

Rule 1.4 [3-500] Communication with Clients

- (a) A lawyer shall:
- (1) promptly inform the client of any decision or circumstance with respect to which disclosure or the client's informed consent,* is required by these Rules or the State Bar Act;
 - (2) reasonably* consult with the client about the means by which to accomplish the client's objectives in the representation;
 - (3) keep the client reasonably* informed about significant developments relating to the representation, including promptly complying with reasonable* requests for information and copies of significant documents when necessary to keep the client so informed; and
 - (4) advise the client about any relevant limitation on the lawyer's conduct when the lawyer knows* that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
- (b) A lawyer shall explain a matter to the extent reasonably* necessary to permit the client to make informed decisions regarding the representation.
- (c) A lawyer may delay transmission of information to a client if the lawyer reasonably believes* that the client would be likely to react in a way that may cause imminent harm to the client or others.
- (d) A lawyer's obligation under this Rule to provide information and documents is subject to any applicable protective order, non-disclosure agreement, or limitation under statutory or decisional law.

Comment

[1] A lawyer will not be subject to discipline under paragraph (a)(3) of this rule for failing to communicate insignificant or irrelevant information. (See Bus. & Prof. Code § 6068(m).) Whether a particular development is significant will generally depend on the surrounding facts and circumstances.

[2] A lawyer may comply with paragraph (a)(3) by providing to the client copies of significant documents by electronic or other means. This Rule does not prohibit a lawyer from seeking recovery of the lawyer's expense in any subsequent legal proceeding.

[3] Paragraph (c) applies during a representation and does not alter the obligations applicable at termination of a representation (see Rule 1.16(e)(1)).

[4] This Rule is not intended to create, augment, diminish, or eliminate any application of the work product rule. The obligation of the lawyer to provide work product to the client shall be governed by relevant statutory and decisional law.

Rule 1.4 [3-500] Communication with Clients

- (a) A lawyer shall:
- (1) promptly inform the client of any decision or circumstance with respect to which disclosure or the client's informed consent,* ~~as defined in Rule 1.0.1(e),~~¹ is required by these Rules or the State Bar Act;
 - (2) reasonably* consult with the client about the means by which to accomplish the client's objectives in the representation;
 - (3) keep the client reasonably* informed about significant developments relating to the representation,² including promptly complying with reasonable* requests for information and copies of significant documents when necessary to keep the client so informed; and
 - (4) advise the client about any relevant limitation on the lawyer's conduct when the lawyer knows* that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
- (b) A lawyer shall explain a matter to the extent reasonably* necessary to permit the client to make informed decisions regarding the representation.
- (c) A lawyer may delay transmission of information to a client if the lawyer reasonably believes* that the client would be likely to react in a way that may cause imminent harm to the client or others.
- (d) A lawyer's obligation under this Rule to provide information and documents is subject to any applicable protective order, non-disclosure agreement, or limitation under statutory ~~limitation~~ or decisional law.³

Comment

[1] A lawyer will not be subject to discipline under paragraph (a)(3) of this rule for failing to communicate insignificant or irrelevant information. (See Bus. & Prof. Code § 6068(m).)

¹ Phrase "as defined in Rule 1.0.1(e)" deleted as unnecessary given the asterisk.

² OCTC suggested the addition of the word "employment" with representation. However, the Commission declined to make the addition. As noted in the Synopsis Table, the Commission has largely substituted "representation" for "employment" throughout the Rules. The use of the word "employment" is a relic of the ABA Code of Professional Responsibility, much of whose language the Supreme Court adopted in the 1975. That language was carried forward in the 1989-1992 Rules. The ABA substituted "representation" for "employment" in 1983, as did the Restatement in 1999. I don't think the change should be made.

The Commission should also consider substituting "representation" for "employment" where it is appropriate throughout the rules.

³ Change made per suggestion of L.A. Public Defender. It restores language in current rule 3-500, Discussion ¶1.3.

Whether a particular development is significant will generally depend on the surrounding facts and circumstances.

[2] A lawyer may comply with paragraph (a)(3) by providing to the client copies of significant documents by electronic or other means. This Rule does not prohibit a lawyer from seeking recovery of the lawyer's expense in any subsequent legal proceeding.

[3] Paragraph (c) applies during a representation and does not alter the obligations applicable at termination of a representation (see Rule 1.16(e)(1)).

[4] This Rule is not intended to create, augment, diminish, or eliminate any application of the work product rule. The obligation of the lawyer to provide work product to the client shall be governed by relevant statutory and decisional law.

Proposed Rule 1.4 [3-500] Communication with Clients
Synopsis of Public Comments

TOTAL = 4 **A = 1**
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-2016-43g	Committee on Professional Responsibility and Conduct (COPRAC) (Baldwin) (8-12-16)	Y	A	1.4	Supports adoption of proposed Rule 1.4.	No response required.
X-2016-66c	San Diego County Bar Association (SDCBA) (Riley) (9-15-16)	Y	M	(c), (d), cmt.	<p>1. Subsection (c) should clarify the type of harm (bodily or otherwise).</p> <p>2. The comment should address subsection (d) by stating that a lawyer shall not seek protective order or non-disclosure agreement that limits the duty to communicate unless it fulfills the objectives of representation is least restrictive on the lawyer's duty to communicate.</p>	<p>1. The Commission did not make the suggested change. The rule version circulated for public comment permits the delay of transmission to prevent imminent harm to the client or others. The Commission does not understand how modifying "harm" with the phrase "bodily or other" would provide additional protection to the client or the public.</p> <p>2. The Commission did not make the suggested change. Proposed Rule 1.3 addresses a lawyer's duty to pursue the client's interest, including the requirement that a lawyer act with commitment and dedication to the interests of the client. The Commission believes the conduct the commenter describes is addressed by Rule 1.3. It is well established that lawyers have the duty to zealously</p>

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

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No.	Commenter/Signatory	Comment on Behalf of Group?	A/D/M/NI ¹	Rule Section or Cmt.	Comment	RRC Response
						represent their clients within the bounds of the law (see, e.g., <i>Hawk v. Superior Court</i> , 42 Cal. App.3d 108, 126 (1974)), and Rule 1.4 doesn't need require a restatement of this concept.
X-2016-93a	Los Angeles County Public Defender (Brown) (9-23-16)	Y	M	(d), cmt. 4	Paragraph (d) should carry forward the concept found in the discussion section of the current rule 3-500 that a lawyer need not provide information to the client where there is an exception permitted by decisional or statutory law	The Commission agrees and has revised paragraph (d) to include a reference to "decisional law."
X-2016-104g	State Bar of California, Office of Chief Trial Counsel (OCTC) (Dressler) (9-27-16)	Y	M	(a)(3), (c), cmt. 1	<p>1. Subsection (a)(3) excludes requiring attorney to keep client informed about employment, not just the representation.</p> <p>2. Subsection (c) will be used to excuse failures to communicate.</p>	<p>1. The Commission did not make the suggested change. The Commission has largely substituted "representation" for "employment" throughout the Rules except where the word "employment" is used to signify a situation where a lawyer is employed by an entity to provide exclusive legal services, e.g., government employment.</p> <p>2. The Commission has not made the suggested change. Proposed Rule 1.3 addresses a lawyer's duty to pursue the client's interest, including the requirement that a lawyer act with commitment and</p>

**Proposed Rule 1.4 [3-500] Communication with Clients
Synopsis of Public Comments**

TOTAL = 4 **A = 1**
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No.	Commenter/Signatory	Comment on Behalf of Group?	A/D/M/NI ¹	Rule Section or Cmt.	Comment	RRC Response
					3. Comment 1 is superfluous.	<p>dedication to the interests of the client. The Commission believes the conduct the commenter describes is addressed by Rule 1.3.</p> <p>3. The Commission has not made the suggested change. The Commission believes Comment [1] provides important guidance on the application of the rule, as well as a citation to the corresponding State Bar Act provision governing lawyers' communications with clients.</p>

