

AMENDED IN ASSEMBLY MAY 12, 2014  
AMENDED IN ASSEMBLY MARCH 20, 2014  
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1515**

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**Introduced by Assembly Member Gonzalez**

January 15, 2014

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1515, as amended, Gonzalez. Attorneys: 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 into a client trust account funds received in advance from, or for, the client for fees, costs, or expenses that have been paid in advance for legal services into a client trust account,~~ *for legal services*, which are to be withdrawn by the attorney only as fees are earned or *costs or expenses are* incurred. *The bill would authorize specified legal services*

to be provided in stages, and would authorize an attorney to withdraw fees when he or she has performed and completed a specified stage or stages, if the agreement with the client specifies each stage and sets the amount of the advance fee for each stage. The bill would provide that any fee that is paid in advance as the set amount of the fee for specified legal services, whether paid as a “fixed” fee, a “flat” fee, or under any other label, is earned only when the attorney has performed and completed the legal services agreed to be provided in exchange for that fee. 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.

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.

- 1 (f) To advance no fact prejudicial to the honor or reputation of  
2 a party or witness, unless required by the justice of the cause with  
3 which he or she is charged.
- 4 (g) Not to encourage either the commencement or the  
5 continuance of an action or proceeding from any corrupt motive  
6 of passion or interest.
- 7 (h) Never to reject, for any consideration personal to himself  
8 or herself, the cause of the defenseless or the oppressed.
- 9 (i) To cooperate and participate in any disciplinary investigation  
10 or other regulatory or disciplinary proceeding pending against  
11 himself or herself. However, this subdivision shall not be construed  
12 to deprive an attorney of any privilege guaranteed by the Fifth  
13 Amendment to the Constitution of the United States, or any other  
14 constitutional or statutory privileges. This subdivision shall not  
15 be construed to require an attorney to cooperate with a request that  
16 requires him or her to waive any constitutional or statutory  
17 privilege or to comply with a request for information or other  
18 matters within an unreasonable period of time in light of the time  
19 constraints of the attorney's practice. Any exercise by an attorney  
20 of any constitutional or statutory privilege shall not be used against  
21 the attorney in a regulatory or disciplinary proceeding against him  
22 or her.
- 23 (j) To comply with the requirements of Section 6002.1.
- 24 (k) To comply with all conditions attached to any disciplinary  
25 probation, including a probation imposed with the concurrence of  
26 the attorney.
- 27 (l) To keep all agreements made in lieu of disciplinary  
28 prosecution with the agency charged with attorney discipline.
- 29 (m) To respond promptly to reasonable status inquiries of clients  
30 and to keep clients reasonably informed of significant  
31 developments in matters with regard to which the attorney has  
32 agreed to provide legal services.
- 33 (n) To provide copies to the client of certain documents under  
34 time limits and as prescribed in a rule of professional conduct,  
35 which the board shall adopt.
- 36 (o) To report to the agency charged with attorney discipline, in  
37 writing, within 30 days of the time the attorney has knowledge of  
38 any of the following:

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

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

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

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

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

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

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

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

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

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

39 (p) To deposit fees and into a client trust account funds received  
40 in advance from, or for, the client for fees, costs, or expenses that

1 ~~have been paid in advance for legal services into a client trust~~  
2 ~~account~~, services, which shall be withdrawn by the attorney only  
3 as fees are earned or *cost or expenses are incurred*. ~~The~~

4 *(1) Specified legal services may be provided in stages and fees*  
5 *may be withdrawn when the attorney has performed and completed*  
6 *a specified stage or stages, if the agreement with the client specifies*  
7 *each stage and sets the amount of the advance fee for each stage.*  
8 *For purposes of this subdivision, any fee that is paid in advance*  
9 *as the set amount of the fee for specified legal services, whether*  
10 *paid as a “fixed” fee, a “flat” fee, or under any other label, is*  
11 *earned only when the attorney has performed and completed the*  
12 *legal services agreed to be provided in exchange for that fee.*

13 *(2) The State Bar shall adopt for approval by the Supreme Court*  
14 *any necessary amendments to its rules of professional conduct to*  
15 *conform with this subdivision.*