

# CALIFORNIA PRACTICE GUIDE PROFESSIONAL RESPONSIBILITY AND LIABILITY 2026 UPDATE

The 2026 softbound Update completely replaces the 2024 Update.

These Highlights summarize the most significant developments. The paragraph numbers are keyed to the 2026 edition of the Practice Guide, where the material is discussed in greater detail.

**Check for Case/Statutory/Rules Developments:** This Update went to press in March 2026. Some of the new cases were not final as of that time and may be affected by later developments. Additionally, unless specifically noted, this Update does not include case, legislative or rules developments taking effect after our press date. Counsel should check subsequent case histories and independently confirm the current state of the law, including any developments that may affect the analysis in this Practice Guide.

**Thank You!** We welcome and appreciate your comments, feedback and suggestions regarding this Practice Guide. Please keep them coming.

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# 2026 UPDATE HIGHLIGHTS

## CHAPTER 1

### REGULATION OF THE PRACTICE OF LAW

#### Regulation of Admission to Practice Law

[1:94a] **Provisional licensure program—first-time registrants of February 2025 bar exam:** Due issues with the February 2025 bar exam, the California Supreme Court approved an extension to the State Bar program for the provisional licensure of first-time registrants of that bar exam—i.e., a limited license to practice specified areas of the law under the supervision of a fully licensed lawyer. The program is extended to December 31, 2027. [CRC 9.49]

Further information about this program is available on the State Bar website ([www.calbar.ca.gov](http://www.calbar.ca.gov)).

#### “Good moral character” investigation

- [1:100.7] **Informal conference procedure:** The State Bar must establish procedures governing the informal conferences, including provisions permitting audio or video recording of the conference, the opportunity for the applicant to present information for consideration, and permission for the applicant’s counsel to attend the conference in order to observe (but not participate). [State Bar Rule 4.46(B)]
- [1:100.12] **Suspension of positive moral character determination:** At any time before the applicant has taken the oath of admission, the State Bar may suspend a positive moral character determination (after having made the determination but before having certified the applicant for admission to practice law) if the Committee receives information that “reasonably calls the applicant’s character into question.” The notice must specify the grounds for the suspension. [State Bar Rule 4.50(A)]

An application that has been suspended on this ground is processed according to State Bar Rule 4.45 (*see* ¶1:100.4 *ff.*). [State Bar Rule 4.50(B)]

The State Bar will send an applicant who has received a positive moral character determination and is not yet certified to the California Supreme Court as qualified for admission to practice law in California a questionnaire to complete 18 months after the issuance of the determination. If the applicant fails to respond within 60 days of receipt, the positive determination will be suspended. [State Bar Rule 4.50(C)]

[1:102b] **California Bar Examination:** The Committee of Bar Examiners is responsible for administering the bar exam, including its mode of administration, proctoring, format, scope, topics, content, and grading process. [CRC 9.6; State Bar Rule 4.60(A)]

- [1:102.1] **Committee requirements:** CRC 9.6(a) specifies the steps the Committee must take in executing its responsibility

for administering the bar exam. These include limitations on third-party involvement in bar exam question preparation, mandatory review of exam questions by Committee members, development and publication of qualification and assessment standards for panelists, subject matter experts, and third-party vendors, oversight of testing accommodations and grading processes, recommendations on passing scores, and consultation with law school stakeholders regarding exam content and administration. Approval and review by the Supreme Court and the Board of Trustees are required for bar exam changes suggested by the Committee. [CRC 9.6(a)]

- [1:102.2] **Cost/benefit requirements:** Any changes to the bar exam requiring substantial modification to training or preparation required to pass the exam or that substantially modify the exam's administration require Supreme Court approval. The Committee must submit a cost/benefit analysis of the efficacy of proposed changes to the Supreme Court. [CRC 9.6(b)]
- [1:102.3] **Comment:** The responsibilities imposed on the Committee under CRC 9.6 were precipitated by the substantial failures in design and administration of the February 2025 bar exam.

#### **Out-of-state attorney admission—Registered Servicemember Attorney and Registered Servicemember Spouse Attorney**

- [1:117.25a] **Alert—amended CRC and effect on State Bar Rules:** Effective November 5, 2025, CRC 9.41.1 was substantially amended. The amended rule indicates the State Bar “may” establish and administer a program to registering registered servicemember attorneys and registered servicemember spouse attorneys under rules adopted by the State Bar. [CRC 9.41.1(g)]

**Caution:** As of our publication date, the State Bar had not revised its existing rules governing Registered Military Spouse Attorneys (State Bar Rules 3.350 et seq.). Thus, CRC 9.41.1 is the primary rule applicable to non-California licensed military attorneys seeking to practice law in California.

- [1:117.26] **“Servicemember” and “Servicemember Spouse” defined:** A “servicemember” means a member of the U.S. Uniformed Services who has relocated their residency to California based on military orders. [CRC 9.41.1(a)(2)]

A “Servicemember Spouse” is a person married to, in civil union with, or registered domestic partner of, a servicemember, and has relocated their residency to California based on the servicemember’s military orders. [CRC 9.41.1(a)(2)]

- [1:117.27] **Scope of practice:** A registered military servicemember and servicemember spouse attorneys may engage (under the requisite supervision) in all forms of legal practice permissible for a licensee of the California State Bar, including pro bono services. [CRC 9.41.1(b)]

- [1:117.28] **Eligibility requirements:** [See CRC 9.41.1(c)]
- [1:117.29-117.30] **Other requirements:** The State Bar must conduct a background check before registering a servicemember attorney or a servicemember spouse attorney. [CRC 9.41.1(d)]  
Registered servicemember attorneys and registered servicemember spouse attorneys must abide by all laws and rules governing California lawyers and are subject to the disciplinary authority of the Supreme Court and the State Bar. [CRC 9.41.1(e)]
- [1:117.31] **Temporary licensure:** If the State Bar cannot complete registration within 30 days of receiving a complete application, it must issue a temporary license valid for 90 days. (The temporary license is extendable in 90-day increments until registration is finalized.) However, if the attorney is found ineligible at any point, the temporary license is revoked and registration is denied. [CRC 9.41.4(f)]
- [1:117.32] **Termination of registration:** Registration of a servicemember attorney or servicemember spouse may be terminated for a variety of reasons, including leaving military service, being transferred outside California, or dissolution of the servicemember spouse attorney’s marriage. [CRC 9.41.4(h)]

#### **Unauthorized Practice of Law**

[1:225.1] **Offering debt relief services in other jurisdictions:** Attorney operating debt relief business employing other lawyers who provided services to debtors in states where they were not admitted to practice was liable for assisting the unauthorized practice of law. [*Matter of Trimarche* (Rev.Dept. 2025) 6 Cal. State Bar Ct.Rptr. 145, 154]

## **CHAPTER 2**

### **ADVERTISING AND SOLICITATION**

#### **Advertising Regulated Under California State Bar Act**

[2:30a] **Caution—recent amendments to State Bar Act:** Effective January 1, 2026 several provisions of the State Bar Act requirements for legal advertising and solicitation have been amended and additional provisions added as noted throughout this Chapter. The affected Bus. & Prof.C. provisions are §§6153, 6155, former §6156 (renumbered 6155.1/amended), §6156.5 (added), 6157, 6157.2, 6158.4, 6158.5, and 6158.7.

#### **Persons/entities subject to statute**

- [2:33-33.5] **“Lawyers”:** The statute covers California State Bar licensees, attorneys eligible to practice in federal court, attorneys licensed in other states, foreign lawyers, and agents of California lawyers. [Bus. & Prof.C. §6157(d) (amended eff. 1/1/26)]
- [2:35] **Referral services, nonlawyers or groups advertising**

**legal services:** The statute also applies to lawyer referral services, “advertising collectives and cooperatives,” and other persons or groups, including nonlawyers, advertising the availability of legal services. [Bus. & Prof.C. §6158.5(a) (amended eff. 1/1/26)]

[2:37-38.1] **Compare—excluded persons/entities:** Bus. & Prof.C. §6158.5 specifically excludes qualified legal service projects, certified nonprofit referral services, advertising agencies and media in which lawyer advertisements appear, and broadcasters. [Bus. & Prof.C. §6158.5(b) to (d) (amended eff. 1/1/26)]

[2:39] **Regulates communications constituting an “advertisement”:** An advertisement for purposes of the statute is:

- any communication through any written, recorded or electronic means;
- available to, or directed generally to, members of the public or to a limited group of individuals;
- that provides information concerning a lawyer or the lawyer’s services for the purpose of encouraging individuals to secure the lawyer’s or law firm’s services. [Bus. & Prof.C. §6157(b) (added eff. 1/1/26)]

To “advertise” means to engage in any communication regarding an advertisement. [Bus. & Prof.C. §6157(a) (added eff. 1/1/26)]

[2:44] **Mandatory contents of legal advertisements:** All legal advertisements must include the following information conspicuously displayed (or intelligible, if spoken):

- [2:44.1] **Name of California lawyer:** The name of at least one lawyer licensed to practice laws in California. [Bus. & Prof.C. §6157(b)(1) (added eff. 1/1/26)]
- [2:44.2] **Law firm responsible for advertisement:** The law firm responsible for the advertisement. [Bus. & Prof.C. §6157(b)(1) (added eff. 1/1/26)]

If not paid for by the lawyer, any advertisement on a lawyer’s behalf must disclose the identity and business relationship (past or present) of the person that is paying for it. [Bus. & Prof.C. §6157.3]

- [2:44.4] **Office location/address:** The city, town or county of at least one bona fide office location or address of record for the lawyer or law firm listed with the California State Bar. [Bus. & Prof.C. §6157(b)(2) (added eff. 1/1/26)]
- [2:44.5-44.7] **Additional requirements for immigration lawyer advertisements:** Advertisements by or on behalf of an attorney providing immigration or naturalization services (including telephone directory listings of more than three lines) are subject to additional requirements. [Bus. & Prof.C. §6157.5(a); see also Bus. & Prof.C. §22442.2 (advertising restrictions for nonlawyer or out-of-state attorney immigration consultants)]

## Prohibited contents of legal advertisements

- [2:45] **General prohibition on false, misleading, or deceptive statements and omissions:** No legal advertisement shall contain any false, misleading or deceptive statement or omit to state any fact necessary to make the statements made, in light of circumstances under which they are made, not false, misleading or deceptive. [Bus. & Prof.C. §6157.1]
- [2:45.1] **False/misleading/deceptive statements re legal skills, experience, or record:** Legal advertisements must not include any misleading, deceptive or false statements, words, or phrases regarding a lawyer's or law firm's skills, experience or record. [Bus. & Prof.C. §6157.2(a)(5) (added eff. 1/1/25)]
- [2:45.2] **Limitations on referencing legal awards/recognition:** References to a lawyer's or law firm's recognition by, or awards from an organization are prohibited *unless* (i) the recognition or award is not conferred by virtue of being a member of the organization; *and* (ii) the organization does not charge or solicit a fee, cost, or payment for the recognition or award. [Bus. & Prof.C. §6157.2(a)(6) (added eff. 1/1/25)]
- [2:45.3] **Advertising by inactive, suspended or disbarred attorneys:** Attorneys who have been suspended, disbarred, involuntarily enrolled as inactive or have resigned cannot hold themselves out as practicing law. [Bus. & Prof.C. §6126(b); *see* ¶2:56]

In addition, lawyers and law firms employing attorneys who have resigned, or who are suspended or disbarred from the practice of law, "shall not permit" those lawyer employees to advertise or hold themselves out as practicing law. [Bus. & Prof.C. §6133—willful violation is cause for discipline (¶2:51)]

- [2:46-46.7] **Other prohibited contents/statements:** Lawyer advertisements may also not contain guarantees or warranties, statements offering immediate cash or quick settlement, lawyer or client impersonations without disclosure, dramatizations of events or use spokespersons without disclosure, and statements offering "no fee" in contingency cases. [Bus. & Prof.C. §6157.2(a) (amended eff. 1/1/26)]

[2:50-51.4] **Civil enforcement actions available for violation of State Bar Act advertising provisions:** Civil enforcement actions are available for violation of the State Bar's advertising requirements Consumers misled by a violation of §§6157.1(a) prohibiting false, misleading or deceptive statements in legal advertisements (*see* ¶2:45) or 6157.2(b) mandatory contents of legal advertisements (*see* ¶2:44.1 *ff.*) may file a civil action for statutory damages, attorney fees, injunctive relief, and other relief deemed proper by the court. [Bus. & Prof.C. §6158.2(c)(2) (added eff. 1/1/26)]

- [2:51.1-51.2] **Procedural prerequisites:** Several prerequisites exist before a civil enforcement action may be filed, including filing a complaint with the State Bar, the State Bar must determine

substantial evidence of a violation exists, and the advertiser does not timely withdraw the advertisement or subsequently rebroadcast the same advertisement. [Bus. & Prof.C. §6157.2(c)(1) (amended eff. 1/1/26)]

[2:563-586] **Civil enforcement actions available for violation of electronic media advertising requirements:** Any California resident can commence a civil enforcement action for violation of the statutes governing electronic media advertising (Bus. & Prof.C. §§6158, 6158.1 or 6158.3). [Bus. & Prof.C. §6158.4(e) (amended eff. 1/1/26)]

- [2:564-586] **Procedural prerequisites:** Several prerequisites exist before a civil enforcement action may be filed, including filing a complaint with the State Bar, the State Bar must determine substantial evidence of a violation exists, and the advertiser does not timely withdraw the advertisement or subsequently rebroadcast the same advertisement. [Bus. & Prof.C. §6157.2(c)(1) (amended eff. 1/1/26)]

### **Solicitation Regulated Under State Bar Act**

[2:249] **Consequences of statutory violation—civil liability:** Any person may bring a civil action for violating the running and capping statute (Bus. & Prof.C. 6152(a)). [Bus. & Prof.C. §6153(c) (amended eff. 1/1/26)]

- [2:249.1-249.5] **Available remedies:** Remedies available include statutory damages, attorney fees, injunctive or declaratory relief, and other relief deemed proper by the court. [Bus. & Prof.C. §6153(c), (d) (amended eff. 1/1/26)]

### **Regulation of Lawyer Referral Services**

[2:629] **Does not prohibit joint attorney advertising:** The rules and regulations governing lawyer referral services do not prohibit attorneys from jointly advertising their services. Permissible under joint advertising satisfies both of the following requirements:

- [2:629.1] **Identifies attorneys/law firms by name:** The advertisement identifies by name the advertising attorneys or law firms who the potential client (consumer of legal services) may select and initiate contact with. [Bus. & Prof.C. §6155(g)(1) (amended eff. 1/1/26)]
- [2:629.2] **Agreement acknowledges liability for advertisements:** Each participating attorney or law firm has executed a joint advertising agreement with the entity managing the joint advertising services, under which the attorney or law firm expressly takes liability for the content of the advertising. [Bus. & Prof.C. §6155(g)(1) (amended eff. 1/1/26)]

[2:633] **Civil enforcement action for violation of lawyer referral services statute:** Any person may bring a civil action for violating the lawyer referral services statute (Bus. & Prof.C. 6155). [Bus. & Prof.C. §6156.5(a) (added eff. 1/1/26)]

- [2:633.1-633.5] **Available remedies:** Remedies available include statutory damages, attorney fees, injunctive or declaratory

relief, and other relief deemed proper by the court. [Bus. & Prof.C. §6156.5(a) (amended eff. 1/1/26)]

[2:634] **Civil penalties under California’s Unfair Competition Law for violation of lawyer referral services statute:** Any individual, partnership, association, corporation, or other entity, including but not limited to, any person or entity having an ownership interest in a lawyer referral service that has engaged in, or proposes to engage in violation of the referral services statute (Bus. & Prof.C. §6155) is liable for civil penalties provided in California’s Unfair Competition Law (UCL) Bus. & Prof.C. §§17206, 17206.1 and 17536. [Bus. & Prof.C. §6155.1 (amended eff. 1/1/26)]

The California State Bar has standing to bring a UCL action for violation of the referral services statute. [Bus. & Prof.C. §6155.1(a)(2) (amended eff. 1/1/26)]

The California attorney general, or any district attorney or various local public prosecutors has standing to a UCL action for violation of the referral services statute. [Bus. & Prof.C. §6155.1(a)(1) (amended eff. 1/1/26)]

- [2:236] **Penalties used to prosecute other cases:** Civil penalties recovered in an action brought by the State Bar are deposited in a special fund used for investigation and prosecution of other cases by the State Bar, with any excess used in investigation and prosecution of attorney discipline cases. [Bus. & Prof.C. §6155.1(c) (amended eff. 1/1/26)]
- [2:637] **State Bar expenses:** In addition, the State Bar is entitled to its reasonable expenses of investigation and prosecution of the civil action; these expenses shall be paid to the State Bar before any civil penalty is collected. [Bus. & Prof.C. §6155.1(b) (amended eff. 1/1/26)]

## CHAPTER 4

### CONFLICTS OF INTEREST

#### **Conflicts Between Present and Former Clients (Successive Representation)**

[4:200.7] **Public defender’s prior representation of another defendant for same murder:** Where Defendant faced murder charge in decades old case and Public Defender’s office was appointed counsel, totality of the circumstances did not warrant current deputy Public Defender’s disqualification based on Public Defender’s Office having previously (and successfully) represented another client for the same murder. Because the files dealing with the prior representation were no longer available, there was little danger the current deputy Public Defender could obtain confidential information. Moreover, existing screening procedures and policies of Public Defender’s Office were sufficient to avoid inadvertent disclosure of confidential information from the prior representation. [*Cain v. Sup.Ct. (People)* (2025) 110 CA5th 639, 648-652, 331 CR3d 806, 813-816]

## **Disqualification Based on Representation of Client With “Materially Adverse” Interests**

[4:239.58b] **“Materiality” determined at time of disqualification:** At least one court has concluded that “materiality” of confidential information should be evaluated at the time of disqualification; not at the time the information is received. [*Winter v. Menlo* (2025) 110 CA5th 299, 312, 331 CR3d 377, 387—reasoning that CRPC 1.18(c) describes materiality in present tense]

## **Conflict Based on Lawyer’s Personal Relationships/Interests**

[4:264.12] **Possible malpractice committed in prior representation of client:** Conflicts can arise where a former client the lawyer represented in the past seeks additional advice from the lawyer regarding the same matter. If the lawyer discovers the prior advice was in error, the lawyer’s potential malpractice liability would constitute a personal interest conflict under CRPC 1.7(b). [See Los Angeles County Bar Ass’n Form.Opn. 536 (2025)]

## **CHAPTER 5**

### **ATTORNEY FEES AND FEE AGREEMENTS**

#### **Renegotiating Fee Agreement With Existing Client**

[5:35] **Compliance with CRPC 1.8.1 required?** A pending California State Bar Opinion concludes that compliance with CRPC 1.8.1 *is required* when a flat fee is renegotiated “midstream” and that the renegotiation is subject to scrutiny for fairness and reasonableness. [Cal. State Bar Interim Opn. 20-0003]

#### **Financing Legal Fees (Litigation Funding)**

**ALERT—California Consumer Litigation Funding Act effective January 1, 2026:** As of January 1, 2026, litigation funding in California is now subject to the California Consumer Litigation Funding Act (*see* ¶5:327 *ff.*). [Bus. & Prof.C. §§6250 to 6256 (added eff. 1/1/26)]

[5:327] **California Consumer Legal Funding Act:** Effective January 1, 2026, the California Consumer Litigation Funding Act (Bus. & Prof.C. §§6250 through 6256) regulates litigation funding in California. [Bus. & Prof.C. §§6250 to 6256 (added eff. 1/1/26)]

The statute focuses on “consumer legal funding,” defined as a nonrecourse transaction in which a consumer legal funding company (¶5:328) purchases and a consumer assigns to the company a contingent right to receive an amount of the potential proceeds of a settlement, judgment, award, or verdict obtained in the consumer’s legal claim. [Bus. & Prof.C. §6250(c) (added eff. 1/1/26); *see also* Bus. & Prof.C. §6250(b) (defining “consumer” as a person with a pending legal claim who resides or is domiciled in California)]

- [5:328] **“Consumer legal funding company” defined:** A consumer legal funding company is a person or entity that enters into a consumer legal funding company contract with a consumer. [Bus. & Prof.C. §6250(d) (added eff. 1/1/26)]

- [5:329-329.3] **Legal funding contract requirements:** All consumer legal funding contracts must be in writing. [Bus. & Prof.C. §6251(a)(1) (added eff. 1/1/26)]

All consumer legal funding contracts must meet certain content requirements including: a right of rescission; a statement that no fees or charges will be paid other than disclosed in the contract; and a statement of the maximum amount the consumer is obligated to pay (absent breach, fraud or misrepresentation by the consumer). [Bus. & Prof.C. §6251(b) (added eff. 1/1/26)]

All legal funding contracts must disclose material terms of the agreement and the consumer's right to cancel, and state that the legal funding company shall have no role in deciding whether, when, or for what dollar amount a legal claim may be settled. [Bus. & Prof.C. §6252(a) (added eff. 1/1/26)]
- [5:329.4] **Consumer's attorney must provide written acknowledgement re contract:** The contract must contain a written acknowledgement by an attorney retained by the consumer attesting that, among other things, the attorney has reviewed the required disclosures in the contract. [Bus. & Prof.C. §6252(c) (added eff. 1/1/26)]

The absence of the attorney's acknowledgement (§5:329.4) renders the consumer legal funding contract null and void, unless the consumer terminates the attorney who made the acknowledgment. [Bus. & Prof.C. §6252(d), (e) (added eff. 1/1/26)]
- [5:331] **Prohibition on lawyers' direct consumer legal funding to clients:** An attorney (or attorney's immediate family) retained by a consumer shall not have a financial interest in a consumer legal funding company offering consumer legal funding, and shall not provide consumer legal funding directly to a consumer. [Bus. & Prof.C. §6256(a) (added eff. 1/1/26)]
- [5:332] **Referring attorney cannot have interest in consumer legal funding company used by consumer:** An attorney who has referred the consumer to the consumer's retained attorney shall not have a financial interest in a consumer legal funding company offering consumer legal funding to that consumer. [Bus. & Prof.C. §6256(b) (added eff. 1/1/26)]
- [5:332.1] **Prohibition on attorney disclosing privileged information to client's legal funding company:** An attorney retained by a consumer shall not disclose any privileged information to a legal funding company without the written consent of the consumer. Disclosing information to a legal funding company at the consumer's request shall not otherwise void the attorney-client privilege. [Bus. & Prof.C. §6256(c) (added eff. 1/1/26)]
- [5:332.2] **Prohibition on attorney payment for soliciting clients:** An attorney shall not compensate, promise, or give anything of value to a person for the purposes of recom-

mending or securing the services of the attorney or the attorney's law firm, except that an attorney may pay reasonable costs of permissible advertisements, pay usual charges to a qualified attorney referral service, pay for a law practice, refer clients to another attorney under an not otherwise prohibited under the CRPC or the California Consumer Litigation Funding Act. [Bus. & Prof.C. §6256(d) (added eff. 1/1/26)]

### **Fee Sharing Restrictions Under State Bar Act**

**ALERT—prohibition on sharing contingent fees with “out-of-state alternative business structures” (ABS) effective January 1, 2026:** As of January 1, 2026, litigation funding in California is now subject to the California Consumer Litigation Funding Act (*see* ¶5:327 *ff.*). [Bus. & Prof.C. §§6250 to 6256 (added eff. 1/1/26)]

[5:534] **Prohibits sharing contingent fees with “out-of-state alternative business structures”:** Effective January 1, 2026, the State Bar Act contains a new provision (Bus. & Prof.C. §6156) that prohibits California attorneys from directly or indirectly sharing contingent legal fees with out-of-state alternative business structures. [Bus. & Prof.C. §6156(a) (added eff. 1/1/26)]

- [5:534.1] **Applies to fee contracts entered into on or after 1/1/26:** The new provision applies to fee contracts entered into on or after *January 1, 2026*. [Bus. & Prof.C. §6156(g) (added eff. 1/1/26)]
- [5:534.2] **Effective through 1/1/2030:** Section 6156 will be repealed effective *January 1, 2030*. [Bus. & Prof.C. §6156(h) (added eff. 1/1/26)]
- [5:535-535.1] **“Out-of-state alternative business structure” (ABS) defined:** An ABS is any entity that provides legal services while allowing nonattorney ownership or decisionmaking authority. [Bus. & Prof.C. §6156(c)(1) (added eff. 1/1/26)]

Nonprofit organizations are specifically excluded from the ABS definition. [Bus. & Prof.C. §6156(c)(2) (added eff. 1/1/26)]

[5:536] **Not applicable where attorney licensed in ABS-approved state:** The statute does not apply where the attorney is also licensed in the state where the ABS is approved, the fees are compensation for providing legal services in that state, and the law of the state is controlling (i.e., the attorney is subject to discipline under the law of that state). [Bus. & Prof.C. §6156(a) (added eff. 1/1/26)]

- [5:537] **Not applicable to court-approved fee sharing:** The statute does not apply where the fee sharing arrangement was ordered by a court tribunal of competent jurisdiction and the fees subject to that tribunal's oversight. [Bus. & Prof.C. §6156(d) (added eff. 1/1/26)]
- [5:538] **Not applicable to contracts unrelated to contingent fee payment or referral fees:** The statute does not apply where the contract outlines a specific dollar amount for services rendered, where no payment is related to the referral of legal

services or purchase of a lead for a potential client case, and no payment is contingent on the amount recovered in a specific case. [Bus. & Prof.C. §6156(e) (added eff. 1/1/26)]

- [5:539] **Consequences for violating statute:** A violation of the statute is cause for attorney discipline, statutory damages, attorney fees/costs and injunctive or declaratory relief. [Bus. & Prof.C. §6156(b) (added eff. 1/1/26)]

### **Fee Recovery/Enforcing Fee Agreements**

#### **Recovery where fee agreement void**

- [5:1024.1] **Contract with public agency entered into without legal authority:** A contract entered into by a local government agency without authority is wholly void, ultra vires, and unenforceable. [*County of Los Angeles v. Quinn Emanuel Urquhart & Sullivan, LLP* (2025) 115 CA5th 489, 506-508, 338 CR3d 441, 453-455 (because sheriff lacked authority to execute fee agreement on behalf of county board of supervisors, sheriff's fee agreement with law firm was void)]

## **CHAPTER 6, PART I**

### **PROFESSIONAL COMPETENCE, DILIGENCE AND SUPERVISION**

#### **Learning and Skill**

[6:73.6] **Competence in using generative artificial intelligence (GenAI):** Lawyers who use GenAI in representing clients must develop a reasonable understanding of its benefits and risks or consult others who have that understanding. The duty of competence also requires that lawyers review and evaluate the output produced by GenAI: “To state the obvious, it is a fundamental duty of attorneys to *read* the legal authorities they cite in appellate briefs or any other court filings to determine that the authorities stand for the propositions for which they are cited.” [*Noland v. Land of the Free, LP* (2025) 114 CA5th 426, 445-448, 336 CR3d 897, 912-915 (emphasis in original) (reliance on fabricated legal authority generated by AI hallucination in appellate brief lawyer failed to read rendered appeal frivolous, resulted in monetary sanctions and court order notifying State Bar)]

#### **Conviction Reversal Based on Defense Counsel’s Ineffective Assistance**

[6:390] **Failure to review aggravation evidence:** [*Hogan v. Bean* (9th Cir. 2025) 140 F4th 1001, 1024—ineffective assistance not found where counsel’s decision to challenge admission of aggravating evidence (out-of-state manslaughter conviction) rather than challenging conviction itself reflected reasonable professional judgment under prevailing professional norms at time of trial]

[6:398] **Erroneous advice to reject plea:** [*United States v. Gordon* (9th Cir. 2025) 151 F4th 1090, 1098-1099—counsel’s prediction of potential sentence Defendant would receive at trial instead of accepting plea (alleged difference of 60 months) was not a gross

mischaracterization of likely outcome of Defendant's case, and Counsel's performance not constitutionally deficient]

[6:426.1] **Failure to diligently represent defendant at resentencing hearing:** [*People v. Guevara* (2025) 115 CA5th 919, 927-928, 338 CR3d 625, 632-633—defendant's repeated delay and eventual failure to file resentencing memorandum or present mitigation evidence constituted ineffective assistance of counsel prejudicing resentencing outcome]

## CHAPTER 6, PART II

### PROFESSIONAL MALPRACTICE AND PROFESSIONAL LIABILITY

#### Professional Negligence (Malpractice)

##### Recoverable damages

- [6:1248] **Emotional distress damages for egregious malpractice (breach of fiduciary duty):** [*Kaushansky v. Stonecroft Attorneys, APC* (2025) 109 CA5th 788, 806-807, 330 CR3d 753, 768-769 (awarding emotional distress damages on breach of fiduciary duty claim where attorney “browbeat” client into signing substitution of attorney form on same day response was due on motion to compel deposition; attorney withdrew 6 weeks before trial without conducting any discovery or obtaining continuances to protect client)]

##### Defenses

- [6:1391] **Res judicata/collateral estoppel:** Former Clients sued attorney for malpractice and Attorney filed cross-complaint against Clients for unpaid attorney fees. Clients' action was dismissed with prejudice based on Clients' discovery order violations. Attorney's cross-complaint proceeded to trial, with court granting Attorney's request to exclude any reference of malpractice allegations made in Clients' complaint. Jury found Clients liable for over \$100,000 in fees/interest. Clients appealed. Clients' allegations in malpractice action were improperly excluded; issue preclusion did not apply because there was no final judgment in Clients' action, and no second lawsuit in which res judicata could apply. (Judgment reversed.) [*640 Octavia LLC v. Walston* (2025) 111 CA5th 861, 872-873, 333 CR3d 183, 192-193]
- [6:1417.1a] **Litigation privilege:** Attorney's verbal abuse of unrepresented Wife in prelitigation meeting with Client/Husband did not reasonably relate to litigation contemplated in good faith and under serious consideration. Without a good faith intention to bring suit, litigation privilege did not shield Attorney from liability for abusive behavior. [*Shenefield v. Kovtun* (2024) 106 CA5th 925, 940, 327 CR3d 519, 530]
- [6:1429] **Motion to strike SLAPP suit (suing opposing counsel):** Claims by attorney against opposing counsel based on opposing counsel's actions in an underlying lawsuit fall within the protections of the SLAPP statute. [*Ramirez v. Mc-*

*Cormack* (2025) 113 CA5th 493, 502, 335 CR3d 447, 453, citing *Thayer v. Kabateck, Brown, Kellner LLP* (2012) 207 CA4th 141, 158, 143 CR3d 17, 30]

- [6:1432] **Motion to strike SLAPP suit (defamation claim):** [*Michael K. v. Cho* (2025) 113 CA5th 1, 10-12, 335 CR3d 102, 109-111—defamation claim based on attorney’s statements to bank that client’s husband was physically and financially “abusive” to rebut husband’s chargeback dispute after client used joint credit card to pay attorney’s legal fees was subject to anti-SLAPP motion; *Neville v. Chudacoff* (2008) 160 CA4th 1255, 1270, 73 CR3d 383, 394-395—defamation claim based on letter drafted by employer’s attorney sent to employer’s customers accusing employee of breach of contract and misappropriation of trade secrets was subject to anti-SLAPP motion]
- [6:1445.1] **Motion to strike SLAPP suit (failure to file protective claim):** Lawsuit by beneficiaries and trustee against law firm representing estate’s personal representative alleging law firm’s failure to file a protective claim for a refund with IRS or advising client about need to file such claim are not protected speech and petitioning activities under CCP §425.16. [*Callister v. James B. Church & Associates* (2025) 108 CA5th 185, 189, 329 CR3d 180, 196 (statute protects statements or writings and not the failure to make them)]

#### **Intentional Torts**

- [6:1748] **Malicious prosecution—advice of counsel defense:** Truthful disclosure of all relevant facts to counsel coupled with good faith reliance on counsel’s advice is a complete defense to a malicious prosecution claim. [*Ceron v. Liu* (2025) 112 CA5th 307, 311, 315-316, 334 CR3d 280, 284, 287—attorney’s lack of experience and alleged failure to perform sufficient legal research insufficient basis for finding that client could not in good faith rely on attorney’s counsel (defense successful)]

## **CHAPTER 7**

### **CONFIDENTIALITY AND PRIVILEGE**

#### **Ethical Obligations Upon Inadvertent Receipt of Opposing Party’s Confidential/Privileged Information**

[7:150.5c] Client/plaintiff in employment action forwarded to his Attorney an email received from Supervisor who worked at Employer. The email originated from Employer’s lawyer, and contained a “Confidentiality Notice” stating the email was privileged. Attorney notified Employer’s lawyer about the email, and asserted that, because Supervisor had intentionally disclosed the email to Client, Employer had waived the attorney-client privilege. Employer’s lawyer requested Attorney destroy the email because Supervisor lacked authority to waive the privilege on Employer’s behalf.

The trial court determined the email was privileged, and entered

a protective order forbidding Attorney and Client from further disseminating the email. Nevertheless, Attorney subsequently disclosed the email to three expert witnesses retained for Client's case. On appeal, Attorney and experts were disqualified from further involvement in Client's case based on Attorney's failure to comply with CRPC 4.4 and the State Fund Rule. [*Johnson v. Department of Transp.* (2025) 109 CA5th 917, 925-929, 943-946, 330 CR3d 811, 820-822, 833-836]

- [7:150.5d] **Comment:** The *Johnson* decision (§7:150.5c) is a textbook example of how *not* to proceed when receiving inadvertently produced documents that appear privileged. While Attorney may have believed the privilege had been waived by Supervisor's disclosure of the email, that determination was for the court, especially in light of the response from Employer's lawyer asserting that Supervisor was not authorized to waive the privilege on Employer's behalf. [See CRPC 4.4, Comment [1] (where sender of inadvertently disclosed writing and lawyer who received it do not agree about disclosed document, lawyer should seek guidance from court)]

## Attorney-Client Privilege

### Limitations on

- [7:325a] **Fifth Amendment right against self-incrimination:** When the Fifth Amendment protects an individual from compelled production of documents and those documents have been shared with the individual's attorney, the attorney-client privilege shields the attorney from compelled production of those documents to the government. [*In re Grand Jury Subpoena* (9th Cir. 2025) 127 F4th 139, 142]

However, no Fifth Amendment protection applies where the "foregone conclusion" exception applies, i.e., where the government can independently determine the existence, authenticity and client's custody of those documents such that the act of producing them would reveal no additional incriminating information; thus the attorney-client privilege does not apply. [*In re Grand Jury Subpoena* (9th Cir. 2025) 127 F4th 139, 142 (also holding an attorney cannot be compelled to provide government with privilege log but court may conduct in camera review of privilege log)]

[7:353] **Waiver of by disclosure of "significant part":** Government Agency's disclosure of confidentiality notice in footer of Agency counsel's email and its general description of the nature of counsel's communication did not constitute disclosure of a "significant part" of the email, so waiver did not apply. [*Johnson v. Department of Transportation* (2025) 109 CA5th 917, 940, 330 CR3d 811, 831]

[7:363.19] **No waiver for disclosures requested by consumer client under California Consumer Legal Funding**

**Act:** The new California Consumer Legal Funding Act (Bus. & Prof.C. §§6250 to 6256, added eff. 1/1/26) permits an attorney, at the request of a client consumer, to disclose information to a legal funding company without voiding the attorney-client privilege. [See Bus. & Prof.C. §6256(c) (added eff. 1/1/26)]

*Cross-refer:* The California Consumer Legal Funding Act is discussed in detail in Ch. 5; see ¶5:327]

## CHAPTER 8

### ADVOCACY AND REPRESENTATION

#### Duty of Prosecuting Attorneys to Disclose *Brady* Evidence

##### Effect of “*Pitchess*” motion

- [8:35g] **Statutory/judicial disclosure limitations not applicable to *Brady* evidence:** *Brady* and *Pitchess* operate in parallel; however, information the court finds material under *Brady* must be disclosed notwithstanding statutory/judicial disclosure limitations. I.e., the *Pitchess* scheme does not prohibit disclosure of *Brady* information. [*Schneider v. Sup.Ct. (Los Angeles County Sheriff's Dept.)* (2025) 111 CA5th 613, 625-633, 332 CR3d 918, 927-934 (directing trial court to require disclosure of actual *Brady* material in personnel files as opposed to only disclosing names and contact information of individuals who witnessed or complained of conduct at issue)]

##### Statutory Reciprocal Discovery Obligations

[8:35.10a] **Materials discoverable under Pen.C. §1054.9:** Discovery under Pen.C. §1054.9 includes materials in the possession of the prosecution or law enforcement authorities that the defendant would have been entitled to at the time of trial, or tend to negate guilt, mitigate the offense, mitigate the sentence, or otherwise are favorable or exculpatory to the defendant, including all materials the convicted person would be entitled to if they were being tried today, irrespective of whether the materials were discoverable at the time of the convicted person’s trial (including the prosecution’s jury selection notes). [Pen.C. §1054.9(c)(1) (amended eff. 1/1/26)]

##### Right to Counsel in Post-Trial Criminal Proceedings

[8:123.1] **Motion to vacate conviction/sentence due to failure to understand immigration consequences:** Counsel may be appointed where an indigent noncitizen defendant has the right to move to vacate their conviction or sentence based on the failure to understand adverse immigration consequences under Pen.C. §1473.7(a). [*People v. Fryhaat* (2019) 35 CA5th 969, 981, 248 CR3d 39, 47-48—due process right to appointed counsel applies when defendant establishes prima facie case for postconviction relief under Pen.C. §1473.7; see also *People v. Gutierrez* (2025) 113 CA5th 906, 911-914, 335 CR3d 922, 926-928 (right to counsel under Pen.C. §1473.7 not limited to situations where indigent defendant is in federal custody and unable to attend the hearing)]

[8:123.4] **Resentencing proceedings:** Although a defendant does not have a constitutional right to counsel at the initial eligibility state of a statutory resentencing process, once the defendant states a prima facie case for relief or reaches the resentencing stage, the defendant has that right. [*People v. Grajeda* (2025) 111 CA5th 829, 838, 333 CR3d 157, 163-164—defendant’s entitlement to full resentencing triggered right to counsel]

### **Removal of Criminal Defense Counsel Over Defendant’s Objection**

[8:225] **For conflict of interest:** [*Sanchez v. Sup.Ct. (People)* (2024) 106 CA5th 617, 629, 327 CR3d 225, 234 (removal of appointed counsel warranted where conflict was based on counsel’s own comments potentially violating duties under Racial Justice Act)]

### **Duty to Disclose Adverse Law**

[8:517.2] **Citing fabricated legal authority:** [*Noland v. Land of the Free, LP* (2025) 114 CA5th 426, 447-448, 336 CR3d 897, 914-915 (sanctions awarded and copy of opinion forwarded to State Bar for attorney’s opening brief citing legal authorities fabricated by generative AI)]

### **Prohibition on Disrespectful Conduct**

[8:552.5] **No defamatory or disrespectful statements in pleadings:** Attorney sanctioned for violating rules of court and CRPC 3.1 by filing a writ petition seeking judge’s disqualification containing a litany of grievances without a factual record or legal authority. (The petition itself was deemed frivolous.) [*N.D. v. Sup.Ct. (E.F.)* (2026) 111 CA5th 1292, \_\_, 341 CR3d 105, 111-113—“concrete evidence” (not just lawyer’s or client’s ire) needed before lawyer levies serious accusations against a trial judge]

[8:552.8] **Caution—Ethics Alert:** The California State Bar has issued an Ethics Alert about threats to the judiciary and cautioning lawyers to carefully consider their ethical obligations and the risks of safety of judges and their staff before making disparaging public statements about judicial officers. [State Bar Ethics Alert (March 2025) available on the State Bar website ([calbar.ca.gov](http://calbar.ca.gov)) (use the Search tab)]

### **Prohibition on Ex Parte Communications With Judge or Court Officials/Employees re Pending Matter**

[8:884.1] **Trial judge’s ex parte text:** Trial judge’s ex parte text message during murder trial to former colleague in D.A.’s office asking why prosecutor in the case was not calling bailiff to testify as a rebuttal witness and suggesting someone talk to the prosecutor, violated Defendant’s due process right to an impartial judge and required reversal of Defendant’s conviction. [*People v. Rockhill* (2025) 115 CA5th 1230, 1245-1247, 338 CR3d 373, 805-807]

## Consequences of Improper Advocacy and Representation

[8:1101] **FRCP 11 sanctions:** [*Lake v. Gates* (9th Cir. 2025) 130 F4th 1054, 1061—“of counsel” attorneys may be sanctioned under FRCP 11 for signing pleading without reasonable basis to believe pleading is not frivolous under the facts]

### CHAPTER 9

#### HANDLING ENTRUSTED FUNDS AND PROPERTY

##### Client Trust Fund Requirements Under State Bar Act

[9:36] **Financial institutions must report client trust account information to State Bar:** The State Bar Act requires specified financial institutions holding client trust accounts to report certain information to the State Bar including detailed information regarding client trust fund accounts, attorney license numbers, client names, account balances and incidents of overdrafts in trust fund accounts. [See Bus. & Prof.C. §§6091.1, 6091.2, 6092.3 (eff. 9/12/24, operative 1/1/26)]

- [9:37] **Applies to “financial institutions” holding trust accounts:** For purposes of the statute, a “financial institution” is a bank, savings and loan, or other financial institution serving as a depository for IOLTA and non-IOLTA client trust accounts. [See Bus. & Prof.C. §6091.1(a)]
- [9:37.1] **Requires collection and transmittal of client trust account information to State Bar:** Commencing January 1, 2026, whenever a licensed California attorney opens a new client trust account at a financial institution, the financial institution must collect and retain the attorney’s State Bar license number in a specified format. [Bus. & Prof.C. §6091.3(a) (eff. 9/12/24, operative 1/1/26)]  

The financial institution, after receiving the attorney’s State Bar license number, shall incorporate it into its books and record the State Bar license number for any known client trust accounts where the license numbers were not previously collected. [Bus. & Prof.C. §6091.3(e) (eff. 9/12/24, operative 1/1/26)]
- [9:38] **Includes trust account identification information and year-end balance:** On or before March 1, 2026, and annually thereafter, the financial institution must provide the information for every client trust account “actually known” to the financial institution to be connected with the attorney’s State Bar license number, including the name of the financial institution, the name of the attorney/law firm associated with the client trust account, the attorney’s State Bar license number associated with the trust account, and the trust account balance as of December 31 of the previous year. [Bus. & Prof.C. §6091.3(b) (eff. 9/12/24, operative 1/1/26)]
- [9:39] **Includes overdrafts in trust account:** The financial institution must report to the State Bar whenever a check is presented for payment on such an account containing insuf-

ficient funds (the statute does not require notice to the attorney). This report is required whether or not the bank honors the check. [Bus. & Prof.C. §6091.1(b)]

**Note:** California attorneys are deemed to have consented to the reporting of the overdraft information. [Bus. & Prof.C. §6091.1(c)]

[9:41] **Attorneys must provide State Bar license numbers to financial institutions for trust accounts:** On or before July 1, 2026, attorneys are required to furnish State Bar license numbers to financial institutions where attorneys maintain client trust accounts. [Bus. & Prof.C. §6091.3(d) (eff. 9/12/24, operative 1/1/26)]

- [9:42] **Where trust account maintained by law firm:** If the trust account is maintained by a law firm, the law firm must designate one of its attorneys to provide the State Bar license number to the financial institution. [Bus. & Prof.C. §6091.3(d) (eff. 9/12/24, operative 1/1/26); *and see discussion at ¶9:94 ff.*]

[9:43] **Financial institution immunity for report/nonreport of required information:** No action shall lie against a financial institution (or its officers, directors, or employees) relating to the discharge of, or their alleged failure to discharge, any obligation under Bus. & Prof.C. §6091.3. [Bus. & Prof.C. §6091.3(g) (eff. 9/12/24, operative 1/1/26)]

#### **Attorney Reporting Duties Under Client Trust Account Protection Program (CTAPP)**

[9:90a] **PRACTICE POINTER:** A step-by-step guide for CTAPP compliance is available on the State Bar’s Website, where individual attorneys can fulfill their CTAPP reporting requirements and law firms and organizations can provide CTAPP information through the State Bar’s Agency Billing application. Related links include FAQs re IOLTA, CTAPP training, and access to the State Bar’s Client Trust Accounting Handbook. [See [www.calbar.ca.gov](http://www.calbar.ca.gov)]

- **ALERT—amended State Bar Rules:** Effective February 21, 2025, the State Bar Rules were amended in connection with CTAPP.

#### **Applicability of CTAPP**

- [9:90.1] **Applies to attorneys “responsible” for client funds and funds entrusted by others:** CTAPP requirements apply to any licensed California attorney “responsible for client funds and entrusted by others” under CRPC 1.15 who at any point during the reportable time period (¶9:90.7) who acted as a signatory on a trust account, exercised managerial or primary administrative oversight for a trust account, or was otherwise responsible for complying with CRPC 1.15 (including recordkeeping, banking, giving notice to clients re receipt of funds on client’s behalf, and duty to identify/discharge liens). [State Bar Rule 2.4(K) (eff. 2/21/25)]
- [9:90.2] **Includes attorney whose law firm controls client trust**

**accounts:** CTAPP reporting is also required for an attorney practicing at a law firm that controls client trust accounts. (But an attorney who no longer practices at the law firm is not required to report.) [State Bar Rule 2.5(C) (amended eff. 2/21/25)]

- [9:90.3] **Caution—reporting required even where attorney not responsible for client funds:** An attorney who has *no responsibility* for client funds must still submit a report indicating that fact. [State Bar Rule 2.5(D) (amended eff. 2/21/25)]
- [9:90.4] **Caution—reporting required even where attorney not responsible for client funds on reporting deadline:** The annual CTAPP reporting requirements (§9:91 ff.) apply to an attorney who, *at any time* during the reportable time period (§9:90.7) was responsible for client funds, including circumstances where the attorney submitting the report is *no longer responsible* for client funds. [State Bar Rule 2.5(C) (amended eff. 2/21/25)]
- [9:90.5] **Limitation—“exempt” attorneys:** An attorney is exempt from CTAPP reporting requirements where the attorney was not on active status for the entirety of the reporting period (§9:90.7), is not entitled to practice law at the time of the reporting deadline for any reason other than voluntary inactive enrollment, was on voluntary inactive status for the entirety of the reportable time period (§9:90.7). [State Bar Rule 2.5(L) (amended eff. 2/21/25)]
- [9:90.6] **Applies to all “trust accounts”:** For purposes of CTAPP, a “trust account” is any bank account opened to receive/hold funds under CRPC 1.15(a), including an IOLTA account (Bus. & Prof.C. §6211(a)) where the interest is paid to the State Bar, any interest-bearing bank trust deposit account or dividend-paying trust investment account (Bus. & Prof.C. §6211(b)) where the interest is payable to a client or others. [State Bar Rule 2.4(L) (eff. 2/21/25)]
- [9:90.8] **Applicable “reportable time period” and deadline for licensed attorneys:** The “reportable time period” for a licensed California attorney is the calendar year immediately preceding the attorney’s due date for paying annual license fees to the State Bar. [State Bar Rule 2.4(J) (eff. 2/21/25)]

The *reporting deadline* is the attorney’s due date for paying annual license fees to the State Bar. [State Bar Rule 2.5(B) (amended eff. 2/21/25)]

- [9:90.9] **Applicable “reportable time period” and deadline newly-licensed attorneys:** The “reportable time period” for a newly-licensed California attorney is from the date of the attorney’s admission through 15 days before the due date for payment of the attorney’s initial license fees to the California State Bar, or (*if the due date to pay initial fees is in the year following the attorney’s date of admission*) through December 31 of the attorney’s admission date. [State Bar Rule 2.4(J) (eff. 2/21/25)]

The *reporting deadline* is the attorney’s due date for paying annual license fees to the State Bar. [State Bar Rule 2.5(B) (amended eff. 2/21/25)]

- [9:90.10] **Online reporting required on State Bar’s**

**website:** CTAPP compliance is achieved using the State Bar's website ([www.calbar.ca.gov](http://www.calbar.ca.gov)). [CRC 9.9(a)(6)]

### Reporting requirements

- [9:91-91.1] **Annual report on responsibility for trust accounts:** Unless exempt (§9:90.5), all licensed attorneys are required to report annually to the State Bar whether or not they were “responsible for client funds and funds entrusted by others” under CRPC 1.15 (§9:90.1 *ff.*) *at any time* during the reportable time period (§9:90.7). [CRC 9.8.5(a)(1)(A); State Bar Rule 2.5(A)(1)]

An attorney who has *no responsibility* for client funds must still submit a report indicating that fact. [State Bar Rule 2.5(D) (amended eff. 2/21/25)]

- [9:92] **Annual trust account certification:** If an attorney is responsible for client funds and funds entrusted by others (§9:90.1 *ff.*), the attorney must also certify that they are knowledgeable about and in compliance with the applicable rules/statutes governing client trust accounts and the safekeeping of funds entrusted by clients and others. [CRC 9.8.5(a)(1); State Bar Rule 2.5(A)(1) (amended eff. 2/21/25)]
- [9:93] **Annual trust account registration:** An attorney must annually register each trust account for which they are responsible (identifying account numbers and financial institutions) on an online form provided by the State Bar. [CRC 9.8.5(a)(1)(B); State Bar Rule 2.5(A)(2)]  
  
If the attorney is a solo practitioner, the attorney is the trust account’s “designated licensee.” [See State Bar Rule 2.4(D) (eff. 2/21/25)]
- [9:94] **Registration by attorney’s law firm sufficient:** An attorney will be considered in compliance with this requirement if the attorney’s firm designates one of its attorneys to provide the State Bar license number, known as the “designated licensee” (*see* §9:94.1) for the trust account(s). [State Bar Rule 2.5(A)(2) (amended eff. 2/21/25); Bus. & Prof.C. §6091.3(d)]
- [9:94.1-94.2] **Law firm’s “designated licensee”:** The “designated licensee” is the attorney designated by the law firm to register trust accounts maintained by the law firm; and that attorney’s State Bar license number is associated with the firm’s trust accounts. The designated licensee is responsible for satisfying the disclosure requirements to the financial institution holding the trust accounts (*see* §9:42). [Bus. & Prof.C. §6091.3(d); State Bar Rule 2.4(D) (eff. 2/21/25); *see also* State Bar Rule 2.4(E) (defining “law firm” (amended eff. 2/21/25)]
- [9:94.3] **Effect where attorney leaves firm:** An attorney is *not* required to register a trust account controlled by a firm with which the attorney no longer practices, even if the attorney *was* responsible for entrusted funds at that firm during the reportable time period (§9:90.7 *ff.*). [State Bar Rule 2.5(C)]
- [9:95] **Annual self-assessment:** An attorney responsible for

a client trust account is required to complete an annual self-assessment on trust accounting duties/practices (CRC 9.8.5(a)(2)(A); State Bar Rule 2.5(A)(3)). An “annual self-assessment” is a survey about client trust accounting duties and practices, including, but not limited to, questions and affirmations regarding an attorney’s trust account management practices, recordkeeping and compliance with applicable law. [State Bar Rules 2.4(A) (eff. 2/21/25), 2.5(A)(3) (amended eff. 2/21/25)]

### **Effect of noncompliance with CTAPP reporting requirements**

- [9:96] **Noncompliance with CTAPP reporting requirements defined:** An attorney is noncompliant with the CTAPP reporting requirements if the attorney fails to complete the annual trust account certification, registration, or self-assessment requirements (¶9:91 *ff.*), or pay the fees for noncompliance (¶9:96.4). [State Bar Rule 2.5(G) (amended eff. 2/21/25)]
- [9:96.1] **Notice of noncompliance:** If the State Bar sends a notice of noncompliance with any required reporting, the attorney must comply as instructed in the notice or be involuntarily enrolled as inactive (and therefore ineligible to practice law). The enrollment is administrative, and no hearing is required. [State Bar Rule 2.5(H) (amended eff. 2/21/25)]
- [9:96.2] **Involuntary enrollment for continued noncompliance:** An attorney who fails to comply with CTAPP reporting requirements will be enrolled as an inactive licensee and will not be eligible to practice law. The inactive enrollment is administrative and no hearing is required. [State Bar Rule 2.5(I) (amended eff. 2/21/25)]

Inactive enrollment imposed for noncompliance is *cumulative* and does not preclude a disciplinary proceeding or other actions for violations of the CRPC, State Bar Act, or other applicable laws. [CRC 9.8.5(c); CRC 9.9(e)]
- [9:96.3] **Reinstatement following proof of compliance:** Inactive enrollment for noncompliance with CTAPP reporting terminates when an attorney submits proof of compliance and pays the noncompliance and reinstatement fees. [State Bar Rules 2.5(J) (amended eff. 2/21/25)]
- [9:96.4] **Noncompliance fees:** The fees for noncompliance with any of the CTAPP reporting requirements, including the reinstatement fee to terminate CTAPP inactive enrollment, are set forth in Appendix A: Schedule of Charges and Deadlines to the State Bar rules (available at [www.calbar.ca.gov](http://www.calbar.ca.gov)).

### **Trust Account Compliance Review and Investigative Audit**

[9:97] **Overview:** The State Bar holds compliance reviews and investigative audits to ensure safekeeping of funds entrusted to California attorneys. [See Bus. & Prof.C. §§6091, 6091.4 (eff. 9/12/24); State Bar Rules 2.4(C) (eff. 2/21/25), 2.4(F) (eff. 2/21/25)]

*Attorney’s duty to cooperate and comply:* Attorneys selected for review/audit are required to comply with all information disclosure

requirements related thereto and to cooperate with the State Bar (see ¶9:98.7 ff.). In addition, attorneys must comply with any mandatory corrective action plans resulting from the review/audit or risk discipline (see ¶9:99.4).

[9:98] **“Compliance review”—attorney requirements:** The State Bar conducts a review of attorney compliance with applicable law regarding the safekeeping of funds entrusted by others and contemporaneous recordkeeping. [State Bar Rule 2.4(C) (eff. 2/21/25)]

Within 30 days of receipt (¶9:98.20) of a notice of selection for compliance review from the State Bar, the attorney must take the following steps:

- [9:98.2-98.3] **Individual/solo practitioner attorney:** Report to the State Bar the name of the State Bar-approved CPA selected to perform the compliance review *at the attorney’s expense*. [State Bar Rule 2.6(A)(1)(a) (eff. 2/21/25)]

Provide any trust account records requested in the notice of selection in a manner specified by the State Bar. [State Bar Rule 2.6(A)(1)(b) (eff. 2/21/25)]

- [9:98.4-98.5] **Law firm attorney:** If a law firm attorney does not handle the firm’s trust accounts, that attorney may take the following steps instead of naming the CPA or providing trust account records (¶9:98.2 ff.): If the attorney is not the designated licensee for the law firm’s the trust accounts (see ¶9:98.5), that attorney must provide the names, State Bar license numbers, current physical addresses, and current email addresses of the designated licenses for each and law firm trust account. [State Bar Rule 2.6(A)(1)(c) (eff. 2/21/25)]

Where the law firm does not have a designated licensee, provide the names, State Bar license numbers, current physical addresses, and current email addresses of the primary account holder or signatory for each and every law firm trust account and the attorneys responsible for performing or supervising the monthly reconciliation of each and every firm trust account. [State Bar Rule 2.6(A)(1)(d) (eff. 2/21/25)]

- [9:98.7] **Cooperate with State Bar re additional information:** The attorney must cooperate with and respond completely to all questions/requests for additional documents from the State Bar or the CPA (¶9:98.2) regarding all transactions and records required to demonstrate compliance with applicable law regarding the safekeeping of entrusted funds by clients or others (and any related obligations). [State Bar Rule 2.6(A)(2) (eff. 2/21/25); see also CRPC 1.15(d)(6)]

In addition, *notwithstanding applicable privileges* (attorney-client privilege, work product), attorneys and law firms must, as part of a compliance review or investigative audit, provide all requested information, records or communications, including but not limited to account journals, client ledgers, fee agreements, client files, and billing statements related to the receipt, holding,

and disbursement of funds, securities, or other property in which the licensee, limited liability partnership, or law corporation knows or reasonably should know a client or other person has an interest. [Bus. & Prof.C. §6091.4(a) (eff. 9/12/24)]

- [9:98.8-98.9] **Effect of disclosing information to State Bar:** By providing requested information to the State Bar, the attorney does not violate, waive or extinguish the duty of client confidentiality (Bus. & Prof.C. §6068(e)), the attorney-client privilege (Ev.C. §950 et seq.), the attorney work product doctrine (CCP §2028.010), or the protections of any other rule or law related to attorney work product or attorney-client privilege. [Bus. & Prof.C. §6091.4(b) (eff. 9/12/24)]

Any information disclosed under Bus. & Prof.C. §6091.4(a) (§9:98.7) remains confidential *unless* disclosure by the State Bar or its agents is required to fulfill its licensing, regulatory, and attorney disciplinary functions. [Bus. & Prof.C. §6091.4(c); State Bar Rule 2.6(E) (eff. 2/21/25)]

Regardless, any such disclosure shall not be deemed a waiver of the confidential character of the information for any other purpose, nor shall the disclosing attorney be considered in violation of any duties of confidentiality, privilege or work product. [Bus. & Prof.C. §6091.4(c) (eff. 9/12/24)]

- [9:98.10] **Disclosure of reported information prohibited:** Any information disclosed under Bus. & Prof.C. §6091.4(a) (§9:98.7) must not be disclosed under any state law, including—but not limited to—the California Public Records Act (Gov.C. §7920.000 et seq.). [Bus. & Prof.C. §6091.4(d) (eff. 9/12/24)]
- [9:98.17] **Provide signed statement after records disclosed:** Prior to completion of the compliance review, provide a signed statement of representations on a form provided by the State Bar. [State Bar Rule 2.6(A)(3) (eff. 2/21/25)]
- [9:98.18] **Acknowledge receipt of compliance review findings:** Within 14 days of completion of the compliance review, submit to the State Bar an acknowledgement of receipt (§9:98.20) of any findings (including areas of deficiency). [State Bar Rule 2.6(A)(4) (eff. 2/21/25)]
- [9:98.19] **Verify compliance with mandatory corrective action plan:** If a possible violation of law is identified during the compliance review or investigative audit, the State Bar may issue a mandatory corrective action plan. The attorney (and any other attorney identified by the State Bar) must implement the mandatory corrective plan and submit verification of compliance with that plan in a manner and by the time designated by the State Bar. [State Bar Rule 2.6(C) (eff. 2/21/25)]
- [9:98.21] **Extension of time to produce information/ records:** The attorney or designated licensee (§9:98.5) may request a 14-day extension to the due date for providing information or records to the State Bar. The request must be

in writing, explain why the extension is being sought, and must be received by the State Bar at least 5 days prior to the due date for providing the information or records. [State Bar Rule 2.6(A)(D) (eff. 2/21/25)]

An extension may be granted if the State Bar determines (in its sole discretion) that the attorney has provided evidence of good cause necessitating the extension of time. [State Bar Rule 2.6(A)(D) (eff. 2/21/25)]

[9:99] **Investigative audit—attorney requirements:** Based upon the outcome and findings of a compliance review, the State Bar may expand the audit of an attorney’s trust accounting. [State Bar Rule 2.4(F) (eff. 2/21/25)]

The scope of the audit will encompass at least 3 years of trust account activity. [State Bar Rule 2.6(B) (eff. 2/21/25)]

- [9:99.2] **Produce trust account records:** Within 14 days of receipt (§9:98.29) of a notice of selection for investigative audit from the State Bar, the attorney must provide any trust account records requested in the notice of selection in the manner specified by the State Bar. [State Bar Rule 2.6(B)(1) (eff. 2/21/25)]
- [9:99.3] **Produce records re nontrust accounts containing entrusted funds:** If entrusted funds are held in account other than a trust account, the attorney subject to the audit must produce all records related to such nontrust account that are in the attorney’s direct or indirect control. [State Bar Rule 2.6(B)(3) (eff. 2/21/25)]
- [9:99.4] **Cooperate with State Bar re additional information:** The attorney must cooperate with and respond completely to all questions/requests for additional documents from the State Bar regarding all transactions and records required to demonstrate compliance with applicable law regarding the safekeeping of entrusted funds by clients or others (and any related obligations). [State Bar Rule 2.6(B)(2) (eff. 2/21/25); *and see discussion at §9:98.7 ff.*]
- [9:99.5] **Provide signed statement after records disclosed:** Prior to completion of the investigative audit, provide a signed statement of representations on a form provided by the State Bar. [State Bar Rule 2.6(B)(4) (eff. 2/21/25)]
- [9:99.6] **Verify compliance with mandatory action plan:** *See discussion at §9:98.19.*

[9:99.9] **Noncompliance with compliance review/investigative audit:** Attorneys is deemed noncompliant with a compliance review or investigative audit where the attorney fails to comply with any requirements of the compliance review or investigative audit, provide a timely response as reasonably requested by the State Bar to questions or requests for additional information or documents/records subject to a compliance review or investigative audit in a complete or accurate manner, comply with a mandatory corrective action plan. [State Bar Rule 2.6(F) (eff. 2/21/25)]

- [9:99.10] **Supervising attorney may also be deemed noncompliant:** Where an attorney is deemed noncompliant, any attorney with supervising or managerial responsibilities over the attorney may also be deemed noncompliant. [State Bar Rule 2.6(F) (eff. 2/21/25)]
- [9:99.11] **Referral to Office of Chief Trial Counsel:** An attorney may be referred to the Office of Chief Trial Counsel for failure to comply with applicable law regarding safe-keeping of entrusted funds or any related obligations (including Bus. & Prof.C. §6091.4, the CRC, and the CRPC). [State Bar Rule 2.6(G) (eff. 2/21/25)]

## CHAPTER 10

### TERMINATION OF EMPLOYMENT AND WITHDRAWAL

#### Consequences of Failure to Comply With Withdrawal Rules/ Procedure

[10:129] **Malpractice liability/emotional distress damages:** An attorney may be liable for malpractice if withdrawal is made under circumstances that *breach the attorney's duty of care* (e.g., withdrawal just before statute of limitations runs without opportunity to engage replacement counsel).

Moreover, if the client also asserts a claim for breach of fiduciary duty, under appropriate circumstances, the lawyer could be found liable for emotional distress damages. [*Kaushansky v. Stonecroft Attorneys, APC* (2025) 109 CA5th 788, 806-807, 330 CR3d 753, 768-769 (awarding emotional distress damages on breach of fiduciary duty claim where attorney “browbeat” client into signing substitution of attorney form on same day response was due on motion to compel deposition; attorney withdrew 6 weeks before trial without conducting any discovery or obtaining continuances to protect client)]

#### Termination by Operation of Law

##### Attorney’s “incapacity” requiring engagement of new counsel (CCP §268 notice)

- [10:190.1] **Includes opponent attorney’s “incapacity” based on involuntary inactive enrollment:** An attorney who has been made involuntarily inactive and ineligible to practice law is an attorney who has been “removed or suspended” for purposes of CCP §286. Thus, where a party becomes aware an opponent’s attorney is on inactive status, that party (or their attorney) must give notice to the opposing party under CCP §286. [*Prato v. Gioia* (2025) 112 CA5th 651, 656, 334 CR3d 463, 467]
- [10:191] **Effect of failure to give §CCP 286 notice:** [*Prato v. Gioia* (2025) 112 CA5th 651, 662-664, 334 CR3d 463, 471-473—order granting plaintiff post-trial attorney fees reversed where plaintiff’s counsel failed to serve CCP §286 notice on defendant despite fact counsel knew defendant’s attorney had been placed on involuntary inactive enrollment]

(but took advantage of situation and continued to trial, obtaining default judgment against defendant)]

### **Duty to Release Client File Upon Termination**

[10:333] **Noncompliance as ground for discipline:** Unreasonable delay in releasing or refusal to turn over a client’s file after being notified of the substitution is ground for attorney discipline. [*Matter of Lucero* (Rev.Dept. 2024) 6 Cal. State Bar Ct.Rptr. 101, 111 (discipline imposed for attorney’s failure to return files after constructive termination of client)]

#### **File documents regulated by state/federal law**

- [10:348.5] **Client files in criminal matters:** In criminal matters involving a conviction for a felony that results in incarceration in the Department of Corrections and Rehabilitation, trial counsel must retain a copy of the former client’s files for the term of that client’s imprisonment. The file may be maintained in electronic form “only if every item in the file is digitally copied in color and preserved.” (Note: To the extent this section imposes new requirements on trial counsel, counsel shall begin retaining their physical files and digital color copies of evidence for all felony convictions on or after July 1, 2026.) [Pen.C. §1054.9(g) (amended eff. 1/1/26); see also CRPC 1.16, Comment [5]]

## **CHAPTER 11**

### **DISCIPLINE**

#### **Commission of Act Involving Moral Turpitude**

[11:92] **No conviction required:** As discussed earlier, an attorney’s conviction of a *crime* involving moral turpitude is cause for discipline under Bus. & Prof.C. §6101(a) (§11:45 ff.). However, commission of an act “involving moral turpitude, dishonesty or corruption” is a *separate* ground for discipline under §6106. This is a disciplinable ground *regardless* of whether the act constitutes a crime; and if it is a crime, regardless of whether a conviction is obtained. [See Bus. & Prof.C. §6106; *In re Bradshaw* (2025) 17 C5th 1095, 1109, 333 CR3d 910, 921—conduct under Bus. & Prof.C. §6106 includes dishonest conduct that may not involve criminal liability or cause monetary loss]

[11:124.1] **Concealment:** [*In re Bradshaw* (2025) 17 C5th 1095, 1109, 333 CR3d 910, 921—attorney/trustee for living trust concealed from probate court excessive payments to unlicensed construction company (that attorney controlled) for doing work on trust assets]

[11:133] **Willful blindness re applicable rules:** [*Matter of Trimarche* (2025) 6 Cal. State Bar Ct.Rptr. 145, 155-156—attorney’s willful blindness re applicability of Telemarketing Sales Rule was equivalent to actual knowledge, and attorney was culpable of moral turpitude for intentionally assisting others to violate Rule and engage in improper solicitation and false communication with prospective client]

[11:137.1] **Threatening violence to judicial officer:** [*Matter of Olin* (Rev.Dept. 2024) 6 Cal. State Bar Ct.Rptr. 166, 176—attorney culpable of moral turpitude for sending email to court commissioner threatening to pay someone to kill commissioner’s minor daughter]

[11:137.5] **Misrepresentation in CRC 9.20 compliance declaration:** [*Matter of Mitchell* (Rev.Dept. 2025) 6 Cal. State Bar Ct.Rptr. 135, 138-139—misrepresentations in CRC 9.20(c) compliance declaration stating attorney had no clients with pending matters after appearing remotely on matters and emailing clients she would be taking “personal” time off]

[11:137.6] **Misrepresentation to expert witness:** [*Matter of Lucero* (Rev.Dept. 2024) 6 Cal. State Bar Ct.Rptr. 101, 105-106—after delaying preparation of reply to summary judgment motion, attorney falsely told expert witness expedited opinion for reply was required because attorney had suffered a heart attack and was unaware of summary judgment motion]

### **Grounds For Discipline Under California Rules of Court**

[11:158] **Failure to reaffirm oath via declaration:** Active California attorneys are required to submit an annual declaration affirming their oath under Bus. & Prof.C. §6067. Failure to do so will result in the attorney being enrolled as an inactive licensee of the State Bar. [CRC 9.7(c)(2) (eff. 4/1/26)]

### **Expungement of Public Suspension Records Based on Nonpayment of Fees**

[11:184.1] **Rejection of proposed automatic expungement rule:** The California Supreme Court rejected a proposed rule that would have automatically expunged attorney discipline records after eight years, where the lawyers were not disbarred or subject to further discipline in the interim. [See California Supreme Court Admin. Order S291807 (10/22/25)]

### **Federal Courts Cannot Intervene in State Bar Disciplinary Proceedings**

[11:309] **Exception—action to enforce bankruptcy discharge injunction against State Bar:** The bankruptcy discharge injunction (like the automatic stay) does not prohibit State Bar disciplinary proceedings against a debtor, as such proceedings do not seek to collect, recover or offset a personal liability. [*In re Lacher* (9th Cir. BAP 2025) 669 BR 548, 562-563]

### **Confidentiality of Disciplinary Investigations**

[11:407.2] **Waiver of confidentiality by State Bar Board—factors considered:** When assessing whether to waive confidentiality, the Board shall, at a minimum apply a presumption in favor of confidentiality, consider the extent to which the allegations or issues involved in the investigation are generally known to the public, consider the gravity of the underlying allegation and potential for continued harm to the public, and consider the potential for harm to attorney’s reputation. [Bus. & Prof.C. §6086.1(c)(1)(B); State Bar Rules Proc. 2302(c)(3)]

- [11:407.2a] **Additional information may be considered:** When assessing whether waiver of confidentiality is warranted to protect the public, the Chief Trial Counsel, Board Chair, or the Board may also consider any other information relating to the attorney and the relevant complaints, inquiries and investigations, including but not limited to likelihood of harm to clients, need to maintain public confidence, existence of any other public matters, and whether the attorney is under investigation by a regulatory or licensing agency or has committed acts/omissions which may result in such investigation. [State Bar Rules Proc. 2302(c)(4)]
- [11:407.7] **Attorney’s motion to contest disclosure:** The procedure for determining the attorney’s motion to contest disclosure is set forth in State Bar Rules Proc. 2302(c)(2)(D), and includes a requirement that the attorney’s motion must be served electronically on the OCTC, and a response by the State Bar. [State Bar Rules Proc. 2302(c)(2)(D)(i) to (vii)]  
If the attorney files a motion to prevent disclosure, that proceeding shall be afforded priority on the State Bar Court’s calendar, and the court shall issue a ruling within 10 days from the filing of the motion. [Bus. & Prof.C. §6086.1(d)(2); State Bar Rules Proc. 2302(c)(2)(D)(v)]

[11:412] **Compare—confidentiality re nonlicensees:** The Chief Trial Counsel may assert confidentiality as to inquiries, complaints or investigations regarding nonlicensees if deemed necessary to protect the public. [State Bar Rules Proc. 2302(a)]

Further, the Chief Trial Counsel may issue one or more public announcements and may disclose information concerning a complaint(s), inquiry(ies), or investigation(s) involving a nonlicensee, including but not limited to, when such disclosure would serve to protect the public, from an individual(s) who has engaged in the unauthorized practice of law. [State Bar Rules Proc. 2302(d)]

### **Prefiling Settlement Conference (PSC)**

[11:481] **Comment—formerly known as Early Neutral Evaluation Conference:** The Prefiling Settlement Conference (PSC) was formerly known as the Early Neutral Evaluation Conference (ENEC).

[11:481.4] **Meet and confer requirement:** The parties must meet and confer prior to the PSC. For the PSC itself, each party must lodge (not file) with the court a settlement conference statement addressed to the settlement conference judge. Settlement conference statements may be (but are not required to be) served on the opposing party. OCTC must submit a copy of the draft notice of disciplinary charges, or other written summary of the proposed charges to the judge with the settlement conference statement. [See State Bar Rules Proc. 5.30(B)]

- [11:481.5] **Confidential:** The content of discussions and written statements made in connection with the PSC and the meet and confer process are confidential and subject to State Bar Rules Proc. 5.52.6. [See State Bar Rules Proc. 5.30(B)]

- [11:481.8] **Effect of inability to resolve at PSC:** If the matter does not settle pre-filing, unless otherwise stipulated by the parties, the PSC judge cannot be the trial judge in a later proceeding involving the same facts. [State Bar Rules Proc. 5.30(C)]

### Response to Notice of Disciplinary Changes

[11:456] **Computation of time for response:** When the action/response deadline falls on a noncourt day, it is extended to the next court day. [State Bar Rules Proc. 5.28(A)]

“Days” means calendar days when referring to the period within which an act must be performed or a specified period of notice. But “days” means court days when the period is 5 days or fewer and not extended by the manner of service. [State Bar Rules Proc. 5.28(B)]

### Respondent’s Duty to Appear at Trial

#### Remote appearances

- [11:840.1] **Parties may stipulate to remote appearance:** Parties may provide notice to the court through a stipulation that either party or both parties intend to appear remotely at an evidentiary hearing or trial. The parties may stipulate orally at the initial status conference or in writing within 10 days after the court serves notice of the evidentiary hearing or trial pursuant to State Bar Rules Proc. 5.102. [State Bar Rules Proc. 5.18(B)]
- [11:840.2] **Oral notice re remote appearance:** A party may provide oral notice at the initial status conference of an intent to appear remotely at an evidentiary hearing or trial. The court’s order following the status conference must state whether any party gave notice of an intent to appear remotely and whether there was opposition. In response to an oral notice of an intent to appear remotely, a party may make an oral showing to the court as to why a remote appearance should not be allowed. A party may also file a written opposition within 5 calendar days of the court’s status conference order stating such notice was given is served (*see* ¶11:840.4). [State Bar Rules Proc. 5.18(C)]
- [11:840.3] **Notice to appear remotely:** A party may appear remotely at an evidentiary hearing or trial by video or telephone by providing written notice to the Court (which may be submitted using the form “Notice re Remote or In-Person Appearance” on the Court website, [www.statebarcourt.ca.gov](http://www.statebarcourt.ca.gov)) within 10 days after the Court sends notice of the hearing or trial date and serving the other parties. [State Bar Rules Proc. 5.18(D)(1), (2)]

If the opposing party also elects to appear remotely, that party must give written notice to the Court (which may be submitted using the form on the Court website) and serve it on the other parties within five days after the initial notice to appear remotely is received. [State Bar Rules Proc. 5.18(D)(3)]

- [11:840.4] **Opposition to notice of remote proceeding:** A party may oppose a notice of remote proceeding by filing written notice with the Court (using the form “Opposition to Remote Proceeding” on the Court website, [www.statebarcourt.ca.gov](http://www.statebarcourt.ca.gov)) and serving the other parties within five days after the initial notice to appear remotely, with a showing as to why a remote appearance should not be allowed. [State Bar Rules Proc. 5.18(D)(3)]

### Vexatious Litigants

[11:841] **Overview:** A party in proceedings before the State Bar Court may be declared a “vexatious litigant.” [See State Bar Rules Proc. 5.19 (eff. 1/1/25)]

[11:842] **“Vexatious litigant” defined:** A vexatious litigant means:

- a party who, in State Bar Court proceedings, repeatedly relitigates or attempts to relitigate an issue of law or fact that has been finally determined (§11:842.1) by the State Bar Court or by the Supreme Court; or
- a party who, in State Bar Court proceedings, repeatedly files unmeritorious motions, pleadings, or other papers, or repeatedly engages in other tactics that are in bad faith, frivolous or solely intended to cause harassment or unnecessary delay; or
- a party who has previously been declared a vexatious litigant by any state or federal court in any action or proceeding. [State Bar Rules Proc. 5.19(A)(1) (eff. 1/1/25)]

### Procedure for imposing vexatious litigant status

- [11:842.10] **Motion required:** A motion to declare a party a vexatious litigant may be made by a party or by the court on its own motion. [State Bar Rules Proc. 5.19(B) (eff. 1/1/25)]
- [11:842.11] **Notice required:** No party shall be declared a vexatious litigant without being given notice and an opportunity to be heard. [State Bar Rules Proc. 5.19(C) (eff. 1/1/25)]
- [11:842.12] **Deadline for written response:** The party subject to a Rule 5.19 motion may file a written response to the motion within 10 days after service, and must serve the response on the opposing party in the case. [State Bar Rules Proc. 5.19(C) (eff. 1/1/25)]
- [11:842.13] **Hearing discretionary:** The court, in its discretion, may set a hearing for presentation of oral evidence or may rule on the motion solely on the basis of the documentary evidence submitted with the motion and response, including any declarations of fact made under penalty of perjury. [State Bar Rules Proc. 5.19(C) (eff. 1/1/25)]

### Order declaring party as “vexatious litigant”

- [11:843] **Finding required:** An order declaring a party to be a vexatious litigant must be based on the court’s finding that the vexatious litigant has abused the court’s process or has previously been declared to be a vexatious litigant by

any state or federal court, and is likely to abuse the court's processes unless protective measures are taken. [State Bar Rules Proc. 5.19(B) (eff. 1/1/25)]

- [11:843.5] **Order must state basis/findings:** The order must state with specificity the grounds for making the finding and the grounds for any requirements imposed other than pre-filing requirements (§11:843.6). [State Bar Rules Proc. 5.19(B) (eff. 1/1/25)]
- [11:843.6-843.7] **Order may impose pre-filing requirements:** With certain exceptions (§11:843.7), an order declaring a party to be a vexatious litigant may prohibit that party from filing a motion, supplement, or amendment to any pleading in any matter before the State Bar Court without first obtaining leave of the court. [State Bar Rules Proc. 5.19(E) (eff. 1/1/25)]
- [11:843.8] **Clerk maintains record of vexatious litigants:** A copy of any order declaring a party to be a vexatious litigant shall be submitted to the Clerk, who shall maintain a record of vexatious litigants subject to pre-filing orders to be used to determine whether a pleading has been submitted in violation of such order. [State Bar Rules Proc. 5.19(F) (eff. 1/1/25)]  

The clerk shall not file any motion, supplement, or amendment submitted by a vexatious litigant unless the vexatious litigant first obtains an order permitting the filing. [State Bar Rules Proc. 5.19(E) (eff. 1/1/25)]
- [11:843.10] **Basis for granting pre-filing permission:** The court shall grant leave to file a motion, supplement, or amendment only if it appears that such document has merit and has not been filed for the purposes of harassment or delay. [State Bar Rules Proc. 5.19(E) (eff. 1/1/25)]

#### **Challenging vexatious litigant order**

- [11:844] **Petition for review:** A Rule 5.19 ruling is reviewable under State Bar Rules Proc. 5.150 (§11:970 ff.). The party must file the petition for review within 10 days after service of the ruling. [State Bar Rules Proc. 5.19(D) (eff. 1/1/25)]
- [11:844.1] **Application to vacate order:** A party who has been declared a vexatious litigant may file an application to vacate the order declaring them a vexatious litigant. The application shall be made before the judge who entered the order, if that judge is available, or to the presiding judge or their designee. [State Bar Rules Proc. 5.19(G) (eff. 1/1/25)]  

The court may vacate an order declaring a party to be a vexatious litigant upon a showing of a material change in the facts upon which the order was granted and that the interests of justice would be served by vacating the order. [State Bar Rules Proc. 5.19(G) (eff. 1/1/25)]
- [11:844.3] **Limitation on filing applications after denial:** A vexatious litigant whose application to vacate the order is denied

shall not be permitted to file another application before 12 months have lapsed after the date of the denial of the previous application. [State Bar Rules Proc. 5.19(G) (eff. 1/1/25)]

## Types of Discipline

### Private reproof

- [11:1031.1] **Part of attorney's official public records:** A private reproof is part of the attorney's official State Bar attorney records, is disclosed in response to public inquiries, and is reported as a record of public discipline on the State Bar's web page. The record of the proceeding in which the public or private reproof was imposed is also public. [State Bar Rule Proc. 5.127(B)]
- [11:1031.2] **Costs not paid by attorney:** Attorneys are not obligated to pay discipline costs for private reprovals. [State Bar Rule Proc. 5.127(B)]

### Public reproof

- [11:1032.1] **Part of attorney's official public records:** A public reproof is part of the attorney's official State Bar attorney records, is disclosed in response to public inquiries, and is reported as a record of public discipline on the State Bar's web page. The record of the proceeding in which the public or private reproof was imposed is also public. [State Bar Rule Proc. 5.127(B)]

### Probation

- [11:1061.8-1061.15] **Confidentiality of probation files and records:** Subject to certain exceptions (*see* ¶11:1061.11 *ff.*), the files and records of the Office of Case Management and Supervision are confidential, and shall not be disclosed under any state law, including the California Public Records Act. [State Bar Rules Proc. 2702(a)]

## Disciplinary Sanction Standards

### Effect of prior discipline

- [11:1085] **Single prior:** If a lawyer has a single prior record of discipline, the sanction shall be greater than the previously imposed sanction *unless* the prior discipline was remote in time, the previous/current misconduct was not sufficiently serious to warrant greater discipline, or there are other circumstances that would make imposing greater discipline unjust. [Prof. Misconduct Sanction Standard 1.8(a) (revised 1/1/25); see *McCray v. State Bar* (1985) 38 C3d 257, 274, 211 CR 691, 702 (construing prior version of Standard)]

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 previously imposed, the court must set forth its reasons for doing so. [Prof. Misconduct Sanction Standard 1.8(a)]

## Monetary Sanctions

[11:1136.3] **Guideline sanction amounts:** In making its recommendations, the State Bar Court must be guided by the following baseline amounts as a total sanction for the Supreme Court order:

- \$5,000 for disbarment;
  - \$2,500 for actual suspension; and
  - \$1,000 for resignation with charges pending. [State Bar Rules Proc. 5.137(E)(2) (revised 1/1/26)]
- [11:1136.6a] **Deviation from baseline amounts:** The State Bar Court may, in its discretion, recommend a monetary sanction in an amount less than or greater than the baseline amounts provided the deviation reasonably based on the facts and circumstances of each discipline case and the State Bar Court states reasons for its recommendation. [State Bar Rules Proc. 5.137(E)(3) (revised 1/1/26)]
  - [11:1136.6b] **Sanctions payable to Client Security Fund:** Monetary sanctions collected under State Bar Rules Proc. 5.137 must be deposited into the Client Security Fund. [State Bar Rules Proc. 5.137(C) (revised 1/1/26)]
  - [11:1136.6c] **Installment payments for actual suspension:** If the State Bar Court's recommendation to impose monetary sanctions for an actual suspension allows an attorney to pay in annual installments, the recommendation must designate the amount of each installment, which will be added to and become a part of the attorney's annual license fees. [State Bar Rules Proc. 5.137(H) (revised 1/1/26)]

## Reinstatement Proceedings

### Procedural requirements (State Bar Rules Proc. 5.441)

- [11:1257.3] **PRACTICE POINTER:** Make sure the State Bar Rules Proc. 5.441 requirements are met because noncompliance is costly. Not only is the reinstatement petition subject to dismissal for nonpayment, but refiling a complying petition will require payment of a second reinstatement petition fee, if not filed within 30 days of dismissal. [State Bar Rules Proc. 5.441(E)]

## Involuntary Inactive Enrollment Proceedings

### Based on threat of harm to clients or public (Bus. & Prof.C. §6007(c))

- [11:1321a] **Verified application, request for hearing:** The OCTC must file a verified application with supporting documents. A request for hearing must be stated in the application or it will be waived. [State Bar Rules Proc. 5.226(A)]
- [11:1321b-1321c] **Stating facts:** The application must state with "particularity" facts showing that the attorney has caused or is causing substantial harm to the attorney's clients or the

public, and there is a reasonable probability the Chief Trial Counsel will prevail on the merits of the underlying disciplinary matter and that the attorney will be disbarred. [State Bar Rules Proc. 5.226(B)]

The application must be supported by declarations, transcripts, or requests for judicial notice. [State Bar Rules Proc. 5.226(B)]

- [11:1321d] **Alleging violations:** If the application relates to pending/currently filed notices of disciplinary charges, those must be identified by case number and copies of all notices attached. If no pending disciplinary proceeding exists, the application itself must cite the statutes, rules, or court orders allegedly violated, or that warrant involuntary enrollment, and state particular acts/omissions constituting the allege violation(s), or forming the basis for involuntary inactive enrollment. [State Bar Rules Proc. 5.226(D)]
- [11:1321.2] **Notice:** The application must contain a notice to the attorney, in prominent type, stating that the attorney must file a verified response to the application and request a hearing as provided in State Bar Rules Proc. 5.227; otherwise, the right to a hearing will be waived. [State Bar Rules Proc. 5.226(E)]