

RESOLUTION 03-01-2021

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Business & Professions Code Section 6068, to read as follows:

1 § 6068

2 It is the duty of an attorney to do all of the following:

3 (a) To support the Constitution and laws of the United States and of this state.

4 (b) To maintain the respect due to the courts of justice and judicial officers.

5 (c) To counsel or maintain those actions, proceedings, or defenses only as appear to him
6 or her legal or just, except the defense of a person charged with a public offense.

7 (d) To employ, for the purpose of maintaining the causes confided to him or her those
8 means only as are consistent with truth, and never to seek to mislead the judge or any judicial
9 officer by an artifice or false statement of fact or law.

10 (e) (1) To maintain inviolate the confidence, and at every peril to himself or herself to
11 preserve the secrets, of his or her client.

12 (2) Notwithstanding paragraph (1), an attorney may, but is not required to, reveal
13 confidential information relating to the representation of a client to the extent that the attorney
14 reasonably believes the disclosure is necessary to prevent an act that the attorney reasonably
15 believes is likely to result in imminent self-inflicted harm or death of the client or a criminal act
16 that the attorney reasonably believes is likely to result in death of, or substantial bodily harm to,
17 an individual.

18 (f) To advance no fact prejudicial to the honor or reputation of a party or witness, unless
19 required by the justice of the cause with which he or she is charged.

20 (g) Not to encourage either the commencement or the continuance of an action or
21 proceeding from any corrupt motive of passion or interest.

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

24 (i) To cooperate and participate in any disciplinary investigation or other regulatory or
25 disciplinary proceeding pending against himself or herself. However, this subdivision shall not
26 be construed to deprive an attorney of any privilege guaranteed by the Fifth Amendment to the
27 Constitution of the United States, or any other constitutional or statutory privileges. This
28 subdivision shall not be construed to require an attorney to cooperate with a request that requires
29 him or her to waive any constitutional or statutory privilege or to comply with a request for
30 information or other matters within an unreasonable period of time in light of the time
31 constraints of the attorney's practice. Any exercise by an attorney of any constitutional or
32 statutory privilege shall not be used against the attorney in a regulatory or disciplinary
33 proceeding against him or her.

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

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

37 (l) To keep all agreements made in lieu of disciplinary prosecution with the State Bar.

- 38 (m) To respond promptly to reasonable status inquiries of clients and to keep clients
39 reasonably informed of significant developments in matters with regard to which the attorney has
40 agreed to provide legal services.
- 41 (n) To provide copies to the client of certain documents under time limits and as
42 prescribed in a rule of professional conduct which the board shall adopt.
- 43 (o) To report to the State Bar, in writing, within 30 days of the time the attorney has
44 knowledge of any of the following:
- 45 (1) The filing of three or more lawsuits in a 12-month period against the attorney for
46 malpractice or other wrongful conduct committed in a professional capacity.
- 47 (2) The entry of judgment against the attorney in a civil action for fraud,
48 misrepresentation, breach of fiduciary duty, or gross negligence committed in a professional
49 capacity.
- 50 (3) The imposition of judicial sanctions against the attorney, except for sanctions for
51 failure to make discovery or monetary sanctions of less than one thousand dollars (\$1,000).
- 52 (4) The bringing of an indictment or information charging a felony against the attorney.
- 53 (5) The conviction of the attorney, including any verdict of guilty, or plea of guilty or no
54 contest, of a felony, or a misdemeanor committed in the course of the practice of law, or in a
55 manner in which a client of the attorney was the victim, or a necessary element of which, as
56 determined by the statutory or common law definition of the misdemeanor, involves improper
57 conduct of an attorney, including dishonesty or other moral turpitude, or an attempt or a
58 conspiracy or solicitation of another to commit a felony or a misdemeanor of that type.
- 59 (6) The imposition of discipline against the attorney by a professional or occupational
60 disciplinary agency or licensing board, whether in California or elsewhere.
- 61 (7) Reversal of judgment in a proceeding based in whole or in part upon misconduct,
62 grossly incompetent representation, or willful misrepresentation by an attorney.
- 63 (8) As used in this subdivision, “against the attorney” includes claims and proceedings
64 against any firm of attorneys for the practice of law in which the attorney was a partner at the
65 time of the conduct complained of and any law corporation in which the attorney was a
66 shareholder at the time of the conduct complained of unless the matter has to the attorney’s
67 knowledge already been reported by the law firm or corporation.
- 68 (9) The State Bar may develop a prescribed form for the making of reports required by
69 this section, usage of which it may require by rule or regulation.
- 70 (10) This subdivision is only intended to provide that the failure to report as required
71 herein may serve as a basis of discipline.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Bar Association of Northern San Diego County

STATEMENT OF REASONS

The Problem (including Existing Law): Existing law only allows an attorney to reveal confidential information in order to prevent a criminal act likely to result in the death or substantial bodily harm to an individual. The State Bar interprets that provision to apply to persons other than the client. Suicide itself is not a crime. *In re Joseph G.* (1983) 34 Cal. 3d 429, 433; *Donaldson v. Lungren* (1992) 2 Cal.App.4th 1614, 1624. So if your client indicates

they are about to harm themselves or plan to commit suicide, other than trying to talk the client out of performing that act, the attorney is helpless.

The ABA has concluded an attorney may disclose a client's declared intent to commit suicide to a third person. See ABA Comm. On Prof'l Ethics and Responsibility, Informal Opinion Op. 89-1530(1989) (citing ABA Comm. On Prof'l Ethics and Responsibility, Informal Opinion Op. 83-1500 (1983)). The exceptions to confidentiality under the ABA Model Rule 1.6(b) are broader than in California. Rule 1.6 states: (b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary (1) to prevent reasonably certain death or substantial bodily harm.

This exact situation happened to me where the client indicated they were about to commit suicide. A call to the State Bar Ethics Hotline revealed that if I tried to call 9-1-1, the police or even a relative, I would be in violation of this section and could be subject to discipline. The Ethics Hotline also informed me that my inquiry was a common call they receive. Attorneys should not have to choose between our license and livelihood and saving a client's life.

The Solution: This resolution would allow (but not require) attorneys will reveal confidential information if the attorney believes a client is about to commit an act of self-harm or death/suicide. This will allow attorneys to make that call if they think it is necessary and the act is imminent.

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION

None known

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RESOLUTION 03-02-2021

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Business and Professions Code section 6086.5, to read as follows:

1 § 6086.5

2 (a) The board of trustees shall establish a State Bar Court, to act in its place and stead in
3 the determination of disciplinary and reinstatement proceedings and proceedings pursuant to
4 subdivisions (b) and (c) of Section 6007 to the extent provided by rules adopted by the board of
5 trustees pursuant to this chapter. In these proceedings the State Bar Court may exercise the
6 powers and authority vested in the board of trustees by this chapter, including those powers and
7 that authority vested in committees of, or established by, the board, except as limited by rules of
8 the board of trustees within the scope of this chapter.

9 (b) Access to records of the State Bar Court shall be governed by court rules and laws
10 applicable to records of the judiciary and not the California Public Records Act (Chapter 3.5
11 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

12 (c) Upon petition by a licensee accompanied by a fee sufficient to defray costs associated
13 with consideration of a petition, filed in State Bar Court, the State Bar of California may remove
14 from the licensee's State Bar Profile, information on a licensee's State Bar profile that has been
15 posted for no less than five years which constitutes an administrative action, or an item that has
16 been posted on the licensee's State Bar Profile for no less than ten years which constitutes a
17 disciplinary action, where the licensee provides evidence of rehabilitation indicating that the
18 notice is no longer required in order to prevent a credible risk to members of the public utilizing
19 licensed activity of the licensee.

20 (d) The State Bar of California may develop, through regulations, the amount of the fee
21 and the minimum information to be included in a licensee's petition, including, but not limited
22 to, a written justification and evidence of rehabilitation.

23 (e) The petition process described by subdivisions (d) and (e) shall commence January 1,
24 2023.

25 (f) The State Bar of California shall maintain a list of all licensees whose administrative
26 or disciplinary records are altered as a result of a petition approved under subdivision (d). The
27 State Bar of California shall make the list accessible to other licensing bodies. The State Bar of
28 California shall update and provide the list to other licensing bodies as often as it modifies the
29 records displayed on its website in response to petitions approved under subdivision (d).

30 (g) For the purposes of Sections 6007, 6043, 6049, 6049.2, 6050, 6051, 6052, 6077
31 (excluding the first sentence), 6078, 6080, 6081, and 6082, "board" includes the State Bar Court.

32 (h) Nothing in this section shall authorize the State Bar Court to adopt rules of
33 professional conduct or rules of procedure.

34 (i) The Executive Committee of the State Bar Court may adopt rules of practice for the
35 conduct of all proceedings within its jurisdiction. These rules may not conflict with the rules of
36 procedure adopted by the board, unless approved by the Supreme Court.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem (including Existing Law): The State Bar Act (codified in the Business and Professions Code) provides for the licensing and regulation of lawyers by the State Bar of California. Fees charged and collected by the State Bar of California from its licensees under the Business and Professions Code are paid to the State Bar of California for the purpose of funding the discipline system and admissions. Existing law requires the State Bar of California to provide on the Internet on the State Bar website specific information regarding the status of every license issued by the State Bar of California on licensees' State Bar Profiles.

At this time any administrative action or any level of discipline against a licensee remains on a licensee's State Bar profile indefinitely, except in rare circumstances. For instance, an administrative inactive enrollment for failing to timely comply with a licensee's MCLE requirement can be expunged from a licensee's State Bar profile after seven years under certain conditions. Very remote or minor violations remain on a State Bar profile much longer than necessary to protect the public by providing full information about lawyers. This resolution would strike a balance in allowing a licensee to seek expungement where the licensee could establish the information is not necessary to ensure public protection.

The Solution: This resolution would authorize the State Bar Court, upon petition by a licensee accompanied by a specified fee, to (1) remove from the licensee's State Bar Profile an item that has been posted for at least five years which constitutes an administrative action against a licensee's license; and (2) remove from the licensee's State Bar Profile an item that has been posted for at least ten years which constitutes any level of public discipline, where the licensee can establish rehabilitation indicating that the notice is no longer required to prevent a credible risk to members of the public utilizing licensed activity of the licensee. The resolution would require the State Bar Court, in evaluating a petition, to take into consideration other violations that present a credible risk to the members of the public since the administrative or disciplinary action which the licensee is seeking to be removed occurred. The resolution would also authorize the State Bar of California to develop, through regulations, the amount of the fee and the minimum information to be included in a licensee's petition, including, but not limited to, a written justification and evidence of rehabilitation. The resolution would require the petition process to commence January 1, 2021. The resolution would require the State Bar of California to maintain a list of all licensees whose disciplinary records are altered as a result of the petition process and to update the list and make it available to other licensing bodies, as specified.

IMPACT STATEMENT

This resolution may require additional statutory changes.

CURRENT OR PRIOR RELATED LEGISLATION

In 2016, the Legislature created a pathway for licensees of the Department of Real Estate to seek expungement of remote discipline recorded on that agency's website in AB 1807, which amended Business and Professions Code section 10083.2 et seq.

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