

AMENDED IN SENATE JUNE 4, 1996
AMENDED IN ASSEMBLY APRIL 10, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

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, *Code*, relating to attorneys.

LEGISLATIVE COUNSEL'S DIGEST

AB 2787, as amended, 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 also 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~~ *no*. 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



1 her mental condition a guardian or conservator, for his or
2 her estate or person or both, has been appointed, the
3 Board of Governors or an officer of the State Bar shall
4 enroll the member as an inactive member.

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

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

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

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

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

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



1 (1) A member asserts a claim of insanity or mental
2 incompetence in any pending action or proceeding,
3 alleging his or her inability to understand the nature of
4 the action or proceeding or inability to assist counsel in
5 representation of the member.

6 (2) The court makes an order assuming jurisdiction
7 over the member's law practice, pursuant to Section
8 6180.5 or 6190.3.

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

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

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

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



1 (A) The attorney has caused or is causing substantial
2 harm to the attorney’s clients or the public.

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

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

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

18 (4) The board shall order the involuntary inactive
19 enrollment of an attorney upon the filing of a
20 recommendation of disbarment after hearing or default.
21 For purposes of this section, that attorney shall be placed
22 on involuntary inactive enrollment regardless of the
23 membership status of the attorney at the time.

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

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

33 (d) (1) The board may order the involuntary inactive
34 enrollment of an attorney for violation of probation upon
35 the occurrence of all of the following:

36 (A) The attorney is under a suspension order any
37 portion of which has been stayed during a period of
38 probation.

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



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

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

10 (3) If the court orders a period of actual suspension in
11 the probation matter, any period of involuntary inactive
12 enrollment pursuant to this subdivision shall be credited
13 against the period of actual suspension ordered.

14 (e) (1) The board shall order the involuntary,
15 inactive enrollment of a member whose default has been
16 entered pursuant to the State Bar Rules of Procedure if
17 both of the following conditions are met:

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

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

22 IF YOU FAIL TO FILE AN ANSWER TO THIS
23 NOTICE WITHIN THE TIME ALLOWED BY STATE
24 BAR RULES, INCLUDING EXTENSIONS, OR IF YOU
25 FAIL TO APPEAR AT THE STATE BAR COURT
26 TRIAL, (1) YOUR DEFAULT SHALL BE ENTERED,
27 (2) YOU SHALL BE ENROLLED AS AN
28 INVOLUNTARY INACTIVE MEMBER OF THE
29 STATE BAR AND WILL NOT BE PERMITTED TO
30 PRACTICE LAW UNLESS THE DEFAULT IS SET
31 ASIDE ON MOTION TIMELY MADE UNDER THE
32 RULES OF PROCEDURE OF THE STATE BAR, (3)
33 YOU SHALL NOT BE PERMITTED TO PARTICIPATE
34 FURTHER IN THESE PROCEEDINGS UNLESS YOUR
35 DEFAULT IS SET ASIDE, AND (4) YOU SHALL BE
36 SUBJECT TO ADDITIONAL DISCIPLINE.

37 (2) The board shall terminate the involuntary inactive
38 enrollment of a member under this subdivision when the
39 member's default is set aside on motion timely made



1 under the State Bar Rules of Procedure or the disciplinary
2 proceedings are completed.

3 (3) The enrollment under this subdivision is
4 administrative in character and no hearing is required.

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

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

11 (f) The pendency or determination of a proceeding or
12 investigation provided for by this section shall not abate
13 or terminate a disciplinary investigation or proceeding
14 except as required by the facts and law in a particular
15 case.

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

19 (h) The board may order a full range of interim
20 remedies or final discipline short of involuntary inactive
21 enrollment, including, but not limited to, conditions of
22 probation following final discipline, or directly ordered
23 interim remedies, to restrict or supervise an attorney's
24 practice of law, as well as proceedings under subdivision
25 (a), (b), (c), or (d), or under Section 6102 or 6190. They
26 may include restrictions as to scope of practice, monetary
27 accounting procedures, review of performance by
28 probation or other monitors appointed by the board, or
29 such other measures as may be determined, after hearing,
30 to protect present and future clients from likely
31 substantial harm. These restrictions may be imposed
32 upon a showing as provided in subdivision (c), except
33 that where license restriction is proposed, the showing
34 required of the State Bar under the factors described in
35 subparagraph (B) of paragraph (2) of subdivision (c)
36 need not be made.

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

39 6044.5. (a) When an investigation or formal
40 proceeding concerns alleged misconduct which may



1 subject a member to criminal prosecution for any felony,
2 or any lesser crime committed during the course of the
3 practice of law, or in any manner that the client of the
4 member was a victim, or may subject the member to
5 disciplinary charges in another jurisdiction, the State Bar
6 shall disclose, in confidence, information not otherwise
7 public under this chapter to the appropriate agency
8 responsible for criminal or disciplinary enforcement or
9 exchange that information with that agency.

10 (b) The Chief Trial Counsel or designee may disclose,
11 in confidence, information not otherwise public under
12 this chapter as follows:

13 (1) To government agencies responsible for
14 enforcement of civil and criminal laws or for professional
15 licensing of individuals.

16 (2) To members of the Judicial Nominees Evaluation
17 Commission or a review committee thereof as to matters
18 concerning nominees in any jurisdiction.

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

21 6085.5. There are three kinds of pleas to the
22 allegations of a notice of disciplinary charges or other
23 pleading which initiates a disciplinary proceeding against
24 a member:

25 (a) Admission of culpability.

26 (b) Denial of culpability.

27 (c) Nolo contendere, subject to the approval of the
28 State Bar Court. The court shall ascertain whether the
29 member completely understands that a plea of nolo
30 contendere shall be considered the same as an admission
31 of culpability and that, upon a plea of nolo contendere,
32 the court shall find the member culpable. The legal effect
33 of such a plea shall be the same as that of an admission of
34 culpability for all purposes, except that the plea and any
35 admissions required by the court during any inquiry it
36 makes as to the voluntariness of, or the factual basis for,
37 the pleas, may not be used against the member as an
38 admission in any civil suit based upon or growing out of
39 the act upon which the disciplinary proceeding is based.



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

3 6090.5. (a) It is cause for suspension, disbarment, or
4 other discipline for any member, whether as a party or as
5 an attorney for a party, to agree or seek agreement, that:

6 (1) The professional misconduct or the terms of a
7 settlement of a claim for professional misconduct shall not
8 be reported to the disciplinary agency.

9 (2) The plaintiff shall withdraw a disciplinary
10 complaint or shall not cooperate with the investigation or
11 prosecution conducted by the disciplinary agency.

12 (3) The record of any civil action for professional
13 misconduct shall be sealed from review by the
14 disciplinary agency.

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

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

19 6101. (a) Conviction of a felony or misdemeanor,
20 involving moral turpitude, constitutes a cause for
21 disbarment or suspension.

22 In any proceeding, whether under this article or
23 otherwise, to disbar or suspend an attorney on account of
24 that conviction, the record of conviction shall be
25 conclusive evidence of guilt of the crime of which he or
26 she has been convicted.

27 (b) The district attorney, city attorney, or other
28 prosecuting agency shall notify the Office of the State Bar
29 of the State Bar of California of the pendency of an action
30 against an attorney charging a felony or misdemeanor
31 immediately upon obtaining information that the
32 defendant is an attorney. The notice shall identify the
33 attorney and describe the crimes charged and the alleged
34 facts. The prosecuting agency shall also notify the clerk of
35 the court in which the action is pending that the
36 defendant is an attorney, and the clerk shall record
37 prominently in the file that the defendant is an attorney.

38 (c) The clerk of the court in which an attorney is
39 convicted of a crime shall, within 48 hours after the
40 conviction, transmit a certified copy of the record of



1 conviction to the Office of the State Bar. Within five days
2 of receipt, the Office of the State Bar shall transmit the
3 record of any conviction which involves or may involve
4 moral turpitude to the Supreme Court with such other
5 records and information as may be appropriate to
6 establish the Supreme Court's jurisdiction. The State Bar
7 of California may procure and transmit the record of
8 conviction to the Supreme Court when the clerk has not
9 done so or when the conviction was had in a court other
10 than a court of this state.

11 (d) The proceedings to disbar or suspend an attorney
12 on account of such a conviction shall be undertaken by
13 the Supreme Court pursuant to the procedure provided
14 in this section and Section 6102, upon the receipt of the
15 certified copy of the record of conviction.

16 (e) A plea or verdict of guilty, an acceptance of a nolo
17 contendere plea, or a conviction after a plea of nolo
18 contendere is deemed to be a conviction within the
19 meaning of those sections.

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

22 6102. (a) Upon the receipt of the certified copy of the
23 record of conviction, if it appears therefrom that the
24 crime of which the attorney was convicted involved or
25 that there is probable cause to believe that it involved
26 moral turpitude or is a felony under the laws of California,
27 the United States, or any state or territory thereof, the
28 Supreme Court shall suspend the attorney until the time
29 for appeal has elapsed, if no appeal has been taken, or
30 until the judgment of conviction has been affirmed on
31 appeal, or has otherwise become final, and until the
32 further order of the court. Upon its own motion or upon
33 good cause shown the court may decline to impose, or
34 may set aside, the suspension when it appears to be in the
35 interest of justice to do so, with due regard being given
36 to maintaining the integrity of and confidence in the
37 profession.

38 (b) For the purposes of this section, a crime is a felony
39 under the law of California if it is declared to be so
40 specifically or by subdivision (a) of Section 17 of the Penal



1 Code, unless it is charged as a misdemeanor pursuant to
2 paragraph (4) or (5) of subdivision (b) of Section 17 of the
3 Penal Code, irrespective of whether in a particular case
4 the crime may be considered a misdemeanor as a result
5 of postconviction proceedings, including proceedings
6 resulting in punishment or probation set forth in
7 paragraph (1) or (3) of subdivision (b) of Section 17 of the
8 Penal Code.

9 (c) After the judgment of conviction of an offense
10 specified in subdivision (a) has become final or,
11 irrespective of any subsequent order under Section 1203.4
12 of the Penal Code or similar statutory provision, an order
13 granting probation has been made suspending the
14 imposition of sentence, the Supreme Court shall
15 summarily disbar the attorney if the offense is a felony
16 under the laws of California, the United States, or any
17 state or territory thereof, and an element of the offense
18 is the specific intent to deceive, defraud, steal, or make or
19 suborn a false statement, or involved moral turpitude.

20 (d) For purposes of this section, a conviction under the
21 laws of another state or territory of the United States shall
22 be deemed a felony if:

23 (1) The judgment or conviction was entered as a
24 felony irrespective of any subsequent order suspending
25 sentence or granting probation and irrespective of
26 whether the crime may be considered a misdemeanor as
27 a result of postconviction proceedings.

28 (2) The elements of the offense for which the member
29 was convicted would constitute a felony under the laws
30 of the State of California at the time the offense was
31 committed.

32 (e) Except as provided in subdivision (c), if after
33 adequate notice and opportunity to be heard (which
34 hearing shall not be had until the judgment of conviction
35 has become final or, irrespective of any subsequent order
36 under Section 1203.4 of the Penal Code, an order granting
37 probation has been made suspending the imposition of
38 sentence), the court finds that the crime of which the
39 attorney was convicted, or the circumstances of its
40 commission, involved moral turpitude, it shall enter an



1 order disbaring the attorney or suspending him or her
2 from practice for a limited time, according to the gravity
3 of the crime and the circumstances of the case; otherwise
4 it shall dismiss the proceedings. In determining the extent
5 of the discipline to be imposed in a proceeding pursuant
6 to this article any prior discipline imposed upon the
7 attorney may be considered.

8 (f) The court may refer the proceedings or any part
9 thereof or issue therein, including the nature or extent of
10 discipline, to the State Bar for hearing, report, and
11 recommendation.

12 (g) The record of the proceedings resulting in the
13 conviction, including a transcript of the testimony
14 therein, may be received in evidence.

15 (h) The Supreme Court shall prescribe rules for the
16 practice and procedure in proceedings had pursuant to
17 this section and Section 6101.

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

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

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

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

38 6203. (a) The award shall be in writing and signed by
39 the arbitrators concurring therein. It shall include a
40 determination of all the questions submitted to the



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

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

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



1 jurisdiction over the amount of the arbitration award, but
2 otherwise in the same manner as provided in Chapter 4
3 (commencing with Section 1285) of Title 9 of Part 3 of the
4 Code of Civil Procedure.

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

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

34 (2) The State Bar shall provide for an administrative
35 procedure to determine whether an award, judgment, or
36 agreement should be enforced pursuant to this
37 subdivision. An award, judgment, or agreement shall be
38 so enforced if:



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 refund, or (ii) is unable to pay
10 the 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 to be refunded to the
16 client or one thousand dollars (\$1,000), whichever is
17 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, (B) the judgment was
28 entered, or (C) the date the agreement was signed. In an
29 arbitrated matter, however, in no event shall a request be
30 made prior to 100 days from the date of the service of a
31 signed copy of the award. In cases where the award is
32 appealed, a request shall not be made prior to 100 days
33 from the date the award has become final as set forth in
34 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.~~

