

## **Proposed Amendments to Standard 1.8 – Clean Version**

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

(a) If a lawyer has a single prior record of discipline, the sanction should be greater than the previously imposed sanction unless the prior discipline was remote in time, the previous or current misconduct was not sufficiently serious to warrant greater discipline, or there are other circumstances that would make imposing greater discipline unjust. In matters in which a lawyer has a single prior record of discipline and the court is not recommending or imposing a sanction greater than the previously imposed sanction, the court must set forth its reason(s) for not imposing a greater sanction.

(b) If a lawyer 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 lawyer's unwillingness or inability to conform to ethical responsibilities.

(c) Sanctions may be imposed, including disbarment, even if a lawyer has no prior record of discipline.

## Proposed Amendments to Standard 1.8 – Redline to Current Language

### 1.8 EFFECT OF PRIOR DISCIPLINE

(a) If a lawyer has a single prior record of discipline, the sanction ~~should~~ must be greater than the previously imposed sanction unless the prior discipline was ~~so~~ remote in time, ~~and~~ the previous or current misconduct was not sufficiently serious to warrant greater discipline, enough ~~or there are other circumstances that would make imposing greater discipline that imposing greater discipline would be manifestly unjust.~~ In matters in which a lawyer has a single prior record of discipline and the court is not recommending or imposing a sanction greater than the previously imposed sanction, the court must set forth its reason(s) for not imposing a greater sanction.

(b) If a lawyer 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 lawyer's unwillingness or inability to conform to ethical responsibilities.

(c) Sanctions may be imposed, including disbarment, even if a lawyer has no prior record of discipline.