

**September 21, 2016 Tuft Email to Drafting Team, cc Difuntorum, Mohr & A. Tuft:**

At our last meeting it was decided that comments by commission members on the proposed rules that are out for public comment should be sent to the drafting team for consideration.

I raised a concern with the use of the word “guidance” in Comment [4] to Rule 1-100. The sources identified in Rule 1-100(b)(2) are obligatory and not guidance. The comment should simply state “In addition to the sources identified in paragraph (b)(2) . . . .” and delete the word “guidance.”

**September 21, 2016 Martinez Email to Drafting Team, cc Difuntorum, Mohr & A. Tuft:**

Agreed. But would it be better to use the word “authorities” rather than “sources”? Or “sources of authority”?

**September 21, 2016 Kornberg Email to Drafting Team, cc Difuntorum, Mohr & A. Tuft:**

I think Mark's point is well taken and Raul's solution is preferred.

**September 21, 2016 Tuft Email to Drafting Team, cc Difuntorum, Mohr & A. Tuft:**

“Authorities” is fine with me.

**September 21, 2016 Chou Email to Drafting Team, cc Difuntorum, Mohr & A. Tuft:**

I agree.

**September 21, 2016 Stout Email to Drafting Team, cc Difuntorum, Mohr & A. Tuft:**

I agree with both suggestions.



## **Rule 1.0 [1-100] Purpose and Function of the Rules of Professional Conduct**

### **(a) Purpose.**

The following rules are intended to regulate professional conduct of lawyers through discipline. They have been adopted by the Board of Trustees of the State Bar of California and approved by the Supreme Court of California pursuant to Business and Professions Code §§ 6076 and 6077 to protect the public, the courts, and the legal profession; protect the integrity of the legal system; and promote the administration of justice and confidence in the legal profession. These Rules together with any standards adopted by the Board of Trustees pursuant to these Rules shall be binding upon all lawyers.

### **(b) Function.**

- (1) A willful violation of any of these rules is a basis for discipline.
- (2) The prohibition of certain conduct in these rules is not exclusive. Lawyers are also bound by applicable law including the State Bar Act (Bus. & Prof. Code, § 6000 et seq.) and opinions of California courts.
- (3) A violation of a rule does not itself give rise to a cause of action for damages caused by failure to comply with the rule. Nothing in these Rules or the Comments to the Rules is intended to enlarge or to restrict the law regarding the liability of lawyers to others.

### **(c) Purpose of Comments.**

The comments are not a basis for imposing discipline but are intended only to provide guidance for interpreting and practicing in compliance with the Rules.

### **(d) These Rules may be cited and referred to as the “California Rules of Professional Conduct.”**

## **Comment**

[1] The Rules of Professional Conduct are intended to establish the standards for lawyers for purposes of discipline. See *Ames v. State Bar* (1973) 8 Cal.3d 910, 917 [106 Cal.Rptr. 489]. Therefore, failure to comply with an obligation or prohibition imposed by a rule is a basis for invoking the disciplinary process. Because the Rules are not designed to be a basis for civil liability, a violation of a rule does not itself give rise to a cause of action for enforcement of a rule or for damages caused by failure to comply with the rule. *Stanley v. Richmond* (1995) 35 Cal.App.4th 1070, 1097 [41 Cal.Rptr.2d 768]. Nevertheless, a lawyer’s violation of a rule may be evidence of breach of a lawyer’s fiduciary or other substantive legal duty in a non-disciplinary context. *Id.*; *Mirabito v. Liccardo* (1992) 4 Cal.App.4th 41, 44 [5 Cal.Rptr.2d 571]. A violation of a rule may have other non-disciplinary consequences. See e.g., *Fletcher v. Davis* (2004) 33 Cal.4th 61, 71-72 [14 Cal.Rptr.3d 58] (enforcement of attorney’s lien); *Chambers v. Kay* (2002) 29 Cal.4th 142, 161 [126 Cal.Rptr.2d 536] (enforcement of fee sharing agreement).

[2] While the rules are intended to regulate professional conduct of lawyers, a violation of a rule can occur when a lawyer is not practicing law or acting in a professional capacity.

[3] A willful violation of a rule does not require that the lawyer intend to violate the rule. *Phillips v. State Bar* (1989) 49 Cal.3d 944, 952 [264 Cal.Rptr. 346]; and see Business and Professions Code § 6077.

[4] In addition to the ~~sources of guidance~~[authorities](#)<sup>1</sup> identified in paragraph (b)(2), opinions of ethics committees in California, although not binding, should be consulted for guidance on proper professional conduct. Ethics opinions and rules and standards promulgated by other jurisdictions and bar associations may also be considered.

[5] The disciplinary standards created by these Rules are not intended to address all aspects of a lawyer's professional obligations. A lawyer, as a member of the legal profession, is a representative and advisor of clients, an officer of the legal system and a public citizen having special responsibilities for the quality of justice. A lawyer should be aware of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons\* who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers are encouraged to devote professional time and resources and use civic influence to ensure equal access to the system of justice for those who because of economic or social barriers cannot afford or secure adequate legal counsel. In meeting this responsibility, every lawyer should aspire to render at least fifty hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should provide a substantial\* majority of such hours to indigent individuals or to nonprofit organizations with a primary purpose of providing services to the poor or on behalf of the poor or disadvantaged. See Business and Professions Code § 6073 (financial support for programs providing pro bono legal services).

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<sup>1</sup> [Drafting team consensus per 9/21/16 correspondence to recommend substitution of "authorities" for "sources of guidance" because paragraph \(b\)\(2\) does not reference sources of guidance" but rather binding "applicable law." This point was also raised by Mr. Tuft during the Commission's 8/26/2016 meeting.](#)