

## PROPOSED STANDARDS FOR LICENSED PARAPROFESSIONAL SANCTIONS FOR PROFESSIONAL MISCONDUCT

### PART A. STANDARDS IN GENERAL

#### 1.1 PURPOSES AND SCOPE OF STANDARDS

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

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

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

The Standards do not apply to: non-disciplinary dispositions such as citations and fines; 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.

#### 1.2 DEFINITIONS

- (a) “Licensed paraprofessional” means a person licensed to engage in the limited practice of law pursuant to *[rule or statute]* and includes any agent of the licensed paraprofessional.
- (b) “License Revocation” is termination from the practice of law and from holding oneself out as entitled to practice law. The license issued by the Supreme Court or State Bar ceases and the licensee’s name is stricken from the roll of licensed paraprofessionals.

- (c) “Suspension” can include a period of actual suspension, stayed suspension, or both:
  - (1) “Actual suspension” is a disqualification from the limited practice of law and from holding oneself out as a licensed paraprofessional, subject to probation and attached conditions. Actual suspension is generally for a period of thirty days, sixty days, ninety days, six months, one year, eighteen months, two years, three years, or until specific conditions are met. Actual suspension for two years or more requires proof, satisfactory to the Licensing Board, of rehabilitation, fitness to practice, and present learning and ability in the general law before a licensed paraprofessional may be relieved of the actual suspension. The Licensing Board 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) “Public Reproval” is a public censure or reprimand. A public reproval may include conditions.
- (e) “Interim Remedies” are temporary restrictions imposed by the Hearing Panel or Licensing Board on a licensed paraprofessional’s ability to practice law. They are imposed in order to protect the public, the courts, and the legal profession until such time as the issues can be resolved through formal proceedings.
- (f) “Prior record of discipline” is a previous imposition or recommendation of discipline. It includes all charges, stipulations, findings and decisions (final or not) reflecting or recommending discipline, including from another jurisdiction. It can be discipline imposed for a violation of a term of probation or a violation of a Supreme Court order requiring compliance with rule 9.20 of the California Rules of Court.
- (g) “Aggravating circumstances” are factors surrounding a licensed paraprofessional’s misconduct that demonstrate that the primary purposes of discipline warrant a greater sanction than what is otherwise specified in a given Standard.
- (h) “Mitigating circumstances” are factors surrounding a licensed paraprofessional’s misconduct that demonstrate that the primary purposes of discipline warrant a more lenient sanction than what is otherwise specified in a given Standard.
- (i) “Probation” is a period of time under which a licensed paraprofessional is subject to State Bar supervision. Probation may include conditions that further the primary purposes of discipline.
- (j) “Conditions” are terms with which a licensed paraprofessional must comply as part of a

disciplinary sanction. They relate to a licensed paraprofessional's misconduct and the facts and circumstances surrounding the misconduct and serve the primary purposes of discipline.

- (k) "Tribunal" means: (i) a court, an arbitrator, an administrative law judge, or an administrative body acting in an adjudicative capacity and authorized to make a decision that can be binding on the parties involved; or (ii) a special master or other person to whom a court refers one or more issues and whose decision or recommendation can be binding on the parties if approved by the court.
- (l) "Rules of Professional Conduct" refers to the California Rules of Professional Conduct for Licensed Paraprofessionals.

### **1.3 DEGREES OF SANCTIONS**

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

- (a) license revocation;
- (b) actual suspension;
- (c) stayed suspension;
- (d) public reproof; or
- (e) any interim remedies or other final discipline authorized by statute.

### **1.4 CONDITIONS ATTACHED TO SANCTIONS**

Conditions attached to a reproof or probation may require a licensed paraprofessional to:

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

- (f) give notice to affected parties, including clients, opposing counsel, courts or other tribunals; 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 or dishonesty;
- (e) misrepresentation;
- (f) concealment;
- (g) overreaching;
- (h) uncharged violations of the California Rules of Professional Conduct for Licensed Paraprofessionals;
- (i) refusal or inability to account for entrusted funds or property;
- (j) significant harm to the client, the public, or the administration of justice;
- (k) indifference toward rectification or atonement for the consequences of the misconduct;
- (l) lack of candor and cooperation to the victims of the misconduct or to the State Bar during disciplinary investigations or proceedings;
- (m) failure to make restitution; or
- (n) high level of vulnerability of the victim.

### **1.6 MITIGATING CIRCUMSTANCES**

A licensed paraprofessional 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 likely to recur;
- (b) good faith belief that is honestly held and objectively reasonable;
- (c) lack of harm to the client, the public, or the administration of justice;
- (d) extreme emotional difficulties or physical or mental disabilities suffered by the licensed paraprofessional 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 licensed paraprofessional, such as illegal drug or substance abuse, and the licensed paraprofessional established by clear and convincing evidence that the difficulties or disabilities no longer pose a risk that the licensed paraprofessional 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 licensed paraprofessional; 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 licensed paraprofessional 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 licensed paraprofessional 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 licensed paraprofessional is willing and has the ability to conform to ethical responsibilities in the future.

### **1.8 EFFECT OF PRIOR DISCIPLINE**

- (a) If a licensed paraprofessional 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 licensed paraprofessional has two or more prior records of discipline, license revocation 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 licensed paraprofessional's unwillingness or inability to conform to ethical responsibilities.
- (c) Sanctions may be imposed, including license revocation, even if a licensed paraprofessional has no prior record of discipline.

### **PART B. SANCTIONS FOR SPECIFIC MISCONDUCT**

The presumed sanction for any specific act of misconduct is a starting point for the imposition of discipline, but can be adjusted up or down depending on the application of mitigating and aggravating circumstances set forth in Standards 1.5 and 1.6, and the balancing of these

circumstances as described in Standard 1.7(b) and (c). For any specific act of misconduct not listed in Part B, please refer to Standards 2.18 and 2.19.

### **2.1. MISAPPROPRIATION**

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

### **2.2 COMMINGLING AND OTHER TRUST ACCOUNT VIOLATIONS**

- (a) Actual suspension of three months is the presumed sanction for (1) commingling, (2) failure to deposit funds received for a client or other person to whom the licensed paraprofessional owes a contractual, statutory, or other legal duty, including advances for fees, costs and expenses, in a client trust account when that conduct does not involve misappropriation, or (3) failure to promptly pay out entrusted funds.
- (b) Suspension or reproof is the presumed sanction for any other violation of rule 1.15 of the Rules of Professional Conduct including, but not limited to violations of 1.15(c).

### **2.3 ILLEGAL OR UNCONSCIONABLE FEE**

- (a) Actual suspension of at least six months is the presumed sanction for entering into an agreement for, charging, or collecting an unconscionable fee for legal services.
- (b) Suspension or reproof is the presumed sanction for entering into an agreement for, charging, or collecting an illegal fee for legal services, or other violations of rule 1.5 (c) – (e) of the Rules of Professional Conduct.

### **2.4 BUSINESS TRANSACTIONS, PECUNIARY INTERESTS ADVERSE TO A CLIENT**

Suspension is the presumed sanction 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 license revocation or actual suspension is appropriate.

## **2.5 REPRESENTATION OF ADVERSE INTERESTS AND CONFLICTS OF INTEREST**

- (a) Actual suspension is the presumed sanction when a licensed paraprofessional violates rule 1.7, subparagraphs (a), (b), and (d) of the Rules of Professional Conduct, or other law prohibiting a licensed paraprofessional from simultaneously representing conflicting interests and causes significant harm to any of the clients.
- (b) Actual suspension is the presumed sanction when a licensed paraprofessional either violates rule 1.9(a) or 1.9(b) of the Rules of Professional Conduct and causes significant harm to the former client.
- (c) Suspension or reproof is the presumed sanction for all other conflicts of interest violations or breaches of the duty of loyalty not covered by other subparagraphs of this Standard, depending on the magnitude of the violation and the harm to the client or clients. This includes, but is not limited to rules 1.7(c), 1.8.2, 1.8.6, 1.10, 1.11, 1.12, and 1.18(c) and (d) of the Rules of Professional Conduct. Actual suspension is the presumed sanction if there is harm.

## **2.6 BREACH OF CONFIDENTIALITY OR MISUSE OF CONFIDENTIAL INFORMATION**

- (a) Suspension is the presumed sanction when a licensed paraprofessional intentionally reveals information protected by rule 1.6 of the Rules of Professional Conduct , or uses a current, former, or prospective client's information to the disadvantage of the client, depending on the harm to the current, former, or prospective client or clients.
- (b) Reproof is the presumed sanction when a licensed paraprofessional recklessly or through gross negligence reveals information relating to the representation of a client, or uses a current, former, or prospective client's information to the disadvantage of the client, depending on the harm to the current, former, or prospective client or clients
- (c) Suspension or reproof is the presumed sanction when a licensed paraprofessional violates rule 4.4 of the Rules of Professional Conduct regarding a licensed paraprofessional's duties concerning inadvertently transmitted writings depending on the harm to the party whose information is inadvertently disclosed.

## **2.7 PERFORMANCE, COMMUNICATION OR WITHDRAWAL VIOLATIONS**

- (a) License revocation is the presumed sanction for performance, communication, or withdrawal violations demonstrating habitual disregard of client interests.
- (b) Actual suspension is the presumed sanction for performance, communication, or withdrawal violations in multiple client matters, not demonstrating habitual disregard of client interests.



- (c) Suspension or reproof is the presumed sanction for performance, communication, or withdrawal violations, which are limited in scope or time. The degree of sanction depends on the extent of the misconduct and the degree of harm to the client or clients.
- (d) Performance in this Standard includes, but is not limited to, any of the following: the duties of diligence; competence; supervision; duties regarding disbarred, suspended, resigned or involuntary inactive licensees of the State Bar or those whose licenses have been revoked; and duties of subordinate licensed paraprofessionals. This includes, but is not limited to rules 1.1, 1.3, 5.1, 5.2, 5.3, and 5.3.1 of the Rules of Professional Conduct. Communication in this Standard includes, but is not limited to of any of the following: communications with clients, communications of settlement offers, disclosure of professional liability insurance, communications with prospective clients, communications with unrepresented persons, and communications with represented persons. This includes, but is not limited to rules 1.2, 1.4, 1.4.1, 1.4.2, 1.4.3, 2.1, 4.2, and 4.3 of the Rules of Professional Conduct.

## **2.8 PARTNERSHIP OR FEE-SHARING WITH PERSONS WHO ARE NOT LAWYERS OR LICENSED PARAPROFESSIONALS**

Actual suspension is the presumed sanction when a licensed paraprofessional enters into a partnership or other organization that practices law with a person who is not a lawyer or licensed paraprofessional, allows a person who is not a lawyer or licensed paraprofessional to own, direct, or control a professional corporation or other organization that practices law, shares legal fees with a person who is not a lawyer or licensed paraprofessional, or any other violation of rule 5.4 of the Rules of Professional Conduct. The degree of sanction depends upon the extent to which the misconduct interfered with a licensed paraprofessional-client relationship and the extent to which the licensed paraprofessional failed to perform legal services for which he or she was employed.

## **2.9 FRIVOLOUS LITIGATION**

- (a) Actual suspension is the presumed sanction when a licensed paraprofessional counsels or assists with bringing or continuing a frivolous claim or action for an improper purpose or uses means that have no substantial purpose other than to delay or prolong the proceeding or cause needless expense, resulting in significant harm to an individual or the administration of justice. License revocation is appropriate if the misconduct demonstrates a pattern.
- (b) Suspension or reproof is the presumed sanction when a licensed paraprofessional counsels or assists with bringing or continuing a frivolous claim or action for an improper purpose or uses means that have no substantial purpose other than to delay or prolong the proceeding or cause needless expense resulting in harm to an individual or the administration of justice.

## **2.10 UNAUTHORIZED PRACTICE OF LAW**

- (a) License revocation or actual suspension is the presumed sanction when a licensed paraprofessional engages in the practice of law beyond the scope permitted by the licensed paraprofessional's license, and the paraprofessional knew or should have known that he or she was practicing beyond the scope permitted by his or her license.
- (b) License revocation or actual suspension is the presumed sanction when a licensed paraprofessional engages in the unauthorized practice of law or unlawfully holds himself or herself out as entitled to practice law while he or she is on actual suspension for disciplinary reasons in the jurisdiction where the licensed paraprofessional practices or holds himself or herself out as entitled to practice law [or is on involuntary inactive enrollment under Business and Professions Code section 6007 or other law in the relevant jurisdiction.] The degree of sanction depends on whether the licensed paraprofessional knew he or she was not entitled to practice law.
- (c) Suspension or reproof is the presumed sanction when a licensed paraprofessional engages in the unauthorized practice of law or unlawfully holds himself or herself out as entitled to practice law while he or she is not licensed to practice law in that jurisdiction, is on voluntary inactive status, or on suspension for non-disciplinary reasons (including, but not limited to non-payment of fees or non-compliance with legal education requirements) in the jurisdiction where the licensed paraprofessional practices or holds himself or herself out as entitled to practice law. The degree of sanction depends on whether the licensed paraprofessional knew he or she was not entitled to practice law.

## **2.11 DISHONESTY, FRAUD, CORRUPTION, OR CONCEALMENT**

License revocation or actual suspension is the presumed sanction for an act of dishonesty, fraud, corruption, intentional or grossly negligent misrepresentation, or concealment of a material fact. The degree of sanction depends on the magnitude of the misconduct; the extent to which the misconduct harmed or misled the victim, which may include the adjudicator; the impact on the administration of justice, if any; and the extent to which the misconduct related to the practice of law.

## **2.12 SEXUAL RELATIONS WITH CLIENTS**

- (a) License revocation is the presumed sanction when a licensed paraprofessional expressly or impliedly conditions the performance of legal services for a current or prospective client upon the client's willingness to engage in sexual relations with the licensed paraprofessional or employs coercion, intimidation, or undue influence in entering into sexual relations with a client.
- (b) Suspension or reproof is the presumed sanction for any other violation of rule 1.8.10 of the Rules of Professional Conduct.

### **2.13 VIOLATION OF CONDITIONS ATTACHED TO DISCIPLINE**

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

### **2.14 CRIMINAL CONVICTIONS INVOLVING MORAL TURPITUDE**

License revocation or actual suspension is the presumed sanction for final conviction of a felony or misdemeanor involving moral turpitude.

### **2.15 CRIMINAL CONVICTIONS NOT INVOLVING MORAL TURPITUDE**

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

### **2.16 VIOLATION OF RULES IN GENERAL**

Suspension not to exceed three years or reproof is the presumed sanction for a violation of a provision of the Rules of Professional Conduct not specified in these Standards.

### **2.17 VIOLATION OF A CRIMINAL ACT THAT REFLECTS ADVERSELY ON THE LICENSED PARAPROFESSIONAL'S HONESTY OR FITNESS AS A LICENSED PARAPROFESSIONAL IN OTHER RESPECTS**

- (a) License revocation or actual suspension is the presumed sanction for a criminal act that reflects on the licensed paraprofessional's honesty if Standards 2.15, 2.16, or 2.17 do not apply.
- (b) Suspension or reproof is the presumed sanction for a criminal act that does not reflect on the licensed paraprofessional's honesty, but reflects on the licensed paraprofessional's fitness as a licensed paraprofessional, if Standards 2.15, 2.16, or 2.17 do not apply.

### **2.18 CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE**

License revocation or actual suspension is the presumed sanction for conduct that is prejudicial to the administration of justice in violation of rule 8.4(d) of the Rules of Professional Conduct. The degree of sanction depends on the magnitude of the misconduct, the extent to which the

misconduct harmed the victim or the administration of justice, and the extent to which the misconduct related to the licensed paraprofessional's practice of law.