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BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 3. PROFESSIONS AND VOCATIONS GENERALLY [5000 - 9998.11] (*Heading of Division 3 added by Stats. 1939, Ch. 30.)*

CHAPTER 4. Attorneys [6000 - 6243] (*Chapter 4 added by Stats. 1939, Ch. 34.)*

ARTICLE 7. Unlawful Practice of Law [6125 - 6133] (*Article 7 added by Stats. 1939, Ch. 34.)*

6125. No person shall practice law in California unless the person is an active licensee of the State Bar.

(Amended by Stats. 2018, Ch. 659, Sec. 89. (AB 3249) Effective January 1, 2019.)

6126. (a) Any person advertising or holding himself or herself out as practicing or entitled to practice law or otherwise practicing law who is not an active licensee of the State Bar, or otherwise authorized pursuant to statute or court rule to practice law in this state at the time of doing so, is guilty of a misdemeanor punishable by up to one year in a county jail or by a fine of up to one thousand dollars (\$1,000), or by both that fine and imprisonment. Upon a second or subsequent conviction, the person shall be confined in a county jail for not less than 90 days, except in an unusual case where the interests of justice would be served by imposition of a lesser sentence or a fine. If the court imposes only a fine or a sentence of less than 90 days for a second or subsequent conviction under this subdivision, the court shall state the reasons for its sentencing choice on the record.

(b) Any person who has been involuntarily enrolled as an inactive licensee of the State Bar, or whose license has been suspended, or has been disbarred, or has resigned from the State Bar with charges pending, and thereafter practices or attempts to practice law, advertises or holds himself or herself out as practicing or otherwise entitled to practice law, is guilty of a crime punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code or in a county jail for a period not to exceed six months. However, any person who has been involuntarily enrolled as an inactive licensee of the State Bar pursuant to paragraph (1) of subdivision (e) of Section 6007 and who knowingly thereafter practices or attempts to practice law, or advertises or holds himself or herself out as practicing or otherwise entitled to practice law, is guilty of a crime punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code or in a county jail for a period not to exceed six months.

(c) The willful failure of a licensee of the State Bar, or one who has resigned or been disbarred, to comply with an order of the Supreme Court to comply with Rule 9.20 of the California Rules of Court, constitutes a crime punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code or in a county jail for a period not to exceed six months.

(d) The penalties provided in this section are cumulative to each other and to any other remedies or penalties provided by law.

(Amended by Stats. 2018, Ch. 659, Sec. 90. (AB 3249) Effective January 1, 2019.)

6126.3. (a) In addition to any criminal penalties pursuant to Section 6126 or to any contempt proceedings pursuant to Section 6127, the courts of the state shall have the jurisdiction provided in this section when a person advertises or holds himself or herself out as practicing or entitled to practice law, or otherwise practices law, without being an active licensee of the State Bar or otherwise authorized pursuant to statute or court rule to practice law in this state at the time of doing so.

(b) The State Bar, or the superior court on its own motion, may make application to the superior court for the county where the person described in subdivision (a) maintains or more recently has maintained his or her principal office for the practice of law or where he or she resides, for assumption by the court of jurisdiction over the practice to the extent provided in this section. In any proceeding under this section, the State Bar shall be permitted to intervene and to assume primary responsibility for conducting the action.

(c) An application made pursuant to subdivision (b) shall be verified, and shall state facts showing all of the following:

(1) Probable cause to believe that the facts set forth in subdivision (a) of Section 6126 have occurred.

(2) The interest of the applicant.

(3) Probable cause to believe that the interests of a client or of an interested person or entity will be prejudiced if the proceeding is not maintained.

(d) The application shall be set for hearing, and an order to show cause shall be issued directing the person to show cause why the court should not assume jurisdiction over the practice as provided in this section. A copy of the application and order to show cause shall be served upon the person by personal delivery or, as an alternate method of service, by certified or registered mail, return receipt requested, addressed to the person either at the address at which he or she maintains, or more recently has maintained, his or her principal office or at the address where he or she resides. Service is complete at the time of mailing, but any prescribed period of notice and any right or duty to do any act or make any response within that prescribed period or on a date certain after notice is served by mail shall be extended five days if the place of address is within the State of California, 10 days if the place of address is outside the State of California but within the United States, and 20 days if the place of address is outside the United States. If the State Bar is not the applicant, copies shall also be served upon the Office of the Chief Trial Counsel of the State Bar in similar manner at the time of service on the person who is the subject of the application. The court may prescribe additional or alternative methods of service of the application and order to show cause, and may prescribe methods of notifying and serving notices and process upon other persons and entities in cases not specifically provided herein.

(e) If the court finds that the facts set forth in subdivision (a) of Section 6126 have occurred and that the interests of a client or an interested person or entity will be prejudiced if the proceeding provided herein is not maintained, the court may make an order assuming jurisdiction over the person's practice pursuant to this section. If the person to whom the order to show cause is directed does not appear, the court may make its order upon the verified application or upon such proof as it may require. Thereupon, the court shall appoint one or more active licensees of the State Bar to act under its direction to mail a notice of cessation of practice, pursuant to subdivision (g), and may order those appointed attorneys to do one or more of the following:

(1) Examine the files and records of the practice and obtain information as to any pending matters that may require attention.

(2) Notify persons and entities who appear to be clients of the person of the occurrence of the event or events stated in subdivision (a) of Section 6126, and inform them that it may be in their best interest to obtain other legal counsel.

(3) Apply for an extension of time pending employment of legal counsel by the client.

(4) With the consent of the client, file notices, motions, and pleadings on behalf of the client where jurisdictional time limits are involved and other legal counsel has not yet been obtained.

(5) Give notice to the depositor and appropriate persons and entities who may be affected, other than clients, of the occurrence of the event or events.

(6) Arrange for the surrender or delivery of clients' papers or property.

(7) Arrange for the appointment of a receiver, where applicable, to take possession and control of any and all bank accounts relating to the affected person's practice.

(8) Do any other acts that the court may direct to carry out the purposes of this section.

The court shall have jurisdiction over the files and records and over the practice of the affected person for the limited purposes of this section, and may make all orders necessary or appropriate to exercise this jurisdiction. The court shall provide a copy of any order issued pursuant to this section to the Office of the Chief Trial Counsel of the State Bar.

(f) Anyone examining the files and records of the practice of the person described in subdivision (a) shall observe any lawyer-client privilege under Sections 950 and 952 of the Evidence Code and shall make disclosure only to the extent necessary to carry out the purposes of this section. That disclosure shall be a disclosure that is reasonably necessary for the accomplishment of the purpose for which the person described in subdivision (a) was consulted. The appointment of a licensee of the State Bar pursuant to this section shall not affect the lawyer-client privilege, which privilege shall apply to communications by or to the appointed licensees to the same extent as it would have applied to communications by or to the person described in subdivision (a).

(g) The notice of cessation of law practice shall contain any information that may be required by the court, including, but not limited to, the finding by the court that the facts set forth in subdivision (a) of Section 6126 have occurred and that the court has assumed jurisdiction of the practice. The notice shall be mailed to all clients, to opposing counsel, to courts and agencies in which the person has pending matters with an identification of the matter, to the Office of the Chief Trial Counsel of the State Bar, and to any other person or entity having reason to be informed of the court's assumption of the practice.

(h) Nothing in this section shall authorize the court or an attorney appointed by it pursuant to this section to approve or disapprove of the employment of legal counsel, to fix terms of legal employment, or to supervise or in any way undertake the conduct of the practice, except to the limited extent provided by paragraphs (3) and (4) of subdivision (e).

(i) Unless court approval is first obtained, neither the attorney appointed pursuant to this section, nor his or her corporation, nor any partner or associate of the attorney shall accept employment as an attorney by any client of the affected person on any matter

pending at the time of the appointment. Action taken pursuant to paragraphs (3) and (4) of subdivision (e) shall not be deemed employment for purposes of this subdivision.

(j) Upon a finding by the court that it is more likely than not that the application will be granted and that delay in making the orders described in subdivision (e) will result in substantial injury to clients or to others, the court, without notice or upon notice as it shall prescribe, may make interim orders containing any provisions that the court deems appropriate under the circumstances. Such an interim order shall be served in the manner provided in subdivision (d) and, if the application and order to show cause have not yet been served, the application and order to show cause shall be served at the time of serving the interim order.

(k) No person or entity shall incur any liability by reason of the institution or maintenance of a proceeding brought under this section. No person or entity shall incur any liability for an act done or omitted to be done pursuant to order of the court under this section. No person or entity shall be liable for failure to apply for court jurisdiction under this section. Nothing in this section shall affect any obligation otherwise existing between the affected person and any other person or entity.

(l) An order pursuant to this section is not appealable and shall not be stayed by petition for a writ, except as ordered by the superior court or by the appellate court.

(m) A licensee of the State Bar appointed pursuant to this section shall serve without compensation. However, the licensee may be paid reasonable compensation by the State Bar in cases where the State Bar has determined that the licensee has devoted extraordinary time and services that were necessary to the performance of the licensee's duties under this article. All payments of compensation for time and services shall be at the discretion of the State Bar. Any licensee shall be entitled to reimbursement from the State Bar for necessary expenses incurred in the performance of the licensee's duties under this article. Upon court approval of expenses or compensation for time and services, the State Bar shall be entitled to reimbursement therefor from the person described in subdivision (a) or his or her estate.

(Amended by Stats. 2018, Ch. 659, Sec. 91. (AB 3249) Effective January 1, 2019.)

6126.4. Section 6126.3 shall apply to a person acting in the capacity of an immigration consultant pursuant to Chapter 19.5 (commencing with Section 22440) who advertises or holds himself or herself out as practicing or entitled to practice law, or otherwise practices law.

(Added by Stats. 2006, Ch. 605, Sec. 1. Effective January 1, 2007.)

6126.5. (a) In addition to any remedies and penalties available in any enforcement action brought in the name of the people of the State of California by the Attorney General, a district attorney, or a city attorney, acting as a public prosecutor, the court shall award relief in the enforcement action for any person who obtained services offered or provided in violation of Section 6125 or 6126 or who purchased any goods, services, or real or personal property in connection with services offered or provided in violation of Section 6125 or 6126 against the person who violated Section 6125 or 6126, or who sold goods, services, or property in connection with that violation. The court shall consider the following relief:

(1) Actual damages.

(2) Restitution of all amounts paid.

(3) The amount of penalties and tax liabilities incurred in connection with the sale or transfer of assets to pay for any goods, services, or property.

(4) Reasonable attorney's fees and costs expended to rectify errors made in the unlawful practice of law.

(5) Prejudgment interest at the legal rate from the date of loss to the date of judgment.

(6) Appropriate equitable relief, including the rescission of sales made in connection with a violation of law.

(b) The relief awarded under paragraphs (1) to (6), inclusive, of subdivision (a) shall be distributed to, or on behalf of, the person for whom it was awarded or, if it is impracticable to do so, shall be distributed as may be directed by the court pursuant to its equitable powers.

(c) The court shall also award the Attorney General, district attorney, or city attorney reasonable attorney's fees and costs and, in the court's discretion, exemplary damages as provided in Section 3294 of the Civil Code.

(d) This section shall not be construed to create, abrogate, or otherwise affect claims, rights, or remedies, if any, that may be held by a person or entity other than those law enforcement agencies described in subdivision (a). The remedies provided in this section are cumulative to each other and to the remedies and penalties provided under other laws.

(Added by Stats. 2001, Ch. 304, Sec. 1. Effective January 1, 2002.)

6126.7. (a) It is a violation of subdivision (a) of Section 6126 for any person who is not an attorney to literally translate from English into another language, in any document, including an advertisement, stationery, letterhead, business card, or other comparable written material, any words or titles, including, but not limited to, "notary public," "notary," "licensed," "attorney," or "lawyer," that imply that the person is an attorney. As provided in this subdivision, the literal translation of the phrase "notary public" into Spanish as "notario publico" or "notario," is expressly prohibited.

(b) For purposes of this section, "literal translation of" or "to literally translate" a word, title, or phrase from one language means the translation of a word, title, or phrase without regard to the true meaning of the word or phrase in the language that is being translated.

(c) (1) In addition to any other remedies and penalties prescribed in this article, a person who violates this section shall be subject to a civil penalty not to exceed one thousand dollars (\$1,000) per day for each violation, to be assessed and collected in a civil action brought by the State Bar.

(2) In assessing the amount of the civil penalty, the court may consider relevant circumstances presented by the parties to the case, including, but not limited to, the following:

(A) The nature and severity of the misconduct.

(B) The number of violations.

(C) The length of time over which the misconduct occurred, and the persistence of the misconduct.

(D) The wilfulness of the misconduct.

(E) The defendant's assets, liabilities, and net worth.

(3) The court shall grant a prevailing plaintiff reasonable attorneys' fees and costs.

(4) A civil action brought under this section shall be commenced within four years after the cause of action accrues.

(5) In a civil action brought by the State Bar under this section, the civil penalty collected shall be paid to the State Bar and allocated to the fund established pursuant to Section 6033 to provide free legal services related to immigration reform act services to clients of limited means or to a fund for the purposes of mitigating unpaid claims of injured immigrant clients under Section 22447, as directed by the Board of Trustees of the State Bar. The board shall annually report any collection and expenditure of funds for the preceding calendar year, as authorized by this section, to the Assembly and Senate Committees on Judiciary. The report required by this section may be included in the report described in Section 6086.15.

(Added by Stats. 2013, Ch. 574, Sec. 1. (AB 1159) Effective October 5, 2013.)

6127. The following acts or omissions in respect to the practice of law are contempts of the authority of the courts:

(a) Assuming to be an officer or attorney of a court and acting as such, without authority.

(b) Advertising or holding oneself out as practicing or as entitled to practice law or otherwise practicing law in any court, without being an active licensee of the State Bar.

Proceedings to adjudge a person in contempt of court under this section are to be taken in accordance with the provisions of Title V of Part III of the Code of Civil Procedure.

(Amended by Stats. 2018, Ch. 659, Sec. 92. (AB 3249) Effective January 1, 2019.)

6127.5. Nothing in Sections 6125, 6126 and 6127 shall be deemed to apply to the acts and practices of a law corporation duly certificated pursuant to the Professional Corporation Act, as contained in Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code, and pursuant to Article 10 (commencing with Section 6160) of Chapter 4 of Division 3 of this code, when the law corporation is in compliance with the requirements of (a) the Professional Corporation Act; (b) Article 10 (commencing with Section 6160) of Chapter 4 of Division 3 of this code; and (c) all other statutes and all rules and regulations now or hereafter enacted or adopted pertaining to such corporation and the conduct of its affairs.

(Added by Stats. 1968, Ch. 1375.)

6128. Every attorney is guilty of a misdemeanor who either:

(a) Is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party.

(b) Willfully delays his client's suit with a view to his own gain.

(c) Willfully receives any money or allowance for or on account of any money which he has not laid out or become answerable for. Any violation of the provisions of this section is punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both.

(Amended by Stats. 1976, Ch. 1125.)

6129. Every attorney who, either directly or indirectly, buys or is interested in buying any evidence of debt or thing in action, with intent to bring suit thereon, is guilty of a misdemeanor.

Any violation of the provisions of this section is punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both.

(Amended by Stats. 1976, Ch. 1125.)

6130. No person, who has been an attorney, shall while a judgment of disbarment or suspension is in force appear on his own behalf as plaintiff in the prosecution of any action where the subject of the action has been assigned to him subsequent to the entry of the judgment of disbarment or suspension and solely for purpose of collection.

(Added by Stats. 1939, Ch. 34.)

6131. Every attorney is guilty of a misdemeanor and, in addition to the punishment prescribed therefor, shall be disbarred:

(a) Who directly or indirectly advises in relation to, or aids, or promotes the defense of any action or proceeding in any court the prosecution of which is carried on, aided or promoted by any person as district attorney or other public prosecutor with whom such person is directly or indirectly connected as a partner.

(b) Who, having himself prosecuted or in any manner aided or promoted any action or proceeding in any court as district attorney or other public prosecutor, afterwards, directly or indirectly, advises in relation to or takes any part in the defense thereof, as attorney or otherwise, or who takes or receives any valuable consideration from or on behalf of any defendant in any such action upon any understanding or agreement whatever having relation to the defense thereof.

This section does not prohibit an attorney from defending himself in person, as attorney or counsel, when prosecuted, either civilly or criminally.

(Added by Stats. 1939, Ch. 34.)

6132. Any law firm, partnership, corporation, or association which contains the name of an attorney who is disbarred, or who resigned with charges pending, in its business name shall remove the name of that attorney from its business name, and from all signs, advertisements, letterhead, and other materials containing that name, within 60 days of the disbarment or resignation.

(Added by Stats. 1988, Ch. 1159, Sec. 27.)

6133. Any attorney or any law firm, partnership, corporation, or association employing an attorney who has resigned, or who is under actual suspension from the practice of law, or is disbarred, shall not permit that attorney to practice law or so advertise or hold himself or herself out as practicing law and shall supervise him or her in any other assigned duties. A willful violation of this section constitutes a cause for discipline.

(Added by Stats. 1988, Ch. 1159, Sec. 28.)