



CALIFORNIA MINORITY  
COUNSEL PROGRAM

# 2025 MCLE MARATHON (VIRTUAL)

JANUARY 23, 2025 | 8:45 AM - 1:45 PM | Zoom | [www.cmcp.org](http://www.cmcp.org)

**8:45 AM - 9:45 AM**  
**WELLNESS IN LAW: ...**  
Kenneth Nourse, J.D. Senior  
Program Analyst, State Bar of  
California  
1 HR (Wellness Competence)

**10:00 AM - 11:30 AM**  
**REDUCING IMPLICIT BIAS**  
Chris Punongbayan Executive  
Director, California  
ChangeLawyers  
1.5 HRS (Implicit Bias)

**11:45 AM - 1:45 PM**  
**THE STATE BAR (of California)  
DISCIPLINE SYSTEM**  
Anand Kumar  
Trial Counsel, State Bar of  
California  
2 HRS (Legal Ethics)

3 Sessions = 4.5 Hrs MCLE  
Credits

# HOUSE RULES

While waiting for others to come in, here are some rules and reminders to keep in mind.



- 01.** Invited to turn ON video (mute audio.)
- 02.** Rename yourself to show first name, last name and law firm/company/agency.
- 03.** Feel free to submit your questions using Q&A.



# **DISCLAIMER**

***ALL OPINIONS EXPRESSED BY PARTICIPANTS ARE SOLELY THEIR CURRENT OPINIONS AND DO NOT REFLECT THE OPINIONS OF CMCP, THEIR RESPECTIVE EMPLOYER, PARENT COMPANIES, LAW FIRMS, OR AFFILIATES.***

***IN THE INTEREST OF PROVIDING A SPACE FOR ROBUST CANDID CONVERSATION AND DISSENTING VIEWS ON SENSITIVE TOPICS, WE RESPECTFULLY ASK ATTENDEES TO EXERCISE RESPECT FOR OTHERS AND TO MAINTAIN CONFIDENTIALITY DURING AND AFTER THIS SESSION.***

**11:45 AM – 1:45 PM**

## **The State Bar (of California) Discipline System**

Anand Kumar, Trial Counsel,  
State Bar of California

MCLE Credit: 1.5 hours (Implicit Bias)





# The State Bar of California

## The State Bar Discipline System

Anand Kumar, Trial Counsel  
Office of Chief Trial Counsel

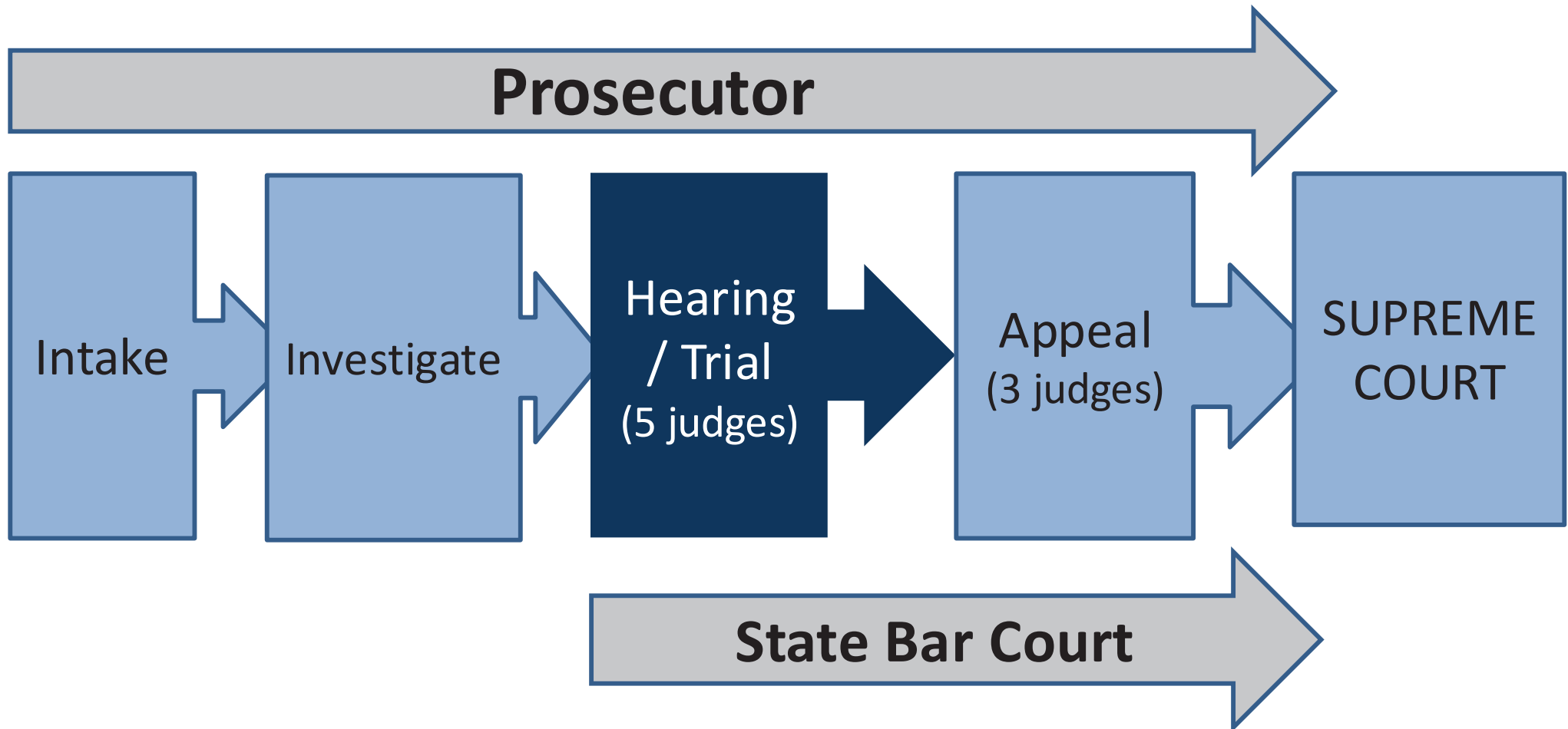


# Disclaimer

“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.



# Disbarment by Default

- Failure to respond or participate can lead to disbarment
- The 3D's of Disbarment by Default:
  - Disappear, usually due to invalid State Bar Membership Records Address
  - Disciplinary charges are filed, sent to official membership records address, service is valid even if returned, fail to answer
  - Default entered
- Under the rules, default will lead to disbarment unless it is set aside. (rule 5.85, Rules of Procedure of State Bar of Ca.)



# 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

## Conflicts (RPC rules 1.7, 1.8.7, 1.9, 1.8.6)

- Most conflicts can be waived with **informed, written consent**
- Examples:
  - Representing driver and passengers in auto collision
  - Representing both parties in a divorce case
  - Attorney's undisclosed relationship with witness
  - Attorney's undisclosed financial interest
  - Consecutive representation of adverse parties



# Common Disciplinary Violations

## Business Transactions with a Client (RPC rule 1.8.1)

- The transaction and its *terms are fair and reasonable* and *fully disclosed in writing* to the client in a manner which should reasonably have been understood;
- The writing *advised the client may seek advice of independent attorney* of client's choice with reasonable opportunity to seek that advice; and
- The client thereafter *consents in writing* to terms the transaction.



# Common Disciplinary Violations

## **Unauthorized Practice of Law (B&P Code § 6125; RPC rule 5.5)**

- Only “active” attorneys may practice law
- Some of the Ways Besides Discipline an Attorney Can Become “Not Entitled”:
  - Failure to pay bar dues/comply with MCLE reporting requirements
  - Failure to make child support payments
  - Failure to pay binding fee arbitration award
  - Criminal convictions
  - Failure to pass the MPRE/entry of default
- What Constitutes UPL? Holding oneself out as entitled?
- Culpability for the UPL of Others

## **Non-Attorney UPL (B&P Code § § 6125, 6126.3)**

- State Bar can issue cease and desist
- Law enforcement referrals on all non-attorney UPL
- Superior Court can assume jurisdiction over active practice



# 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

**Ethics Hotline** – 800-2-Ethics (800-238-4427)

**Membership Records for Notification of Change of Address** –  
change online using your attorney profile or call  
(415)538-2577

**Lawyer Assistance Program** – Confidential. Includes resources  
for mental health (including work-life balance), alcohol or  
drug usage (legal or illegal).

213-765-1190 or toll free 877-527-4435

LAP@calbar.ca.gov





# 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**

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

(both classes offered monthly virtually via Zoom)






# Contact Information

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# SECURE YOUR MCLE CREDIT

		<a href="#">35th ANNIVERSARY</a>   <a href="#">MEMBERS</a>   <a href="#">EVENTS</a>   <a href="#">PROGRAMS</a>   <a href="#">JOB BANK</a>   <a href="#">NEWS</a>   <a href="#">AMBASSADORS COUNCIL</a>   <a href="#">ABOUT CMCP</a> 			
<h2>MCLE and Written Materials</h2>					
	<b>9/13/2024</b> 10:00 am - 11:30 am	<b>Men of Color Forum: On the Clock versus Off the Clock</b>	0.75 Hour CA MCLE Credit 0.75 hr Wellness Competence	<ul style="list-style-type: none"> <li>■ <a href="#">Record &amp; Certificate of Attendance</a></li> <li>■ <a href="#">MCLE Activity Evaluation Form</a></li> </ul>	
	<b>9/13/2024</b> 10:00 am - 11:30 am	<b>Women of Color Forum: Navigating Work, Leadership, and Equity</b>	1.0 Hour CA MCLE Credit 1.0 hr Recognition and Elimination of Bias	<ul style="list-style-type: none"> <li>■ <a href="#">Record &amp; Certificate of Attendance</a></li> <li>■ <a href="#">MCLE Activity Evaluation Form</a></li> <li>■ <a href="#">Written Materials: 2024 ABC Women of Color Forum Written Materials</a></li> </ul>	

**2025**



**CONFERENCES**

[www.cmcp.org/events](http://www.cmcp.org/events)



Women of CMCP Conference  
April 22, 2025 | Los Angeles



Men of CMCP Conference  
April 23, 2025 | Los Angeles



Annual Business  
Conference  
September 10-12, 2025  
San Francisco



**THANK  
YOU!**

If you have questions, send a  
message to  
[events@cmcp.org](mailto:events@cmcp.org).