



THE STATE BAR
OF CALIFORNIA

OFFICE OF CHIEF TRIAL COUNSEL

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Hon. Ronald B. Robie
Associate Justice of the Court of Appeal
Third Appellate District
914 Capitol Mall, 4th Floor
Sacramento, CA 95814

Dear Hon. Robie:

I am currently the Interim Chief Trial Counsel of the State Bar of California. The mission of the State Bar of California is to protect the public through its primary functions of licensing, regulating and disciplining attorneys, advancing the ethical and competent practice of law, and supporting greater access to, and inclusion in, the legal system. The primary responsibility of my office is the investigation and prosecution of disciplinary complaints against licensees of the State Bar of California.

I am aware that every year my office has sent a letter to judicial officers throughout the state requesting judicial officers to report specific instances of attorney misconduct to our office. I understand that, at times, some judicial officers have been frustrated because the State Bar has not informed judicial officers what, if any, discipline results from their report to the State Bar. The frustration with the lack of regular communication has led to skepticism about the effectiveness of the attorney discipline system.

I want to assure you that we recognize the crucial role that judicial officers play in the attorney discipline system. In order to address potential shortcomings in our communications, we have made some internal modifications in how we identify and process reports from judicial officers. Among the changes is to the form that is available for your use when making a report to the State Bar. We have clarified in the form that the judicial officer submitting the form, will be identified as the complainant and apprised of the status. However, if at any time after submitting the form the judicial officer notifies us that he/she prefers not to receive further information about the status of the complaint, we will act accordingly. Otherwise, the judicial officer should expect to receive status updates as the complaint progresses.

As you know, courts are required to notify the State Bar of many types of attorney misconduct. These Reportable Actions include the following:

- A final order of contempt imposed against an attorney that may involve grounds warranting discipline. The court entering the final order must transmit to the State Bar a copy of the relevant minutes, the final order and the reporter's transcript, if one exists. (Bus. & Prof. Code § 6086.7, subd. (a)(1).)
- A modification or reversal of a judgment based in whole or in part on the misconduct, incompetent representation or willful misrepresentation of an attorney. (Bus. & Prof. Code § 6086.7, subd. (a)(2).)
- The imposition of judicial sanctions against an attorney, except for sanctions for failure to make discovery or monetary sanctions of less than \$1,000. (Bus. & Prof. Code § 6086.7, subd. (a)(3).)
- A judgment against an attorney in any civil action for fraud, misrepresentation, breach of fiduciary duty, or gross negligence committed in a professional capacity. Written notice of the judgment must be provided to the State Bar within 20 days of the judgment. (Bus. & Prof. Code § 6086.8, subd. (a).)
- The imposition of a civil penalty upon an attorney pursuant to section 8620 of the Family Code regarding adoption of children with Indian tribal affiliations. (Bus. & Prof. Code § 6086.7, subd. (a)(4).)
- The finding of bad faith by a prosecuting attorney in withholding exculpatory evidence. (Bus. & Prof. Code § 6086.7, subd. (a)(5).)
- The conviction of an attorney of any crime. The clerk of the court in which the attorney was convicted is required to transmit a certified copy of the record of conviction to the State Bar within 48 hours after the conviction.¹ (Bus. & Prof. Code, § 6101, subd. (c).)
- The finding of violation by a lawyer selling financial services to a client who is an elder or dependent adult without required disclosure of the lawyer's commission (Bus. & Prof. Code § 6175.6.)

The conduct of attorneys in the courtroom and in the course of litigation often gives rise to disciplinary complaints that judicial officers are not required to report.² As a result, the effectiveness of the attorney discipline system requires a close working relationship between all California judicial officers and the State Bar. Often judicial officer reports of attorney misconduct involve the willful violation of court orders (Bus. & Prof. Code, § 6103) or improper public comments by counsel regarding pending court proceedings (rule 5-120, Rules of Professional Conduct).

In addition, consistent with the 2007 Report and Recommendation of the California Commission on the Fair Administration of Justice concerning the professional responsibility and accountability of prosecutors and defense lawyers, you may also report any egregious conduct of prosecutors and defense counsel, including: (1) willful misrepresentation of law or fact to a court; (2) appearing in a judicial proceeding while intoxicated; (3) engaging in willful unlawful

discrimination in a judicial proceeding; (4) willfully and in bad faith withholding or suppressing exculpatory evidence (including impeachment evidence) which he or she is constitutionally obligated to disclose; (5) willful presentation of perjured testimony; (6) willful and unlawful disclosure of victim or witness information; and (7) failure to properly identify oneself in interviewing victims or witnesses.

Your help in directing the clerks of your court to provide the above-referenced information to the State Bar on a timely basis would be of great assistance so that the State Bar can fulfill its duty to investigate these matters and determine the appropriateness of initiating disciplinary action against the attorney. (Bus. & Prof. Code § 6086.7, subd. (c).)

When reporting attorney misconduct, whether or not the report is required by statute, you or your agent may use the [Discipline Referral Form](#) designed for use by judicial officers. A copy of that form is attached for your convenience. To use that form, simply click the link in this letter, fill the form out online, print the form, sign it, and mail the form to:

**Office of the Chief Trial Counsel – Intake Unit
The State Bar of California
845 S. Figueroa Street
Los Angeles, California 90017-2515**

Additionally, you can also make a report or discuss an attorney performance problem, by contacting Mr. John Kelley, Assistant Chief Trial Counsel of our Intake Unit. **Mr. Kelley's telephone number is (213) 765-1237.**

One caveat about the timing of State Bar investigations, however: we are highly sensitive to the prejudicial effect that a State Bar investigation may have on a pending trial or proceeding. Therefore, while we encourage you to report attorney misconduct at any time and we are always willing to speak with you about attorney misconduct in pending proceedings, in most cases, the court is in the best position to deal with conduct as it occurs, and the State Bar will generally only pursue an investigation once the trial or proceeding has been concluded.

In addition to our role in the attorney discipline system, my office has statutory authority to investigate the unauthorized practice of law by both non-attorneys and by disbarred, resigned, and suspended attorneys. In appropriate cases, my office can also petition the superior courts to assume jurisdiction over the illegal practices of such non-attorneys or former or suspended attorneys. You can find detailed information about an attorney's current license status and his or her current eligibility to practice law from the Look Up a Lawyer feature on the State Bar of California's website at www.calbar.ca.gov.

I would also like to call your attention to the Lawyer Assistance Program ("LAP"). The LAP is available to provide confidential and comprehensive assistance to California attorneys with substance abuse and/or mental health issues. Participation in the LAP is voluntary and may, in appropriate cases, either be in lieu of discipline or as an adjunct to discipline through the State Bar's Alternative Discipline Program. It is LAP's goal to provide assistance to these attorneys before their conduct results in a disciplinary complaint, investigation, or proceeding. The LAP can be reached at (877) LAP-4-HELP [527-4435] and is available to provide assistance to you

in dealing with an attorney. Alternatively, the LAP can make direct contact with the attorney at your request. All LAP activities are conducted confidentially.

I would like to do what I can to ensure an ongoing dialogue with you regarding the regulation of attorney conduct and to encourage judicial officers to report attorney misconduct even when such a report is not required by statute. If you have any questions, concerns, need additional information, or have any suggestions as to how we can more effectively collaborate to improve the attorney discipline system, please do not hesitate to contact me. My direct telephone number is (213) 765-1066.

Respectfully,

A handwritten signature in blue ink, appearing to read 'Melanie J. Lawrence', with a long horizontal flourish extending to the right.

Melanie J. Lawrence
Interim Chief Trial Counsel

MJL/srcp

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¹ According to the statute, a “plea or verdict of guilty, an acceptance of a nolo contendere plea, or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of those Sections.” (Bus. & Prof. Code, § 6101, subd. (e).) An attorney who has been convicted of a felony or a crime that involves, or probably involves, moral turpitude is placed on interim suspension from the practice of law pending the finality of his or her conviction and until the final disposition of any disciplinary proceeding arising out of the conviction. (Bus. & Prof. Code, §§ 6101 subd. (d) and 6102.)

² Judicial Canon 3(D)(2).