

Rule 8.1 False Statement Regarding Application for Admission to Practice Law

- (a) An applicant for admission to practice law shall not knowingly make a false statement of material fact or knowingly fail to disclose a material fact in connection with that person's own application for admission.
- (b) A lawyer shall not knowingly make a false statement of material fact in connection with another person's application for admission to practice law.
- (c) An applicant for admission to practice law, or a lawyer in connection with an application for admission, shall not fail to disclose a fact necessary to correct a statement known by the applicant or the lawyer to have created a material misapprehension in the matter, except that this Rule does not authorize disclosure of information otherwise protected by Rule 1.6 and Business and Professions Code § 6068(e).
- (d) As used in this Rule, "admission to practice law" includes admission or readmission to membership in the State Bar; reinstatement to active membership in the State Bar; and any similar provision relating to admission or certification to practice law in California or elsewhere.
- (e) This Rule does not apply to a lawyer in representing an applicant in proceedings relating to admission to practice law.

Comment

[1] A person who makes a false statement in connection with that person's own application for admission to practice law may be subject to discipline under this Rule after that person has been admitted.

[3] A lawyer's duties with respect to a *pro hac vice* application or other application to a court for admission to practice law are governed by Rule 3.3.

Rule 8.1 ~~[1-200]~~ False Statement Regarding Application for Admission, ~~Readmission, Certification or Registration~~ to Practice Law

- (a) ~~This Rule applies to applications for admission, readmission, certification or registration submitted to the State Bar or a court, including applications for: admission to practice law under Business and Professions Code §§ 6060 and 6062; readmission or reinstatement to practice law pursuant to California Rules of Court, rule 9.10(f); certification as a legal specialist under California Rules of Court, rule 9.35; and appearance and practice under California Rules of Court, rules 9.40–9.46.~~
- (~~b~~a) An applicant for admission, ~~readmission, certification or registration~~ to practice law shall not knowingly* make a false statement of material fact; or knowingly fail to disclose a material fact, ~~or fail to correct a statement known* to be false~~ in connection with that person's own application for admission.
- (b) A lawyer shall not knowingly make a false statement of material fact in connection with another person's application for admission to practice law.
- (c) ~~A lawyer supporting or opposing another person's~~ An applicant for admission to practice law, or a lawyer in connection with an application for admission, ~~readmission, certification or registration, shall not, as part of the application process, knowingly* make a false statement of material fact, shall not~~ fail to disclose a ~~material fact, or fail~~ necessary to correct a statement known* ~~to be false.~~ by the applicant or the lawyer to have created a material misapprehension in the matter, except that this Rule does not authorize disclosure of information otherwise protected by Rule 1.6 and Business and Professions Code § 6068(e).
- (d) As used in this Rule, "admission to practice law" includes admission or readmission to membership in the State Bar; reinstatement to active membership in the State Bar; and any similar provision relating to admission or certification to practice law in California or elsewhere.
- (~~d~~e) This Rule does not apply to a lawyer in representing an applicant in proceedings relating to admission, ~~readmission, certification or registration~~ to practice law.

Comment

[1] A person* who makes a false statement in connection with that person's own application ~~can for admission to practice law may~~ be subject to discipline under this Rule ~~or to later cancellation of that person's admission or other authorization~~ after that person has been admitted.

[2] ~~In representing an applicant for admission, readmission, certification or registration, a lawyer is subject to other applicable rules and the State Bar Act.~~

[3] A lawyer's duties with respect to a *pro hac vice* application or other application to a court for admission to practice law are governed by Rule 3.3.

Rule 8.1 False Statement Regarding Application for Admission to Practice Law

- (a) An applicant for admission to practice law shall not knowingly make a false statement of material fact or knowingly fail to disclose a material fact in connection with that person's own application for admission.
- (b) A lawyer shall not knowingly make a false statement of material fact in connection with another person's application for admission to practice law.
- (c) An applicant for admission to practice law, or a lawyer in connection with an application for admission, shall not fail to disclose a fact necessary to correct a statement known by the applicant or the lawyer to have created a material misapprehension in the matter, except that this Rule does not authorize disclosure of information otherwise protected by Rule 1.6 and Business and Professions Code § 6068(e).
- (d) As used in this Rule, "admission to practice law" includes admission or readmission to membership in the State Bar; reinstatement to active membership in the State Bar; ~~an application for permission to appear pro hac vice~~; and any similar provision relating to admission or certification to practice law in California or elsewhere.
- (e) This Rule does not apply to a lawyer in representing an applicant in proceedings relating to admission to practice law.

Comment

[1] A person who makes a false statement in connection with that person's own application for admission to practice law may be subject to discipline under this Rule after that person has been admitted.

~~[2] This Rule is subject to the provisions of the Fifth Amendment of the United States Constitution and corresponding provisions of applicable state constitutions.~~

~~[3] A lawyer representing an applicant for admission to practice law is governed by the rules applicable to the client-lawyer relationship, including Rule 1.6. A lawyer representing a lawyer who is the subject of a disciplinary proceeding is not governed by this Rule but is subject to the requirements of Rule 3.3.~~

~~[4] The examples in paragraph (d) are illustrative. As used in paragraph (d), "similar provision relating to admission or certification" includes, but is not limited to, an application by an out-of-state attorney for admission to practice law under Business and Professions Code section 6062; an application to appear as counsel pro hac vice under Rule of Court 9.40; an application by military counsel to represent a member of the military in a particular cause under Rule of Court 9.41; an application to register as a certified law student under Rule of Court 9.42; proceedings for certification as a Registered Legal Services attorney under Rule of Court 9.45 and related State Bar Rules; certification as a Registered In-house Counsel under Rule of Court 9.46 and related State Bar Rules; certification as an Out-of-State Attorney Arbitration Counsel under Rule of Court 9.43, Code of Civil Procedure section 1282.4, and related State Bar Rules; and certification as a Registered Foreign Legal Consultant under Rule of Court 9.44 and related State Bar Rules.~~

~~[5]~~ [3] This Rule shall not prevent a lawyer from representing an applicant for admission to practice in proceedings related to such admission. A lawyer's duties with respect to a pro hac

vice application or other application to a court for admission to practice law are governed by
~~Other laws or rules govern the responsibilities of a lawyer representing an applicant for~~
~~admission. See, e.g., Business and Professions Code sections 6068(c), (d) and (e);~~ Rule 3.3.

**Proposed Rule 8.1 [1-200] False Statement Regarding Application for
Admission, Readmission, Certification or Registration
Synopsis of Public Comments**

| | |
|------------------|---------------|
| TOTAL = 3 | A = 0 |
| | D = 0 |
| | M = 3 |
| | NI = 0 |

| No. | Commenter/Signatory | Comment on Behalf of Group? | A/D/M/NI ¹ | Rule Section or Cmt. | Comment | RRC Response |
|-------------|---|-----------------------------|-----------------------|----------------------|---|--|
| X-2016-43am | Committee on Professional Responsibility and Conduct (COPRAC) (Baldwin) (8/12/16) | Yes | M | 8.1 | <p>COPRAC supports the proposed rule, with the following significant caveat.</p> <p>Unlike present Rule 1-200, proposed Rule 8.1 includes within its scope applications for admission not only made to the State Bar, but also applications to a court, including <i>pro hac vice</i> applications.</p> <p>Proposed Rule 8.1, however, contains a different standard of truthfulness than that applicable to lawyer statements made to a court or other tribunal. In particular, proposed Rule 3.3 [5-200] and Bus. & Prof. Code § 6068(d) each prohibits an attorney from making any “false statement of fact” to a tribunal; whereas proposed Rule 8.1 [1-200] prohibits an attorney only from making a false statement of “material” fact. With respect to applications for admission, readmission, certification or registration made to a court, then, the applicable standards of truthfulness are different. Moreover, permitting an attorney, as proposed Rule 1-200 does, to</p> | The Commission agrees and has revised proposed Rule 8.1 to avoid the conflict between the rule and proposed Rule 3.3. (See Comment [2].) |

¹ A = AGREE with proposed Rule D = DISAGREE with proposed Rule M = AGREE ONLY IF MODIFIED NI = NOT INDICATED

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| | | | | | <p>make knowingly false statements about non-material matters to the State Bar or any tribunal is contrary to an attorney's duty of honesty under the State Bar Act. (See Bus. & Prof. Code §§ 6068(d) and 6106).</p> <p>Because proposed Rule 1-200 cannot be harmonized with the prohibition in the State Bar Act on making knowingly false statements of fact to a tribunal or engaging in dishonest conduct, the limiting term "material" should not be used in Rule 1-200. Rather, the Rule should prohibit an attorney from knowingly making any false statement of fact, not merely a false statement of "material" fact. 2</p> <p>COPRAC recognizes that the present formulation of Rule 1-200 and ABA Model Rule 8.1 both include the materiality limitation, but each applies only to statements made in connection with an application for admission to the State Bar, not applications made to a tribunal, such that the inconsistent standard of truthfulness present in proposed Rule 8.1 is not present in either.</p> | |

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|------------|---|-----------------------------|-----------------------|----------------------|---|--|
| X-2016-76u | Los Angeles County Bar Association (LACBA) (Schmid) (9/21/16) | Y | M | 8.1 | <p>1. With respect to section (c) of Proposed Rule 8.1 [False Statement Regarding Application for Admission, Readmission, Certification or Registration (current Rule 1-200)], LACBA does not believe that it is appropriate to impose on a lawyer supporting or opposing another person's application the dual burden of (1) disclosing all material facts relating to that application and (2) correcting any statement contained in that application. For example, if a lawyer is opposing an application on specific grounds (such as moral character), why should that lawyer have any obligation to correct a false statement or an omission made by the applicant that is not relevant to the opposition?</p> <p>2. LACBA is also concerned that the language changes from current Rule 1- 200 inadvertently expose an applicant or a lawyer supporting or opposing another person's application to technical violations for immaterial or unintended misstatements or omissions. While the first applicable prohibitory clause in both sections (b) and (c) of this</p> | <p>1. The Commission has revised paragraph (c) to address the commenter's concerns. See revised paragraphs (b) and (c). Paragraph (c) has been modified to require the lawyer to disclose only those facts known to the lawyer "to have created a material misapprehension in the matter."</p> <p>2. See response to #1.</p> |

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| | | | | | <p>rule (i.e., “knowingly make a false statement of material fact”) is qualified by both knowledge and materiality, the second clause (i.e., “fail to disclose a material fact”) and the third clause (i.e., “fail to correct a statement known to be false”) of sections (b) and (c) are not so qualified. LACBA recommends that sections (b) and (c) be qualified by both knowledge and materiality.</p> <p>3. With respect to the second applicable prohibitory clause in both sections (b) and (c), the omission should be known to the applicant or the lawyer (as is the case with the current version of the rule).</p> <p>4. With respect to the third applicable prohibitory clause in both sections (b) and (c), the false statement should be material in order to impose a burden of correction on the applicant or the lawyer. As written, this third clause (i.e., “fail to correct a statement known to be false”) obligates an applicant or a lawyer to correct a statement known to be false without regard to whether the statement is material – even though there is</p> | <p>3. See response to #1.</p> <p>4. See response to #1. The Commission believes that the focus should not be on the materiality of the fact but rather on the materiality of the misapprehension that a previous misstatement might have caused.</p> |

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| | | | | | no prohibition on making a false statement of fact that is not material. | |
| X-2016-104bk | Office of Chief Trial Counsel (OCTC) (9/26/16) | Y | M | 8.1 | <p>1. OCTC has concerns about the use of “knowingly” in this rule for the same reasons expressed regarding that term in proposed Rule 1.9, proposed Rule 3.3, 4.1, and the General Comments section of this letter. False statements made with reckless disregard, gross negligence, or willful blindness are, and should be, disciplinable. Moreover, the “knowing” requirement is inconsistent with Supreme Court’s direction for applicants and would lessen the current standards required of applicants by the Supreme Court.</p> <p>2. OCTC is concerned that this proposed rule and Comment 1 to this rule would only prohibit a false statement of fact or law, not other misleading statements. . . . California has long held that an attorney is required to refrain from misleading and deceptive acts without qualification.</p> | <p>1. The Commission disagrees that “knowingly” is an inappropriate standard under the Rule. Under proposed rule 1.0.1(f), “‘Knowingly,’ ‘known,’ or ‘knows’ means actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances.” Under that definition, a person cannot avoid an allegation of “willful blindness” by asserting that the person did not have knowledge.</p> <p>2. The Commission believes that a prohibition on misstatements of fact or law is an appropriate limitation in an application process. The Commission does not understand what other “acts” would be relevant in this context.</p> |

