

# Making the State Bar Complaint System ADA Accessible

By Thomas F. Coleman  
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The California State Bar has its main office in a commercial building in San Francisco. Such structures must comply with the physical access requirements of the Americans with Disabilities Act.

Common areas of the entire building as well as the offices of the State Bar must be accessible to people with disabilities. Being an association for lawyers, I have no doubt that State Bar employees are very familiar with ADA's physical access requirements. But I have reason to doubt their awareness of the organization's duties to ensure that people with mental disabilities have full and equal access to services of the State Bar.

As an arm of the Supreme Court, the State Bar is a government agency. Government Code Section 11135 requires all state-funded agencies to obey Title II of the ADA. This includes compliance with regulations and judicial decisions implementing Title II and other federal disability rights laws.

Federal regulations and judicial opinions make it clear that the ADA protects more than physical access. People with physical *and* mental disabilities must be provided meaningful participation in all services that a public entity offers.

Because State Bar officials know that clients of some attorneys have mental disabilities that diminish their access to bar association services, federal law requires the organization to remove unnecessary barriers to participation by these individuals in those services.

One of the most important programs of the State Bar is its complaint system, the primary purpose of which is to assure the protection of the public. (*Tenner v. State Bar*, 28 Cal.3d 202, 206 (1980))

Investigating complaints serves other goals too, such as protecting the integrity of the judicial system and legal profession, maintaining high professional standards for attorneys, and preserving public confidence in the legal profession. (*Gold v. State Bar*, 49 Cal.3d 908, 913 (1989)) These goals are frustrated when a segment of the public lacks meaningful access to this system.

The State Bar professes a policy that people with disabilities should have full and equal access to its proceedings, services, and programs. Its website says that people with disabilities can contact the State Bar for "help or reasonable accommodation in connection with filing a misconduct complaint against an attorney licensed by the State Bar."

The website is silent, however, about how someone with a cognitive disability would gain access to the complaint process. Some disabilities make it impossible for people to make a request for assistance

or to even know when they are a victim of attorney misconduct.

Research by Spectrum Institute into the practices of court-appointed attorneys representing seniors and other adults with disabilities in conservatorship proceedings has revealed a pattern of ethical violations and many instances of blatant malpractice. Family members involved in conservatorship proceedings also have observed such violations being committed against their disabled loved-ones.

When witnesses to attorney misconduct have filed complaints with the State Bar against court-appointed attorneys, they have been told they lack standing to complain. They have been informed that only the actual client or an authorized representative may initiate the investigation process.



This is a Catch-22 for clients with mental disabilities. A complaint will only be investigated when the actual client files it, but some clients with such disabilities are unable to do so.

I recently raised this issue with an official at the State Bar and got the same response – no third party standing is allowed. Reference was made to Business and Professions Code Section 6093.5.

Section 6093.5 says no such thing. That statute deals with communications *from* the State Bar to third parties, not communications *to* the State Bar. Once I realized this statutory rationale was illusory, I did some more research. What I found were authorities that completely contradict this unjustified excuse for denying investigations.

Business and Professions Code Section 6044 authorizes the State Bar, with or without the filing of a complaint, to initiate and conduct investigations of all matters relating to the discipline of a lawyer or any other matter within its jurisdiction. Business and Professions Code Section 6077 gives it the power to discipline attorneys who willfully breach the rules of professional conduct. Therefore, even if a communication to the State Bar about attorney misconduct were not considered to be a formal complaint, an investigation could be initiated anyway.

The State Bar is sending inconsistent messages. When it wants to close a complaint without investigation, staff members tell families or others that only the actual client can file a complaint. This advice directly contradicts a website statement that “The State Bar’s Office of Chief Trial Counsel handles complaints from clients, members of the public, and other attorneys over unethical professional conduct.”

So there it is in black and white. Members of the public are authorized to file complaints when they become aware that an attorney has breached ethical or professional duties.

Attorneys who become aware of such misconduct can also file complaints. Although they may not have a legal duty to do so, attorneys may have a

moral or ethical obligation to report known improprieties of other lawyers to the State Bar (San Francisco Bar Association Opinion 1977-1). A moral obligation is even more imperative when the victim is someone with a cognitive disability.

The failure of the State Bar to process third-party complaints undermines its own policies on accessibility, is inconsistent with provisions of the State Bar Act, and also violates Title II of the ADA. This failure not only tarnishes the organization’s own reputation but also implicates the California Supreme Court since the State Bar operates under the supervision of that court.

By giving bad information to the public about who may file complaints, employees of the State Bar are violating Business and Professions Code Section 6092.5. That statute obligates the State Bar to “Inform the public, local bar associations and other organizations, and any other interested parties about the work of the State Bar and the right of all persons to make a complaint.” *All persons*. There is no ambiguity in that.

New legislation is not needed to fix this problem. Business and Professions Code Section 6086 delegates authority to the board of trustees to adopt rules for “the mode of procedure in all cases of complaints against licensees.”

The first step to make the complaint process accessible to people with cognitive disabilities is for the trustees to implement what the law already allows – third party standing to initiate complaints. Other measures should also be explored, such as annual audits of attorney performance in a random sample of conservatorship cases and imposing discipline when an audit reveals misconduct.

If the State Bar does not initiate such reforms on its own volition, the California Supreme Court should direct it to so, thereby making ADA accessibility to the complaint and disciplinary system a reality.

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