Rule 8.4 [1-120] Misconduct
(Commission's Proposed Rule Adopted on October 21–22, 2016 – Clean Version)

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) 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

(f) knowingly* assist, solicit, or induce a judge or judicial officer in conduct that is a violation of an applicable code of judicial ethics or code of judicial conduct, or other law. For purposes of this Rule, "judge" and "judicial officer" have the same meaning as in Rule 3.5(c).

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] This Rule 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.

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-2016-21ae	State Bar Office of Chief Trial Counsel (OCTC) (Dresser) (01-09-17)	Y	M	(a), (b)	(1) Subsection (a)'s use of the word "knowingly" is problematic and inconsistent with California law. The rules should not encourage willful blindness, gross negligence, recklessness, or failure to investigate. (2) The rule does not prohibit attempted violations of the rules. (3) Paragraph (b) does not include other misconduct warranting discipline and thus creates a different standard than under Business and Professions Code section 6101. (4) OCTC supports subsections (c), (d), and (e). (5) Subsection (f) only prohibits "knowingly" assisting a judge or judicial officer in conduct that is a violation of applicable rules and is thus inconsistent with California law. (6) Concerned with use of the word judge or judicial officer as opposed to "tribunal." This subsection should also include assisting an administrative law	(1) 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 paragraph (a) in imposing vicarious liability for a Rule violation committed by another, and will not encourage willful blindness or failure to investigates. The Rule does not apply the "knowingly" standard to violations committed by the lawyer him or herself. (2) 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. (3) The Commission believes that paragraph (b) as drafted reflects consistency with the

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

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
					judge or arbitrator. (7) Subsection (f) should also include soliciting or inducing a judge or judicial officer to violate the applicable rules. (8) OCTC supports the Comments to this rule.	ABA Model Rule and appropriately highlights a focus on criminal acts that reflect adversely on the lawyer's honesty, trustworthiness or fitness. Comment 3 makes clear that discipline may still be imposed for criminal acts triggering application of the referenced State Bar Act sections. (4) No response required. (5) See response in (1) above. (6) The Commission believes that paragraph (f)'s reference to "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).

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
						(7) Paragraph (f) as drafted is parallel with paragraph (a) and includes inducement and solicitation. (8) No response required.