

ASSEMBLY BILL

No. 2787

Introduced by Assembly Member Kuehl

February 22, 1996

An act to amend Sections 6007, 6044.5, 6090.5, 6101, 6102, 6140.7, and 6203 of, and to add Section 6085.5 to, the Business and Professions Code, to add Section 1160 to the Evidence Code, and to amend Section 1808.4 of the Vehicle Code, relating to attorneys.

LEGISLATIVE COUNSEL'S DIGEST

AB 2787, as introduced, Kuehl. Attorneys: State Bar of California.

The State Bar Act provides that the Board of Governors of the State Bar may order the involuntary inactive enrollment of an attorney under specified circumstances.

This bill would require the board to order the involuntary inactive enrollment of an attorney upon the filing of a recommendation of disbarment after hearing or default, as specified.

Existing law provides that when an investigation or formal proceeding of the State Bar concerns alleged misconduct that may subject a member to criminal prosecution for any felony or any lesser crime committed during the course of the practice of law, or misconduct where the client was a victim or that may subject the member to disciplinary action in another jurisdiction, the State Bar shall disclose, in confidence, certain information to the appropriate agency responsible for criminal or disciplinary enforcement.

This bill would instead provide that the chief trial counsel or designee may disclose, in confidence, any information not otherwise public under the State Bar Act to government agencies responsible for enforcement of civil and criminal laws or professional licensing of individuals, and to members of the Judicial Nominees Evaluation Commission and review committees of the commission with respect to nominees.

Existing law provides for disciplinary proceedings against members of the State Bar, as specified.

This bill would provide that the appropriate pleas to allegations of a notice of disciplinary charges or other pleading are admission of culpability, denial of culpability, and nolo contendere, as specified.

Existing law provides that it a cause for suspension, disbarment, or other discipline for a member of the State Bar to require as a condition of a settlement of a civil action for professional misconduct that the plaintiff agree to not file a complaint against the member with the disciplinary agency.

This bill would provide that it is cause for suspension, disbarment, or other discipline for any member, whether as a party or an attorney for a party, to agree or seek agreement that the professional misconduct or the terms of settlement of a claim for that misconduct not be reported to the disciplinary agency. This would also apply to agreements for the plaintiff to withdraw a complaint or to not cooperate in an investigation or prosecution, and for the record of any civil action for professional misconduct to be sealed from review by the disciplinary agency.

Existing law provides that conviction of a member of the State Bar of a felony or misdemeanor, involving moral turpitude, constitutes a cause for disbarment or suspension. A plea or verdict of guilty, or a conviction after a plea of nolo contendere, is deemed to be a conviction for these purposes.

This bill would provide that an acceptance of a plea of nolo contendere is also deemed to be a conviction for those purposes. The bill would include applicable convictions under the laws of any state or territory of the United States as cause for disbarment or suspension, as specified.



The bill would revise other provisions relating to costs assessed against publicly reprovved or suspended members and attorney fee arbitrations.

Existing law provides that certain types of evidence are admissible or inadmissible in a civil proceeding, or are inadmissible only for specified purposes.

This bill would provide that the proceedings and records of risk management review committees and peer review committees responsible for evaluating and improving the quality of services rendered by a law practice are not subject to discovery in any civil action or State Bar proceeding.

Existing law provides that the home addresses of certain public officials, peace officers, and other persons that appear in any record of the Department of Motor Vehicles are confidential, upon request.

This bill would extend this status to employees of the State Bar who submit verification that they participate in the investigation, prosecution, or adjudication of attorney licensing matters in the normal course of their employment.

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

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

1 SECTION 1. Section 6007 of the Business and
2 Professions Code is amended to read:
3 6007. (a) When a member requires involuntary
4 treatment pursuant to Article 6 (commencing with
5 Section 5300) of Chapter 2 of Division 5 of, or Part 2
6 (commencing with Section 6250) of Division 6 of the
7 Welfare and Institutions Code, or when under an order
8 pursuant to Section 3051, 3106.5, or 3152 of the Welfare
9 and Institutions Code he or she has been placed in or
10 returned to inpatient status at the California
11 Rehabilitation Center or its branches, or when he or she
12 has been determined insane or mentally incompetent
13 and is confined for treatment or placed on outpatient
14 status pursuant to the Penal Code, or on account of his or
15 her mental condition a guardian or conservator, for his or
16 her estate or person or both, has been appointed, the



1 Board of Governors or an officer of the State Bar shall
2 enroll the member as an inactive member.

3 The clerk of any court making an order containing any
4 of the determinations or adjudications referred to in the
5 immediately preceding paragraph shall send a certified
6 copy of that order to the State Bar at the same time that
7 the order is entered.

8 The clerk of any court with which is filed a notice of
9 certification for intensive treatment pursuant to Article
10 4 (commencing with Section 5250) of Chapter 2 of
11 Division 5 of the Welfare and Institutions Code, upon
12 receipt of the notice, shall transmit a certified copy of it
13 to the State Bar.

14 The State Bar may procure a certified copy of any
15 determination, order, adjudication, appointment, or
16 notice when the clerk concerned has failed to transmit
17 one or when the proceeding was had in a court other than
18 a court of this state.

19 In the case of an enrollment pursuant to this
20 subdivision, the State Bar shall terminate the enrollment
21 when the member has had the fact of his or her
22 restoration to capacity judicially determined, upon the
23 member's release from inpatient status at the California
24 Rehabilitation Center or its branches pursuant to Section
25 3053, 3109, or 3151 of the Welfare and Institutions Code,
26 or upon the member's unconditional release from the
27 medical facility pursuant to Section 5304 or 5305 of the
28 Welfare and Institutions Code; and on payment of all fees
29 required.

30 When a member is placed in, returned to, or released
31 from inpatient status at the California Rehabilitation
32 Center or its branches, or discharged from the narcotics
33 treatment program, the Director of Corrections or his or
34 her designee shall transmit to the State Bar a certified
35 notice attesting to that fact.

36 (b) The board shall also enroll a member of the State
37 Bar as an inactive member in each of the following cases:

38 (1) A member asserts a claim of insanity or mental
39 incompetence in any pending action or proceeding,
40 alleging his or her inability to understand the nature of



1 the action or proceeding or inability to assist counsel in
2 representation of the member.

3 (2) The court makes an order assuming jurisdiction
4 over the member's law practice, pursuant to Section
5 6180.5 or 6190.3.

6 (3) After notice and opportunity to be heard before
7 the board or a committee, the board finds that the
8 member, because of mental infirmity or illness, or
9 because of the habitual use of intoxicants or drugs, is (i)
10 unable or habitually fails to perform his or her duties or
11 undertakings competently, or (ii) unable to practice law
12 without substantial threat of harm to the interests of his
13 or her clients or the public. No proceeding pursuant to
14 this paragraph shall be instituted unless the board or a
15 committee finds, after preliminary investigation, or
16 during the course of a disciplinary proceeding, that
17 probable cause exists therefor. The determination of
18 probable cause is administrative in character and no
19 notice or hearing is required.

20 In the case of an enrollment pursuant to this
21 subdivision, the board shall terminate the enrollment
22 upon proof that the facts found as to the member's
23 disability no longer exist and on payment of all fees
24 required.

25 (c) (1) The board may order the involuntary inactive
26 enrollment of an attorney upon a finding that the
27 attorney's conduct poses a substantial threat of harm to
28 the interests of the attorney's clients or to the public or
29 upon a finding based on all the available evidence,
30 including affidavits, that the attorney has not complied
31 with Section 6002.1 and cannot be located after
32 reasonable investigation.

33 (2) In order to find that the attorney's conduct poses
34 a substantial threat of harm to the interests of the
35 attorney's clients or the public pursuant to this
36 subdivision, each of the following factors shall be found,
37 based on all the available evidence, including affidavits:

38 (A) The attorney has caused or is causing substantial
39 harm to the attorney's clients or the public.



1 (B) The attorney's clients or the public are likely to
2 suffer greater injury from the denial of the involuntary
3 inactive enrollment than the attorney is likely to suffer if
4 it is granted, or there is a reasonable likelihood that the
5 harm will reoccur or continue. Where the evidence
6 establishes a pattern of behavior, including acts likely to
7 cause substantial harm, the burden of proof shall shift to
8 the attorney to show that there is no reasonable likelihood
9 that the harm will reoccur or continue.

10 (C) There is a reasonable probability that the State Bar
11 will prevail on the merits of the underlying disciplinary
12 matter.

13 (3) In the case of an enrollment under this subdivision,
14 the underlying matter shall proceed on an expedited
15 basis.

16 (4) *The board shall order the involuntary inactive*
17 *enrollment of an attorney upon the filing of a*
18 *recommendation of disbarment after hearing or default;*
19 ~~creates, for purposes of this subdivision, a rebuttable~~
20 ~~presumption that the factors enumerated under~~
21 ~~paragraph (2) are established. The presumption~~
22 ~~described in this section is one affecting the burden of~~
23 ~~proof as defined in Section 605 of the Evidence Code.~~
24 *That attorney shall be placed on involuntary inactive*
25 *enrollment regardless of the membership status of the*
26 *attorney at the time.*

27 (5) The board shall formulate and adopt rules of
28 procedure to implement this subdivision.

29 In the case of an enrollment pursuant to this
30 subdivision, the board shall terminate the involuntary
31 inactive enrollment upon proof that the attorney's
32 conduct no longer poses a substantial threat of harm to
33 the interests of the attorney's clients or the public or
34 where an attorney who could not be located proves
35 compliance with Section 6002.1.

36 (d) (1) The board may order the involuntary inactive
37 enrollment of an attorney for violation of probation upon
38 the occurrence of all of the following:



1 (A) The attorney is under a suspension order any
2 portion of which has been stayed during a period of
3 probation.

4 (B) The board finds that probation has been violated.

5 (C) The board recommends to the court that the
6 attorney receive an actual suspension on account of the
7 probation violation or other disciplinary matter.

8 (2) The board shall terminate an enrollment under
9 this subdivision upon expiration of a period equal to the
10 period of stayed suspension in the probation matter, or
11 until the court makes an order regarding the
12 recommended actual suspension in the probation matter,
13 whichever occurs first.

14 (3) If the court orders a period of actual suspension in
15 the probation matter, any period of involuntary inactive
16 enrollment pursuant to this subdivision shall be credited
17 against the period of actual suspension ordered.

18 (e) (1) The board ~~may~~ *shall* order the involuntary,
19 inactive enrollment of a member ~~where it appears that~~
20 ~~the member has failed to file an answer to the notice~~
21 ~~initiating a disciplinary proceeding conducted under this~~
22 ~~chapter within the time allowed by whose default has~~
23 ~~been entered pursuant to the State Bar Rules of~~
24 ~~Procedure and any extensions granted thereunder, and~~
25 ~~all if both~~ of the following conditions are met:

26 (A) The notice was duly served pursuant to
27 subdivision (c) of Section 6002.1.

28 (B) The notice contained the following language at or
29 near the beginning of the notice, in capital letters:

30 IF YOU FAIL TO FILE AN ANSWER TO THIS
31 NOTICE WITHIN THE TIME ALLOWED BY STATE
32 BAR RULES, INCLUDING EXTENSIONS, *OR IF YOU*
33 *FAIL TO APPEAR AT THE STATE BAR COURT*
34 *TRIAL, (1) YOUR DEFAULT SHALL BE ENTERED,*
35 *(2) YOU ~~MAY~~ SHALL BE ENROLLED AS AN*
36 *INVOLUNTARY INACTIVE MEMBER OF THE*
37 *STATE BAR AND WILL NOT BE PERMITTED TO*
38 *PRACTICE LAW ~~UNTIL AN ANSWER IS FILED~~*
39 *UNLESS THE DEFAULT IS SET ASIDE ON MOTION*
40 *TIMELY MADE UNDER THE RULES OF*



1 *PROCEDURE OF THE STATE BAR, (3) YOU SHALL*
2 *NOT BE PERMITTED TO PARTICIPATE FURTHER*
3 *IN THESE PROCEEDINGS UNLESS YOUR DEFAULT*
4 *IS SET ASIDE, AND (4) YOU SHALL BE SUBJECT TO*
5 *ADDITIONAL DISCIPLINE.*

6 ~~(C) After the initial time to answer has passed, a letter~~
7 ~~has been served on the member through regular mailing~~
8 ~~again warning the member of the consequences of failing~~
9 ~~to file an answer, and the member has not filed an answer~~
10 ~~within 15 days after the letter was served.~~

11 (2) The board shall terminate the involuntary inactive
12 enrollment of a member under this subdivision when ~~an~~
13 ~~answer to the notice is filed on behalf of the member, or~~
14 ~~when a proposed answer is filed with a request to set aside~~
15 ~~the member's default~~ *the member's default is set aside on*
16 *motion timely made under the State Bar Rules of*
17 *Procedure or the disciplinary proceedings are*
18 *completed.*

19 (3) The enrollment ~~and termination~~ under this
20 subdivision ~~are~~ is administrative in character and no
21 hearing is required.

22 (4) Upon the involuntary inactive enrollment of a
23 member under this subdivision, the notice required by
24 subdivision (b) of Section 6092.5 shall be promptly given.

25 (5) The board may delegate its authority under this
26 subdivision to the presiding referee or presiding judge of
27 the State Bar Court or his or her designee.

28 (f) The pendency or determination of a proceeding or
29 investigation provided for by this section shall not abate
30 or terminate a disciplinary investigation or proceeding
31 except as required by the facts and law in a particular
32 case.

33 (g) No membership fees shall accrue against the
34 member during the period he or she is enrolled as an
35 inactive member pursuant to this section.

36 (h) The board may order a full range of interim
37 remedies or final discipline short of involuntary inactive
38 enrollment, including, but not limited to, conditions of
39 probation following final discipline, or directly ordered
40 interim remedies, to restrict or supervise an attorney's



1 practice of law, as well as proceedings under subdivision
2 (a), (b), (c), or (d), or under Section 6102 or 6190. They
3 may include restrictions as to scope of practice, monetary
4 accounting procedures, review of performance by
5 probation or other monitors appointed by the board, or
6 such other measures as may be determined, after hearing,
7 to protect present and future clients from likely
8 substantial harm. These restrictions may be imposed
9 upon a showing as provided in subdivision (c), except
10 that where license restriction is proposed, the showing
11 required of the State Bar under the factors described in
12 subparagraph (B) of paragraph (2) of subdivision (c)
13 need not be made.

14 SEC. 2. Section 6044.5 of the Business and Professions
15 Code is amended to read:

16 ~~6044.5. When an investigation or formal proceeding~~
17 ~~concerns alleged misconduct which may subject a~~
18 ~~member to criminal prosecution for any felony, or any~~
19 ~~lesser crime committed during the course of the practice~~
20 ~~of law, or in any manner that the client of the member~~
21 ~~was a victim, or may subject the member to disciplinary~~
22 ~~charges in another jurisdiction, the State Bar shall~~
23 ~~disclose, in confidence, information not otherwise public~~
24 ~~under this chapter to the appropriate agency responsible~~
25 ~~for criminal or disciplinary enforcement or exchange~~
26 ~~such information with that agency. The Chief Trial~~
27 ~~Counsel or designee may disclose, in confidence,~~
28 ~~information not otherwise public under this chapter as~~
29 ~~follows:~~

30 *(a) To government agencies responsible for*
31 *enforcement of civil and criminal laws or for professional*
32 *licensing of individuals.*

33 *(b) To members of the Judicial Nominees Evaluation*
34 *Commission or a review committee thereof as to matters*
35 *concerning nominees in any jurisdiction.*

36 SEC. 3. Section 6085.5 is added to the Business and
37 Professions Code, to read:

38 6085.5. There are three kinds of pleas to the
39 allegations of a notice of disciplinary charges or other



1 pleading which initiates a disciplinary proceeding against
2 a member:

3 (a) Admission of culpability.

4 (b) Denial of culpability.

5 (c) Nolo contendere, subject to the approval of the
6 State Bar Court. The court shall ascertain whether the
7 member completely understands that a plea of nolo
8 contendere shall be considered the same as an admission
9 of culpability and that, upon a plea of nolo contendere,
10 the court shall find the member culpable. The legal effect
11 of such a plea shall be the same as that of an admission of
12 culpability for all purposes, except that the plea and any
13 admissions required by the court during any inquiry it
14 makes as to the voluntariness of, or the factual basis for,
15 the pleas, may not be used against the member as an
16 admission in any civil suit based upon or growing out of
17 the act upon which the disciplinary proceeding is based.

18 SEC. 4. Section 6090.5 of the Business and Professions
19 Code is amended to read:

20 6090.5. ~~It is a cause for suspension, disbarment, or~~
21 ~~other discipline for any member of the State Bar to~~
22 ~~require as a condition of a settlement of a civil action for~~
23 ~~professional misconduct brought against the member~~
24 ~~that the plaintiff agree to not file a complaint with the~~
25 ~~disciplinary agency concerning that misconduct.~~

26 *(a) When a claim alleging professional misconduct is*
27 *made against a member of the State Bar, it is cause for*
28 *suspension, disbarment, or other discipline for any*
29 *member, whether as a party or as an attorney for a party,*
30 *to agree or seek agreement, that:*

31 *(1) The professional misconduct or the terms of a*
32 *settlement of a claim for professional misconduct shall not*
33 *be reported to the disciplinary agency.*

34 *(2) The plaintiff shall withdraw a disciplinary*
35 *complaint or shall not cooperate with the investigation or*
36 *prosecution conducted by the disciplinary agency.*

37 *(3) The record of any civil action for professional*
38 *misconduct shall be sealed from review by the*
39 *disciplinary agency.*



1 (b) *This section applies to all settlements, whether*
2 *made before or after the commencement of a civil action.*

3 SEC. 5. Section 6101 of the Business and Professions
4 Code is amended to read:

5 6101. (a) Conviction of a felony or misdemeanor,
6 involving moral turpitude, constitutes a cause for
7 disbarment or suspension.

8 In any proceeding, whether under this article or
9 otherwise, to disbar or suspend an attorney on account of
10 that conviction, the record of conviction shall be
11 conclusive evidence of guilt of the crime of which he or
12 she has been convicted.

13 (b) The district attorney, city attorney, or other
14 prosecuting agency shall notify the Office of the State Bar
15 of the State Bar of California of the pendency of an action
16 against an attorney charging a felony or misdemeanor
17 immediately upon obtaining information that the
18 defendant is an attorney. The notice shall identify the
19 attorney and describe the crimes charged and the alleged
20 facts. The prosecuting agency shall also notify the clerk of
21 the court in which the action is pending that the
22 defendant is an attorney, and the clerk shall record
23 prominently in the file that the defendant is an attorney.

24 (c) The clerk of the court in which an attorney is
25 convicted of a crime shall, within 48 hours after the
26 conviction, transmit a certified copy of the record of
27 conviction to the Office of the State Bar. Within five days
28 of receipt, the Office of the State Bar shall transmit the
29 record of any conviction which involves or may involve
30 moral turpitude to the Supreme Court with such other
31 records and information as may be appropriate to
32 establish the Supreme Court's jurisdiction. The State Bar
33 of California may procure and transmit the record of
34 conviction to the Supreme Court when the clerk has not
35 done so or when the conviction was had in a court other
36 than a court of this state.

37 (d) The proceedings to disbar or suspend an attorney
38 on account of such a conviction shall be undertaken by
39 the Supreme Court pursuant to the procedure provided



1 in this section and Section 6102, upon the receipt of the
2 certified copy of the record of conviction.

3 (e) A plea or verdict of guilty ~~or a~~, *an acceptance of a*
4 *nolo contendere plea*, or a conviction after a plea of nolo
5 contendere is deemed to be a conviction within the
6 meaning of those sections.

7 SEC. 6. Section 6102 of the Business and Professions
8 Code is amended to read:

9 6102. (a) Upon the receipt of the certified copy of the
10 record of conviction, if it appears therefrom that the
11 crime of which the attorney was convicted involved or
12 that there is probable cause to believe that it involved
13 moral turpitude or is a felony under the laws of California
14 ~~or of~~, the United States, *or any state or territory thereof*,
15 the Supreme Court shall suspend the attorney until the
16 time for appeal has elapsed, if no appeal has been taken,
17 or until the judgment of conviction has been affirmed on
18 appeal, or has otherwise become final, and until the
19 further order of the court. Upon its own motion or upon
20 good cause shown the court may decline to impose, or
21 may set aside, the suspension when it appears to be in the
22 interest of justice to do so, with due regard being given
23 to maintaining the integrity of and confidence in the
24 profession.

25 (b) For the purposes of this section, a crime is a felony
26 under the law of California if it is declared to be so
27 specifically or by subdivision (a) of Section 17 of the Penal
28 Code, unless it is charged as a misdemeanor pursuant to
29 paragraph (4) or (5) of subdivision (b) of Section 17 of the
30 Penal Code, irrespective of whether in a particular case
31 the crime may be considered a misdemeanor as a result
32 of postconviction proceedings, including proceedings
33 resulting in punishment or probation set forth in
34 paragraph (1) or (3) of subdivision (b) of Section 17 of the
35 Penal Code.

36 (c) After the judgment of conviction of an offense
37 specified in subdivision (a) has become final or,
38 irrespective of any subsequent order under Section 1203.4
39 of the Penal Code *or similar statutory provision*, an order
40 granting probation has been made suspending the



1 imposition of sentence, the Supreme Court shall
2 summarily disbar the attorney if the ~~conviction is a felony~~
3 ~~under the laws of California or of the United States which~~
4 ~~meets both of the following criteria:~~

5 ~~(1) An offense is a felony under the laws of California,~~
6 ~~the United States, or any state or territory thereof, and an~~
7 ~~element of the offense is the specific intent to deceive,~~
8 ~~defraud, steal, or make or suborn a false statement, or an~~
9 ~~element of the offense involved moral turpitude.~~

10 ~~(2) The offense was committed in the course of the~~
11 ~~practice of law or in any manner such that a client of the~~
12 ~~attorney was a victim.~~

13 (d) *For purposes of this section, a conviction under the*
14 *laws of another state or territory of the United States shall*
15 *be deemed a felony if:*

16 *(1) The judgment or conviction was entered as a*
17 *felony irrespective of any subsequent order suspending*
18 *sentence or granting probation and irrespective of*
19 *whether the crime may be considered a misdemeanor as*
20 *a result of postconviction proceedings.*

21 *(2) The elements of the offense for which the member*
22 *was convicted would constitute a felony under the laws*
23 *of the State of California at the time the offense was*
24 *committed.*

25 (e) Except as provided in subdivision (c), if after
26 adequate notice and opportunity to be heard (which
27 hearing shall not be had until the judgment of conviction
28 has become final or, irrespective of any subsequent order
29 under Section 1203.4 of the Penal Code, an order granting
30 probation has been made suspending the imposition of
31 sentence), the court finds that the crime of which the
32 attorney was convicted, or the circumstances of its
33 commission, involved moral turpitude, it shall enter an
34 order disbaring the attorney or suspending him or her
35 from practice for a limited time, according to the gravity
36 of the crime and the circumstances of the case; otherwise
37 it shall dismiss the proceedings. In determining the extent
38 of the discipline to be imposed in a proceeding pursuant
39 to this article any prior discipline imposed upon the
40 attorney may be considered.



1 ~~(e)~~
 2 (f) The court may refer the proceedings or any part
 3 thereof or issue therein, including the nature or extent of
 4 discipline, to the State Bar for hearing, report, and
 5 recommendation.

6 ~~(f)~~
 7 (g) The record of the proceedings resulting in the
 8 conviction, including a transcript of the testimony
 9 therein, may be received in evidence.

10 ~~(g)~~
 11 (h) The Supreme Court shall prescribe rules for the
 12 practice and procedure in proceedings had pursuant to
 13 this section and Section 6101.

14 ~~(h)~~
 15 (i) The other provisions of this article providing a
 16 procedure for the disbarment or suspension of an
 17 attorney do not apply to proceedings pursuant to this
 18 section and Section 6101, unless expressly made
 19 applicable.

20 SEC. 7. Section 6140.7 of the Business and Professions
 21 Code is amended to read:

22 6140.7. Costs assessed against a *member* publicly
 23 reproved or suspended—~~member~~, *where suspension is*
 24 *stayed and the member not actually suspended*, shall be
 25 added to and become a part of the membership fee of the
 26 member, for the next calendar year. ~~Costs unpaid by~~
 27 *Unless time for payment of discipline costs is extended*
 28 *pursuant to subdivision (c) of Section 6085.10, costs*
 29 *assessed against a member who resigns with disciplinary*
 30 *charges pending or by a member who is actually*
 31 *suspended or disbarred shall be paid as a condition of*
 32 *reinstatement of or return to active membership.*

33 SEC. 8. Section 6203 of the Business and Professions
 34 Code is amended to read:

35 6203. (a) The award shall be in writing and signed by
 36 the arbitrators concurring therein. It shall include a
 37 determination of all the questions submitted to the
 38 arbitrators, the decision of which is necessary in order to
 39 determine the controversy. The award shall not include
 40 any award to either party for *costs or attorney's fees*



1 incurred *in preparation for or in the course of the fee*
2 *arbitration proceeding*, notwithstanding any contract
3 between the parties providing for such an award or *costs*
4 *or attorney's fees*. However, ~~this~~ *the filing fee paid may*
5 *be allocated between the parties by the arbitrators*. This
6 section shall not preclude an award of *costs or attorney's*
7 *fees* to either party by a court pursuant to subdivision (c)
8 of this section or of subdivision (d) of Section 6204. The
9 State Bar, or the local bar association delegated by the
10 State Bar to conduct the arbitration, shall deliver to each
11 of the parties with the award, an original declaration of
12 service of the award.

13 Evidence relating to claims of malpractice and
14 professional misconduct, shall be admissible only to the
15 extent that those claims bear upon the fees, costs, or both,
16 to which the attorney is entitled. The arbitrators shall not
17 award affirmative relief, in the form of damages or offset
18 or otherwise, for injuries underlying any such claim.
19 Nothing in this section shall be construed to prevent the
20 arbitrators from awarding the client a refund of unearned
21 fees, costs, or both previously paid to the attorney.

22 (b) Even if the parties to the arbitration have not
23 agreed in writing to be bound, the arbitration award shall
24 become binding upon the passage of 30 days after mailing
25 of notice of the award, unless a party has, within the 30
26 days, sought a trial after arbitration pursuant to Section
27 6204. If an action has previously been filed in any court,
28 any petition to confirm, correct, or vacate the award shall
29 be to the court in which the action is pending, and may
30 be served by mail on any party who has appeared, as
31 provided in Chapter 4 (commencing with Section 1003)
32 of Title 14 of Part 2 of the Code of Civil Procedure;
33 otherwise it shall be in the same manner as provided in
34 Chapter 4 (commencing with Section 1285) of Title 9 of
35 Part 3 of the Code of Civil Procedure. If no action is
36 pending in any court, the award may be confirmed,
37 corrected, or vacated by petition to the court having
38 jurisdiction over the amount of the arbitration award, but
39 otherwise in the same manner as provided in Chapter 4



1 (commencing with Section 1285) of Title 9 of Part 3 of the
2 Code of Civil Procedure.

3 (c) ~~Neither party to the arbitration may recover~~
4 ~~costs or attorney's fees incurred in preparation for or in~~
5 ~~the course of the fee arbitration proceeding with the~~
6 ~~exception of the filing fee paid pursuant to subdivision (a)~~
7 ~~of this section. However, a court confirming, correcting,~~
8 ~~or vacating an award under this section may award to the~~
9 ~~prevailing party reasonable fees and costs incurred in~~
10 ~~obtaining confirmation, correction, or vacation of the~~
11 ~~award including, if applicable, fees ~~or~~ and costs on appeal,~~
12 ~~incurred in obtaining confirmation, correction, or~~
13 ~~vacation of the award.~~ The party obtaining judgment
14 confirming, correcting, or vacating the award shall be the
15 prevailing party except that, without regard to
16 consideration of who the prevailing party may be, if a
17 party did not appear at the arbitration hearing in the
18 manner provided by the rules adopted by the board of
19 governors, that party shall not be entitled to attorney's
20 fees or costs upon confirmation, correction, or vacation of
21 the award.

22 (d) (1) In any matter in which ~~(A) the award of the~~
23 ~~arbitrators includes a refund of fees or costs, or both, to~~
24 ~~the client; (B) the award is binding or has become~~
25 ~~binding by operation of law or has become a judgment~~
26 ~~either after confirmation under subdivision (c) or after a~~
27 ~~trial after arbitration under Section 6204; or in any matter~~
28 ~~mediated under this article, if: (A) the award, judgment,~~
29 ~~or agreement reached after mediation includes a refund~~
30 ~~of fees or costs, or both, to the client and (C) (B) the~~
31 ~~attorney has not complied with that award, judgment, or~~
32 ~~agreement the State Bar shall enforce the award,~~
33 ~~judgment, or agreement by placing the attorney on~~
34 ~~involuntary inactive status until the award refund has~~
35 ~~been paid.~~

36 (2) The State Bar shall provide for an administrative
37 procedure to determine whether an award, *judgment, or*
38 *agreement* should be enforced pursuant to this
39 subdivision. An award, *judgment, or agreement* shall be
40 so enforced if either of the following applies:



1 (A) The State Bar shows that the attorney has failed to
2 comply with a binding fee arbitration award, *judgment,*
3 *or agreement* rendered pursuant to this article.

4 (B) The attorney has not proposed a payment plan
5 acceptable to the client or the State Bar.

6 However, the award, *judgment, or agreement* shall not
7 be so enforced if the attorney has demonstrated that he
8 or she (i) is not personally responsible for making or
9 ensuring payment of the ~~award~~ *refund*, or (ii) is unable
10 to pay the ~~award~~ *refund*.

11 (3) An attorney who has failed to comply with a
12 binding award, *judgment, or agreement* shall pay
13 administrative penalties or reasonable costs, or both, as
14 directed by the State Bar. Penalties imposed shall not
15 exceed 20 percent of the amount ~~awarded~~ *to be refunded*
16 to the client or one thousand dollars (\$1,000), whichever
17 is greater. Any penalties or costs, or both, that are not paid
18 shall be added to the membership fee of the attorney for
19 the next calendar year.

20 (4) The board shall terminate the inactive enrollment
21 upon proof that the attorney has complied with the
22 award, *judgment, or agreement* and upon payment of
23 any costs or penalties, or both, assessed as a result of the
24 attorney's failure to comply.

25 (5) A request for enforcement under this subdivision
26 shall be made within four years from the date (A) the
27 arbitration award was mailed.—~~However,~~ (B) *the*
28 *judgment was entered, or (C) the date the agreement*
29 *was signed. In an arbitrated matter, however, in no event*
30 shall a request be made prior to 100 days from the date of
31 the service of a signed copy of the award. In cases where
32 the award is appealed, a request shall not be made prior
33 to 100 days from the date the award has become final as
34 set forth in this section.

35 SEC. 9. Section 1160 is added to the Evidence Code,
36 to read:

37 1160. (a) Neither the proceedings nor the records of
38 risk management review committees or peer review
39 committees, as those committees are defined in
40 subdivision (e), having the responsibility of evaluation



1 and improvement of the quality of legal services
2 rendered by a law practice, shall be subject to discovery
3 in any civil action or State Bar proceeding.

4 (b) Except as hereinafter provided, no person who
5 participates in a risk management review or peer review
6 committee shall be permitted to testify regarding the
7 review.

8 (c) The prohibitions in this section do not apply to any
9 risk management or peer review committees if any
10 lawyer serves upon the committee when his or her own
11 personal conduct or performance is being reviewed.

12 (d) Nothing in this section shall preclude the
13 discovery or use of relevant evidence in a criminal action.

14 (e) For purposes of this section, “risk management
15 review committee” means a person or persons from an
16 outside entity, including, but not limited to, entities such
17 as insurance companies and professional bar associations,
18 that provide risk analysis services to lawyers. For
19 purposes of this section, peer review committee refers to
20 a lawyers or committee of lawyers who conduct an
21 internal audit or risk management analysis of a law
22 practice.

23 SEC. 10. Section 1808.4 of the Vehicle Code is
24 amended to read:

25 1808.4. (a) The home address of any of the following
26 persons, that appears in any record of the department, is
27 confidential, if the person requests the confidentiality of
28 that information:

29 (1) Attorney General.

30 (2) State public defender.

31 (3) Members of the Legislature.

32 (4) Judges or court commissioners.

33 (5) District attorneys.

34 (6) Public defenders.

35 (7) Attorneys employed by the Department of Justice,
36 the office of the State Public Defender, or a county office
37 of the district attorney or public defender.

38 (8) City attorneys and attorneys who submit
39 verification from their public employer that they
40 represent the city in matters that routinely place them in



1 personal contact with persons under investigation for,
2 charged with, or convicted of, committing criminal acts,
3 if those attorneys are employed by city attorneys.

4 (9) Nonsworn police dispatchers.

5 (10) Child abuse investigators or social workers,
6 working in child protective services within a social
7 services department.

8 (11) Active or retired peace officers, as defined in
9 Chapter 4.5 (commencing with Section 830) of Title 3 of
10 Part 2 of the Penal Code.

11 (12) Employees of the Department of Corrections, the
12 Department of the Youth Authority, or the Prison
13 Industry Authority specified in Sections 20017.77 and
14 20017.79 of the Government Code.

15 (13) Nonsworn employees of a city police department,
16 a county sheriff's office, the Department of the California
17 Highway Patrol, federal, state, and local detention
18 facilities, and local juvenile halls, camps, ranches, and
19 homes, who submit agency verification that, in the
20 normal course of their employment, they control or
21 supervise inmates or are required to have a prisoner in
22 their care or custody.

23 (14) County counsels assigned to child abuse cases.

24 (15) Investigators employed by the Department of
25 Justice, a county district attorney, or a county public
26 defender.

27 (16) Members of a city council.

28 (17) Members of a board of supervisors.

29 (18) Federal prosecutors and criminal investigators
30 and National Park Service Rangers working in this state.

31 (19) Any active or retired city enforcement officer
32 engaged in the enforcement of the Vehicle Code or
33 municipal parking ordinances.

34 (20) *Employees of the State Bar of California who*
35 *submit verification from their employer that in the*
36 *normal course of employment, they participate in the*
37 *investigation, prosecution, or adjudication of attorney*
38 *licensing matters.*

1 (21) The spouse or children of persons listed in this
2 section, regardless of the spouse's or child's place of
3 residence.

4 (b) The confidential home address of any of the
5 persons listed in subdivision (a) shall not be disclosed to
6 any person, except a court, a law enforcement agency, the
7 State Board of Equalization, or any governmental agency
8 to which, under any provision of law, information is
9 required to be furnished from records maintained by the
10 department.

11 (c) Any record of the department containing a
12 confidential home address shall be open to public
13 inspection, as provided in Section 1808, if the address is
14 completely obliterated or otherwise removed from the
15 record. The home address shall be withheld from public
16 inspection for three years following termination of office
17 or employment except with respect to retired peace
18 officers, whose home addresses shall be withheld from
19 public inspection permanently upon request of
20 confidentiality at the time the information would
21 otherwise be opened. The department shall inform any
22 person who requests a confidential home address what
23 agency the individual whose address was requested is
24 employed by or the court at which the judge or court
25 commissioner presides.

26 (d) A violation of subdivision (a) by the disclosure of
27 the confidential home address of a peace officer, as
28 specified in paragraph (11) of subdivision (a), a
29 nonsworn employee of the city police department or
30 county sheriff's office, or the spouse or children of these
31 persons that results in bodily injury to the peace officer,
32 employee of the city police department or county
33 sheriff's office, or the spouse or children of these persons
34 is a felony.

