

**Rule 8.4 [1-120] Misconduct**  
**(Commission's Proposed Rule Adopted on January 22 – 23, 2016 – Clean Version)**

It is professional misconduct for a lawyer to:

- (a) violate these Rules or the State Bar Act, knowingly\* assist, solicit or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that involves moral turpitude or that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) engage in conduct involving moral turpitude, dishonesty, fraud,\* deceit or reckless or intentional misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate these Rules, the State Bar Act, or other law; or
- (f) knowingly\* assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

**Comment**

[1] A violation of this Rule can occur when a lawyer is acting in propria persona or when a lawyer is not practicing law or acting in a professional capacity.

[2] Paragraph (a) does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

[3] A lawyer may be disciplined for criminal acts as set forth in Business and Professions Code §§ 6101 et seq., or if the criminal act constitutes “other misconduct warranting discipline” as defined by California Supreme Court case law. See *In re Kelley* (1990) 52 Cal.3d 487 [276 Cal.Rptr. 375].

[4] A lawyer may be disciplined under Business and Professions Code § 6106 for acts of gross negligence involving moral turpitude.

[5] Paragraph (c) does not apply where a lawyer advises clients or others about, or supervises, lawful covert activity in the investigation of violations of civil or criminal law or constitutional rights, provided the lawyer's conduct is otherwise in compliance with these Rules and the State Bar Act.

[6] Paragraph (d) does not prohibit activities of a lawyer that are protected by the First Amendment to the United States Constitution or by Article I, § 2 of the California Constitution.



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- (c) engage in conduct involving ~~moral turpitude~~, dishonesty, fraud,\* deceit or reckless or intentional misrepresentation;
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- (f) knowingly\* assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

### Comment

[1] A violation of this Rule can occur when a lawyer is acting in propria persona or when a lawyer is not practicing law or acting in a professional capacity.

[2] Paragraph (a) does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

[3] A lawyer may be disciplined for criminal acts as set forth in Business and Professions Code §§ 6101 et seq., or if the criminal act constitutes “other misconduct warranting discipline” as defined by California Supreme Court case law. *See In re Kelley* (1990) 52 Cal.3d 487 [276 Cal.Rptr. 375].

[4] A lawyer may be disciplined under Business and Professions Code § 6106 for any act involving moral turpitude, dishonesty or corruption, whether intentional, reckless or grossly negligent.

[5] Paragraph (c) does not apply where a lawyer advises clients or others about, or supervises, lawful covert activity in the investigation of violations of civil or criminal law or constitutional rights, provided the lawyer's conduct is otherwise in compliance with these Rules and the State Bar Act.

[6] Paragraphs (c) and (d) do not prohibit activities of a lawyer that are protected by the First Amendment to the United States Constitution or by Article I, § 2 of the California Constitution.



**Proposed Rule 8.4 [1-120] Misconduct  
Synopsis of Public Comments**

**TOTAL = XX**    **A = X**  
**D = X**  
**M = X**  
**NI = X**

No.	Commenter/Signatory	Comment on Behalf of Group?	A/D/M/NI <sup>1</sup>	Rule Section or Cmt.	Comment	RRC Response
X-2016-9	Mahacek, Jim (7-13-16)				<p>Current rules demand that any record of public reprobate becomes a life time reflection on the attorney. This is especially unfair to new attorneys who lack experience with sometimes very tricky and vague rules.</p> <p>An attorney so disciplined should have the right to apply to a state bar judge after an appropriate amount of time based on the severity of the discipline and have the discipline expunged if the attorney can show good conduct and rehabilitation.</p>	<p>Member records expungement policies are beyond the scope of the Commission's rule revision project because those policies are addressed in provisions other than the Rules of Professional Conduct (see, e.g., Rule 9.6(b) of the California Rules of Court).</p> <p>Regarding the commenter's concern about "vague" rules, consistent with the Commission's Charter the Commission has proposed amendments that are intended to eliminate ambiguities and facilitate the function of the rules as disciplinary standards.</p>
X-2016-32r	Law Professors (Zitrin) (07-25-16)			8.4(b) & (c)	<p>ABA Model Rules 8.4(b) and (c) define misconduct as both commission of "a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer," or engag[ing] in conduct involving dishonesty, fraud, deceit or misrepresentation." Proposed California rule 8.4(C) combines both of these phrases. However, it adds engaging in "conduct involving moral turpitude" to both phrases. This is may be redundant with respect to crimes.</p>	<p>The Commission has revised the proposed rule to remove the references to "moral turpitude" from both 8.4(b) and 8.4(c). The Commission has modified a comment to provide notice to lawyers that Bus. &amp; Prof. Code § 6106 remains a source of discipline for any act of moral turpitude.</p> <p>In response to another comment, the Commission has added language to a Comment to make clear that paragraph (c), like paragraph (d), does not</p>

<sup>1</sup> A = AGREE with proposed Rule

D = DISAGREE with proposed Rule

M = AGREE ONLY IF MODIFIED

NI = NOT INDICATED

**Proposed Rule 8.4 [1-120] Misconduct  
Synopsis of Public Comments**

**TOTAL = XX**    **A = X**  
**D = X**  
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No.	Commenter/Signatory	Comment on Behalf of Group?	A/D/M/NI <sup>1</sup>	Rule Section or Cmt.	Comment	RRC Response
						extend to First Amendment protected activity.
X-2016-33	Narcis Brasov	No				
X-2016-52r	Law Professors (Zitrin) (08-24-16)	Yes		8.4(b) & (c)	ABA Model Rules 8.4(b) and (c) define misconduct as both commission of “a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer,” or engag[ing] in conduct involving dishonesty, fraud, deceit or misrepresentation.” Proposed California rule 8.4(C) combines both of these phrases. However, it adds engaging in “conduct involving moral turpitude” to both phrases. This is may be redundant with respect to crimes.	The Commission has revised the proposed rule to remove the references to “moral turpitude” from both 8.4(b) and 8.4(c). The Commission has modified a comment to provide notice to lawyers that Bus. & Prof. Code § 6106 remains a source of discipline for any act of moral turpitude.  In response to another comment, the Commission has added language to a Comment to make clear that paragraph (c), like paragraph (d), does not extend to First Amendment protected activity.
Public Hearing	Law Professors (Zitrin, Richard) (Provided oral public hearing testimony on July 26, 2016. See pages 26-28 of the public hearing transcript.)	Yes	M	8.4(c)	Rule’s prohibition of moral turpitude is vague and gives OCTC too much discretion. The concept is already addressed in B&P Code section 6106.	The Commission has revised the proposed rule to remove the references to “moral turpitude” from both 8.4(b) and 8.4(c). The Commission has modified a comment to provide notice to lawyers that Bus. & Prof. Code § 6106 remains a source of discipline for any act of moral turpitude.