

Rule 8.4 [1-120] Misconduct

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 reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) engage in conduct involving, dishonesty, fraud,* deceit or reckless or intentional misrepresentation;
- (d) 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
- (e) knowingly* assist, solicit, or induce 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 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] Paragraph (c) 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, 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
- ~~(e)~~ knowingly* assist, solicit, or induce a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

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[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.

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[6] Paragraphs (c) ~~and (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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Synopsis of Public Comments**

TOTAL = 10 **A = 1**
D = 1
M = 7
NI = 1

No.	Commenter/Signatory	Comment on Behalf of Group?	A/D/M/NI ¹	Rule Section or Cmt.	Comment	RRC Response
X-2016-9	Mahacek, Jim (7-13-16)		NI		<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)		M	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</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 Comment 4 to provide notice to lawyers that Bus. & Prof. Code § 6106 remains a source of discipline for acts of moral turpitude.</p> <p>In response to another comment, the Commission has modified Comment 6 to make</p>

¹ A = AGREE with proposed Rule

D = DISAGREE with proposed Rule

M = AGREE ONLY IF MODIFIED

NI = NOT INDICATED

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					redundant with respect to crimes.	clear that paragraph (c) does not extend to activities protected by the First Amendment to the US Constitution or Article I, § 2 of the California Constitution.
X-2016-33	Brasov, Narcis	No	D		Rule infringes upon freedom of speech and religion by subjecting lawyers to discipline for expressing views on the wrong side of the official orthodoxy.	The Commission disagrees that the Rule infringes on freedom of speech or religion. In particular, in response to another comment, the Commission has modified Comment 6 to make clear that paragraph (c) does not extend to activities protected by the First Amendment to the US Constitution or Article I, § 2 of the California Constitution. The other paragraphs of the Rule address defined conduct that falls outside Constitutional protections.
X-2016-52r	Law Professors (Zitrin) (08-24-16)	Yes	M	8.4(b) & (c)	See X-2016-32r Law Professors (Zitrin) dated July 25, 2016, for the comment synopsis. The comments are identical and the only difference is the signatories.	See response to X-2016-32r.
X-2016-43bj	Committee on Professional Responsibility and Conduct (COPRAC) (Baldwin) (9-8-16)	Y	M	Cmt. 4	Comment 4 should be deleted as it risks inconsistency with established case law.	The Commission believes Comment 4 remains appropriate to provide notice to lawyers that Bus. & Prof. Code § 6106 remains a source of discipline for acts of moral turpitude. The Commission has modified Comment 4 and believes that as modified it is

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						not inconsistent with the case law.
X-2016-66ad	San Diego County Bar Association (SDCBA) (Riley) (9-15-16)	Y	A		We support this incorporation of ABA Model Rule 8.4 as a proposed rule for California lawyers. While the phrase “prejudicial to the administration of justice” can be somewhat general, we believe on balance that there are broad categories of misconduct that, if established to the requisite standard, should subject a lawyer to discipline; subsection (a) through (f) encompass such categories and particularized rules in each instance would be cumbersome if not impossible.	No response required.
X-2016-68r	Law Professors (Zitrin) (9-21-16)	Y	M	8.4(b) & (c)	See X-2016-32r Law Professors (Zitrin) dated July 25, 2016, for the comment synopsis. The comments are identical and the only difference is the signatories.	See response to X-2016-32r.
X-2016-76x	Los Angeles County Bar Association (LACBA) (9-21-16)	Y	M	(a), (b), (c), (d)	Paragraphs (a),(b), and (c) are superfluous. Paragraph (d) is vague and could lead to unintended discipline.	With respect to paragraph (a), all but the first clause (stating that it is professional misconduct to “violate these rules or the State Bar Act”) carries over and expands on current Rule 1-120, defining the circumstances in which a lawyer can be liable for violations of the Rules and State Bar Act even if the actual violation is committed by

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						<p>someone other than the lawyer. This latter portion of paragraph (a), which states principles of responsibility not found elsewhere in the Rules, is not superfluous.</p> <p>With respect to the first clause of paragraph (a), as well as paragraphs (b) and (c), though they may be viewed as restating violations defined elsewhere in the Rules or State Bar Act, the Commission does not believe them to be superfluous (in the sense of unnecessary) because they serve an important notice purpose, grouping in one Rule for easy reference a list of what constitutes professional misconduct that can give rise to discipline. Given this purpose, and the virtue of consistency with the ABA Model Rules, the Commission believes these provisions remain appropriate.</p> <p>With respect to paragraph (d), after consideration, the Commission agrees that it is overly vague and unnecessary in light of the other provisions of the Rule, and has removed it.</p>

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X-2016-104bn	State Bar of California, Office of Chief Trial Counsel (OCTC) (Dressler) (9-27-16)	Y	M	(a), (f)	<p>Concerned with “knowing” standard in subsection (a). The rules should not encourage willful blindness or failure to investigate.</p> <p>Concerned that the rule does not prohibit attempted violation of the rules.</p> <p>Concerned with subsection (f)’s “knowing” standard. Also concerned with use of “judge” or “judicial officer” as opposed to “tribunal.” Rule should administrative law judges or arbitrators.</p> <p>Subsection (f) should also include “solicitation” as grounds for violation.</p>	<p>The definition of “knowingly” in Rule 1.0.1(f) makes clear that knowledge can be inferred from the circumstances. With this definition, the Commission believes that the “knowingly” standard is appropriately used in both paragraphs (a) and (e) (formerly (f)) in imposing vicarious liability for a Rule violation committed by another, and will not encourage willful blindness or failure to investigate. The Rule does not apply the “knowingly” standard to violations committed by the lawyer him or herself.</p> <p>The Commission debated at length whether to include a general attempt prohibition in this Rule. As discussed in the Report and Recommendation, the Commission rejected this approach as overbroad given that certain Rules do not lend themselves to discipline for attempted violations.</p> <p>The Commission has modified paragraph (f) to be parallel with paragraph (a) to include inducement and solicitation. The Commission believes that paragraph (f)’s reference to</p>

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						“judicial officers” includes administrative law judges. The Commission does not believe that extending paragraph (a) to a “tribunal” makes sense, and notes that assisting, soliciting, or inducing a violation of applicable portions of the Code of Judicial Ethics by a lawyer serving as a temporary judge, referee, or court-appointed arbitrator would violate Rule 8.4(a) through Rule 2.4.1 (Lawyer as Temporary Judge, Referee, or Court-Appointed Arbitrator).
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 Comment 4 to provide notice to lawyers that Bus. & Prof. Code § 6106 remains a source of discipline for acts of moral turpitude.