

**Rule 8.1 [1-200] False Statement Regarding Application for
Admission to Practice Law
(Commission's Proposed Rule Adopted on October 21–22, 2016 – Clean Version)**

- (a) An applicant for admission to practice law shall not, in connection with that person's own application for admission, make a statement of material fact that the lawyer knows* to be false or make such a statement with reckless disregard as to its truth or falsity.
- (b) A lawyer shall not, in connection with another person's application for admission to practice law, make a statement of material fact that the lawyer knows* to be false .
- (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 protected by Business and Professions Code § 6068(e) and Rule 1.6.
- (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.

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. See, e.g., *In re Gossage* (2000) 23 Cal.4th 1080 [99 Cal.Rptr.2d 130].

[2] 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.

[3] A lawyer representing an applicant for admission to practice law is governed by the rules applicable to the lawyer-client relationship, including Business and Professions Code § 6068(e)(1) and 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.

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- (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~~ process relating to admission or certification to practice law in California or elsewhere.

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

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

No.	Commenter/Signatory	Comment on Behalf of Group?	A/D/M/NI ¹	Rule Section or Cmt.	Comment	RRC Response
Y-2016-Xx	State Bar Office of Chief Trial Counsel (OCTC) (Dresser) (01-09-17)	Y	M	8.1	<p>1. OCTC supports the revision of paragraph (a) of this rule to include that it can be violated by an applicant making a statement in his or her application in reckless disregard for the truth or falsity of a statement, as well as knowingly. This is consistent with <i>In re Gossage</i> (2000) 23 Cal.4th 1080.</p> <p>2. The “reckless disregard” language should be in paragraphs (b) and (c). As previously discussed, gross negligence or recklessness in preparing, responding, or correcting false or misleading statements should be disciplinable.</p> <p>3. OCTC supports Comment 3. OCTC takes no position as to Comment 2.</p> <p>4. 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</p>	<p>1. No response required.</p> <p>2. The Commission agrees with the commenter regarding paragraph (b) and has made the suggested change. However, the Commission does not agree that “reckless disregard” should be a standard in paragraph (c), which concerns failure to disclose, and has not made the change.</p> <p>3. No response required.</p> <p>4. The Commission previously replied to this comment and continues to believe that a prohibition on misstatements of fact or law is an appropriate</p>

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

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					to refrain from misleading and deceptive acts without qualification. (<i>Rodgers v. State Bar</i> (1989) 48 Cal.3d 300, 315. No distinction is made among concealment, half-truths, and false statements of fact. Further, express and implied representations, as well as material omissions, support finding a statement misleading.	limitation in an application process.
Y-2016-7s	State Bar Standing Committee on Professional Responsibility and Conduct (Spencer) (01-6-17)	Yes	M	8.1	<p>COPRAC supports the change in scope of proposed Rule 8.1, which addresses the issue of potential inconsistencies between this proposed Rule and proposed Rule 3.3.</p> <p>We find somewhat confusing new paragraph (d), which states as follows:</p> <p>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.</p> <p>The phrase "any similar provision relating to admission or</p>	The Commission agrees and has made the suggested change.

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					<p>certification to practice law in California or elsewhere” does not seem to follow in that there is no “provision” earlier identified in the definition and the definition lacks parallel construction, which renders it difficult to comprehend. Thus, it is not clear what type of “provision” is being referred to – a legal provision, such as a Rule or statute, or the State Bar providing something to an attorney? If the intent is to refer simply to reinstatement after disbarment or resignation or applications for a certified legal specialty, then that intention should be clearly stated to eliminate this inherent ambiguity.</p> <p>Further, on its face, it would not appear that “admission or readmission” or “reinstatement” is a type of “provision.” Perhaps changing the word “provision” to “process” or removing the words “provision relating to” would provide the needed clarity. Either way, the sentence as presently constructed does not, in our opinion, clearly convey its meaning and should be clarified.</p>	

