



# The State Bar of California

## The State Bar Discipline System

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Office of Chief Trial Counsel

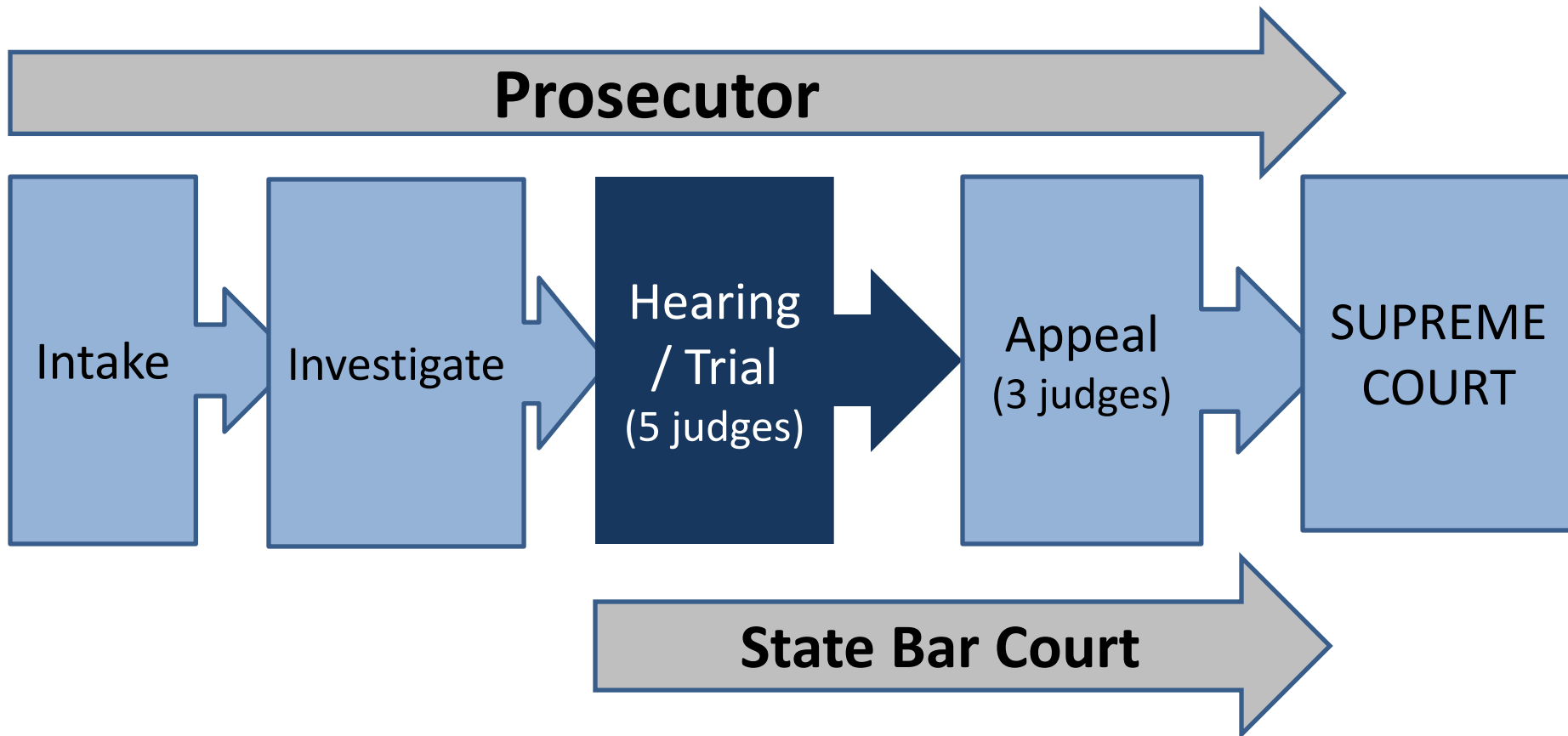


# Disclaimer

“As an employee of the State Bar, I am not authorized to provide you with any *legal* advice or counsel or render a legal opinion. Neither my comments nor the comments expressed by other persons in attendance today represent the official position of the State Bar, its Board of Trustees, or the State Bar’s Chief Trial Counsel. Similarly, the comments and views offered here should not be taken as reflecting the views of the State Bar, its Board of Trustees or the State Bar’s Chief Trial Counsel.”



# Life Cycle of a Complaint





# Why Attorneys Get Into Trouble

- Ignorance
- Carelessness/Laziness
- Poor Delegation/Supervision
- Lack of Office Policies & Procedures
- Bad Judgment
- Procrastination
- Greed
- Stress/Burn-Out
- Mental Health and/or Substance Abuse Issues



# The Who & Why

## Who Complains?

- Clients
- Opposing Counsel
- Courts
- Non-Client Members of the Public
- Mandatory Reporters (Licensees, Banks, Courts, Ins. Co.)

## Why do they Complain?

- Lack of communication with attorney
- Failure to refund fees
- Unexpected Outcome
- Animus
- For DA's – collusion, withholding evidence, misleading judge



# Sources of Ethical Obligations

## California Rules of Professional Conduct (“RPC”)

### The State Bar Act

- Business and Professions Code section 6000 et. seq.

### Case Law

- California Supreme Court Cases
- State Bar Court Review Department Cases
  - Published in the California State Bar Court Reporter



# Standards for Attorney Sanctions

## **Purpose of Discipline (Std. 1.1)**

- Public protection
- Maintenance of professional standards
- Preservation of public confidence in the profession

## **Aggravating & Mitigating Circumstances (Stds. 1.5/1.6)**

- Aggravation: prior discipline, significant harm, pattern, etc.
- Mitigation: no prior discipline, spontaneous candor, lack of harm, etc.

## **Sanctions for Specific Misconduct (Std. 2.1 et. seq.)**

- Determining the appropriate discipline for any given case is an art, not an exact science.



# Common Disciplinary Violations

## Lack of Reasonable Communication (B&P § 6068(m))

- Attorneys have a duty to respond *promptly* to a client's *reasonable* status inquires, and
- Must keep the client informed of significant developments
- **Rule 1.4 imposes additional communication duties:**
  - Requirement that client be informed of decisions/circumstances surrounding disclosure or informed consent
  - Reasonable consultation with client
  - Advisements when client expects impermissible assistance
  - Explaining matter to the extent necessary for client to make informed decisions



# Common Disciplinary Violations

## Failure to Perform with Competence/Diligence (RPC rules 1.1 & 1.3)

- Rule 1.1.(a) - A member shall not intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence [with diligence – rule 1.3].
- Examples:
  - Failure to perform the services for which hired
  - Sporadic performance
  - Reckless/repeated incompetent performance
  - Repeated failures to appear at court hearings
  - Intentional/reckless failure to meet statutory deadline
  - Failure to supervise staff to whom work delegated



# Common Disciplinary Violations

## **Terminating the Relationship (RPC rule 1.16)**

- Give notice to the client/Steps to avoid foreseeable prejudice
- Allow time for employment of other counsel
- Return client file/unearned fees (accounting)
- Comply with applicable laws and rules to withdraw or substitute out of the case



# Common Disciplinary Violations

## Client Trust Accounts (RPC rule 1.15)

- Failure to *deposit* or *maintain* client funds in trust
  - *With one exception, now includes advanced fees!*
- Commingling
- Issuing checks/disbursements against insufficient funds
- Failure to notify client of receipt of funds
- Failure to promptly pay out client funds
- Failure to account to client
- Failure to maintain required records
- **Misappropriation (B&P Code § 6106 – moral turpitude)**



# Common Disciplinary Violations

## Misrepresentation

- B&P Code section 6068(d)
  - Employ only those means consistent with the truth, and
  - Never seek to mislead the court or an officer of the court
- B&P Code section 6106
  - The commission of any act involving moral turpitude, dishonesty or corruption,
  - Whether acting as an attorney or otherwise.
  - Moral turpitude generally, shocks the conscience but no precise definition.



# Common Disciplinary Violations

## Failure to Obey Court Orders (B&P Code § 6103)

- “A willful disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear, and any violation of the oath taken by him, or of his duties as such attorney, constitute causes for disbarment or suspension.”
- Includes *oral orders*, failures to comply with discovery, failures to pay sanctions if either order is directed at attorney personally (includes joint and several).



# Common Disciplinary Violations

## Attorney Reporting Requirements (B&P Code § 6068(o))

- Impositions of certain sanctions
- Felony *prosecution* against attorney
- Felony or misdemeanor *conviction*
- Imposition of discipline by another agency or board
- Reversal of judgement based on misconduct, gross incompetence, or misrepresentation
- The filing of 3+ lawsuits in a 12-month period for malpractice or other wrongful professional conduct



# Common Disciplinary Violations

## **Criminal Convictions (B&P Code § § 6101, 6102)**

- Discipline for convictions involving moral turpitude or other misconduct warranting discipline.
  - Includes many DUIs.
  - Elements of crime deemed proved by conviction.
  - Disciplinary trial re facts and circumstances of offense.
- Summary disbarment for felony conviction where element of offense is specific intent to deceive, defraud, steal, or make or suborn a false statement, or if the offense involved moral turpitude per se, or if facts and circumstances involve moral turpitude.
  - Interim suspension imposed for any felony, or a misdemeanor involving moral turpitude per se.



# State Bar Resources

## **State Bar Website – [www.calbar.ca.gov](http://www.calbar.ca.gov)**

- Free online resources
- Client Security Fund (paid out \$5.66 million to 221 victims in 2021)

## **[Ethics.calbar.ca.gov](http://Ethics.calbar.ca.gov)**

- Ethics opinions, education programs, research tools
- Handbook on Client Trust Accounting for California Attorneys
- Rules and Statutes
- Info on Legal Specialization
- How to Close a Law Practice, etc.

## **State Bar Ethics School and State Bar Client Trust Accounting School**

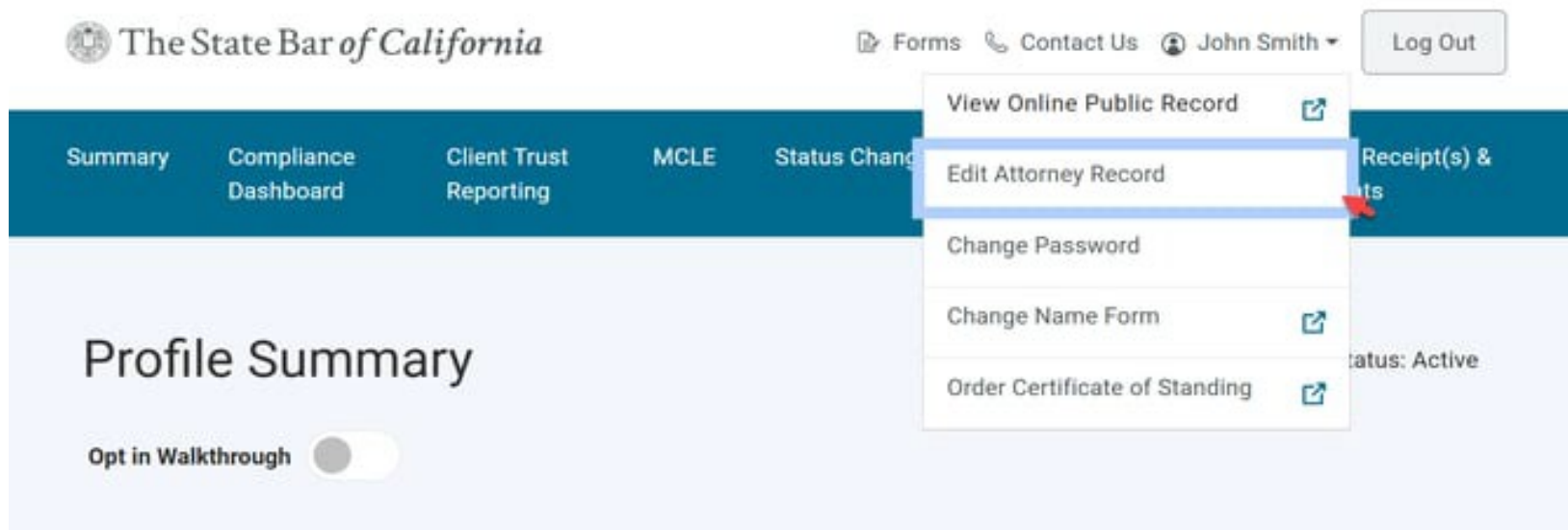
(both classes offered on demand via the State Bar's [e-learning platform](#))



# State Bar Resources

## Membership Records for Notification of Change of Address

You can update your contact information with the State Bar by clicking on “Edit Attorney Record” from the drop down that appears after clicking your name on the main profile menu.





# State Bar Resources

## Ethics Hotline

- Confidential research service for attorneys seeking guidance on their professional responsibilities
- Ethics Hotline at 1-800-238-4427, Monday-Friday, 9:00 a.m. to 12 noon
  - Ethics Hotline Research Assistance Request Form
  - <https://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Ethics/Hotline>
- Staff members:
  - Cannot provide legal counsel, advice, or opinions
  - Can discuss issues and authorities
  - Can refer attorneys to statutes, rules, cases, and State Bar opinions
  - Can strive to assist attorneys in reaching informed decisions



# State Bar Resources

## Lawyer Assistance Program

- Supports law students, State Bar applicants, and attorneys in their rehabilitation and competent practice of law
- Enhances public protection
- Maintains the integrity of the legal profession
- Assists participants with substance use and mental health issues
- **Contact LAP:**
  - Toll free: 877-LAP-4-HELP (877-527-4435)
  - [LAP@calbar.ca.gov](mailto:LAP@calbar.ca.gov)
  - [www.calbar.ca.gov/LAP](http://www.calbar.ca.gov/LAP)



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