

STANDARDS FOR ATTORNEY SANCTIONS FOR PROFESSIONAL MISCONDUCT

(Proposed, July 2013)

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PART A. STANDARDS IN GENERAL

1.1 PURPOSES AND SCOPE OF STANDARDS

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

- (a) protection of the public, the courts and the legal profession;¹
- (b) maintenance of the highest professional standards; and
- (c) preservation of public confidence in the legal profession.

Rehabilitation can also be an objective in determining the appropriate sanction in a particular case, so long as it is consistent with the primary purposes of discipline.

The Standards are based on the State Bar Act and the longstanding decisions of the California Supreme Court, which maintains inherent and plenary authority over the practice of law in California.² Although not binding, the Standards are afforded great weight by the Supreme Court and should be followed whenever possible.³ The Supreme Court will accept a disciplinary recommendation that is consistent with the Standards unless it has grave doubts about the propriety of the recommended sanction.⁴ If a recommendation is at the high end or low end of a Standard, an explanation must be given as to how the recommendation was reached. Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure.⁵

The Standards do not apply to: non-disciplinary dispositions such as admonitions and agreements in lieu of discipline; resignations; involuntary inactive enrollments; interim suspensions after conviction of a crime; or suspensions for nonpayment of State Bar fees, failure to comply with child support orders, or tax delinquencies.⁶

¹ Business and Professions Code, § 6001.1 [protection of the public is paramount].

² *In re Attorney Discipline System* (1998) 19 Cal.4th 582; California Rule of Courts, rule 9.2; Business and Professions Code, § 6087.

³ *In re Silverton* (2005) 36 Cal.4th 81, 92.

⁴ *Hipolito v. State Bar* (1989) 48 Cal.3d 621, 630; *Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1366.

⁵ *In re Silverton* (2005) 36 Cal.4th 81; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5; *In re Brown* (1995) 12 Cal.4th 205, 220.

⁶ California Rules of Court, rules 9.21, 9.22, and 9.31(d); Business and Professions Code, §§ 494.5, 6007, 6070(a), 6102(a), 6143, 6143.5, and 6203(d).

1.2 DEFINITIONS

- (a) “Member” is a member of the State Bar of California.⁷
- (b) “Disbarment” is termination from the practice of law and from holding oneself out as entitled to practice law. Membership in the State Bar ceases and the member’s name is stricken from the roll of attorneys.⁸
- (c) “Suspension” can include a period of actual suspension, stayed suspension, or both:
 - (1) “Actual suspension” is a disqualification from the practice of law and from holding oneself out as entitled to practice law, subject to conditions. Actual suspension is generally for a period of thirty days, sixty days, ninety days, six months, one year, eighteen months, two years, or three years. Actual suspension for two years or more requires proof, satisfactory to the State Bar Court, of rehabilitation, fitness to practice, and present learning and ability in the general law before a member may be relieved of the actual suspension.⁹ The State Bar Court can require this showing in other appropriate cases as well.
 - (2) “Stayed suspension” is a stay of all or part of a suspension. Stayed suspension is generally for a period of at least one year. A suspension can be stayed only if it is consistent with the primary purposes of discipline.
- (d) “Reproval” is a censure or reprimand. It can be either public or private, and it may include conditions.¹⁰
- (e) “Prior record of discipline” is a previous imposition or recommendation of discipline. It includes all charges, stipulations, findings and decisions (final or not) reflecting or recommending discipline, including from another jurisdiction.¹¹ It can be discipline imposed for a violation of a term of probation or a violation of a Supreme Court order requiring compliance with rule 9.20 of the California Rules of Court.
- (f) “Aggravating circumstances” are factors surrounding a member’s misconduct that demonstrate that the primary purposes of discipline warrant a greater sanction than what is otherwise specified in a given Standard.

⁷ Business and Professions Code, § 6002.

⁸ Business and Professions Code, § 6117 [member precluded from practicing law while disbarred or suspended].

⁹ Rules of Procedure of the State Bar of California, rules 5.400-5.411.

¹⁰ California Rules of Court, rule 9.19; Rules of Procedure of the State Bar of California, rules 5.127 and 5.128.

¹¹ Business and Professions Code, § 6049.1; Rules of Procedure of the State Bar of California, rule 5.106.

- (g) “Mitigating circumstances” are factors surrounding a member’s misconduct that demonstrate that the primary purposes of discipline warrant a more lenient sanction than what is otherwise specified in a given Standard.
- (h) “Conditions” are terms that may attach to a reproof¹² or probation. They relate to the member’s misconduct and the facts and circumstances surrounding the misconduct and serve the primary purposes of discipline.

1.3 DEGREES OF SANCTIONS

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

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

1.4 CONDITIONS ATTACHED TO SANCTIONS¹³

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

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

¹² California Rules of Court, rule 9.19.

¹³ Business and Professions Code, § 6093.

- (f) give notice to affected parties, including clients, co-counsel, opposing counsel, courts or other tribunals;¹⁴ or
- (g) comply with any other conditions consistent with the primary purposes of discipline.

1.5 AGGRAVATING CIRCUMSTANCES

The State Bar must establish aggravating circumstances by clear and convincing evidence. Aggravating circumstances may include:

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

1.6 MITIGATING CIRCUMSTANCES

A member must establish mitigating circumstances by clear and convincing evidence. Mitigating circumstances may include:

- (a) absence of any prior record of discipline over many years of practice coupled with present misconduct, which is not deemed serious;
- (b) good faith belief that is honestly held and reasonable;
- (c) lack of harm to the client, the public, or the administration of justice;

¹⁴ California Rules of Court, rule 9.20.

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

1.7 DETERMINATION OF APPROPRIATE SANCTIONS

- (a) If a member commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed.
- (b) If aggravating circumstances are found, they should be considered alone and in balance with any mitigating circumstances, and if the net effect demonstrates that a greater sanction is needed to fulfill the primary purposes of discipline, it is appropriate to impose or recommend a greater sanction than what is otherwise specified in a given Standard. On balance, a greater sanction is appropriate in cases where there is serious harm to the client, the public, the legal system, or the profession and where the record demonstrates that the member is unwilling or unable to conform to ethical responsibilities.
- (c) If mitigating circumstances are found, they should be considered alone and in balance with any aggravating circumstances, and if the net effect demonstrates that a lesser sanction is needed to fulfill the primary purposes of discipline, it is appropriate to impose or recommend a lesser sanction than what is otherwise specified in a given Standard. On balance, a lesser sanction is appropriate in cases of minor misconduct, where there is little or no injury to a client, the public, the legal system, or the profession and where the record demonstrates that the member is willing and has the ability to conform to ethical responsibilities in the future.

1.8 EFFECT OF PRIOR DISCIPLINE

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

PART B. SANCTIONS FOR SPECIFIC MISCONDUCT¹⁵

2.1 MISAPPROPRIATION¹⁶

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

¹⁵ For purposes of Part B, the term "suspension" includes actual and/or stayed suspension, unless a Standard specifies only actual suspension.

¹⁶ See Rules of Professional Conduct, rule 4-100.

2.2 COMMINGLING AND OTHER TRUST ACCOUNT VIOLATIONS¹⁷

- (a) Actual suspension of three months is appropriate for commingling or failure to promptly pay out entrusted funds.
- (b) Suspension or reproof is appropriate for any other violation of Rule 4-100.

2.3 ILLEGAL OR UNCONSCIONABLE FEE¹⁸

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

2.4 BUSINESS TRANSACTIONS, PECUNIARY INTERESTS ADVERSE TO A CLIENT¹⁹

Suspension is appropriate for improperly entering into a business transaction with a client or knowingly acquiring a pecuniary interest adverse to a client, unless the extent of the misconduct and any harm it caused to the client are minimal, in which case reproof is appropriate. If the transaction or acquisition and its terms are unfair or unreasonable to the client, then disbarment or actual suspension is appropriate.

2.5 FAILURE TO PERFORM OR COMMUNICATE²⁰

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

¹⁷ See Rules of Professional Conduct, rule 4-100.

¹⁸ See Rules of Professional Conduct, rule 4-200.

¹⁹ See Rules of Professional Conduct, rule 3-300.

²⁰ See Rules of Professional Conduct, rules 3-110 and 3-500; Business and Professions Code, § 6068(m) and (n).

2.6 UNAUTHORIZED PRACTICE OF LAW²¹

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

2.7 MORAL TURPITUDE, DISHONESTY, FRAUD, CORRUPTION, OR CONCEALMENT²²

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

2.8 VIOLATION OF OATH OR DUTIES OF AN ATTORNEY²³

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

²¹ See Business and Professions Code, §§ 6125 and 6126.

²² See Business and Professions Code, § 6106.

²³ See Business and Professions Code, §§ 6103, 6067, and 6068.

2.9 SEXUAL RELATIONS WITH CLIENTS²⁴

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

2.10 VIOLATION OF CONDITIONS ATTACHED TO DISCIPLINE²⁵

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

2.11 CRIMINAL CONVICTIONS INVOLVING MORAL TURPITUDE

- (a) Summary disbarment is appropriate for final conviction of a felony in which an element of the offense involves the specific intent to deceive, defraud, steal, or make or suborn a false statement, or involved moral turpitude.²⁶
- (b) Disbarment is appropriate for final conviction of a felony in which the facts and circumstances surrounding the offense involve moral turpitude, unless the most compelling mitigating circumstance clearly predominate, in which case actual suspension²⁷ of at least two years is appropriate.
- (c) Disbarment or actual suspension is appropriate for final conviction of a misdemeanor involving moral turpitude.²⁸

2.12 CRIMINAL CONVICTIONS NOT INVOLVING MORAL TURPITUDE

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

²⁴ See Business and Professions Code, § 6106.8; Rules of Professional Conduct, rule 3-120.

²⁵ See Business and Professions Code, § 6068(k); Rules of Professional Conduct, rule 1-110.

²⁶ See Business and Professions Code, § 6102(c).

²⁷ See Business and Professions Code, § 6102(e).

²⁸ See Business and Professions Code, § 6101(a).

2.13 CRIMINAL CONVICTION FOR SPECIFIC MISDEMEANORS

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

2.14 VIOLATION OF OTHER ARTICLE 6 STATUTES²⁹

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

2.15 VIOLATION OF RULES IN GENERAL³⁰

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

²⁹ See Business and Professions Code, §§ 6100, et seq.

³⁰ See Business and Professions Code, § 6077.