

Rule 4.1 Truthfulness in Statements to Others
(Commission's Proposed Rule Adopted on June 2 – 3, 2016 – Clean Version)

In the course of representing a client a lawyer shall not knowingly:*

- (a) make a false statement of material fact or law to a third person;* or
- (b) fail to disclose a material fact to a third person* when disclosure is necessary to avoid assisting a criminal or fraudulent* act by a client, unless disclosure is prohibited by Rule 1.6 or Business and Professions Code § 6068(e)(1).

Comment

[1] A lawyer is required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing party of relevant facts. A misrepresentation can occur if the lawyer incorporates or affirms the truth of a statement of another person* that the lawyer knows* is false. However, in drafting an agreement or other document on behalf of a client, a lawyer does not necessarily affirm or vouch for the truthfulness of representations made by the client in the agreement or document. A nondisclosure can be the equivalent of a false statement of material fact or law under paragraph (a) where a lawyer makes a partially true but misleading material statement or material omission. In addition to this Rule, lawyers remain bound by Rule 8.4 and Business and Professions Code § 6106.

[2] This Rule refers to statements of fact. Whether a particular statement should be regarded as one of fact can depend on the circumstances. For example, in negotiation, certain types of statements ordinarily are not taken as statements of material fact. Estimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim are ordinarily in this category, and so is the existence of an undisclosed principal except where nondisclosure of the principal would constitute fraud.*

[3] Under Rule 1.2.1, a lawyer is prohibited from counseling or assisting a client in conduct that the lawyer knows* is criminal or fraudulent.* See Rule 1.4(a)(5) regarding a lawyer's obligation to consult with the client about limitations on the lawyer's conduct. In some circumstances, a lawyer can avoid assisting a client's crime or fraud* by withdrawing from the representation in compliance with Rule 1.16.

[4] Regarding a lawyer's involvement in lawful covert activity in the investigation of violations of law, see Rule 8.4, Comment [5].

Proposed Rule 4.1 Truthfulness in Statements to Others
Synopsis of Public Comments

TOTAL = 7 **A = 7**
D = 0
M = 0
NI = 0

No.	Commenter/Signatory	Comment on Behalf of Group?	A/D/M/NI ¹	Rule Section or Cmt.	Comment	RRC Response
X-2016-32k	Law Professors (Zitrin) (07-25-16)	Yes	A	4.1	This rule, admonishing lawyers that they may not make false material statements while representing a client, seems to be a simple and completely appropriate statement about proper lawyer behavior.” We commend the Commission for including this rule.	No response required.
X-2016-43ac	Committee on Professional Responsibility and Conduct (COPRAC) (Baldwin) (08-22-16)	Yes	A	4.1	COPRAC supports the adoption of proposed Rule 4.1.	No response required.
X-2016-52k	Law Professors (Zitrin) (08-24-16)	Yes	A	4.1	See X-2016-32k Law Professors (Zitrin) dated July 25, 2016 for the comment synopsis. The comments are identical and the only difference is the signatories.	See X-2016-32k for the Commission’s response to the Law Professors’ comments.
X-2016-66s	San Diego County Bar Association (SDCBA) (Riley) (09-21-16)	Yes	A	4.1	We support and approve this proposed rule. If one of the hallmarks of our profession is candor to our clients and to tribunals, lawyers should also be ethically precluded from deceiving third parties, either by false statement or material omission. This proposed rule, together with the others that mandate truthfulness in other contexts, underscores	No response required.

¹ A = AGREE with proposed Rule

D = DISAGREE with proposed Rule

M = AGREE ONLY IF MODIFIED

NI = NOT INDICATED

No.	Commenter/Signatory	Comment on Behalf of Group?	A/D/M/N ¹	Rule Section or Cmt.	Comment	RRC Response
					that lawyers have an ethical duty not to deceive anybody they deal with in the course of their representation of a client.	
X-2016-68k	Law Professors (Zitrin) (09-22-16)	Yes	A	4.1	See X-2016-32k Law Professors (Zitrin) dated July 25, 2016 for the comment synopsis. The comments are identical and the only difference is the signatories.	See X-2016-32k for the Commission's response to the Law Professors' comments.
X-2016-104as	Office of Chief Trial Counsel (OCTC) (Dresser) (09-27-16)	Yes	M	4.1 Cmt.[1]	1. OCTC is concerned with the use of the term "knows" in regards to section (ii) of Comment 1 for the reasons expressed in OCTC's comments to proposed Rules 1.9 and 3.3 and the General Comments sections of this letter. While what constitutes recklessness or gross negligence to a third party is not the same as to a client or a court, an attorney can be disciplined for gross negligence to others. 2. OCTC is concerned with the use of the term "knowingly" in Comment 1 for the same reasons expressed to the use of that word in the rule itself. 3. OCTC supports Comments 2, 3, and 4.	1. The Commission disagrees that "knows" is an inappropriate standard for this rule. Under proposed rule 1.0.1(f), although "knows" means actual knowledge of the fact in question, that knowledge may be inferred from the specific circumstances. 2. (See above response to no. 1.) 3. No response required.
X-2016-114	Legal Services for Prisoners with Children (Barry)	Yes	D	4.1 (This letter was submitted for	Legal Services for Prisoners with Children hereby agrees with and signs onto the comment	The substance of this public comment pertains to proposed Rule 8.4.1. Please refer to the

**Proposed Rule 4.1 Truthfulness in Statements to Others
Synopsis of Public Comments**

TOTAL = 7 **A = 7**
D = 0
M = 0
NI = 0

No.	Commenter/Signatory	Comment on Behalf of Group?	A/D/M/NI ¹	Rule Section or Cmt.	Comment	RRC Response
				rule 4.1 but it pertains to rule 8.4.1)	submitted by Equal Rights Advocates on proposed rule 8.4.1.	public commenter table for Rule 8.4.1.

**Rules 5.4 [1-320, 1-310, 1-600] Financial and Similar Arrangements with Nonlawyers
(Commission's Proposed Rule Adopted on November 13 – 14, 2015 – Clean Version)**

- (a) A lawyer or law firm* shall not share legal fees directly or indirectly with a nonlawyer or with an organization that is not authorized to practice law, except that:
 - (1) an agreement by a lawyer with the lawyer's firm,* partner,* or associate may provide for the payment of money or other consideration over a reasonable* period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;
 - (2) a lawyer purchasing the practice of a deceased, disabled or disappeared lawyer may pay the agreed-upon purchase price, pursuant to Rule 1.17, to the lawyer's estate or other representative;
 - (3) a lawyer or law firm* may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement, provided the plan does not otherwise violate these Rules or the State Bar Act;
 - (4) a lawyer or law firm* may pay a prescribed registration, referral, or other fee to a lawyer referral service established, sponsored and operated in accordance with the State Bar of California's Minimum Standards for Lawyer Referral Services; or
 - (5) a lawyer or law firm* may share with or pay a court-awarded legal fee to a nonprofit organization that employed, retained or recommended employment of the lawyer or law firm in the matter.
- (b) A lawyer shall not form a partnership or other organization with a nonlawyer if any of the activities of the partnership or other organization consist of the practice of law.
- (c) A lawyer shall not permit a person* who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's independent professional judgment or interfere with the lawyer-client relationship in rendering legal services.
- (d) A lawyer shall not practice with or in the form of a professional corporation or other organization authorized to practice law for a profit if:
 - (1) a nonlawyer owns any interest in it, except that a fiduciary representative of a lawyer's estate may hold the lawyer's stock or other interest for a reasonable* time during administration;
 - (2) a nonlawyer is a director or officer of the corporation or occupies a position of similar responsibility in any other form of organization; or

- (3) a nonlawyer has the right or authority to direct or control the lawyer's independent professional judgment.
- (e) The Board of Trustees of the State Bar shall formulate and adopt Minimum Standards for Lawyer Referral Services, which, as from time to time amended, shall be binding on lawyers. A lawyer shall not accept a referral from, or otherwise participate in, a lawyer referral service unless it complies with such Minimum Standards for Lawyer Referral Services.
- (f) A lawyer shall not practice with or in the form of a nonprofit legal aid, mutual benefit or advocacy group if the nonprofit organization allows any third person* or organization to interfere with the lawyer's independent professional judgment, or with the lawyer-client relationship, or allows or aids any person,* organization or group to practice law in violation of these Rules or the State Bar Act.

Comment

[1] Paragraph (a) does not prohibit a lawyer or law firm* from paying a bonus to or otherwise compensating a nonlawyer employee from general revenues received for legal services, provided the arrangement does not interfere with the independent professional judgment of the lawyer or lawyers in the firm* and does not violate these Rules or the State Bar Act. However, a nonlawyer employee's bonus or other form of compensation may not be based on a percentage or share of fees in specific cases or legal matters.

[2] Paragraph (a) also does not prohibit payment to a nonlawyer third-party for goods and services provided to a lawyer or law firm;* however, the compensation to a nonlawyer third-party may not be determined as a percentage or share of the lawyer's or law firm's overall revenues or tied to fees in particular cases or legal matters. A lawyer may pay to a nonlawyer third-party, such as a collection agency, a percentage of past due or delinquent fees in concluded matters that the third-party collects on the lawyer's behalf.

[3] Paragraph (a)(5) permits a lawyer to share with or pay court-awarded legal fees to nonprofit legal aid, mutual benefit, and advocacy groups that are not engaged in the unauthorized practice of law. See *Frye v. Tenderloin Housing Clinic, Inc.* (2006) 38 Cal.4th 23 [40 Cal.Rptr.3d 221]. See also Rule 6.3. Regarding a lawyer's contribution of legal fees to a legal services organization, see Rule 1.0, Comment [5] on financial support for programs providing pro bono legal services.

[4] This Rule is not intended to affect case law regarding the relationship between insurers and lawyers providing legal services to insureds. See, e.g., *Gafcon, Inc. v. Ponsor Associates* (2002) 98 Cal.App.4th 1388 [120 Cal.Rptr.2d 392].

**Proposed Rule 5.4 [1-320, 1-310, 1-600] Financial and Similar Arrangements
with Nonlawyers
Synopsis of Public Comments**

TOTAL = 4	A = 1
	D = 1
	M = 2
	NI = 0

No.	Commenter/Signatory	Comment on Behalf of Group?	A/D/M/NI ¹	Rule Section or Cmt.	Comment	RRC Response
Public Hearing	Responsive Law (Gordon, Tom) (Provided oral public hearing testimony on July 26, 2016. See pages 43-46 of the public hearing transcript.)	Yes	D	5.4	<p>Nonlawyers should be permitted to invest in law firms as long as lawyer's professional judgment isn't compromised.</p> <p>Recounts examples under current rules where attorneys place their financial interests above those of their clients.</p> <p>Outside ownership will increase access to justice. Cites H&R Block as an example of a large company that has made tax work more available to the public.</p> <p>Outside ownership will allow lawyers to focus on what they are trained to do as opposed to the business of the law firm.</p> <p>Recent law grads can get training at these types of firms which is less likely at smaller firms.</p> <p>That the rule should just contain the language in paragraph (c) to protect the public while allowing outside ownership.</p>	<p>No change to the report is recommended. It is outside of the scope of the Commission to draft Rules that conflict with established California law. Ownership interests by non-lawyers in California law firms are prohibited. California Business and Professions Code Section 6125 states, "No person shall practice law in California unless the person is an active member of the State Bar." California law has long limited the practice of law to Lawyers. "(I)ndividuals may not, either singly or in association, engage in the practice of the law without having a special license so to do, and hence the individuals forming this corporation could not, under the section of the code relied upon, gain any other or further right by the act of incorporation than that lawfully possessed by them, either singly or in the aggregate, without incorporation." <i>People v. Merchants Protective Corp.</i>, 189 Cal. 531 (1922). The</p>

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

**Proposed Rule 5.4 [1-320, 1-310, 1-600] Financial and Similar Arrangements
with Nonlawyers
Synopsis of Public Comments**

TOTAL = 4	A = 1
	D = 1
	M = 2
	NI = 0

No.	Commenter/Signatory	Comment on Behalf of Group?	A/D/M/NI ¹	Rule Section or Cmt.	Comment	RRC Response
						Business and Professions Code Section specifically allows the establishment of law corporations. Law corporations are limited by California Business and Professions Code § 6165 which provides that "...each director, shareholder, and each officer of a law corporation shall be a licensed person as defined in the Professional Corporation Act, or a person licensed to render the same professional services in the jurisdiction or jurisdictions in which the person practices."
X-2016-76q	Los Angeles County Bar Association Professional Responsibility and Ethics Committee (PREC) (Schmid) (09-24-16)	Y	M		PREC finds the reference to "other organization" in paragraph (b) of Proposed Rule 5.4 to be overbroad and recommends that the language in this paragraph be clarified by adding "for a profit" to the end of the paragraph. Such a change would parallel the language used in the beginning portion of paragraph (d) of this Rule.	The Commission has not made the requested change. The provisions of paragraph (d) referred to by the commenter were discussed during drafting and were designed for lawyers practicing in for profit law firm organizations as differentiated from existing and legally permitted not for profit organizations that provide legal service. The provisions of paragraph (b) deal with all lawyers regarding the startup formation by lawyers of law

**Proposed Rule 5.4 [1-320, 1-310, 1-600] Financial and Similar Arrangements
with Nonlawyers
Synopsis of Public Comments**

TOTAL = 4
A = 1
D = 1
M = 2
NI = 0

No.	Commenter/Signatory	Comment on Behalf of Group?	A/D/M/NI ¹	Rule Section or Cmt.	Comment	RRC Response
						partnerships and other law firm organizations and restates the long held prohibition against nonlawyers practicing law in California.
X-2016-104ba	Office of Chief Trial Counsel (OCTC) (Dresser) (09-27-16)	Y	A		OCTC supports this rule and its Comments.	No response required.
X-2016-115g	Lamport, Stanley (09-29-16)	N	M		<p>Current Rules 1-320 and 2-200 use different terms to describe the same concept, the division/sharing of fees. Proposed Rules 1.5.1 and 5.4 continue the use of the different terminology. Proposed Rule 1.5.1 refers to a division of fees for legal services. Proposed Rule 5.4 refers to sharing legal fees. In my view, the terminology in both rules should be the same.</p> <p>Accordingly, I recommend that proposed Rule 5.4 should be revised so that both proposed Rules 1.5.1 and proposed Rule 5.4 state that a lawyer or a firm shall not divide a fee for legal services. I have prepared redlined revision to proposed Rule 5.4 showing the requested changes.</p>	The Commission did not make the requested change. The current California rules, as well as those in all other jurisdictions, intentionally use different words for fee split arrangements among lawyers as opposed to fee arrangements between lawyers and nonlawyers. The former are permitted under certain circumstances, (proposed Rule 1.5.1 [2-200], while the latter are prohibited. The Commission is concerned about the problems a deviation in language could create. Consistent with the Commission's charter, the Commission does not believe a sufficiently good reason exists to deviate from this distinction in terminology established in the current rules.

Rule 5.6 [1-500] Restrictions on a Lawyer's Right to Practice
(Commission's Proposed Rule Adopted on October 23, 2015 – Clean Version)

- (a) A lawyer shall not participate in offering or making:
 - (1) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement that: (i) concerns benefits upon retirement, or (ii) is authorized by law; or
 - (2) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy.
- [(b) A lawyer shall not participate in offering or making an agreement which precludes the reporting of a violation of these rules.]
- (c) This Rule does not prohibit an agreement that is authorized by Business and Professions Code §§ 6092.5(i) or 6093.

Comment

- [1] Concerning the application of paragraph (a)(1)(ii), see Business and Professions Code § 16602; *Howard v. Babcock* (1993) 6 Cal.4th 409, 425 [25 Cal.Rptr.2d 80].
- [2] Paragraph (a)(2) prohibits a lawyer from offering or agreeing not to represent other persons* in connection with settling a claim on behalf of a client.
- [3] This Rule does not prohibit restrictions that may be included in the terms of the sale of a law practice pursuant to Rule 1.17.

Proposed Rule 5.6 [1-500] Restrictions on Lawyer's Right to Practice
Synopsis of Public Comments

TOTAL = 2	A = 2
	D = 0
	M = 0
	NI = 0

No.	Commenter/Signatory	Comment on Behalf of Group?	A/D/M/NI ¹	Rule Section or Cmt.	Comment	RRC Response
X-2016-43ai	Committee on Professional Responsibility and Conduct (COPRAC) (Baldwin) (08-18-16)	Yes	A	5.6	COPRAC supports the adoption of proposed Rule 5.6.	No response required.
X-2016-104bc	Office of Chief Trial Counsel (OCTC) (Dresser) (09-27-16)	Yes	A	5.6	<p>OCTC supports this rule and Comments 1 and 3</p> <p>OCTC is concerned that Comment 2 is unnecessary and merely repeats the rule.</p>	<p>No response required.</p> <p>The Commission did not delete Comment [2] because it explains how paragraph (a)(2) is applied, emphasizing that the terms of a settlement agreement may not require that a lawyer refrain from representing other clients. This explanation is being carried forward from the first Discussion paragraph found in current rule 1-500 and deleting it might cause confusion as to whether this explanation remains true for the proposed rule.</p>

¹ A = AGREE with proposed Rule

D = DISAGREE with proposed Rule

M = AGREE ONLY IF MODIFIED

NI = NOT INDICATED

**Rule 8.1.1 [1-110] Compliance with Conditions of Discipline
and Agreements in Lieu of Discipline
(Commission's Proposed Rule Adopted on May 29, 2015 – Clean Version)**

A lawyer shall comply with the terms and conditions attached to any agreement in lieu of discipline, any public or private reproof, or to other discipline administered by the State Bar pursuant to Business and Professions Code §§ 6077 and 6078 and California Rules of Court, rule 9.19.

Comment

Other provisions also require a lawyer to comply with agreements in lieu of discipline and conditions of discipline. See e.g., Business and Professions Code § 6068 (k) and (l).

**Proposed Rule 8.1.1 [1-110] Compliance with Conditions of Discipline
and Agreements in Lieu of Discipline
Synopsis of Public Comments**

TOTAL = 3 **A = 2**
D = 0
M = 1
NI = 0

No.	Commenter/Signatory	Comment on Behalf of Group?	A/D/M/NI ¹	Rule Section or Cmt.	Comment	RRC Response NI = 0
X-2016-43an	Committee on Professional Responsibility and Conduct (COPRAC) (Baldwin) (08-12-16)	Yes	A		Supports adoption of proposed Rule 8.1.1.	No response required.
X-2016-76v	Los Angeles County Bar Association (LACBA) – Professional Responsibility and Ethics Committee of Los Angeles (PREC) (Schmid) (09-24-16)	Yes	M		PREC recommends that reference in Proposed Rule 8.1.1 [Compliance with Conditions of Discipline and Agreements in Lieu of Discipline (current Rule 1-110)] to “any agreement in lieu of discipline” be deleted as it is unnecessary. Violations of agreements in lieu of discipline already constitute a violation of Business and Professions Code section 6068, subdivision (I). There is no need for a rule that also addresses violations of agreements in lieu of discipline.	The Commission has not made the suggested change. The Commission continues to believe that including the term “agreement in lieu of discipline” removes ambiguity concerning a member’s duties under disciplinary orders and such agreements and emphasizes the importance of strict compliance with such orders and agreements.
X-2016-104bl	Office of Chief Trial Counsel (OCTC) (Dresser) (09-27-16)	Yes	A		Supports adoption of proposed Rule 8.1.1 and its comments.	No response required.

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

Rule 8.5 Disciplinary Authority; Choice of Law
(Commission's Proposed Rule Adopted on October 23, 2015 – Clean Version)

- (a) **Disciplinary Authority.** A lawyer admitted to practice in California is subject to the disciplinary authority of California, regardless of where the lawyer's conduct occurs. A lawyer not admitted in California is also subject to the disciplinary authority of California if the lawyer provides or offers to provide any legal services in California. A lawyer may be subject to the disciplinary authority of both California and another jurisdiction for the same conduct.
- (b) **Choice of Law.** In any exercise of the disciplinary authority of California, the rules of professional conduct to be applied shall be as follows:
 - (1) for conduct in connection with a matter pending before a tribunal,* the rules of the jurisdiction in which the tribunal* sits, unless the rules of the tribunal* provide otherwise; and
 - (2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes* the predominant effect of the lawyer's conduct will occur.

Comment

Disciplinary Authority

The conduct of a lawyer admitted to practice in California is subject to the disciplinary authority of California. See Business and Professions Code §§ 6077, 6100. Extension of the disciplinary authority of California to other lawyers who provide or offer to provide legal services in California is for the protection of the residents of California. A lawyer disciplined by a disciplinary authority in another jurisdiction may be subject to discipline in California for the same conduct. See e.g., Business and Professions Code § 6049.1.

**Proposed Rule 8.5 [1-100(D)] Disciplinary Authority; Choice of Law
Synopsis of Public Comments**

TOTAL = 3
A = 1
D = 1
M = 1
NI = 0

No.	Commenter/Signatory	Comment on Behalf of Group?	A/D/M/NI ¹	Rule Section or Cmt.	Comment	RRC Response A = 12
X-2016-43ap	Committee on Professional Responsibility and Conduct (COPRAC) (Baldwin) (08-18-16)	Yes	A	8.5	COPRAC supports the adoption of proposed Rule 3.1.	No response required.
X-2016-104bp	Office of Chief Trial Counsel (OCTC) (Dresser) (09-27-16)	Yes	M	8.5	OCTC agrees with the policy behind this rule, but still has concerns that the rule, as written, is in conflict with section 6049.1. Section 6049.1(b)(2) provides that discipline in another jurisdiction will constitute a basis for discipline in California, unless, as a matter of law, the member's culpability in the other jurisdiction would not warrant discipline in California under the laws or rules binding upon members of the State Bar of California at the time the misconduct was committed. Thus, how can OCTC enforce a rule that permits discipline based on another jurisdiction's rules, if those rules are in conflict with California's rules? Is rule 8.5 intended to change section 6049.1? This needs to be discussed and addressed in this rule and its Comments.	The Commission has not made any change to the proposed Rule. The Commission disagrees that OCTC will be unable to enforce the proposed Rule. As explained in its Report and Recommendation, the Commission believes that the citation to section 6049.1 in the Comment to the Rule appropriately recognizes that section's possible effect on the bar's disciplinary authority while at the same time allowing California to move toward the national standard of Model Rule 8.5 ("A lawyer disciplined by a disciplinary authority in another jurisdiction may be subject to discipline in California for the same conduct. See e.g., Business and Professions Code § 6049.1.")

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

**Proposed Rule 8.5 [1-100(D)] Disciplinary Authority; Choice of Law
Synopsis of Public Comments**

TOTAL = 3
A = 1
D = 1
M = 1
NI = 0

No.	Commenter/Signatory	Comment on Behalf of Group?	A/D/M/NI ¹	Rule Section or Cmt.	Comment	RRC Response A = 12
X-2016-116c	Hamilton, Thomas (10-03-16)	No	D	8.5	No explanation provided.	As the commenter did not provide an explanation for his disagreement with the proposed rule, no response is possible or necessary. However, the Commission reaffirms its belief that including Rule 8.5 in the Rules is both necessary and appropriate to explain under what circumstances and to whom the Rules will apply.