return for the client or third party.

(B) The State Bar will not bring disciplinary charges against a licensee for determining in good faith whether or not to place funds in an IOLTA account.

*Rule 2.110 adopted effective January 12, 2008; amended effective January 25, 2019.*

## APPENDIX 1

### **Rule 2.111 Funds not to be held in an IOLTA account**

(A) If a licensee determines that the funds can earn income for the benefit of the client or third party in excess of the costs incurred to secure such income, the funds must be deposited in a trust account in accordance with the provisions of Section 6211(b) of the Business and Professions Code and Rule 4-100 of the Rules of Professional Conduct or as the client or third party directs in writing.

(B) A licensee should not designate an exempt account<sup>1</sup> as an IOLTA account.

*Rule 2.111 adopted effective January 12, 2008; amended effective January 25, 2019.*

### **Rule 2.112 Review of funds in an IOLTA account**

A licensee must review an IOLTA account at reasonable intervals to determine whether changed circumstances require funds be moved out of the IOLTA account.

*Rule 2.112 adopted effective January 12, 2008; amended effective January 25, 2019.*

### **Rule 2.113 Charges against IOLTA funds**

A licensee may allow an IOLTA-eligible institution to deduct chargeable fees permitted by Business and Professions Code 6212(c) from IOLTA funds. A licensee must pay any licensee business expense and may not allow the bank to deduct such expenses from IOLTA funds. If the State Bar becomes aware that a licensee business expense is erroneously deducted from IOLTA funds, the State Bar will inform the IOLTA-eligible institution and request that the error be corrected.

*Rule 2.113 adopted effective January 12, 2008; amended effective January 25, 2019.*

### **Rule 2.114 Reporting to the State Bar**

A licensee must report compliance with these rules.

*Rule 2.114 adopted effective January 12, 2008; amended effective January 25, 2019.*

### **Rule 2.115 Consent to reporting**

By establishing funds in an account, a licensee consents to the eligible institution's furnishing account information to the State Bar as required by these rules, State Bar guidelines, and the State Bar Act.

*Rule 2.115 adopted effective January 12, 2008; amended effective January 25, 2019.*

### **Rule 2.116 Liquidity requirements**

IOLTA accounts must allow prompt withdrawal of funds, except that such accounts may be subject to notification requirements applicable to all other accounts of the same class at the eligible institution so long as the notification requirement does not exceed thirty days.

*Rule 2.116 adopted effective January 12, 2008.*

### **Rule 2.117 Institution eligibility requirements**

A licensee may place an IOLTA account only in an IOLTA-eligible institution. The State Bar will maintain a list of IOLTA-eligible institutions.

*Rule 2.117 adopted effective January 12, 2008; amended effective January 25, 2019.*

### **Rule 2.118 No change to other duties and obligations of a licensee**

Nothing in these rules shall be construed as affecting or impairing the duties and obligations of a licensee pursuant to the statutes and rules governing the conduct of licensees of the State Bar including, but not limited to, provisions of Rule 1.15 of the Rules of Professional Conduct requiring a licensee to promptly notify a client of the receipt of the client's funds and to promptly pay or deliver to the client, as requested by the client, the funds in the possession of the licensee which the client is entitled to receive.

*Rule 2.118 adopted effective January 12, 2008; amended effective January 25, 2019.*

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<sup>1</sup> As defined in Rule 2.100(D).

**Chapter 3. Duties of an IOLTA Eligible Institution**

**Rule 2.130 Comparable Interest Rate or Dividend Requirement**

(A) An IOLTA-eligible institution must pay comparable interest rates or dividends as required under Business and Professional Code 6212(b) and 6212(e) and may choose to do so in one of three ways:

- (1) allow establishment of IOLTA accounts as comparable-rate products;
- (2) pay the comparable-product rate on IOLTA deposit accounts, less chargeable fees, if any; or
- (3) pay the Established Compliance Rate determined by the Legal Services Trust Fund Commission.

(B) “Accounts of the same type” in section 6212(b) refers to comparable-rate products described in sections 6212(e) and 6212(j) for which the IOLTA-eligible institution pays no less than the highest interest rate or dividend generally available from the institution to non-IOLTA account customers when the IOLTA account meets the same minimum balance or other eligibility qualifications.

*Rule 2.130 adopted effective January 12, 2008.*

**Rule 2.131 Payments to the State Bar**

An IOLTA-eligible institution must remit payments to the State Bar in accordance with Business and Professions Code 6212(d)(1-3) and State Bar rules and guidelines.

*Rule 2.131 adopted effective January 12, 2008.*



## APPENDIX 2

### LAWYER REFERRAL SERVICE RULES

(Effective June 1, 2019)

#### EXCERPT FROM RULES OF THE STATE BAR

#### TITLE 3. PROGRAMS AND SERVICES

#### Division 5. Providers of Programs and Services

#### Chapter 3. Lawyer Referral Services

##### Article 1. Certification

##### **Rule 3.800 Certification Required**

An individual or organization that refers prospective clients to attorneys must comply with minimum standards and be certified by the State Bar of California as a lawyer referral service unless exempt by law.<sup>1</sup> These rules set forth the minimum standards and certification requirements.

*Rule 3.800 adopted as rule 3.700 January 7, 2011; renumbered as rule 3.800 November 4, 2011; approved by the Supreme Court effective January 21, 2014.*

##### **Rule 3.801 Application for Certification**

(A) To initiate or continue certification, a lawyer referral service must submit an Application for Certification as a Lawyer Referral Service that identifies each county in which it operates.

(B) Every application must include panel membership criteria, including criteria for suspension and removal that provide for written notice and review with an opportunity to respond.

(C) An application for initial certification may be submitted at any time. An application for continuance

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<sup>1</sup> Business & Professions Code § 6155. See also California Rules of Professional Conduct, rule 5.4.

of certification must be submitted with the annual report required by Rule 3.828. Within a reasonable time, the State Bar will notify an applicant that certification has been granted or denied or that an application is incomplete or noncompliant.

(D) An application must be completed in accordance with application instructions and filed with any required fee.

*Rule 3.801 adopted as rule 3.701 January 7, 2011; renumbered as rule 3.801 November 4, 2011; approved by the Supreme Court effective January 21, 2014; approved by the Supreme Court effective June 1, 2019.*

##### **Rule 3.802 Application Fees**

(A) Application fees for initial and continued certification, which are set forth in the Schedule of Charges and Deadlines.<sup>2</sup>

(B) An application fee not received by the deadline is subject to the late penalty set forth in the Schedule of Charges and Deadlines. If the fee and penalty are not received within thirty days of the deadline, certification may be suspended and the lawyer referral service must cease any activity subject to these rules.

(C) Application fees will be refunded upon written withdrawal of the application by the service. An application may not be withdrawn after certification has been granted. An application fee is otherwise not refundable.

(D) An application or late fee for continued certification may be waived or reduced. Any request for a waiver or reduction will be reviewed based on demonstrated financial necessity.

*Rule 3.802 adopted as rule 3.702 January 7, 2011; renumbered as rule 3.802 November 4, 2011; approved by the Supreme Court effective January 21, 2014; approved by the Supreme Court effective June 1, 2019.*

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<sup>2</sup> Business & Professions Code § 6155(f)(4).

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### Rule 3.803 Denial of Application

(A) An application for initial certification that fails to comply with these rules is denied in a written notice explaining the denial.

(1) Upon receipt of a notice of denial, an initial applicant may submit a written request for reconsideration within thirty days of the date of the notice. The request must explain why the application was compliant and be supported by any relevant evidence.

(2) Within sixty days of receiving a request for reconsideration of denial, the State Bar may grant certification or confirm denial of the initial application. If the denial is confirmed, the applicant may submit a petition for review to the State Bar Court in accordance with its rules.

(3) Denial of an application for initial certification does not preclude an applicant from submitting a new application. A new application must be submitted in accordance with application instructions and with the fee set forth in the Schedule of Charges and Deadlines.

(B) An application for continued certification that fails to comply with these rules subjects a lawyer referral service to suspension or revocation pursuant to rule 3.806.

*Rule 3.803 adopted as rule 3.703 January 7, 2011; renumbered as rule 3.803 November 4, 2011; approved by the Supreme Court effective January 21, 2014.*

### Rule 3.804 Issuance of Certification

The State Bar may grant certification with or without conditions for two years or a shorter time specified by the State Bar. Certification terminates at the end of the certification period unless renewed in accordance with these rules.

*Rule 3.804 adopted as rule 3.704 January 7, 2011; renumbered as rule 3.804 November 4, 2011; approved by the Supreme Court effective January 21, 2014.*

### Rule 3.805 Audits

Before granting or continuing certification, waiving an application fee, or at any other time, the State Bar may conduct an audit to determine whether a lawyer referral service has complied with these rules. Any audit must be at the expense of the lawyer referral service.

*Rule 3.805 adopted as rule 3.705 January 7, 2011; renumbered as rule 3.805 November 4, 2011; approved by the Supreme Court effective January 21, 2014.*

### Rule 3.806 Suspension or Revocation of Certification<sup>3</sup>

(A) The State Bar may suspend or revoke certification of a lawyer referral service for failure to comply with these rules or for other good cause.

(B) A lawyer referral service is entitled to notice of intention to suspend or revoke certification that states the reasons for the State Bar's action.

(C) A lawyer referral service may file a written request for review of suspension or revocation of certification within thirty days of receipt of the notice. The request must explain why the action was inappropriate and be supported by any relevant evidence. Failure to request review results in final suspension or revocation of certification.

(D) The State Bar must respond to a request for review that meets the requirements of these rules within sixty days of filing and give the lawyer referral service an opportunity to support the request. The State Bar may then continue, suspend, or revoke certification with or without conditions as it deems appropriate. The State Bar must provide the lawyer referral service a written statement of the reasons for its determination.

(E) Within thirty days of receipt of the notice of suspension or revocation, the lawyer referral service may submit a petition for review to the State Bar Court in accordance with its rules. Certification is suspended or revoked for failure to submit a timely petition for review of suspension or revocation.

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<sup>3</sup> See Business & Professions Code § 6155(g).

## APPENDIX 2

(F) Pending review of a denial to continue certification, certification remains in effect unless the State Bar suspends or revokes it.

(G) When suspension or revocation of certification is final, a lawyer referral service must immediately cease any activity subject to these rules, and the State Bar must notify every panel member of the lawyer referral service that certification has been suspended or revoked.

*Rule 3.806 adopted as rule 3.706 January 7, 2011; renumbered as rule 3.806 November 4, 2011; approved by the Supreme Court effective January 21, 2014.*

### **Rule 3.807 Complaints About a Lawyer Referral Service**

The State Bar must review a complaint about a lawyer referral service submitted pursuant to these rules<sup>4</sup> within a reasonable time and

(A) if the complaint demonstrates an apparent violation of these rules or other authority provide the service written notice of the complaint and an opportunity to respond; and

(B) provide written notice to the complainant regarding what action, if any, it deems appropriate.

*Rule 3.807 adopted as rule 3.707 January 7, 2011; renumbered as rule 3.807 November 4, 2011; approved by the Supreme Court effective January 21, 2014; approved by the Supreme Court effective June 1, 2019.*

### **Rule 3.808 Notice**

In these rules, a notice or other document is deemed received the fifth day after being sent by first-class mail or upon actual receipt when delivered otherwise.

*Rule 3.808 adopted as rule 3.708 January 7, 2011; renumbered as rule 3.808 November 4, 2011; approved by the Supreme Court effective January 21, 2014.*

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<sup>4</sup> Rule 3.820(E).

## **Article 2. Minimum Standards for Lawyer Referral Services**

### **Rule 3.820 General Duties of a Lawyer Referral Service**

A lawyer referral service must

(A) have a governing committee; one or more panels of attorneys to provide legal services; staff to evaluate and process requests for legal assistance; and, if engaging in automated referrals as described in rule 3.826(C), appropriate technology and safeguards to ensure accurate referrals;

(B) encourage widespread attorney membership;<sup>5</sup>

(C) serve its community and improve the quality and affordability of legal services by

(1) assisting those in need of legal services to find a qualified, insured attorney or other appropriate legal services, including dispute resolution;

(2) providing the public with general information about appropriate legal services; and

(3) establishing services for persons of limited means, such as a modest means panel, a limited scope panel, flat fee panels, providing a free referral for a 30 minute consultation by an attorney panel member, or providing for services on sliding fee scales or payment schedules; and

(D) ensure 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;<sup>6</sup>

(E) tell each client how to submit a complaint about the service or one of its panel members and inform the client that an unresolved complaint may be submitted to the State Bar, provided it is in writing and supported by factual information that demonstrates a violation of these rules or other applicable authority;

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<sup>5</sup> Business and Professions Code § 6155(f)(1).

<sup>6</sup> Business and Professions Code § 6155(a)(2).

## APPENDIX 2

- (F) if it is a non-profit use its income only to pay reasonable operating expenses and to fund its pro bono, legal services, and other public service programs;
- (G) fully cooperate with any State Bar audit;<sup>7</sup>
- (H) provide each panel member a copy of these rules; and
- (I) at all times comply with these rules and applicable law.

*Rule 3.820 adopted as rule 3.720 January 7, 2011; renumbered as rule 3.820 November 4, 2011; approved by the Supreme Court effective January 21, 2014; approved by the Supreme Court effective June 1, 2019.*

### **Rule 3.821 Ownership<sup>8</sup>**

A lawyer referral service owned or operated by a bar association is deemed to be owned or operated by its governing committee. An attorney may not directly or indirectly own or operate a lawyer referral service if the attorney individually or jointly receives more than twenty percent of the referrals of the lawyer referral service.

*Rule 3.821 adopted as rule 3.721 January 7, 2011; renumbered as rule 3.821 November 4, 2011; approved by the Supreme Court effective January 21, 2014.*

### **Rule 3.822 Governing Committee**

(A) A lawyer referral service must be supervised by a governing committee of three or more members. A majority of the governing committee must be active licensees of the State Bar. No more than half the members of the governing committee may receive referrals from the lawyer referral service.

(B) The governing committee must

- (1) establish criteria for subject matter and general panel membership and use the criteria to evaluate panel members at least once every two years;

(2) establish and assess compliance with the referral procedures required by these rules;<sup>9</sup>

(3) review and submit the annual report required by these rules;<sup>10</sup>

(4) annually survey a random sample of at least ten percent of the clients of the service to determine client satisfaction with services and fees;

(5) on the basis of the annual survey, make any operational changes it deems necessary;

(6) provide to the State Bar information required to be collected under rule 3.826; and

(7) meet at least quarterly.

*Rule 3.822 adopted as rule 3.722 January 7, 2011; renumbered as rule 3.822 November 4, 2011; approved by the Supreme Court effective January 21, 2014; amended effective January 25, 2019; approved by the Supreme Court effective June 1, 2019.*

### **Rule 3.823 Panels**

(A) A lawyer referral service must establish panels of attorney members qualified to provide legal services to the public. The panels must be organized by subject matter but may include a general panel. A lawyer referral service is encouraged to establish moderate and no-fee panels and other special panels that respond to the needs of the public, in order to provide services that serve persons of limited means as required under rule 3.820(C)(3).<sup>11</sup>

(B) At least twenty attorney members, ten of whom are from separate and independent law firms, are required for all lawyer referral services, and each panel must have at least four members. The State Bar may waive these minimum requirements if a lawyer referral service operates in an underserved county or provides written evidence that the size of the community or the number of its attorneys warrants a lesser number, or

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<sup>7</sup> See rule 3.805.

<sup>8</sup> Business and Professions Code § 6155(b).

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<sup>9</sup> Rule 3.826.

<sup>10</sup> Rule 3.826.

<sup>11</sup> Business & Professions Code § 6155(f)(5).

## APPENDIX 2

the service otherwise demonstrates the ability to meet the needs of its service area with a smaller panel.

(C) A lawyer referral service must require that each panel member

(1) have errors and omissions insurance in the amounts set forth in the Schedule of Charges and Deadlines and provide proof of insurance to the State Bar upon request;<sup>12</sup>

(2) not receive referrals evaluated and processed by a lawyer referral service staff member employed or otherwise compensated by the panel attorney;

(3) if the service operates in more than one county, identify each county the member agrees to take referrals from.

(D) A lawyer referral service may disclose a panel member's past performance when the information is accurate, complete, and not misleading.

*Rule 3.823 adopted as rule 3.723 January 7, 2011; renumbered as rule 3.823 November 4, 2011; approved by the Supreme Court effective January 21, 2014; approved by the Supreme Court effective June 1, 2019.*

### **Rule 3.824 Eligibility for Membership**

(A) Only an active licensee of the State Bar practicing in the community served by the lawyer referral service may be a member of the service. A member of any service that operates in more than one county make take referrals from any of the counties in which the service operates; provided, however, that the member must agree to travel to each county as reasonably necessary to perform legal services (such as client meetings), and must either maintain a place of business in each county or be able to offer an otherwise suitable location or method for the performance of such services. Remote services may be provided if they are adequate to meet a client's needs. To serve on a subject matter panel, such a member must meet the experience and other substantial and objective criteria of the lawyer referral service. Certification as a legal specialist qualifies an attorney to serve on a panel that

deals with the area of certification, provided the attorney meets other criteria for panel membership.

(B) Panel membership may not be contingent upon membership in a sponsoring entity.

*Rule 3.824 adopted as rule 3.724 January 7, 2011; renumbered as rule 3.824 November 4, 2011; approved by the Supreme Court effective January 21, 2014; amended effective January 25, 2019; approved by the Supreme Court effective June 1, 2019.*

### **Rule 3.825 Panel Membership Fees**

(A) Panel membership fees must be reasonable, encourage widespread panel membership, and otherwise comply with these rules and applicable law.<sup>13</sup>

(B) Panel membership fees may not in any way be based on or guarantee contacts, calls, cases, referrals, or clients.

(C) Panel members who are not members of a sponsoring entity may be required to pay a nominal charge for administrative services.

*Rule 3.825 adopted as rule 3.725 January 7, 2011; renumbered as rule 3.825 November 4, 2011; approved by the Supreme Court effective January 21, 2014.*

### **Rule 3.826 Referrals**

(A) The governing committee of a lawyer referral service must establish fair and impartial procedures to assure that referrals are allocated equitably to panel members and respond insofar as possible to clients' legal needs and other circumstances, such as geographic convenience and language issues.

(B) All referrals in a geographical area may not be made to a single attorney or law firm. The State Bar may deny certification or recertification, or suspend or revoke certification, for failure to make referrals fairly and impartially to panel members or to maintain current and complete records of referrals.

<sup>12</sup> Business and Professions Code § 6155(f)(6).

<sup>13</sup> Business and Professions Code § 6155(f)(1). See rule 3.820(B).

## APPENDIX 2

(C) If a lawyer referral service makes any referrals using purely technological means, the service must:

(1) for a minimum of twelve (12) months immediately following the implementation of any automated referral system, establish quality control and assurance measures that, at a minimum:

(a) make reasonable efforts to follow up within two (2) business days of each automated referral to evaluate whether the client's needs were adequately met; and

(b) allow for electronic feedback from clients regarding whether the automated referral was successful or failed to meet client's needs.

After twelve (12) months, the service may reduce its quality control and assurance efforts to follow up with twenty-five percent (25%) of automated referrals if it demonstrates to the State Bar that the automated referral system results in successful referrals at a rate as high or higher than traditional referral methods. The service may make such a demonstration with customer satisfaction surveys, or other appropriate methods. The requirements of this subsection also apply after the adoption of a new technological platform, but do not otherwise apply to incremental software updates or similar improvements to an existing automated referral system;

(2) ensure that any client who encounters a technical problem or any other difficulty or delay in using service's automated referral system is provided with information to contact an appropriate service staff member during regular business hours;

(3) forgo any fee if a referral is made that does not accurately reflect the needs of the client, unless the fee is applied to further referral efforts in the same matter that are successful;

(4) regularly analyze the efficiency and accuracy of the automated referrals and make adjustments to the technological platforms as needed; and

(5) provide data to the State Bar enumerating how many requests for referrals were made in a

calendar year through the service's automated referral system, and how many such referrals were made using purely technological means.

(D) A referral may not

(1) discriminate on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, general expression, sexual orientation, age, military and veteran status, or other category of discrimination prohibited by applicable law, whether the category is actual or perceived;<sup>14</sup>

(2) violate restrictions against unlawful solicitation and false and misleading advertising or otherwise violate the Rules of Professional Conduct or law applicable to a licensee of the State Bar; or

(3) be made directly or indirectly by a person employed or otherwise compensated by an attorney or firm to whom the referral is made.

*Rule 3.826 adopted as rule 3.726 January 7, 2011; renumbered as rule 3.826 November 4, 2011; approved by the Supreme Court effective January 21, 2014; amended effective January 25, 2019; approved by the Supreme Court effective June 1, 2019.*

### Rule 3.827 Records

(A) A lawyer referral service must maintain and provide to the State Bar upon request current records for

(1) each panel member that include

(a) name, contact information, and qualifications;

(b) number and type of referrals, including whether referrals were made using purely technological means; and

(c) fees remitted for membership, referrals or consultations, advertising; or any other reason; and

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<sup>14</sup> See Rules of Professional Conduct, rule 8.4.1(c)(1).

## APPENDIX 2

- (2) for each referral that include
  - (a) the client's name and contact information;
  - (b) type of matter, date of referral, and whether each referral was made using purely technological means; and
  - (c) panel member to whom the referral was made.

- (3) sufficient to demonstrate compliance with section (C) of rule 3.826.

(B) Any record in the possession of the State Bar pertaining to a lawyer referral service is the property of the State Bar and confidential unless authorized for disclosure by these rules, order of the Board of Trustees, or consent of the lawyer referral service.

*Rule 3.827 adopted as rule 3.727 January 7, 2011; renumbered as rule 3.827 November 4, 2011; approved by the Supreme Court effective January 21, 2014; approved by the Supreme Court effective June 1, 2019.*

### **Rule 3.828 Annual Report**

(A) The governing committee of a lawyer referral service must submit an annual report of its activities and those of the lawyer referral service. The report must at a minimum

- (1) provide a detailed accounting of
  - (a) all sources and amounts of income, expenses, and reserves during the reporting period;
  - (b) the disposition of any reserves or surpluses derived from activities of the service during the reporting period and the immediately preceding reporting period;
- (2) include statistics derived from the records the service is required to maintain, including information about the proportion of referrals made through an automated referral system;<sup>15</sup> and

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<sup>15</sup> See rule 3.826(C).

- (3) summarize the annual client survey and any operational changes it prompted.<sup>16</sup>

(B) Failure to submit an annual report on time suspends certification unless the State Bar extends the report deadline for good cause.

*Rule 3.828 adopted as rule 3.728 January 7, 2011; renumbered as Rule 3.828 November 4, 2011; approved by the Supreme Court effective January 21, 2014; approved by the Supreme Court effective June 1, 2019.*

### **Rule 3.829 Publicity**

(A) Publicity, which includes advertising or any other kind of promotional material, must

- (1) indicate that the purpose of the lawyer referral service is to serve its community and improve the quality and affordability of legal services as required by these rules;<sup>17</sup> and

- (2) acknowledge any sponsorship by the lawyer referral service; identify the counties in which the service operates; and provide the State Bar certification number or certification mark.

(B) Any publicity by a lawyer referral service must comply with the California Rules of Professional Conduct and any other legal requirements.

(C) A copy of any publicity

- (1) must be submitted with an application for certification or recertification; and

- (2) may be required with the annual report.<sup>18</sup>

*Rule 3.829 adopted as rule 3.729 January 7, 2011; renumbered as rule 3.829 November 4, 2011; approved by the Supreme Court effective January 21, 2014; amended March 7, 2014; approved by the Supreme Court effective December 1, 2014.*

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<sup>16</sup> Rule 3.822(B)(4) and (5).

<sup>17</sup> See rule 3.820(C).

<sup>18</sup> Rule 3.828.

## APPENDIX 2

**APPENDIX A: SCHEDULE OF CHARGES AND DEADLINES (Adopted by the Board of Trustees March 7, 2014; effective retroactive to January 21, 2014; approved by the Supreme Court effective September 8, 2020.)**

**Title 3, Division 5, Chapter 3**

**Rule 3.802(A) Application Fee:<sup>1</sup>**

(1) Non-profit services.

Amount: \$1,000 for a service that operates in one county only. \$500 for the second county in which the service will operate, if any. \$250 for each county in which the service will operate, if any.

For continued certification and regardless of the number of counties in which the service operates, one percent (1%) of gross revenue up to maximum of \$10,000. No application fee, either for initial or continued certification shall exceed \$10,000

Deadline: Upon filing of application for certification or continued certification.

(2) For-profit services.

Amount: \$5,000 for a service that operates in one county only. \$2,500 for the second county in which the service will operate, if any. \$1,250 for each additional county in which the service will operate, if any.

For continued certification and regardless of the number of counties in which the services operates, one percent (1%) of gross revenue, up to maximum of \$10,000.

Deadline: Upon filing of application for certification or continued certification.

**Rule 3.803(A)(3) Reapplication Fee Following Denial of Initial Application**

Amount: See fees under rule 3.802(A).

Deadline: Not applicable.

**Rule 3.823(C)(1) Errors and Omissions Insurance Amounts For Each Panel Attorney<sup>2</sup>**

Amount: \$100,000 per occurrence and \$300,000 aggregate, per year.

Deadline: Upon filing of application for certification or continued certification.

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<sup>1</sup> Business and Professions Code § 6155(f)(4) provides that the application fee and renewal fees be determined by a combination of factors including for-profit or non-profit status and that the fees do not exceed \$10,000 or 1 percent of gross annual revenues, whichever is less.

<sup>2</sup> Business and Professions Code § 6155(f)(6) requires each panel attorney to possess a policy of errors and omissions insurance in an amount not less than \$100,000 for each occurrence and \$300,000 aggregate, per year.



## APPENDIX 3

### INFORMATION CONCERNING MINIMUM CONTINUING LEGAL EDUCATION RULES

California’s MCLE program is the result of a process that began in 1989, when Governor Deukmejian signed into law Senate Bill 905 (Davis), the continuing legal education bill. (SB 905 added Section 6070 to the Business and Professions Code.) The 1989 legislation required the State Bar to request the California Supreme Court to adopt a rule of court authorizing the State Bar to establish and administer an MCLE program. On December 7, 1990, the Court adopted Rule 9.31, the MCLE Rule of Court.

Rule 9.31 provides a skeletal outline of an MCLE program and authorizes the State Bar Board to adopt more detailed rules and regulations. The former MCLE Rules and Regulations were approved by the Board on December 8, 1990 and the MCLE program officially began on February 1, 1992. In 2005, the State Bar undertook a rules revision project, with the goal of providing one structure for more than two dozen sets of rules that formerly had their own organizational schemes and stylistic conventions. The revised Rules of the State Bar are organized into a single structure, observe common stylistic conventions, and use clear and simple language. The MCLE rules governing attorneys are found in Title 2, Division 4 of the Rules of the State Bar, and became effective January 1, 2008. The MCLE rules governing providers of legal education are found in Title 3, Division 5 of the Rules of the State Bar. These rules were most recently amended effective October 1, 2023 and are provided in this appendix as follows:

- MCLE rules for attorneys can be found at pages 362 – 368.
- MCLE rules of providers can be found at pages 369 – 374.

| UPCOMING MCLE COMPLIANCE REPORTING DEADLINES |                     |           |                    |
|--|---------------------|-----------|--------------------|
| GROUP  | PERIOD              | HOURS     | REPORTING DEADLINE |
| <b>Group 1</b><br><b>(Last Names A-G)</b>    | 02/01/22 – 01/31/25 | 25 Hours* | February 1, 2025   |
| <b>Group 2</b><br><b>(Last Names H-M)</b>    | 02/01/21 – 01/31/24 | 25 Hours* | February 1, 2024   |
| <b>Group 3</b><br><b>(Last Names N-Z)</b>    | 02/01/23 – 01/31/26 | 25 Hours* | February 1, 2026   |

\* Total regular requirement is **25 Hours every three years** and **must include** the following:

- Licensees must fulfill at least one-half of their MCLE requirement with activities approved for “participatory” MCLE credit.
- Maximum “self-study” hours is 12.5 hours.
- Special Requirements within the total hours required (may be taken as participatory or self-study)
  - Minimum of **4 hours** of Legal Ethics;
  - Minimum of **2 hours** of Dealing with the Recognition and Elimination of Bias in the Legal Profession and Society (*at least 1 hour must focus on implicit bias and the promotion of bias-reducing strategies*);
  - Minimum of **2 hours** of Education addressing Competence (**1 hour** must focus on prevention and detection and **1 hour** may focus on wellness in the context of the practice of law);\*\*
  - Minimum of **1 hour** of Education addressing technology in the practice of law;\*\* and
  - Minimum of **1 hour** of Education addressing civility in the legal profession.\*\*

\*\*The new MCLE credit hour requirements are effective for the reporting deadline February 1, 2025 and thereafter.

**APPENDIX 3**  
**MCLE RULES – ATTORNEYS**

**EXCERPT FROM RULES OF THE STATE BAR**

**TITLE 2.**  
**RIGHTS AND RESPONSIBILITIES OF LICENSEES**

**Division 4.**  
**Minimum Continuing Legal Education**

**Chapter 1. Purpose and Scope**

**Rule 2.50      Purpose of MCLE**

Rules for Minimum Continuing Legal Education (MCLE) require active licensees of the State Bar of California to remain current regarding the law, the obligations and standards of the legal profession, and the management of their practices. A licensee's involuntary enrollment as inactive for failing to comply with these rules is public information available on the State Bar Web site.

*Rule 2.50 adopted effective January 1, 2008; amended effective January 25, 2019.*

**Rule 2.51      Definitions**

(A) An "MCLE activity" is minimum continuing legal education that is accredited by the State Bar as meeting the standards for MCLE credit.

(B) An "LSMCLE" activity is legal specialty minimum continuing legal education that is accredited by the State Bar as meeting the standards for LSMCLE and MCLE credit as set forth in rule 3.114. Any requirements for an MCLE activity as set forth in these rules apply to an LSMCLE activity.

(C) A "provider" is an individual or entity approved by the State Bar to grant MCLE or LSMCLE credit for MCLE or LSMCLE activity.

(D) "MCLE credit" is the number of credit hours that a licensee may claim to meet the requirements of these rules.

(E) A "credit hour" is sixty minutes actually spent in an MCLE activity. A credit hour is reported to the nearest quarter hour in decimals, and includes time for introductory and concluding remarks and for questions and answers. Time spent in breaks or lunch periods, and participating in any nonlegal education functions, including but not limited to networking, business

meetings, tours, or demonstrations is not activity that may be applied to a credit hour or receive MCLE credit.

(F) An "approved jurisdiction" is recognized by the State Bar as having MCLE requirements that substantially meet State Bar standards for MCLE activities and computing MCLE credit hours in a manner acceptable to the State Bar. Approved jurisdictions are listed on the State Bar Web site.

(G) A "participatory activity" is an MCLE or LSMCLE activity for which the provider must verify attendance. Participatory activities may be presented in person or delivered by electronic means.

(H) A "self-study activity" is any MCLE activity identified in rule 2.83. Self-study activities may be presented in person or delivered by electronic means.

(I) State Bar New Attorney Training is MCLE that is developed and made available directly from the State Bar and is focused on law practice competency for newly admitted licensees.

*Rule 2.51 adopted effective January 1, 2008; amended effective July 1, 2014; amended effective February 1, 2018; amended effective January 25, 2019; amended effective October 1, 2023.*

**Rule 2.52      MCLE activities**

To receive MCLE credit, a licensee must complete an MCLE activity that meets State Bar standards set forth in rule 3.601.

*Rule 2.52 adopted effective January 1, 2008; amended effective January 1, 2013; amended effective July 1, 2014; amended effective January 25, 2019; amended September 24, 2020; amended effective October 1, 2023.*

**Rule 2.53      New licensees**

(A) A new licensee is permanently assigned to a compliance group on the date of admission.

(B) The initial compliance period for a new licensee begins on the first day of the month in which the licensee was admitted. It ends when the period ends for the compliance group. If the initial period is less than the period for the compliance group, the required

## APPENDIX 3

### MCLE RULES – ATTORNEYS

credit hours may be reduced as provided in these rules.<sup>1</sup>

(C) A new licensee may not claim credit for education taken before the initial compliance period.

(D) A new licensee is required to complete a State Bar New Attorney Training program during the first year of admission. New licensees who have completed any portion of the New Attorney Training program while enrolled in the State Bar's Provisional Licensure Program<sup>2</sup> are deemed to have satisfied that portion of the requirement and, therefore, do not have to retake that portion of the New Attorney Training program.

(E) New licensees can also apply New Attorney Training hours to their regular MCLE requirement, provided that the hours are completed within the licensee's MCLE compliance period.

*Rule 2.53 adopted effective January 1, 2008; amended effective February 1, 2018; amended effective January 25, 2019; amended effective October 1, 2023.*

#### **Rule 2.54 Exemptions**

(A) The following active licensees are exempt from MCLE requirements, provided they claim the exemption in their assigned compliance periods using My State Bar Profile online or an MCLE Compliance Form:

- (1) officers and elected officials of the State of California;
- (2) full-time professors at law schools accredited by the State Bar of California or the American Bar Association;
- (3) those employed full-time by the State of California on a permanent or probationary basis, regardless of their working hours, who do not otherwise practice law; and
- (4) those employed full-time by the United States government on a permanent or probationary basis, regardless of their working hours, who do not otherwise practice law.

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<sup>1</sup> Rule 2.72(C).

<sup>2</sup> California Rule of Court, rule 9.49.

(B) Licensees whom this rule exempts by reason of their employment with the State of California or the United States government may provide pro bono legal services through a California qualified legal services project or a qualified support center<sup>3</sup>, or through a legal services project or support center that primarily provides legal services without charge to indigent persons in another jurisdiction and is funded by the Legal Services Corporation or the Older Americans Act or receives funding administered by the jurisdiction's interest on lawyers trust accounts program.

*Rule 2.54 adopted effective January 1, 2008; amended effective February 23, 2017; amended effective January 25, 2019.*

#### **Rule 2.55 Modifications**

A licensee prevented from fulfilling the MCLE requirement for a substantial part of a compliance period because of a physical or mental condition, natural disaster, family emergency, financial hardship, or other good cause may apply for modification of MCLE compliance requirements. The State Bar must approve any modification.

*Rule 2.55 adopted effective January 1, 2008; amended effective January 25, 2019.*

### **Chapter 2. Compliance**

#### **Rule 2.70 Compliance groups**

A licensee is permanently assigned to one of three compliance groups on the basis of the first letter of the licensee's last name at the date of admission.<sup>4</sup> The three groups are A-G, H-M, and N-Z. The licensee remains in the compliance group despite any subsequent change of last name.

*Rule 2.70 adopted effective January 1, 2008; amended effective January 25, 2019.*

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<sup>3</sup> Business & Professions Code § 6213.

<sup>4</sup> A historical exception exists. When the MCLE program was established in 1992, licensees were permanently assigned to compliance groups on the basis of their last names at the time, regardless of any different last names they might have used previously.

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**Rule 2.71 Compliance periods**

(A) A compliance period consists of thirty-six months. It begins on the first day of February and ends three years later on the last day of January. The three compliance groups begin and end their compliance periods in different years. A licensee must report MCLE compliance no later than the day following the end of the compliance period. The report must be made online using My State Bar Profile or with an MCLE Compliance Form. Fees for noncompliance are set forth in the Schedule of Charges and Deadlines.

(B) Compliance with State Bar New Attorney Training must be effectuated and reported completed, in a manner established by the State Bar, by the last day of the month of an attorney's one-year anniversary as a State Bar licensee. Fees for noncompliance are set forth in the Schedule of Charges and Deadlines.

*Rule 2.71 adopted effective January 1, 2008; amended effective February 1, 2018; amended effective January 25, 2019; amended September 24, 2020.*

**Rule 2.72 Requirements**

(A) Until December 31, 2021, all licensees shall be subject to the following:

(1) Unless these rules indicate otherwise, a licensee who has been active throughout a thirty-six-month compliance period must complete twenty-five credit hours of MCLE activities. No more than twelve and a half credit hours may be self-study.<sup>5</sup> Total hours must include no less than 6 hours as follows:

- (a) at least four hours of legal ethics;
- (b) at least one hour dealing with the recognition and elimination of bias in the legal profession and society by reason of, but not limited to, sex, color, race, religion, ancestry, national origin, physical disability, age, or sexual orientation; and
- (c) at least one hour of education addressing substance abuse or other mental or physical issues that impair a licensee's ability to perform legal services with competence.

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<sup>5</sup> Rule 2.83.

(2) Required education in legal ethics, elimination of bias, or competence issues may be a component of an approved MCLE activity that deals with another topic.

(3) A licensee may reduce the required twenty-five hours in proportion to the number of full months the licensee was inactive or exempt in the thirty-six-month compliance period. Up to half the reduced hours may be self-study.<sup>6</sup> A tool for applying this formula is available at the State Bar Web site.

(4) Excess credit hours may not be applied to the next compliance period.<sup>7</sup>

(B) On and after January 1, 2022, all licensees shall be subject to the following:

(1) Licensees reporting for the compliance periods ending January 31, 2022, shall be subject to the requirements set forth in paragraphs (A)(1), (A)(2), (A)(3), and (A)(4) for the compliance period ending January 31, 2022.

(2) Beginning with the compliance period ending January 31, 2023, all licensees shall comply with the following:

(a) Unless these rules indicate otherwise, a licensee who has been active throughout a thirty-six-month compliance period must complete twenty-five credit hours of MCLE activities. No more than twelve and a half credit hours may be self-study.<sup>8</sup> Total hours must include no less than 7 hours as follows:

- (i) at least four hours of legal ethics;
- (ii) at least two hours dealing with the recognition and elimination of bias in the legal profession and society by reason of, but not limited to, sex, color, race, religion, ancestry, national origin, physical disability, age, or sexual orientation;

- 1. Of those two hours, at least one hour must focus on implicit

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<sup>6</sup> Rule 2.83.

<sup>7</sup> But see rule 2.93.

<sup>8</sup> Rule 2.83.

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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; and

(iii) at least one hour of education addressing substance abuse or other mental or physical issues that impair a licensee's ability to perform legal services with competence.

(b) Required education in legal ethics, elimination of bias, or competence issues may be a component of an approved MCLE activity that deals with another topic, consistent with the requirements of rule 2.52(F).

(c) A licensee may reduce the required twenty-five hours in proportion to the number of full months the licensee was inactive or exempt in the thirty-six-month compliance period, except that the requirements of paragraphs (B)(2)(a)(ii) and (B)(2)(a)(iii) may not be reduced to less than one hour each. Up to half the reduced hours may be self-study.<sup>9</sup> A tool for applying this formula is available at the State Bar website.

(d) Excess credit hours may not be applied to the next compliance period.<sup>10</sup>

(C) On and after January 1, 2024, all licensees shall be subject to the following:

(1) Licensees reporting for the compliance period ending January 31, 2024, shall be subject to the requirements set forth in paragraphs (B)(1) and (B)(2) for the compliance period ending January 31, 2024.

(2) Beginning with the compliance period ending January 31, 2025, all licensees shall comply with the following:

(a) Unless these rules indicate otherwise, a licensee who has been active throughout a thirty-six-month compliance period must complete twenty-five credit hours of MCLE activities. No more than twelve and a half credit hours may be self-study.<sup>11</sup> Total hours must include no less than 10 hours as follows:

(i) at least four hours of legal ethics;

(ii) at least two hours dealing with the recognition and elimination of bias, one hour of which must focus on implicit bias and the promotion of bias-reducing strategies;

(iii) at least two hours of education addressing competence, one hour of which must focus on prevention and detection;

(iv) at least one hour of education addressing technology in the practice of law; and

(v) at least one hour of education addressing civility in the legal profession.<sup>12</sup>

(b) Required education in legal ethics, elimination of bias, or competence, technology in the practice of law, and civility in the legal profession may be a component of an approved MCLE activity that deals with another topic, consistent with the requirements of rule 2.52(F).

(c) A licensee may reduce the required twenty-five hours in proportion to the number of full months the licensee was inactive or exempt in the thirty-six-month compliance period, except that the requirements of paragraphs (C)(2)(a)(ii) and (C)(2)(a)(iii) may not be reduced to less than one hour each. Up to half the reduced hours may be self-study.<sup>13</sup> Total A tool for applying

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<sup>9</sup> Rule 2.83.

<sup>10</sup> But see rule 2.93.

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<sup>11</sup> Rule 2.83.

<sup>12</sup> See rule 3.601 regarding the content requirements for these credit hours.

<sup>13</sup> Rule 2.83.

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this formula is available at the State Bar website.

(d) Excess credit hours may not be applied to the next compliance period.<sup>14</sup>

*Rule 2.72 adopted effective January 1, 2008; amended effective July 1, 2014; amended effective January 25, 2019; amended effective September 24, 2020; amended effective October 1, 2023.*

**Rule 2.73 Record of MCLE**

For a year after reporting MCLE compliance, a licensee must retain and provide upon demand and to the satisfaction of the State Bar

- (A) a provider's certificate of attendance;
- (B) a record of self-study that includes the title, provider, credit hours, and date of each MCLE activity; or
- (C) proof of exempt status.

*Rule 2.73 adopted effective January 1, 2008; amended effective July 1, 2014; amended effective January 25, 2019.*

**Chapter 3. MCLE Activities Approved For MCLE Credit**

**Rule 2.80 Attending programs and classes**

A licensee may claim MCLE credit for attending a MCLE activity, such as a lecture, panel discussion, or law school class, in person or by technological means.

*Rule 2.80 adopted effective January 1, 2008; amended effective January 25, 2019.*

**Rule 2.81 Speaking**

A licensee may claim participatory MCLE credit for speaking at an approved MCLE activity.

(A) A principal speaker, who is responsible for preparing and delivering a program or class and its related materials, may claim

(1) actual speaking time multiplied by four for the first presentation; or

(2) actual speaking time only for each time a presentation is repeated without significant change.

(B) A panelist may claim

(1) either of the following for the first panel presentation:

(a) scheduled individual speaking time multiplied by four, plus the actual time spent in attendance at the remainder of the presentation; or

(b) when times have not been scheduled for individual speakers, an equal share of the total time for all speakers multiplied by four plus the actual time spent in attendance at the remainder of the presentation.

(2) actual speaking time only for each time a presentation is repeated without significant change.

(C) A licensee who introduces speakers or serves as a moderator may claim only the MCLE credit available to any attendee.

*Rule 2.81 adopted effective January 1, 2008; amended effective July 1, 2014; amended effective January 25, 2019.*

**Rule 2.82 Teaching**

A licensee may claim participatory MCLE credit for teaching a law school course.

(A) A licensee assigned to teach a course may claim no more than the credit hours granted by the law school multiplied by twelve or actual speaking time for required MCLE in legal ethics, elimination of bias, or competence issues.

(B) A guest lecturer or substitute teacher may claim

(1) actual speaking time multiplied by four for the first presentation; or

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<sup>14</sup> But see rule 2.93.

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- (2) actual speaking time only for each time a presentation is repeated without significant change.

*Rule 2.82 adopted effective January 1, 2008; amended effective July 1, 2014; amended effective January 25, 2019.*

**Rule 2.83 Self-study**

A licensee may claim up to half the credit hours required in a compliance period for

- (A) completing MCLE activities for which attendance is not verified by a provider and the MCLE activities were prepared within the preceding five years;

- (B) taking an open- or closed-book self-test and submitting it to a provider who returns it with a grade and explanations of correct answers; or

- (C) authoring or co-authoring written materials that
- (1) have contributed to the licensee's legal education;
  - (2) have been published or accepted for publication; and
  - (3) were not prepared in the ordinary course of employment or in connection with an oral presentation at an approved MCLE activity.

*Rule 2.83 adopted effective January 1, 2008; amended effective July 1, 2014; amended effective January 25, 2019.*

**Rule 2.84 Mock trial, moot court, and other competition activity**

- (A) A licensee may claim up to two hours of participatory MCLE credit for serving as an attorney coach or scorer or presiding judge for mock trials, moot court arguments, negotiation competitions, arbitration competitions, and mediation competitions involving substantive and procedural law at the middle, high school, college, graduate, and law school levels.

- (B) MCLE credit hours are not available for grading written briefs or other written papers in connection with this type of MCLE activity.

- (C) Additional hours cannot be claimed for preparation time.

- (D) A licensee may not claim MCLE credit for legal ethics, elimination of bias, competence, technology in the practice of law, or civility in the legal profession as required by rule 2.72 for participation in this type of activity.

*Rule 2.84 adopted effective October 1, 2023. Former rule 2.84 (Legal Specialization) rescinded effective September 30, 2023.*

**Rule 2.85 Education taken while physically out of state**

- (A) A licensee may claim MCLE credit for an MCLE activity authorized by an approved jurisdiction if it meets the requirements of these rules and if the licensee attends or does the MCLE activity outside California. A licensee may not claim credit for such an activity, including self-study, when physically present in California unless the State Bar has specifically approved it.

- (B) A licensee who qualifies for an MCLE activity authorized by an approved jurisdiction may claim the amount of credit authorized by the jurisdiction. No special procedure is required to claim the credit.

*Rule 2.85 adopted effective January 1, 2008; amended effective July 1, 2014; amended effective January 25, 2019.*

**Rule 2.86 Licensee credit request**

A licensee may apply for MCLE credit for an educational activity directly relevant to the licensee's practice but not otherwise approved if the activity substantially meets State Bar standards. The application must be submitted with the appropriate fee.

*Rule 2.86 adopted effective January 1, 2008; amended effective July 1, 2014; amended effective January 25, 2019.*

**Rule 2.87 Bar examinations and MPRE**

A licensee may not claim MCLE credit for preparing for or taking a bar examination or the Multistate Professional Responsibility Examination (MPRE).

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*Rule 2.87 adopted effective January 1, 2008; amended effective January 25, 2019.*

**Chapter 4. Noncompliance**

**Rule 2.90      Definition**

Noncompliance is failure to

(A) complete the required education during the compliance period or an extension of it;

(B) report compliance or claim exemption from MCLE requirements;

(C) keep a record of MCLE compliance<sup>15</sup> or;

(D) pay fees for noncompliance.

*Rule 2.90 adopted effective January 1, 2008.*

**Rule 2.91      Notice of noncompliance**

(A) A licensee who is sent a notice of noncompliance must comply with its terms or be involuntarily enrolled as inactive. An inactive licensee is not eligible to practice law.

(B) If the notice requires the licensee to complete credit hours for the previous compliance period, any excess credit hours may be counted toward the current compliance period.

*Rule 2.91 adopted effective January 1, 2008; amended effective January 25, 2019.*

**Rule 2.92      Enrollment as inactive for MCLE noncompliance**

A licensee who fails to comply with a notice of noncompliance is enrolled as inactive and is not eligible to practice law. The enrollment is administrative and no hearing is required.

*Rule 2.92 adopted effective January 1, 2008; amended effective January 25, 2019.*

**Rule 2.93      Reinstatement following MCLE noncompliance**

Enrollment as inactive for MCLE noncompliance terminates when a licensee submits proof of compliance and pays noncompliance fees. Credit hours that exceed those required for compliance may be counted toward the current period.

*Rule 2.93 adopted effective January 1, 2008; amended effective January 25, 2019.*

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<sup>15</sup> Rule 2.73



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**EXCERPT FROM RULES OF THE STATE BAR**

**TITLE 3.**  
**PROGRAMS AND SERVICES**

**Division 5.**  
**Providers of Programs and Services**

**Chapter 1. Providers of Continuing Legal Education**

**Article 1. Global Provisions**

**Rule 3.600 Definitions**

(A) An “MCLE activity” is minimum continuing legal education that is accredited by the State Bar as meeting standards for MCLE credit.<sup>1</sup>

(B) An “LSMCLE” activity is legal specialty minimum continuing legal education that is accredited by the State Bar as meeting the standards for LSMCLE and MCLE credit as set forth in rule 3.114.

(C) A “provider” is an individual or entity approved by the State Bar to grant MCLE or LSMCLE credit for MCLE or LSMCLE activity.

(D) A “Single Activity Provider” is a provider approved to grant credit for a single MCLE activity after applying for and receiving approval of the activity in accordance with State Bar procedures and paying the appropriate processing fee(s).

(E) A “Multiple Activity Provider” is a provider approved to grant credit for any MCLE activity after applying for and receiving approval for Multiple Activity Provider status in accordance with State Bar procedures and paying the appropriate fee(s).

(F) A “Legal Specialty Credit Provider” is approved to grant credit for a single LSMCLE activity designed to attain and maintain proficiency in a specialty area of law or is an approved Multiple Activity Provider in a specialty area of law as set forth in rule 3.114.

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<sup>1</sup> Business & Professions Code § 6070 (b) provides that programs offered by the California District Attorneys Association and the California Public Defenders Association are deemed to be approved MCLE.

(G) “MCLE credit” is the number of credit hours that a licensee may claim to meet the requirements of these rules.

(H) A “credit hour” is sixty minutes actually spent in an MCLE activity. A credit hour is reported to the nearest quarter hour in decimals, and includes time for introductory and concluding remarks and for questions and answers. Time spent in breaks or lunch periods, and participating in any nonlegal education functions, including networking, business meetings, tours, or demonstrations is not activity that may be applied to a credit hour or receive MCLE credit.

(I) A “participatory activity” is an MCLE or LSMCLE activity that qualifies for participatory MCLE or LSMCLE credit and for which the provider must verify attendance. Participatory activities may be presented in person or delivered by electronic means.

(J) A “self-study activity” is any MCLE activity identified in Rule 2.83. Self-study activities may be presented in person or delivered by electronic means.

(K) “State Bar MCLE Activity Auditors” are individuals designated by the State Bar to conduct audits of MCLE activities on behalf of the State Bar for the purpose of evaluating compliance by providers with these rules.

*Rule 3.600 adopted as Rule 3.500 effective January 1, 2008; renumbered as Rule 3.600 effective November 4, 2011; amended effective July 1, 2014; amended effective January 25, 2019; amended effective October 1, 2023.*

**Rule 3.601 Standards for MCLE activity approval**

To be eligible for MCLE accreditation, an MCLE activity must meet State Bar standards.

(A) General MCLE activity must relate to legal subjects directly relevant to licensees of the State Bar and have current significant educational professional, or practical content, with an objective to increase each participant’s professional competency as an attorney. Activities designed for non-attorney participants will not be approved for general MCLE credit. MCLE activities that may be eligible for general MCLE credit include those that provide education or practical instructions in:

- (1) The practice of law;

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- (2) Litigation;
- (3) Management of a solo law practice;
- (4) Management of a law firm or corporate legal department;
- (5) The management of client trust accounts;
- (6) Law firm finances;
- (7) Attorney-client communications;
- (8) Case management;
- (9) Effective calendaring;
- (10) The avoidance of malpractice; or
- (11) Opportunities to participate in pro bono legal services.

(B) Legal ethics MCLE activity must focus on attorneys' professional responsibility, including education on and citation to the California Rules of Professional Conduct and the State Bar Act, and related authorities such as the professional conduct rules of a tribunal. Activities that focus on the ethics of business, corporate or government affairs, or society, in general, do not qualify for MCLE credit.

(C) Recognition and elimination of bias MCLE activity must focus on education in the recognition and elimination of impermissible bias in the courtroom and law offices; attorney-client relationships and relationships with other attorneys; legal and nonlegal employment and workplaces, including hiring, managing, and terminating employees; and in housing, including accommodations and services. Courses required by Government Code section 12950.1 also qualify for recognition and elimination of bias credit.

(D) Implicit bias and the promotion of bias-reducing strategies MCLE activity must meet the requirements of Business and Professions Code section 6070.5 and must focus 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.

(E) Prevention and detection competence MCLE activity must consist of education that relates to the

prevention and detection of substances use disorders, mental illness, and other mental or physical issues that impair an attorney's ability to perform legal services with competence.

(F) Wellness competence MCLE activity may include physical and mental wellness and well-being or stress management so long as the activity addresses these topics in the context of the practice of law and the impact these issues can have on an attorney's ability to perform legal services with competence.

(G) Technology MCLE activity must consist of education that addresses technology in the practice of law. This includes education on technology tools, programs, or applications to assist attorneys in their law practice. Credit will not be awarded for course content consisting of marketing of a technology product or service. Examples of courses that would qualify for this credit include:

- (1) Cybersecurity, privacy, and data protection;
- (2) Use of technology to create, receive, transmit, store, analyze, or delete client documents or client information;
- (3) Law practice management technology tools, including technology for virtual appearances before a tribunal;
- (4) Use of applications to assist attorneys in advising clients, including artificial intelligence technology; and
- (5) Electronic discovery.

(H) Civility MCLE activity must consist of education that addresses civility in the legal profession. This includes education that discusses the link between civility and bias, incivility that is directed at opposing parties or counsel, and incivility aimed at the judiciary.

(I) Legal Specialist MCLE activity must provide high-quality legal education in one or more of the areas of the law eligible for LSMCLE credit as set forth in Title 3, Division 2, Chapter 2 of the State Bar Rules.

(J) A presenter or presenters of an MCLE activity must have significant professional or academic experience related to its content.

(K) Any information regarding an approved MCLE activity, including all promotional materials, must state

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that the activity is approved for California MCLE credit, specify the amount of credit hours offered, and indicate whether any of the credit may be claimed for required MCLE in legal ethics, recognition and elimination of bias, implicit bias, prevention and detection competence, wellness competence, technology in the practice of law, civility in the legal profession, or legal specialization.

(L) If an MCLE activity is submitted for accreditation, but the provider has not received a determination on approval of the activity, any information regarding the proposed MCLE activity, including all promotional materials, must state that an application for California MCLE credit is pending approval.

(M) If an MCLE activity is not approved, the provider must promptly provide written notice of the State Bar's denial to any registrant seeking California MCLE credit for the course or program.

(N) If an MCLE activity lasts one hour or more, the provider must provide participants with substantive written materials relevant to the MCLE activity either before or during the activity. Any materials provided online must remain online for at least thirty (30) calendar days following the MCLE activity.

*Rule 3.601 adopted effective October 1, 2023. Former rule 3.601 (MCLE activities) rescinded effective September 30, 2023.*

#### **Rule 3.602 Responsibilities of every provider**

Every provider must

(A) Comply with any State Bar rules, standards, and terms applicable to an approved MCLE activity;

(B) For MCLE that is offered as participatory activity, take attendance using the State Bar's Record of Attendance form or its equivalent and retain the form for four years from the date of the MCLE activity. The form must include the following:

- (1) title of the MCLE activity;
- (2) date of the MCLE activity;
- (3) total hours awarded, including any credit hours or partial credit hours awarded for legal ethics, recognition and elimination of bias, prevention and detection competence, wellness

competence, technology in the practice of law, civility in the legal profession, or legal specialization as a component of the activity; and

(4) the name and State Bar number of each California licensee.

(C) Provide the State Bar of California with electronic attendance records for any MCLE participatory activity in a form acceptable to the State Bar of California within 60 days of completion of the activity.

(D) Provide participants who have met the requirements of a participatory activity with a Certificate of Attendance or provide participants who have met the requirement of a self-study activity with a Certificate of Completion. Certificates may be issued in written or electronic form. Each certificate must include the following:

- (1) provider name;
- (2) title of the MCLE activity;
- (3) date the MCLE activity ;
- (4) total hours awarded, including any credit hours awarded for legal ethics, recognition and elimination of bias, implicit bias, prevention and detection competence, wellness competence, technology in the practice of law, civility in the legal profession, or legal specialization as a component of the topic of the activity;
- (5) whether the activity is participatory or self-study; and
- (6) name and license number of the California licensee, if available. This section may be left blank by the provider for completion by the licensee.

(E) Provide each participant who completes an MCLE activity a State Bar MCLE Activity Evaluation Form or its equivalent, retain the completed form for at least one year, and submit it to the State Bar upon request.

(F) Notify the State Bar in writing of any change -to the provider's name, address, contact person, or other contact information required by the State Bar including those of its affiliates, within thirty (30) days of the effective date of the change.

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*Rule 3.602 adopted as Rule 3.502 effective January 1, 2008; renumbered as Rule 3.602 effective November 4, 2011; amended effective July 1, 2014; amended effective September 24, 2020; amended effective October 1, 2023.*

#### **Rule 3.603 State Bar MCLE activity auditors**

A State Bar MCLE Activity Auditor is a State Bar staff member, Board of Trustees member, California Board of Legal Specialization member, or other person designated by the State Bar to conduct an audit of an MCLE activity on behalf of the State Bar for the purpose of evaluating compliance by providers with these rules and to inform determinations regarding suspension or revocation of provider approval or status under rule 3.604. A State Bar MCLE Activity Auditor may not have a business, financial or personal relationship with or oversight responsibility for the provider of the MCLE activity being audited. A State Bar MCLE Activity Auditor may audit the MCLE activity at no cost. Such attendance shall not qualify for MCLE credit.

*Rule 3.603 adopted effective July 1, 2014. Amended effective September 24, 2020; amended effective October 1, 2023.*

#### **Rule 3.604 Suspension or revocation of provider approval**

The State Bar may suspend or revoke a provider's approval for failure to comply with these rules or a State Bar determination of the following:

- (A) Failure of the content of the course, the program materials, the quality of the MCLE activity or activities, or the provider's performance to meet the standards set forth in these rules;
- (B) Misuse of a Record of Attendance, Certificate of Attendance, activity evaluation form, or any other form given to a provider by the State Bar;
- (C) Failure to pay appropriate processing fees, late filing fees, or any other applicable fees; and
- (D) Substantiated complaint(s) documented against the provider or against an activity offered by the provider.

*Rule 3.604 adopted as Rule 3.503 effective January 1, 2008; renumbered as Rule 3.603 effective November 4,*

*2011; renumbered as Rule 3.604 effective July 1, 2014; amended effective March 10, 2017; amended effective September 24, 2020; amended effective October 1, 2023.*

#### **Rule 3.605 Complaints about providers**

The State Bar does not intervene in disputes between a provider and an attendee or potential attendee, but complaints the State Bar receives regarding a provider are considered in assessing the provider's compliance with these rules.

*Rule 3.605 adopted effective July 1, 2014.*

#### **Rule 3.606 MCLE providers**

(A) Providers of MCLE or LSMCLE are categorized as either Single Activity or Multiple Activity Providers. Single Activity Providers are approved providers permitted to hold and grant MCLE or LSMCLE credit for a single MCLE or LSMCLE activity for a period of two years from the date of the activity, provided that no substantive changes are made to the program.

(B) Multiple Activity Providers are approved providers authorized to hold and grant MCLE credit for any MCLE or LSMCLE activity that complies with these rules without having to submit separate applications to request approval for each program.

*Rule 3.606 adopted effective October 1, 2023.*

#### **Rule 3.607 Applying for Single Activity Provider status**

(A) To be considered for Single Activity Provider status, a provider must:

- (1) Apply using the State Bar's Single Activity Provider application form for each activity the provider plans to provide;
- (2) Submit the completed form in the manner prescribed by the State Bar, the appropriate processing fee, and the required supporting materials no less than sixty (60) days prior to the date for which the course or activity is scheduled;
- (3) Submit a separate application for each activity that is offered as part of an on-demand,

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multiday or multitrack, subscription based, bundled activity, or multiple sessions within a bundled activity.

Incomplete applications or applications that do not include the required supporting materials or the appropriate processing fee will not be considered for approval.

(B) A Single Activity Provider application that requests retroactive approval of an activity is subject to late fees as set forth in the State Bar's Schedule of Fees. Retroactive approval may only be granted for an activity occurring within the past two years.

*Rule 3.607 adopted effective October 1, 2023.*

**Rule 3.608 Applying for Multiple Activity Provider status**

(A) To be considered for Multiple Activity Provider status, a provider must:

- (1) Within a two-year period prior to submitting an application for Multiple Activity Provider status, receive State Bar approval for six different MCLE activities that are different and not repeat presentations of the same activity and held on six different dates;
- (2) Apply using the State Bar's Multiple Activity Provider application; and
- (3) Submit the completed application in the manner prescribed by the State Bar, the appropriate processing fee, and the required supporting materials for the six activities described in subparagraph (A)(1).

Incomplete applications or applications that do not include the required supporting materials or the appropriate processing fee will not be considered for approval.

(B) Any activity that is held prior to approval of Multiple Activity Provider status must be submitted for Single Activity Provider approval under rule 3.607.

*Rule 3.608 adopted as rule 3.520 effective January 1, 2008; renumbered as 3.620 effective November 4, 2023; renumbered as rule 3.608 and amended effective October 1, 2023.*

**Rule 3.609 Renewing Multiple Activity Provider status**

(A) To be eligible for renewal of up to two years, a Multiple Activity Provider must:

- (1) Apply for renewal using the State Bar's Multiple Activity Provider renewal application;
- (2) Submit evidence that it has offered six different MCLE activities that meet the requirements of these rules within the two years preceding its application for renewal;
- (3) Submit the completed application in the manner prescribed by the State Bar, the required supporting materials for the six activities, and the appropriate processing fee on or before the deadline set by the State Bar;
- (4) Certify that all self-study activities offered have been reviewed within the 12 months preceding an application for renewal, and that all self-study activities continue to meet the requirements of rule 3.601; and
- (5) Submit any complaints it may have received regarding compliance with these rules.

Incomplete applications or applications that do not include the required supporting materials or the appropriate processing fee will not be considered for approval.

(B) A Multiple Activity Provider renewal application that is received after the renewal deadline set by the State Bar is subject to late fees as set forth in the State Bar's Schedule of Fees. A Multiple Activity Provider renewal application that is received two years or more after the renewal deadline set by the State Bar is ineligible for renewal under this rule. A Multiple Activity Provider who fails to renew their status within the two-year timeframe must submit any MCLE or LSMCLE activity offered during that timeframe for retroactive approval under rule 3.607.

*Rule 3.609 adopted as rule 3.521 effective January 1, 2008; renumbered as 3.621 effective November 4, 2023; renumbered as rule 3.609 and amended effective October 1, 2023.*

### APPENDIX 3

#### MCLE RULES – PROVIDERS

##### **Rule 3.610 Applying for Legal Specialty Provider status**

(A) The State Bar certifies attorneys as specialists in certain areas of law. Certified specialists must take and report LSMCLE specific to the area(s) of their specialty, in addition to MCLE credit to maintain their certification. The State Bar may accredit specialty education as meeting the standards for LSMCLE activity. LSMCLE activity may also qualify as approved MCLE activity for legal ethics, recognition and elimination of bias, implicit bias, prevention and detection competence, wellness competence, technology in the practice of law, or civility in the profession.

(B) A provider intending to offer LSMCLE must be approved by the State Bar as a Multiple Activity Provider in a specialty area of law in the manner set forth in rule 3.608 or must file an application for Single Activity Provider status for a single education activity designed to attain or maintain proficiency in a specialty area of law in the manner set forth in rule 3.607. A separate Multiple Activity Provider Application is required for each specialty area.

(C) Any requirements for an MCLE activity as set forth in these rules apply to an LSMCLE activity.<sup>2</sup>

*Rule 3.610 adopted effective October 1, 2023.*

##### **Rule 3.611 MCLE provider fees**

(A) Providers are subject to application processing fees when seeking approval to grant credit for a single MCLE activity as a Single Activity Provider or applying for or seeking to renew their Multiple Activity Provider Status. Providers are also subject to applicable late fees and reinstatement fees as set forth in these rules and the State Bar's Schedule of Fees.

(B) Government Agency and Nonprofit Fees: Providers that are courts, government agencies, or granted tax-exempt 501(c)(3) status from the United States Internal Revenue Service (IRS) qualify for lower application processing and renewal fees. Proof of a provider's nonprofit status is required and must be submitted with the provider's application. A provider that is unable to provide proof of their registered

nonprofit status with the IRS does not qualify for the lower application processing or renewal fee.

*Rule 3.611 adopted effective October 1, 2023.*

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<sup>2</sup> See State Bar Rule 3.114.

## APPENDIX 4

### STATE BAR OF CALIFORNIA PRO BONO RESOLUTION

(Adopted by the Board of Governors of the State Bar of California at its December 9, 1989 meeting and amended at its June 22, 2002 Meeting)

**RESOLVED** that the Board hereby adopts the following resolution and urges local bar associations to adopt similar resolutions:

**WHEREAS**, there is an increasingly dire need for pro bono legal services for the needy and disadvantaged; and

**WHEREAS**, the federal, state and local governments are not providing sufficient funds for the delivery of legal services to the poor and disadvantaged; and

**WHEREAS**, lawyers should ensure that all members of the public have equal redress to the courts for resolution of their disputes and access to lawyers when legal services are necessary; and

**WHEREAS**, the Chief Justice of the California Supreme Court, the Judicial Council of California and Judicial Officers throughout California have consistently emphasized the pro bono responsibility of lawyers and its importance to the fair and efficient administration of justice; and

**WHEREAS**, California Business and Professions Code Section 6068(h) establishes that it is the duty of a lawyer “Never to reject, for any consideration personal to himself or herself, the cause of the defenseless or the oppressed”; now, therefore, it is

**RESOLVED** that the Board of Governors of the State Bar of California:

- (1) Urges all attorneys to devote a reasonable amount of time, at least 50 hours per year, to provide or enable the direct delivery of legal services, without expectation of compensation other than reimbursement of expenses, to indigent individuals, or to not-for-profit organizations with a primary purpose of providing services to the poor or on behalf of the poor or disadvantaged, not-for-profit organizations with a purpose of improving the law and the legal system, or increasing access to justice;
- (2) Urges all law firms and governmental and corporate employers to promote and support the involvement of associates and partners in pro bono and other public service activities by counting all or a reasonable portion of their time spent on these activities, at least 50 hours per year, toward their billable hour requirements, or by otherwise giving actual work credit for these activities;
- (3) Urges all law schools to promote and encourage the participation of law students in pro bono activities, including requiring any law firm wishing to recruit on campus to provide a written statement of its policy, if any, concerning the involvement of its attorneys in public service and pro bono activities; and
- (4) Urges all attorneys and law firms to contribute financial support to not-for-profit organizations that provide free legal services to the poor, especially those attorneys who are precluded from directly rendering pro bono services.

*[Publisher’s Note: 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” are deemed to refer to the “board of trustees.”]*

## APPENDIX 5

### 12 CODE OF FEDERAL REGULATIONS PART 1015 MORTGAGE ASSISTANCE RELIEF SERVICES RULE (REGULATION O)

(The previous regulations published at 16 CFR Part 322 have been replaced by 12 CFR Part 1015.

All provisions of the rule became effective December 30, 2011.)

**[Publisher's Note:** In reviewing the following Federal law, refer to Business and Professions Code section 6106.3 (Volume 1, page 113), and Civil Code sections 2944.6 and 2944.7 (Volume 2, pages 143–144).]

#### 12 C.F.R. § 1015.1 Scope of regulations in this part.

This part, known as Regulation O, is issued by the Bureau of Consumer Financial Protection to implement the 2009 Omnibus Appropriations Act, Public Law 111–8, section 626, 123 Stat. 524 (Mar. 11, 2009), as clarified by the Credit Card Accountability Responsibility and Disclosure Act of 2009, Public Law 111–24, section 511, 123 Stat. 1734 (May 22, 2009), and as amended by the Dodd–Frank Wall Street Reform and Consumer Financial Protection Act of 2010, Public Law 111–203, section 1097, 124 Stat. 1376 (July 21, 2010). This part applies to persons over which the Federal Trade Commission has jurisdiction under the Federal Trade Commission Act.

#### 12 C.F.R. § 1015.2 Definitions.

For the purposes of this part:

Clear and prominent means:

(1) In textual communications, the required disclosures shall be easily readable; in a high degree of contrast from the immediate background on which it appears; in the same languages that are substantially used in the commercial communication; in a format so that the disclosure is distinct from other text, such as inside a border; in a distinct type style, such as bold; parallel to the base of the commercial communication, and, except as otherwise provided in this rule, each letter of the disclosure shall be, at a minimum, the larger of 12–point type or one-half the size of the largest letter or numeral used in the name of the advertised Web site or telephone number to which consumers are

referred to receive information relating to any mortgage assistance relief service. Textual communications include any communications in a written or printed form such as print publications or words displayed on the screen of a computer;

(2) In communications disseminated orally or through audible means, such as radio or streaming audio, the required disclosures shall be delivered in a slow and deliberate manner and in a reasonably understandable volume and pitch;

(3) In communications disseminated through video means, such as television or streaming video, the required disclosures shall appear simultaneously in the audio and visual parts of the commercial communication and be delivered in a manner consistent with paragraphs (1) and (2) of this definition. The visual disclosure shall be at least four percent of the vertical picture or screen height and appear for the duration of the oral disclosure;

(4) In communications made through interactive media, such as the internet, online services, and software, the required disclosures shall:

(i) Be consistent with paragraphs (1) through (3) of this definition;

(ii) Be made on, or immediately prior to, the page on which the consumer takes any action to incur any financial obligation;

(iii) Be unavoidable, i.e., visible to consumers without requiring them to scroll down a Web page; and

(iv) Appear in type at least the same size as the largest character of the advertisement;

(5) In all instances, the required disclosures shall be presented in an understandable language and syntax, and with nothing contrary to, inconsistent



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with, or in mitigation of the disclosures used in any communication of them; and

(6) For program-length television, radio, or internet-based multimedia commercial communications, the required disclosures shall be made at the beginning, near the middle, and at the end of the commercial communication.

Client trust account means a separate account created by a licensed attorney for the purpose of holding client funds, which is:

- (1) Maintained in compliance with all applicable state laws and regulations, including licensing regulations; and
- (2) Located in the state where the attorney's office is located, or elsewhere in the United States with the consent of the consumer on whose behalf the funds are held.

Commercial communication means any written or oral statement, illustration, or depiction, whether in English or any other language, that is designed to effect a sale or create interest in purchasing any service, plan, or program, whether it appears on or in a label, package, package insert, radio, television, cable television, brochure, newspaper, magazine, pamphlet, leaflet, circular, mailer, book insert, free standing insert, letter, catalogue, poster, chart, billboard, public transit card, point of purchase display, film, slide, audio program transmitted over a telephone system, telemarketing script, onhold script, upsell script, training materials provided to telemarketing firms, program-length commercial ("infomercial"), the internet, cellular network, or any other medium. Promotional materials and items and Web pages are included in the term "commercial communication."

- (1) General Commercial Communication means a commercial communication that occurs prior to the consumer agreeing to permit the provider to seek offers of mortgage assistance relief on behalf of the consumer, or otherwise agreeing to use the mortgage assistance relief service, and that is not directed at a specific consumer.
- (2) Consumer-Specific Commercial Communication means a commercial communication that occurs prior to the consumer agreeing to permit the provider to seek offers of mortgage assistance relief on behalf of the consumer, or otherwise

agreeing to use the mortgage assistance relief service, and that is directed at a specific consumer.

Consumer means any natural person who is obligated under any loan secured by a dwelling.

Dwelling means a residential structure containing four or fewer units, whether or not that structure is attached to real property, that is primarily for personal, family, or household purposes. The term includes any of the following if used as a residence: An individual condominium unit, cooperative unit, mobile home, manufactured home, or trailer.

Dwelling loan means any loan secured by a dwelling, and any associated deed of trust or mortgage.

Dwelling Loan Holder means any individual or entity who holds the dwelling loan that is the subject of the offer to provide mortgage assistance relief services.

Material means likely to affect a consumer's choice of, or conduct regarding, any mortgage assistance relief service.

Mortgage Assistance Relief Service means any service, plan, or program, offered or provided to the consumer in exchange for consideration, that is represented, expressly or by implication, to assist or attempt to assist the consumer with any of the following:

- (1) Stopping, preventing, or postponing any mortgage or deed of trust foreclosure sale for the consumer's dwelling, any repossession of the consumer's dwelling, or otherwise saving the consumer's dwelling from foreclosure or repossession;
- (2) Negotiating, obtaining, or arranging a modification of any term of a dwelling loan, including a reduction in the amount of interest, principal balance, monthly payments, or fees;
- (3) Obtaining any forbearance or modification in the timing of payments from any dwelling loan holder or servicer on any dwelling loan;
- (4) Negotiating, obtaining, or arranging any extension of the period of time within which the consumer may:
  - (i) Cure his or her default on a dwelling loan,

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- (ii) Reinstate his or her dwelling loan,
  - (iii) Redeem a dwelling, or
  - (iv) Exercise any right to reinstate a dwelling loan or redeem a dwelling;
- (5) Obtaining any waiver of an acceleration clause or balloon payment contained in any promissory note or contract secured by any dwelling; or
- (6) Negotiating, obtaining or arranging:
- (i) A short sale of a dwelling,
  - (ii) A deed-in-lieu of foreclosure, or
  - (iii) Any other disposition of a dwelling other than a sale to a third party who is not the dwelling loan holder.

Mortgage Assistance Relief Service Provider or Provider means any person that provides, offers to provide, or arranges for others to provide, any mortgage assistance relief service. This term does not include:

- (1) The dwelling loan holder, or any agent or contractor of such individual or entity.
- (2) The servicer of a dwelling loan, or any agent or contractor of such individual or entity.

Person means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity, except to the extent that any person is specifically excluded from the Federal Trade Commission's jurisdiction pursuant to 15 U.S.C. 44 and 45(a)(2).

Servicer means the individual or entity responsible for:

- (1) Receiving any scheduled periodic payments from a consumer pursuant to the terms of the dwelling loan that is the subject of the offer to provide mortgage assistance relief services, including amounts for escrow accounts under section 10 of the Real Estate Settlement Procedures Act (12 U.S.C. 2609); and
- (2) Making the payments of principal and interest and such other payments with respect to the amounts received from the consumer as may be required pursuant to the terms of the

mortgage servicing loan documents or servicing contract.

Telemarketing means a plan, program, or campaign which is conducted to induce the purchase of any service, by use of one or more telephones and which involves more than one interstate telephone call.

### 12 C.F.R. § 1015.3 Prohibited representations.

It is a violation of this rule for any mortgage assistance relief service provider to engage in the following conduct:

- (a) Representing, expressly or by implication, in connection with the advertising, marketing, promotion, offering for sale, sale, or performance of any mortgage assistance relief service, that a consumer cannot or should not contact or communicate with his or her lender or servicer.
- (b) Misrepresenting, expressly or by implication, any material aspect of any mortgage assistance relief service, including but not limited to:

- (1) The likelihood of negotiating, obtaining, or arranging any represented service or result, such as those set forth in the definition of Mortgage Assistance Relief Service in § 1015.2;
- (2) The amount of time it will take the mortgage assistance relief service provider to accomplish any represented service or result, such as those set forth in the definition of Mortgage Assistance Relief Service in § 1015.2;
- (3) That a mortgage assistance relief service is affiliated with, endorsed or approved by, or otherwise associated with:

- (i) The United States government,
- (ii) Any governmental homeowner assistance plan,
- (iii) Any Federal, State, or local government agency, unit, or department,
- (iv) Any nonprofit housing counselor agency or program,
- (v) The maker, holder, or servicer of the consumer's dwelling loan, or

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- (vi) Any other individual, entity, or program;
- (4) The consumer's obligation to make scheduled periodic payments or any other payments pursuant to the terms of the consumer's dwelling loan;
- (5) The terms or conditions of the consumer's dwelling loan, including but not limited to the amount of debt owed;
- (6) The terms or conditions of any refund, cancellation, exchange, or repurchase policy for a mortgage assistance relief service, including but not limited to the likelihood of obtaining a full or partial refund, or the circumstances in which a full or partial refund will be granted, for a mortgage assistance relief service;
- (7) That the mortgage assistance relief service provider has completed the represented services or has a right to claim, demand, charge, collect, or receive payment or other consideration;
- (8) That the consumer will receive legal representation;
- (9) The availability, performance, cost, or characteristics of any alternative to for-profit mortgage assistance relief services through which the consumer can obtain mortgage assistance relief, including negotiating directly with the dwelling loan holder or servicer, or using any nonprofit housing counselor agency or program;
- (10) The amount of money or the percentage of the debt amount that a consumer may save by using the mortgage assistance relief service;
- (11) The total cost to purchase the mortgage assistance relief service; or
- (12) The terms, conditions, or limitations of any offer of mortgage assistance relief the provider obtains from the consumer's dwelling loan holder or servicer, including the time period in which the consumer must decide to accept the offer;
- (c) Making a representation, expressly or by implication, about the benefits, performance, or efficacy of any mortgage assistance relief service unless, at the time such representation is made, the provider possesses and relies upon competent and reliable evidence that substantiates that the

representation is true. For the purposes of this paragraph, competent and reliable evidence means tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by individuals qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

### **12 C.F.R. § 1015.4 Disclosures required in commercial communications.**

It is a violation of this rule for any mortgage assistance relief service provider to engage in the following conduct:

(a) Disclosures in All General Commercial Communications—Failing to place the following statements in every general commercial communication for any mortgage assistance relief service:

(1) "(Name of company) is not associated with the government, and our service is not approved by the government or your lender."

(2) In cases where the mortgage assistance relief service provider has represented, expressly or by implication, that consumers will receive any service or result set forth in paragraphs (2) through (6) of the definition of Mortgage Assistance Relief Service in § 1015.2, "Even if you accept this offer and use our service, your lender may not agree to change your loan."

(3) The disclosures required by this paragraph must be made in a clear and prominent manner, and—

(i) In textual communications the disclosures must appear together and be preceded by the heading "IMPORTANT NOTICE," which must be in bold face font that is two point-type larger than the font size of the required disclosures; and

(ii) In communications disseminated orally or through audible means, wholly or in part, the audio component of the required disclosures must be preceded by the statement "Before using this service, consider the following information."

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(b) Disclosures in All Consumer-Specific Commercial Communications—Failing to disclose the following information in every consumer-specific commercial communication for any mortgage assistance relief service:

(1) “You may stop doing business with us at any time. You may accept or reject the offer of mortgage assistance we obtain from your lender [or servicer]. If you reject the offer, you do not have to pay us. If you accept the offer, you will have to pay us (insert amount or method for calculating the amount) for our services.” For the purposes of this paragraph (b)(1), the amount “you will have to pay” shall consist of the total amount the consumer must pay to purchase, receive, and use all of the mortgage assistance relief services that are the subject of the sales offer, including, but not limited to, all fees and charges.

(2) “(Name of company) is not associated with the government, and our service is not approved by the government or your lender.”

(3) In cases where the mortgage assistance relief service provider has represented, expressly or by implication, that consumers will receive any service or result set forth in paragraphs (2) through (6) of the definition of Mortgage Assistance Relief Service in § 1015.2, “Even if you accept this offer and use our service, your lender may not agree to change your loan.”

(4) The disclosures required by this paragraph must be made in a clear and prominent manner, and—

(i) In textual communications the disclosures must appear together and be preceded by the heading “IMPORTANT NOTICE,” which must be in bold face font that is two point-type larger than the font size of the required disclosures; and

(ii) In communications disseminated orally or through audible means, wholly or in part, the audio component of the required disclosures must be preceded by the statement “Before using this service, consider the following information” and, in telephone communications, must be made at the beginning of the call.

(c) Disclosures in All General Commercial Communications, Consumer-Specific Commercial Communications, and Other Communications—In cases where the mortgage assistance relief service provider has represented, expressly or by implication, in connection with the advertising, marketing, promotion, offering for sale, sale, or performance of any mortgage assistance relief service, that the consumer should temporarily or permanently discontinue payments, in whole or in part, on a dwelling loan, failing to disclose, clearly and prominently, and in close proximity to any such representation that “If you stop paying your mortgage, you could lose your home and damage your credit rating.”

### **12 C.F.R. § 1015.5 Prohibition on collection of advance payments and related disclosures.**

It is a violation of this rule for any mortgage assistance relief service provider to:

(a) Request or receive payment of any fee or other consideration until the consumer has executed a written agreement between the consumer and the consumer’s dwelling loan holder or servicer incorporating the offer of mortgage assistance relief the provider obtained from the consumer’s dwelling loan holder or servicer;

(b) Fail to disclose, at the time the mortgage assistance relief service provider furnishes the consumer with the written agreement specified in paragraph (a) of this section, the following information: “This is an offer of mortgage assistance we obtained from your lender [or servicer]. You may accept or reject the offer. If you reject the offer, you do not have to pay us. If you accept the offer, you will have to pay us [same amount as disclosed pursuant to § 1015.4(b)(1)] for our services.” The disclosure required by this paragraph must be made in a clear and prominent manner, on a separate written page, and preceded by the heading: “IMPORTANT NOTICE: Before buying this service, consider the following information.” The heading must be in bold face font that is two point-type larger than the font size of the required disclosure; or

(c) (1) Fail to provide, at the time the mortgage assistance relief service provider furnishes the consumer with the written agreement specified in paragraph (a) of this section, a notice from the consumer’s dwelling loan holder or servicer that describes all material differences between the

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terms, conditions, and limitations associated with the consumer's current mortgage loan and the terms, conditions, and limitations associated with the consumer's mortgage loan if he or she accepts the dwelling loan holder's or servicer's offer, including but not limited to differences in the loan's:

- (i) Principal balance;
- (ii) Contract interest rate, including the maximum rate and any adjustable rates, if applicable;
- (iii) Amount and number of the consumer's scheduled periodic payments on the loan;
- (iv) Monthly amounts owed for principal, interest, taxes, and any mortgage insurance on the loan;
- (v) Amount of any delinquent payments owing or outstanding;
- (vi) Assessed fees or penalties; and
- (vii) Term.

(2) The notice must be made in a clear and prominent manner, on a separate written page, and preceded by heading: "IMPORTANT INFORMATION FROM YOUR [name of lender or servicer] ABOUT THIS OFFER." The heading must be in bold face font that is two-point-type larger than the font size of the required disclosure.

(d) Fail to disclose in the notice specified in paragraph (c) of this section, in cases where the offer of mortgage assistance relief the provider obtained from the consumer's dwelling loan holder or servicer is a trial mortgage loan modification, the terms, conditions, and limitations of this offer, including but not limited to:

- (1) The fact that the consumer may not qualify for a permanent mortgage loan modification; and
- (2) The likely amount of the scheduled periodic payments and any arrears, payments, or fees that the consumer would owe in failing to qualify.

### **12 C.F.R. § 1015.6 Assisting and facilitating.**

It is a violation of this rule for a person to provide substantial assistance or support to any mortgage assistance relief service provider when that person knows or consciously avoids knowing that the provider is engaged in any act or practice that violates this rule.

### **12 C.F.R. § 1015.7 Exemptions.**

(a) An attorney is exempt from this part, with the exception of § 1015.5, if the attorney:

- (1) Provides mortgage assistance relief services as part of the practice of law;
- (2) Is licensed to practice law in the state in which the consumer for whom the attorney is providing mortgage assistance relief services resides or in which the consumer's dwelling is located; and
- (3) Complies with state laws and regulations that cover the same type of conduct the rule requires.

(b) An attorney who is exempt pursuant to paragraph (a) of this section is also exempt from § 1015.5 if the attorney:

- (1) Deposits any funds received from the consumer prior to performing legal services in a client trust account; and
- (2) Complies with all state laws and regulations, including licensing regulations, applicable to client trust accounts.

### **12 C.F.R. § 1015.8 Waiver not permitted.**

It is a violation of this rule for any person to obtain, or attempt to obtain, a waiver from any consumer of any protection provided by or any right of the consumer under this rule.

### **12 C.F.R. § 1015.9 Recordkeeping and compliance requirements.**

(a) Any mortgage assistance relief provider must keep, for a period of twenty-four (24) months from the date the record is created, the following records:

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- (1) All contracts or other agreements between the provider and any consumer for any mortgage assistance relief service;
  - (2) Copies of all written communications between the provider and any consumer occurring prior to the date on which the consumer entered into an agreement with the provider for any mortgage assistance relief service;
  - (3) Copies of all documents or telephone recordings created in connection with compliance with paragraph (b) of this section;
  - (4) All consumer files containing the names, phone numbers, dollar amounts paid, and descriptions of mortgage assistance relief services purchased, to the extent the mortgage assistance relief service provider keeps such information in the ordinary course of business;
  - (5) Copies of all materially different sales scripts, training materials, commercial communications, or other marketing materials, including Web sites and weblogs, for any mortgage assistance relief service; and
  - (6) Copies of the documentation provided to the consumer as specified in § 1015.5 of this rule;
- (b) A mortgage assistance relief service provider also must:
- (1) Take reasonable steps sufficient to monitor and ensure that all employees and independent contractors comply with this rule. Such steps shall include the monitoring of communications directed at specific consumers, and shall also include, at a minimum, the following:
    - (i) If the mortgage assistance relief service provider is engaged in the telemarketing of mortgage assistance relief services, performing random, blind recording and testing of the oral representations made by individuals engaged in sales or other customer service functions;
    - (ii) Establishing a procedure for receiving and responding to all consumer complaints; and
    - (iii) Ascertaining the number and nature of consumer complaints regarding transactions

in which all employees and independent contractors are involved;

- (2) Investigate promptly and fully each consumer complaint received;
  - (3) Take corrective action with respect to any employee or contractor whom the mortgage assistance relief service provider determines is not complying with this rule, which may include training, disciplining, or terminating such individual; and
  - (4) Maintain any information and material necessary to demonstrate its compliance with paragraphs (b)(1) through (3) of this section.
- (c) A mortgage assistance relief provider may keep the records required by paragraphs (a) and (b) of this section in any form, and in the same manner, format, or place as it keeps such records in the ordinary course of business.
- (d) It is a violation of this rule for a mortgage assistance relief service provider not to comply with this section.

### 12 C.F.R. § 1015.10 Actions by states.

Any attorney general or other officer of a state authorized by the state to bring an action under this part may do so pursuant to section 626(b) of the 2009 Omnibus Appropriations Act, Public Law 111–8, section 626, 123 Stat. 524 (Mar. 11, 2009), as amended by Public Law 111–24, section 511, 123 Stat. 1734 (May 22, 2009), and as amended by Public Law 111–203, section 1097, 124 Stat. 2102 (July 21, 2010).

### 12 C.F.R. § 1015.11 Severability.

The provisions of this rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Bureau of Consumer Financial Protection’s intention that the remaining provisions shall continue in effect.

## APPENDIX 6

### CONSTRUCTION-RELATED DISABILITY ACCESS CLAIMS INFORMATION

#### Significant changes to the law concerning construction-related disability access claims

Senate Bill No. 1186, made significant changes to the law, some of which impose State Bar disciplinary consequences on lawyers relating to construction-related disability access claims. This bill included, but is not limited to, the following changes: (1) addition of section 6106.2 to the Business and Professions Code; (2) amendments to sections 55.3, 55.52, 55.53, 55.54, and 55.56, and the addition of sections 55.31 and 55.32 to the Civil Code; (3) addition of section 425.50 to the Code of Civil Procedure; and (4) addition of section 8299.08 to the Government Code. The bill contained an urgency clause, making it effective immediately upon enactment September 19, 2012, although some provisions did not go into effect until January 1, 2013.

Assembly Bill No. 1521, which went into effect on October 10, 2015, impacted construction-related disability access claims. This bill included, but is not limited to, the following changes: (1) amendments to sections 55.3, 55.52, and 55.54 of the Civil Code; (2) amendments to section 425.50 to the Code of Civil Procedure; and (3) addition of section 425.55 to the Code of Civil Procedure. The bill contained an urgency clause, making it effective immediately.

Senate Bill No. 1406, which went into effect January 1, 2017, includes the following changes: (1) addition of section 54.27 to the Civil Code; and (2) amendment to section 8299.08 of the Government Code.

Assembly Bill No. 54, which also went into effect January 1, 2017, includes, but is not limited to, an amendment to section 55.32 of the Civil Code.

Assembly Bill No. 3249, which went into effect on January 1, 2019, includes, but is not limited to, an amendment to section 55.32 of the Civil Code.

Assembly Bill No. 3364, which went into effect on January 1, 2021, includes, but is not limited to, an amendment to section 55.32 of the Civil Code and section 12921 of the Government Code.

#### Selected Statutes Pertaining to Construction-Related Disability Access Claims Found in this Book Include:

|  |                    |
|--|--------------------|
| Business and Professions Code section 6106.2 ..... | Volume 1, page 115 |
| Civil Code section 54.27 .....                     | Volume 2, page 119 |
| Civil Code section 55.3 .....                      | Volume 2, page 121 |
| Civil Code section 55.31 .....                     | Volume 2, page 124 |
| Civil Code section 55.32 .....                     | Volume 2, page 125 |
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