

AMENDED IN ASSEMBLY MARCH 20, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1515

Introduced by Assembly Member Gonzalez

January 15, 2014

An act to amend Section ~~6077~~ 6068 of the Business and Professions Code, relating to attorneys.

LEGISLATIVE COUNSEL'S DIGEST

AB 1515, as amended, Gonzalez. Attorneys: ~~suspension from practice.~~ *duties.*

Existing law, the State Bar Act, provides for the regulation and licensure of attorneys by the State Bar of California. Existing law imposes various duties on an attorney, including the duty to maintain the confidences and preserve the secrets of his or her client at every peril to himself or herself. Existing law authorizes the Board of Trustees of the State Bar, with the approval of the Supreme Court, to formulate and enforce rules of professional conduct for all members of the State Bar. Existing law requires the State Bar, if a client files a complaint alleging that his or her trust fund is being mishandled, to investigate and, if the State Bar determines that circumstances warrant, to require an audit.

This bill would additionally impose on an attorney the duty to deposit fees and expenses that have been paid in advance for legal services into a client trust account, which are to be withdrawn by the attorney only as fees are earned or expenses incurred. The bill would require the State Bar to adopt for approval by the Supreme Court any necessary amendments to its rules of professional conduct to conform with this provision.

~~Under existing law, when a member of the State Bar willfully breaches any of the rules of professional conduct, the Board of Governors of the State Bar may discipline the member or recommend to the Supreme Court that the member be suspended for no longer than 3 years.~~

~~This bill would make technical, nonsubstantive changes to those provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 6068 of the Business and Professions
- 2 Code is amended to read:
- 3 6068. It is the duty of an attorney to do all of the following:
- 4 (a) To support the Constitution and laws of the United States
- 5 and of this state.
- 6 (b) To maintain the respect due to the courts of justice and
- 7 judicial officers.
- 8 (c) To counsel or maintain those actions, proceedings, or
- 9 defenses only as appear to him or her legal or just, except the
- 10 defense of a person charged with a public offense.
- 11 (d) To employ, for the purpose of maintaining the causes
- 12 confided to him or her those means only as are consistent with
- 13 truth, and never to seek to mislead the judge or any judicial officer
- 14 by an artifice or false statement of fact or law.
- 15 (e) (1) To maintain inviolate the confidence, and at every peril
- 16 to himself or herself to preserve the secrets, of his or her client.
- 17 (2) Notwithstanding paragraph (1), an attorney may, but is not
- 18 required to, reveal confidential information relating to the
- 19 representation of a client to the extent that the attorney reasonably
- 20 believes the disclosure is necessary to prevent a criminal act that
- 21 the attorney reasonably believes is likely to result in death of, or
- 22 substantial bodily harm to, an individual.
- 23 (f) To advance no fact prejudicial to the honor or reputation of
- 24 a party or witness, unless required by the justice of the cause with
- 25 which he or she is charged.
- 26 (g) Not to encourage either the commencement or the
- 27 continuance of an action or proceeding from any corrupt motive
- 28 of passion or interest.

1 (h) Never to reject, for any consideration personal to himself
2 or herself, the cause of the defenseless or the oppressed.

3 (i) To cooperate and participate in any disciplinary investigation
4 or other regulatory or disciplinary proceeding pending against
5 himself or herself. However, this subdivision shall not be construed
6 to deprive an attorney of any privilege guaranteed by the Fifth
7 Amendment to the Constitution of the United States, or any other
8 constitutional or statutory privileges. This subdivision shall not
9 be construed to require an attorney to cooperate with a request that
10 requires him or her to waive any constitutional or statutory
11 privilege or to comply with a request for information or other
12 matters within an unreasonable period of time in light of the time
13 constraints of the attorney's practice. Any exercise by an attorney
14 of any constitutional or statutory privilege shall not be used against
15 the attorney in a regulatory or disciplinary proceeding against him
16 or her.

17 (j) To comply with the requirements of Section 6002.1.

18 (k) To comply with all conditions attached to any disciplinary
19 probation, including a probation imposed with the concurrence of
20 the attorney.

21 (l) To keep all agreements made in lieu of disciplinary
22 prosecution with the agency charged with attorney discipline.

23 (m) To respond promptly to reasonable status inquiries of clients
24 and to keep clients reasonably informed of significant
25 developments in matters with regard to which the attorney has
26 agreed to provide legal services.

27 (n) To provide copies to the client of certain documents under
28 time limits and as prescribed in a rule of professional conduct,
29 which the board shall adopt.

30 (o) To report to the agency charged with attorney discipline, in
31 writing, within 30 days of the time the attorney has knowledge of
32 any of the following:

33 (1) The filing of three or more lawsuits in a 12-month period
34 against the attorney for malpractice or other wrongful conduct
35 committed in a professional capacity.

36 (2) The entry of judgment against the attorney in a civil action
37 for fraud, misrepresentation, breach of fiduciary duty, or gross
38 negligence committed in a professional capacity.

1 (3) The imposition of judicial sanctions against the attorney,
2 except for sanctions for failure to make discovery or monetary
3 sanctions of less than one thousand dollars (\$1,000).

4 (4) The bringing of an indictment or information charging a
5 felony against the attorney.

6 (5) The conviction of the attorney, including any verdict of
7 guilty, or plea of guilty or no contest, of a felony, or a misdemeanor
8 committed in the course of the practice of law, or in a manner in
9 which a client of the attorney was the victim, or a necessary
10 element of which, as determined by the statutory or common law
11 definition of the misdemeanor, involves improper conduct of an
12 attorney, including dishonesty or other moral turpitude, or an
13 attempt or a conspiracy or solicitation of another to commit a
14 felony or a misdemeanor of that type.

15 (6) The imposition of discipline against the attorney by a
16 professional or occupational disciplinary agency or licensing board,
17 whether in California or elsewhere.

18 (7) Reversal of judgment in a proceeding based in whole or in
19 part upon misconduct, grossly incompetent representation, or
20 willful misrepresentation by an attorney.

21 (8) As used in this subdivision, “against the attorney” includes
22 claims and proceedings against any firm of attorneys for the
23 practice of law in which the attorney was a partner at the time of
24 the conduct complained of and any law corporation in which the
25 attorney was a shareholder at the time of the conduct complained
26 of unless the matter has to the attorney’s knowledge already been
27 reported by the law firm or corporation.

28 (9) The State Bar may develop a prescribed form for the making
29 of reports required by this section, usage of which it may require
30 by rule or regulation.

31 (10) This subdivision is only intended to provide that the failure
32 to report as required herein may serve as a basis of discipline.

33 *(p) To deposit fees and expenses that have been paid in advance*
34 *for legal services into a client trust account, which shall be*
35 *withdrawn by the attorney only as fees are earned or expenses*
36 *incurred. The State Bar shall adopt for approval by the Supreme*
37 *Court any necessary amendments to its rules of professional*
38 *conduct to conform with this subdivision.*

39 ~~SECTION 1. Section 6077 of the Business and Professions~~
40 ~~Code is amended to read:~~

1 ~~6077.~~ (a) ~~The rules of professional conduct adopted by the~~
2 ~~board, when approved by the Supreme Court, are binding upon all~~
3 ~~members of the State Bar.~~

4 ~~(b) For a willful breach of any of these rules, the board has~~
5 ~~power to discipline members of the State Bar by reproof, public~~
6 ~~or private, or to recommend to the Supreme Court the suspension~~
7 ~~of members of the State Bar from practice for a period not~~
8 ~~exceeding three years.~~

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