

RESOLUTION 05-01-2022

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Business & Professions Code section 10133, to read as follows:

1 § 10133

2 (a) The acts described in Section 10131 are not acts for which a real estate license is
3 required if performed by:

4 (1) A regular officer of a corporation or a general partner of a partnership or a manager or
5 member of a limited liability company with respect to real property owned or leased by the
6 corporation, ~~or partnership~~ or limited liability company, respectively, or in connection with the
7 proposed purchase or leasing of real property by the corporation, ~~or partnership~~ or limited
8 liability company, respectively, if the acts are not performed by the officer, ~~or partner,~~ manager
9 or member in expectation of special compensation.

10 (2) A person holding a duly executed power of attorney from the owner of the real
11 property with respect to which the acts are performed.

12 (3) An attorney at law in rendering legal services to a client.

13 (4) A receiver, trustee in bankruptcy or other person acting under order of a court of
14 competent jurisdiction.

15 (5) A trustee for the beneficiary of a deed of trust when selling under authority of that
16 deed of trust.

17 (b) The exemptions in subdivision (a) are not applicable to a person who uses or attempts
18 to use them for the purpose of evading the provisions of this part.

(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 exempts the requirement to hold a real estate license if a corporation or partnership owns the property and is acting though an officer or partner. However, many properties owned by entities in California are owned by LLCs (usually for tax reasons). There is no rational reason why LLC ownership of real property would require a licensed real estate agent to sell, lease, etc. that property while properties owned by corporations and partnership do not.

The Solution: This resolution would add limited liabilities companies to the exception to holding a real estate license for properties owned by the LLC. The exception would extend to either a manager of the LLC (for manager-managed LLCs) or a member of the LLC (for member-managed LLCs). This will allow LLCs that own real property in California to act through its authorized member/manager to lease, manage and sell its own real property, like corporations and partnerships.

IMPACT STATEMENT

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

CURRENT OR PRIOR RELATED LEGISLATION

AB 482 (17-18 session) attempted to add an exception to this statute for nonprofit limited liability companies that provide affordable housing through approved housing development agencies. It did not pass in the assembly by the constitutional deadline.

AB2397 (15-16 session) attempted to add an exception to this statute for agents that provide housing services. It did not pass at the committee level.

AUTHOR AND/OR PERMANENT CONTACT

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RESPONSIBLE FLOOR DELEGATE

Melissa L. Bustarde, Esq.

RESOLUTION 05-02-2022

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Business & Professions Code section 23399.5, to read as follows:

1 §23399.5

2 (a) (1) A license or permit is not required for the serving of alcoholic beverages in a
3 limousine by any person operating a limousine service regulated by the Public Utilities
4 Commission, provided there is no extra charge or fee for the alcoholic beverages.

5 (2) For purposes of this subdivision, there is no extra charge or fee for the alcoholic
6 beverages when the fee charged for the limousine service is the same regardless of whether
7 alcoholic beverages are served.

8 (b) (1) A license or permit is not required for the serving of alcoholic beverages as part of
9 a hot air balloon ride service, provided there is no extra charge or fee for the alcoholic beverages.

10 (2) For purposes of this subdivision, there is no extra charge or fee for the alcoholic
11 beverages when the fee charged for the hot air balloon ride service is the same regardless of
12 whether alcoholic beverages are served.

13 (c) A license or permit is not required for the serving of wine or beer as part of ~~a beauty~~
14 ~~salon service or barber shop~~ any service provided by any establishment that is subject to
15 regulation by the State Board of Barbering and Cosmetology as defined in Business and
16 Professions Code section 7301, et seq. if the following requirements are met:

17 (1) There is no extra charge or fee for the beer or wine. For purposes of this paragraph,
18 there is no extra charge or fee for the beer or wine if the fee charged for the beauty salon service
19 or barber shop service is the same regardless of whether beer or wine is served.

20 (2) The license of the establishment providing the beauty salon service or barber shop
21 service is in good standing with the State Board of Barbering and Cosmetology.

22 (3) No more than 12 ounces of beer or six ounces of wine by the glass is offered to a
23 client.

24 (4) The beer or wine is provided only during business hours and in no case later than 10
25 p.m.

26 (5) Nothing in this subdivision shall be construed to limit the authority of a city or city
27 and county to restrict or limit the consumption of alcoholic beverages, as described in this
28 subdivision, pursuant to Section 23791.

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

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem: Business & Professions Code section 23399.5 provides that a permit or license from the Alcoholic Beverage Control Board (“ABC”) “is not required for the serving of wine or beer as part of a beauty salon service or barber shop service if the following requirements are met.” The requirements include that only 12 ounces can be served, and it must be provided free

of charge. Barbershops have loved this law – guys go to get a haircut and they can have a cold one while doing so.

Unfortunately, most women cannot enjoy the same privilege because the statute says, “beauty salon service,” but that term is not defined anywhere in the B&P Code or anywhere else. Consequently, ABC has said that unless the law is changed, it will require “beauty salons” to get an ABC permit. I have represented nail salons and estheticians (which are widely considered to be beauty salons) that have been denied by the ABC this “free wine or beer” privilege because their type of business is not specifically included in the B & P Code language, whereas barber shops are.

The Solution: The solution is straightforward – define the term “beauty salon service.” And, since the existing Code section already refers to the State Board of Barbering and Cosmetology, simply define beauty salon service as a service provided by a business governed by the State Board of Barbering and Cosmetology. These businesses are Cosmetologists; Barbers; Manicurists (nail care); Estheticians (skin care); Electrologists (permanent hair removal); Apprentices; Establishments (Places where barbering, cosmetology, electrology, and other related services are performed.). See, Business & Professions Code §§7301, *et seq.*

The Legislative Counsel has issued an Opinion Letter that says any establishment that is governed by the State Board of Barbering and Cosmetology should not have to get an ABC permit to enjoy the benefits of Business & Professions Code §23399.5(c). Despite this, ABC has insisted that it will continue to require an ABC permit for any business (outside of barber shops) to serve any alcohol regardless of quantity or cost, whereas barbershops can continue to offer this perk for free and without an ABC license.

IMPACT STATEMENT

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

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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RESPONSIBLE FLOOR DELEGATE

Carl Kanowsky

RESOLUTION 05-03-2022

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Business and Professions Code section 6106.9, to read as follows:

1 § 6106.9

2 (a) It shall constitute cause for the imposition of discipline of an attorney within the
3 meaning of this chapter for an attorney to do any of the following:

4 (1) Expressly or impliedly condition the performance of legal services for a current or
5 prospective client upon the client's willingness to engage in sexual relations with the attorney.

6 (2) Employ coercion, intimidation, or undue influence in entering into sexual relations
7 with a client.

8 (3) Continue representation of a client with whom the attorney has consensual sexual
9 relations if the sexual relations cause the attorney to perform legal services incompetently in
10 violation of Rule 3-110 of the Rules of Professional Conduct of the State Bar of California, or if
11 the sexual relations would, or would be likely to, damage or prejudice the client's case.

12 (b) Subdivision (a) shall not apply to sexual relations between attorneys and their spouses
13 or persons in an equivalent domestic relationship, to ongoing consensual sexual relationships that
14 predate the initiation of the attorney-client relationship, or to sexual relations that occurred
15 without the attorney's express consent.

16 (c) Where an attorney in a firm has sexual relations with a client but does not participate
17 in the representation of that client, the attorneys in the firm shall not be subject to discipline
18 under this section solely because of the occurrence of those sexual relations.

19 (d) For the purposes of this section, "sexual relations" means sexual intercourse or the
20 touching of an intimate part of another person for the purpose of sexual arousal, gratification, or
21 abuse.

22 (e) Any complaint made to the State Bar alleging a violation of subdivision (a) shall be
23 verified under oath by the person making the complaint.

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

PROPONENT: Queen's Bench Bar Association of the San Francisco Bay Area

STATEMENT OF REASONS

The Problem: A report published in 2020 by Women Lawyers On Guard Inc. found that more than two-thirds of women working in law have directly experienced sexual harassment during their careers. (Women Lawyers On Guard Inc., Still Broken: Sexual Harassment and Misconduct in the Legal Profession (2020) p. 4, available at <https://womenlawyersonguard.org/still-broken/>). The report also states that "harassment by clients ... continues to plague the profession. Harassment by clients and opposing counsel is particularly disturbing, given the difficulty of addressing these situations." (Id. p. 19.). The frequency of such misconduct is difficult to measure due to significant underreporting.

Current law requires lawyers to preserve the secrets of their clients at “every peril” to themselves and imposes disciplinary action for attorney-client sexual relations. (Bus. & Prof. Code §§ 6068 and 6106.9.) Attorneys who are sexually assaulted by their client can be disciplined if the assault causes them to incompetently represent their client or if it would, or would be likely to, damage or prejudice their client’s case. Current law, therefore, does not protect attorneys from disciplinary action for sexual relations resulting from sexual assault or harassment by a client. Sexual harassment and assault of lawyers by their clients may thus cause them to violate ethics rules through no fault of their own. Failing to explicitly exclude non-consensual sexual relations between attorneys and clients caused by the client’s sexual misconduct from disciplinary action under this section allows attorneys to be disciplined for being survivors of sexual misconduct. Retaining penalties for attorneys in these situations contradicts the spirit and objectives of the ethics rules.

The Solution: Amending the Business and Professions Code to clarify that non-consensual sexual relations initiated by the client are not cause for discipline eliminates the possibility of attorneys being sanctioned for unwanted sexual relations by no fault of their own. These changes mirror existing language yet improve upon a set of rules that, as they stand, do not reflect the experience of attorneys in their profession. Amending this code section also sends the message to the profession that attorneys should be protected from sexual misconduct by clients, rather than being subjected to discipline for it.

IMPACT STATEMENT

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

CURRENT OR PRIOR RELATED LEGISLATION

None known.

AUTHOR AND/OR PERMANENT CONTACT

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RESPONSIBLE FLOOR DELEGATE

Andrea Carlise

RESOLUTION 05-04-2022

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Business and Professions Code section 7363, to read as follows:

1 § 7363

2 (a) A course in hairstyling established by a school shall consist of not less than 600 hours
3 of practical and technical instruction.

4 (b) The curriculum for a hairstyling course shall include, at a minimum, technical and
5 practical instruction in the following areas:

6 (1) One hundred hours in health and safety, which includes hazardous substances,
7 chemical safety, safety data sheets, protection from hazardous chemicals, preventing chemical
8 injuries, health and safety laws and regulations, and preventing communicable diseases.

9 (2) One hundred hours in disinfection and sanitation, which includes disinfection
10 procedures to protect the health and safety of consumers as well as the technician and proper
11 disinfection procedures for equipment used in establishments.

12 (3) Two hundred hours in hair styling services, which includes arranging, blow drying,
13 cleansing, curling, dressing, hair analysis, shampooing, waving, and nonchemical straightening,
14 and hair cutting including the use of shears, razors, electrical clippers and trimmers, and thinning
15 shears, for wet and dry cutting. Instruction on hair styling services shall include natural and
16 textured hair and hairstyles, such as afros, braids, twists, and locks.

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

PROPONENT: Alameda County Bar Association

STATEMENT OF REASONS

The Problem: According to the 2020 Census, no race or ethnic group constitutes a majority of California's population: 39% of state residents are Latino, 35% are white, 15% are Asian American or Pacific Islander, 5% are Black, 4% are multiracial, and fewer than 1% are Native American or Alaska Natives. In the Crown Act, the California legislature recognized the importance of allowing natural hairstyles in the workplace and in schools, finding that "hair discrimination targeting hairstyles associated with race is racial discrimination." (Senate Bill No. 188, 2019-2020 sess.) Despite laws mandating acceptance of natural hairstyles, California barbers and cosmetologists are not required to have any training on the unique questions associated with styling and caring for natural and textured hair.

The Solution: This resolution would require that the hairstyling curriculum for barbering and cosmetology schools include natural and textured hair.

IMPACT STATEMENT

This resolution may require related amendments to the California Code of Regulations. This resolution may require amendments to 16 California Code of Regulations sections 950.1 and

950.2, which provide more detailed curriculum requirements for barbering and cosmetology courses,

CURRENT OR PRIOR RELATED LEGISLATION

There is no prior related legislation.

AUTHOR AND/OR PERMANENT CONTACT

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RESPONSIBLE FLOOR DELEGATE

Margaret J. Grover

RESOLUTION 05-05-2022

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
11 3.5 (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 ~~(e)~~(g) For the purposes of Sections 6007, 6043, 6049, 6049.2, 6050, 6051, 6052,
31 6077 (excluding the first sentence), 6078, 6080, 6081, and 6082, "board" includes the State Bar
32 Court.

33 ~~(d)(1)~~(h) Nothing in this section shall authorize the State Bar Court to adopt rules
34 of professional conduct or rules of procedure.

35 ~~(2)~~(i) The Executive Committee of the State Bar Court may adopt rules of practice for the
36 conduct of all proceedings within its jurisdiction. These rules may not conflict with the rules of
37 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: 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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