

**Rule 1.0 [1-100] Purpose and Function of the Rules of Professional Conduct
(Commission's Proposed Rule Adopted on October 21-22, 2016 –
Clean Version)**

(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. *Ibid.*; *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 authorities 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. Also, lawyers may fulfill this pro bono responsibility by providing financial support to organizations providing free legal services. See Business and Professions Code § 6073.

**Proposed Rule 1.0 [1-100] Purpose and Function of the Rules of Professional Conduct
Synopsis of Public Comments**

TOTAL = 1 **A = 0**
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
Y-2016-21a	State Bar Office of Chief Trial Counsel (OCTC) (Dresser) (01-09-17)	Y	M		<p>1. OCTC supports this rule.</p> <p>2. OCTC supports Comments [2], [3], and [4].</p> <p>3. Comment [1] is duplicative of subsections (a) and (b) and, thus, unnecessary and inconsistent with the directive that Comments should be used sparingly and only to elucidate and not to expand upon the rules themselves.</p> <p>4. Comment [5] is aspirational only, encouraging attorneys to do pro bono activities. Therefore, this Comment is contrary to the Commission Charter.</p>	<p>No response required.</p> <p>No response required.</p> <p>3. The Commission disagrees with the commenter's assessment. It believes that Comment [1] provides guidance on how the rule is applied by clarifying that although the rules are disciplinary in nature, they can be evidence of the standard of conduct in a civil action, and providing leading authority on that concept.</p> <p>4. The Commission continues to believe that the comment is an important reminder of a lawyer's professional responsibilities as an officer of the legal system. The comment is intended to encourage lawyers to provide voluntary pro bono services to help address the recognized problem of access to justice in California, but at the same time clarify that the comment is not a disciplinary standard. Given those parameters, the</p>

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

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						Commission believes that a comment in proposed Rule 1.0, which is the closest provision in the proposed Rules to the ABA Model Rules' Preamble, is appropriate.

GENERAL COMMENTS
Synopsis of Public Comments

No.	Commenter/Signatory	Comment on Behalf of Group?	A/D/M/NI ¹	Rule Section or Cmt.	Comment	RRC Response
Y-2016-5	Agassi, Andre (12-19-16)	No	NI	General	<p>I do not want to attach files or get specific about people, places, or certain situations, however I wanted to express the experiences I have suffered through over the last 5 years with attorneys here in CA have been horrific. I have been lied to, have had lawyers take 3,5, and often more thousands of dollars and do zero, or disappear without a care, as they know there is very little one not versed or even versed can do.</p> <p>I have had attorneys enter fabricated, forged, and false documents into court and judges who rule in their favor, I have had a judge rule against me because he and my lawyer were lovers and when he wasn't happy with their sexual encounters he naturally expressed that on her client.</p> <p>I have had a lawyer who moved my case in order to get props with a certain judge and lie about it ,only to turn around and admit it 3 minutes later via email.</p> <p>The legal industry and judicial</p>	<p>The Commission believes that the proposed new and amended rules improve the regulation of lawyer conduct.</p> <p>The Commission has proposed rules that strengthen a lawyer's responsibilities involving fee arrangements, including a new requirement, with limited exceptions, that advanced fees be held in trust until earned (proposed rule 1.15(a)).</p> <p>The Commission also has proposed a general misconduct rule prohibiting dishonesty and deceit that also references the following California concepts: "other misconduct warranting discipline" (proposed rule 8.4 Cmt.[3]) and the statutory Business and Professions Code sec. 6101 interim suspension procedures for criminal convictions (proposed rule 8.4 Cmt.[3]).</p>

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					system in this great state is 150% not for those in the private sector, or those non-lawyers and the word is out, a sure way to endure more grief is to enter into a situation with either entity. I apologize for my frankness but not really as this is an unsustainable, unfair, unethical group and you have a daunting task ahead, good luck.	