

# **OPEN SESSION AGENDA ITEM**

## **54-123 JULY 2018 RAD AGENDA ITEM III.C**

**DATE:** July 19, 2018

**TO:** **Members, Regulation and Discipline Committee  
Members, Board of Trustees**

**FROM:** Randall Difuntorum, Program Manager, Professional Competence

**SUBJECT:** Rules of Professional Conduct – Adoption of Non-Substantive “Clean-up” Revisions

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### **EXECUTIVE SUMMARY**

New Rules of Professional Conduct will become operative on November 1, 2018. Staff reviewed the text of the new rules and identified non-substantive “clean-up” revisions. This agenda item requests Board adoption of these non-substantive revisions.

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### **BACKGROUND**

On May 10, 2018, the California Supreme Court issued an order approving comprehensive amendments to the Rules of Professional Conduct, which will go into effect November 1, 2018. In preparation for the operative date, staff carefully reviewed the text of the new rules and identified a number of instances where the rules would benefit from non-substantive “clean-up” revisions.

The Board has the authority to adopt these amendments without issuing them for public comment under the State Bar’s public comment policy which provides that rule amendments may be adopted without conducting a public comment process where the changes are to “correct clerical errors; clarify grammar; improve organization; conform to specific changes in a law; update references or citations; or make similar editorial changes . . . .” (Title 1, Div. 2, Rule 1.10 of the State Bar Board Book.)

If the Board adopts the clean-up amendments, they would be submitted to the Court for approval. (A clean version of the rules incorporating the proposed revisions is provided as Attachment A. A redline/strikeout version showing the changes is provided as Attachment B.)

## DISCUSSION

In reviewing the new rules attached to the Supreme Court's May 10, 2018 order, the following non-substantive rule revision issues were identified.

1. In rule 4.2(b)(2) there is a copyediting error. By deleting the word "an" before "person," the sentence will be grammatically correct.

### PROPOSED LANGUAGE CHANGE:

#### Rule 4.2

\* \* \* \* \*

#### (b) . . . .

(2) A current employee, member, agent, or other constituent of the organization, if the subject of the communication is any act or omission of such ~~an~~ person\* in connection with the matter which may be binding upon or imputed to the organization for purposes of civil or criminal liability.

2. In rule 1.6 Comment [12], there is a copyediting error. By deleting an erroneous period that appears after the phrase "must comply with rule" and before "3.7," the sentence will be grammatically correct.

### PROPOSED LANGUAGE CHANGE:

#### Rule 1.6

\* \* \* \* \*

#### Comment

\* \* \* \* \*

[12] Depending upon the circumstances of a lawyer's disclosure of information protected by Business and Professions Code section 6068, subdivision (e)(1) as permitted by this rule, there may be other important issues that a lawyer must address. For example, a lawyer who is likely to testify as a witness in a matter involving a client must comply with rule ~~.~~ 3.7. Similarly, the lawyer must also consider his or her duties of loyalty and competence. (See rules 1.7 and 1.1.)

3. The new rules implement a rule numbering system that is patterned on the ABA Model Rules of Professional Conduct. In other jurisdictions that use this numbering system, if a Model Rule is not adopted that rule number is included but it is designated as “Reserved.” The Court implemented this approach in the rules approved but did not include rule number 5.7 with a “Reserved” designation. Staff recommends adding rule 5.7 with a “Reserved” designation.

PROPOSED REVISION TO RULE NUMBERING:

Rule 5.6

[Rule 5.7 \[Reserved\]](#)

Rule 6.1 [Reserved]

4. Throughout the rules, there are internal references to provisions within the rules and those references use the term “paragraph,” such as “paragraph (b)” or “paragraph (a)(1).” This stylistic approach is used in the Rules of Procedure of the State Bar and in the ABA Model Rules. In the new rules adopted by the Board and approved by the Court there are six instances where “subparagraph” was erroneously used. Staff recommends changing these references to “paragraph” to achieve internal consistency.

The six instances where “paragraph” should be substituted for “subparagraph” are listed below.

- Rule 1.6, Comment [7]
- Rule 1.6, heading for Comment [9]
- Rule 1.7, Comment [3]
- Rule 1.15(e)
- Rule 1.15, introductory paragraph to the Board adopted record-keeping standards
- Rule 3.6(b)(7)  
(Note: For rule 3.6(b)(7), the plural word “paragraphs” would be substituted for “subparagraphs” and the paragraph reference that follows would be modified to refer to “paragraphs [\(b\)](#)(1) through (6).”)

- 5. Adding chapter enumeration for the 8 topical rule groupings and modifying the term “client-lawyer relationship”

Like the current rules, the new rules are divided into topical categories with a descriptive heading or title above the rules that fall into that category. In the current rules, these divisions are designated as “chapters” and are enumerated (e.g., Chapter 5 Advocacy and Representation). In the new rules, the designation “Chapter” and the enumeration were inadvertently omitted. Staff recommends restoring this format for ease of navigation and citation purposes.

In addition, the wording of the first chapter heading should be changed from “Client-Lawyer Relationship” to “Lawyer-Client Relationship.” This change is necessary to be consistent with the use of that term throughout the new rules. The phrase “client-lawyer relationship” also appears in the Comment to rule 6.3 and staff recommends the same change for that rule.

PROPOSED LANGUAGE CHANGES:

Chapter 1. ~~Client-Lawyer~~Lawyer-Client Relationship  
Chapter 2. Counselor  
Chapter 3. Advocate  
Chapter 4. Transactions with Persons Other than Clients  
Chapter 5. Law Firms and Associations  
Chapter 6. Public Service  
Chapter 7. Information about Legal Services  
Chapter 8. Maintaining the Integrity of the Profession

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Rule 6.3

\* \* \* \* \*

Comment

Lawyers should support and participate in legal service organizations. A lawyer who is an officer or member of such an organization does not thereby have a ~~client-lawyer~~lawyer-client relationship with persons served by the organization. . . .

6. Moving Rules 1.0 (Purpose and Function) and 1.0.1 (Terminology) to appear before Chapter 1

Staff recommends that rules 1.0 and 1.0.1 be moved out of the first chapter of the rules and relocated to appear before that chapter heading since the rules setting forth terminology and purpose and function are concepts that pertain to all of the rules and not just one chapter. This same structure, with the terminology and function rules appearing before Chapter 1, is used in the Model Rules. With this change, the first chapter of the new rules will begin with rule 1.1 Competence.

7. Adding a “\*” next to defined terms

The new rules include a global terminology rule, rule 1.0.1, that provides definitions for certain terms used repeatedly in the rules. Throughout the rules, an occurrence of any of these defined terms is marked with an asterisk to alert a user to consult the terminology rule. An asterisk was omitted in the chapter heading “Law Firms and Associations” for the defined term “law firm.” Staff recommends adding the asterisk, “Law Firms\*,” to correct the inadvertent omission. Additionally, in rule 3.3, paragraphs (a)(1) and (a)(2) asterisks were omitted after the word “knowingly.”

If the Board adopts the foregoing clean-up amendments, the amended rules would be submitted to the Court for approval.

## **FISCAL/PERSONNEL IMPACT**

None

## **RULE AMENDMENTS**

Board adoption of staff's recommendations would implement changes to the new Rules of Professional Conduct that are set to become operative on November 1, 2018 and would only become operative if they are approved by the Supreme Court. (Business and Professions Code section 6077.)

## **BOARD BOOK AMENDMENTS**

None

## **STRATEGIC PLAN GOALS & OBJECTIVES**

Goal: 2. Ensure a timely, fair, and appropriately resourced admissions, discipline, and regulatory system for the more than 250,000 lawyers licensed in California.

## **RECOMMENDATION**

**It is recommended that the Regulation and Discipline Committee and Board of Trustees approve the following resolution:**

**RESOLVED**, that the Board of Trustees adopt the "clean-up" revisions to the Rules of Professional Conduct as set forth in Attachment A; and it is

**FURTHER RESOLVED**, that staff is directed to submit these revisions to the Supreme Court with a request that the Supreme Court approve the revisions.

## **ATTACHMENT(S) LIST**

- A.** Clean Version of the Proposed Amended Rules
- B.** Redline/strikeout Version of the Proposed Amended Rules



**RULES OF PROFESSIONAL CONDUCT**

*(effective November 1, 2018)*

*On May 10, 2018, the California Supreme Court issued an order approving new Rules of Professional Conduct, which are effective on November 1, 2018. The current rules remain in effect until then.*

**Rule 1.0 Purpose and Function of the Rules of Professional Conduct**

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**Rule 1.0.1 Terminology**

\* \* \* \* \*

**CHAPTER 1. LAWYER-CLIENT RELATIONSHIP**

**Rule 1.1 Competence**

\* \* \* \* \*

**Rule 1.2 Scope of Representation and Allocation of Authority**

\* \* \* \* \*

**Rule 1.2.1 Assisting, Soliciting, or Inducing Violations**

\* \* \* \* \*

**Rule 1.3 Diligence**

\* \* \* \* \*

**Rule 1.4 Communication with Clients**

\* \* \* \* \*

**Rule 1.4.1 Communication of Settlement Offers**

\* \* \* \* \*

**Rule 1.4.2 Disclosure of Professional Liability Insurance**

\* \* \* \* \*

**Rule 1.5 Fees for Legal Services**

\* \* \* \* \*

**RULES OF PROFESSIONAL CONDUCT**

*(effective November 1, 2018)*

**Rule 1.5.1 Fee Divisions Among Lawyers**

\* \* \* \* \*

**Rule 1.6 Confidential Information of a Client**

\* \* \* \* \*

**Comment**

\* \* \* \* \*

*Whether to counsel client or third person\* not to commit a criminal act reasonably\* likely to result in death or substantial\* bodily harm*

[7] Paragraph (c)(1) provides that before a lawyer may reveal information protected by Business and Professions Code section 6068, subdivision (e)(1), the lawyer must, if reasonable\* under the circumstances, make a good faith effort to persuade the client not to commit or to continue the criminal act, or to persuade the client to otherwise pursue a course of conduct that will prevent the threatened death or substantial\* bodily harm, including persuading the client to take action to prevent a third person\* from committing or continuing a criminal act. If necessary, the client may be persuaded to do both. The interests protected by such counseling are the client's interests in limiting disclosure of information protected by section 6068, subdivision (e) and in taking responsible action to deal with situations attributable to the client. If a client, whether in response to the lawyer's counseling or otherwise, takes corrective action — such as by ceasing the client's own criminal act or by dissuading a third person\* from committing or continuing a criminal act before harm is caused — the option for permissive disclosure by the lawyer would cease because the threat posed by the criminal act would no longer be present. When the actor is a nonclient or when the act is deliberate or malicious, the lawyer who contemplates making adverse disclosure of protected information may reasonably\* conclude that the compelling interests of the lawyer or others in their own personal safety preclude personal contact with the actor. Before counseling an actor who is a nonclient, the lawyer should, if reasonable\* under the circumstances, first advise the client of the lawyer's intended course of action. If a client or another person\* has already acted but the intended harm has not yet occurred, the lawyer should consider, if reasonable\* under the circumstances, efforts to persuade the client or third person\* to warn the victim or consider other appropriate action to prevent the harm. Even when the lawyer has concluded that paragraph (b) does not permit the lawyer to reveal information protected by section 6068, subdivision (e)(1), the lawyer nevertheless is permitted to counsel the client as to why it may be in the client's best interest to consent to the attorney's disclosure of that information.

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**RULES OF PROFESSIONAL CONDUCT**

*(effective November 1, 2018)*

*Informing client pursuant to paragraph (c)(2) of lawyer's ability or decision to reveal information protected by Business and Professions Code section 6068, subdivision (e)(1)*

[9] A lawyer is required to keep a client reasonably\* informed about significant developments regarding the representation. (See rule 1.4; Bus. & Prof. Code, § 6068, subd. (m).) Paragraph (c)(2), however, recognizes that under certain circumstances, informing a client of the lawyer's ability or decision to reveal information protected by section 6068, subdivision (e)(1) as permitted in paragraph (b) would likely increase the risk of death or substantial\* bodily harm, not only to the originally-intended victims of the criminal act, but also to the client or members of the client's family, or to the lawyer or the lawyer's family or associates. Therefore, paragraph (c)(2) requires a lawyer to inform the client of the lawyer's ability or decision to reveal information protected by section 6068, subdivision (e)(1) as permitted in paragraph (b) only if it is reasonable\* to do so under the circumstances. Paragraph (c)(2) further recognizes that the appropriate time for the lawyer to inform the client may vary depending upon the circumstances. (See Comment [10] of this rule.) Among the factors to be considered in determining an appropriate time, if any, to inform a client are:

- (1) whether the client is an experienced user of legal services;
- (2) the frequency of the lawyer's contact with the client;
- (3) the nature and length of the professional relationship with the client;
- (4) whether the lawyer and client have discussed the lawyer's duty of confidentiality or any exceptions to that duty;
- (5) the likelihood that the client's matter will involve information within paragraph (b);
- (6) the lawyer's belief,\* if applicable, that so informing the client is likely to increase the likelihood that a criminal act likely to result in the death of, or substantial\* bodily harm to, an individual; and
- (7) the lawyer's belief,\* if applicable, that good faith efforts to persuade a client not to act on a threat have failed.

\* \* \* \* \*

*Other consequences of the lawyer's disclosure*

[12] Depending upon the circumstances of a lawyer's disclosure of information protected by Business and Professions Code section 6068, subdivision (e)(1) as permitted by this rule, there may be other important issues that a lawyer must address. For example, a lawyer who is likely to testify as a witness in a matter involving a client must comply with rule 3.7. Similarly, the lawyer must also consider his or her duties of loyalty and competence. (See rules 1.7 and 1.1.)

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**RULES OF PROFESSIONAL CONDUCT**

*(effective November 1, 2018)*

**Rule 1.7 Conflict of Interest: Current Clients**

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**Comment**

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[3] In *State Farm Mutual Automobile Insurance Company v. Federal Insurance Company* (1999) 72 Cal.App.4th 1422 [86 Cal.Rptr.2d 20], the court held that paragraph (C)(3) of predecessor rule 3-310 was violated when a lawyer, retained by an insurer to defend one suit, and while that suit was still pending, filed a direct action against the same insurer in an unrelated action without securing the insurer's consent. Notwithstanding *State Farm*, paragraph (a) does not apply with respect to the relationship between an insurer and a lawyer when, in each matter, the insurer's interest is only as an indemnity provider and not as a direct party to the action.

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**Rule 1.8.1 Business Transactions with a Client and Pecuniary Interests Adverse to a Client**

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**Rule 1.8.2 Use of Current Client's Information**

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**Rule 1.8.3 Gifts From Client**

\* \* \* \* \*

**Rule 1.8.4 [Reserved]**

**Rule 1.8.5 Payment of Personal or Business Expenses Incurred by or for a Client**

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**Rule 1.8.6 Compensation from One Other Than Client**

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**Rule 1.8.7 Aggregate Settlements**

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**Rule 1.8.8 Limiting Liability to Client**

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*(effective November 1, 2018)*

**Rule 1.8.9 Purchasing Property at a Foreclosure or a Sale Subject to Judicial Review**

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**Rule 1.8.10 Sexual Relations With Current Client**

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**Rule 1.8.11 Imputation of Prohibitions Under Rules 1.8.1 to 1.8.9**

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**Rule 1.9 Duties to Former Clients**

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**Rule 1.10 Imputation Of Conflicts Of Interest: General Rule**

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**Rule 1.11 Special Conflicts of Interest for Former and Current Government Officials and Employees**

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**Rule 1.12 Former Judge, Arbitrator, Mediator, Or Other Third-Party Neutral**

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**Rule 1.13 Organization as Client**

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**Rule 1.14 [Reserved]**

**Rule 1.15 Safekeeping Funds and Property of Clients and Other Persons\***

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- (e) The Board of Trustees of the State Bar shall have the authority to formulate and adopt standards as to what “records” shall be maintained by lawyers and law firms\* in accordance with paragraph (d)(3). The standards formulated and adopted by the Board, as from time to time amended, shall be effective and binding on all lawyers.

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*(effective November 1, 2018)*

*Standards:*

Pursuant to this rule, the Board of Trustees of the State Bar adopted the following standards, effective \_\_\_\_\_, as to what “records” shall be maintained by lawyers and law firms\* in accordance with paragraph (d)(3).

- (1) A lawyer shall, from the date of receipt of funds of the client or other person\* through the period ending five years from the date of appropriate disbursement of such funds, maintain:

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**Rule 1.16 Declining Or Terminating Representation**

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**Rule 1.17 Sale of a Law Practice**

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**Rule 1.18 Duties To Prospective Client**

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**CHAPTER 2. COUNSELOR**

**Rule 2.1 Advisor**

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**Rule 2.2 [Reserved]**

**Rule 2.3 [Reserved]**

**Rule 2.4 Lawyer as Third-Party Neutral**

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**Rule 2.4.1 Lawyer as Temporary Judge, Referee, or Court-Appointed Arbitrator**

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**RULES OF PROFESSIONAL CONDUCT**

*(effective November 1, 2018)*

**CHAPTER 3. ADVOCATE**

**Rule 3.1 Meritorious Claims and Contentions**

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**Rule 3.2 Delay of Litigation**

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**Rule 3.3 Candor Toward The Tribunal\***

(a) A lawyer shall not:

- (1) knowingly\* make a false statement of fact or law to a tribunal\* or fail to correct a false statement of material fact or law previously made to the tribunal\* by the lawyer;
- (2) fail to disclose to the tribunal\* legal authority in the controlling jurisdiction known\* to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel, or knowingly\* misquote to a tribunal\* the language of a book, statute, decision or other authority; or

\* \* \* \* \*

**Rule 3.4 Fairness to Opposing Party and Counsel**

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**Rule 3.5 Contact With Judges, Officials, Employees, and Jurors**

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**Rule 3.6 Trial Publicity**

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- (b) Notwithstanding paragraph (a), but only to the extent permitted by Business and Professions Code section 6068, subdivision (e) and rule 1.6, lawyer may state:

\* \* \* \* \*

- (7) in a criminal case, in addition to paragraphs (1) through (6):
- (i) the identity, general area of residence, and occupation of the accused;
  - (ii) if the accused has not been apprehended, the information necessary to aid in apprehension of that person;\*

**RULES OF PROFESSIONAL CONDUCT**

*(effective November 1, 2018)*

- (iii) the fact, time, and place of arrest; and
- (iv) the identity of investigating and arresting officers or agencies and the length of the investigation.

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**Rule 3.7 Lawyer as Witness**

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**Rule 3.8 Special Responsibilities of a Prosecutor**

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**Rule 3.9 Advocate in Nonadjudicative Proceedings**

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**Rule 3.10 Threatening Criminal, Administrative, or Disciplinary Charges**

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**CHAPTER 4. TRANSACTIONS WITH PERSONS\* OTHER THAN CLIENTS**

**Rule 4.1 Truthfulness in Statements to Others**

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**Rule 4.2 Communication With a Represented Person\***

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- (b) In the case of a represented corporation, partnership, association, or other private or governmental organization, this rule prohibits communications with:
  - (1) A current officer, director, partner,\*or managing agent of the organization; or
  - (2) A current employee, member, agent, or other constituent of the organization, if the subject of the communication is any act or omission of such person\* in connection with the matter which may be binding upon or imputed to the organization for purposes of civil or criminal liability.

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**RULES OF PROFESSIONAL CONDUCT**

*(effective November 1, 2018)*

**Rule 4.3 Communicating with an Unrepresented Person\***

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**Rule 4.4 Duties Concerning Inadvertently Transmitted Writings\***

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**CHAPTER 5. LAW FIRMS\* AND ASSOCIATIONS**

**Rule 5.1 Responsibilities of Managerial and Supervisory Lawyers**

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**Rule 5.2 Responsibilities of a Subordinate Lawyer**

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**Rule 5.3 Responsibilities Regarding Nonlawyer Assistants**

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**Rule 5.3.1 Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Lawyer**

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**Rule 5.4 Financial and Similar Arrangements with Nonlawyers**

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**Rule 5.5 Unauthorized Practice of Law; Multijurisdictional Practice of Law**

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**Rule 5.6 Restrictions on a Lawyer's Right to Practice**

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**Rule 5.7 [Reserved]**

**RULES OF PROFESSIONAL CONDUCT**

*(effective November 1, 2018)*

**CHAPTER 6. PUBLIC SERVICE**

**Rule 6.1 [Reserved]**

**Rule 6.2 [Reserved]**

**Rule 6.3 Membership In Legal Services Organization**

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**Comment**

Lawyers should support and participate in legal service organizations. A lawyer who is an officer or a member of such an organization does not thereby have a lawyer-client relationship with persons\* served by the organization. However, there is potential conflict between the interests of such persons\* and the interests of the lawyer's clients. If the possibility of such conflict disqualified a lawyer from serving on the board of a legal services organization, the profession's involvement in such organizations would be severely curtailed.

**Rule 6.4 [Reserved]**

**Rule 6.5 Limited Legal Services Programs**

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**CHAPTER 7. INFORMATION ABOUT LEGAL SERVICES**

**Rule 7.1 Communications Concerning a Lawyer's Services**

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**Rule 7.2 Advertising**

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**Rule 7.3 Solicitation of Clients**

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**Rule 7.4 Communication of Fields of Practice and Specialization**

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**Rule 7.5 Firm\* Names and Trade Names**

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**RULES OF PROFESSIONAL CONDUCT**

*(effective November 1, 2018)*

**CHAPTER 8. MAINTAINING THE INTEGRITY OF THE PROFESSION**

**Rule 8.1 False Statement Regarding Application for Admission to Practice Law**

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**Rule 8.1.1 Compliance with Conditions of Discipline and Agreements in Lieu of Discipline**

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**Rule 8.2 Judicial Officials**

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**Rule 8.3 [Reserved]**

**Rule 8.4 Misconduct**

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**Rule 8.4.1 Prohibited Discrimination, Harassment and Retaliation**

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**Rule 8.5 Disciplinary Authority; Choice of Law**

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**RULES OF PROFESSIONAL CONDUCT**

*(effective November 1, 2018)*

*On May 10, 2018, the California Supreme Court issued an order approving new Rules of Professional Conduct, which are effective on November 1, 2018. The current rules remain in effect until then.*

**CLIENT-LAWYER RELATIONSHIP**

**Rule 1.0 Purpose and Function of the Rules of Professional Conduct**

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**Rule 1.0.1 Terminology**

\* \* \* \* \*

**CHAPTER 1. CLIENT-LAWYERLAWYER-CLIENT RELATIONSHIP**

**Rule 1.1 Competence**

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**Rule 1.2 Scope of Representation and Allocation of Authority**

\* \* \* \* \*

**Rule 1.2.1 Assisting, Soliciting, or Inducing Violations**

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**Rule 1.3 Diligence**

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**Rule 1.4 Communication with Clients**

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**Rule 1.4.1 Communication of Settlement Offers**

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**Rule 1.4.2 Disclosure of Professional Liability Insurance**

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**Rule 1.5 Fees for Legal Services**

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**RULES OF PROFESSIONAL CONDUCT**

*(effective November 1, 2018)*

**Rule 1.5.1 Fee Divisions Among Lawyers**

\* \* \* \* \*

**Rule 1.6 Confidential Information of a Client**

\* \* \* \* \*

**Comment**

\* \* \* \* \*

*Whether to counsel client or third person\* not to commit a criminal act reasonably\* likely to result in death or substantial\* bodily harm*

[7] ~~Subparagraph~~ Paragraph (c)(1) provides that before a lawyer may reveal information protected by Business and Professions Code section 6068, subdivision (e)(1), the lawyer must, if reasonable\* under the circumstances, make a good faith effort to persuade the client not to commit or to continue the criminal act, or to persuade the client to otherwise pursue a course of conduct that will prevent the threatened death or substantial\* bodily harm, including persuading the client to take action to prevent a third person\* from committing or continuing a criminal act. If necessary, the client may be persuaded to do both. The interests protected by such counseling are the client's interests in limiting disclosure of information protected by section 6068, subdivision (e) and in taking responsible action to deal with situations attributable to the client. If a client, whether in response to the lawyer's counseling or otherwise, takes corrective action — such as by ceasing the client's own criminal act or by dissuading a third person\* from committing or continuing a criminal act before harm is caused — the option for permissive disclosure by the lawyer would cease because the threat posed by the criminal act would no longer be present. When the actor is a nonclient or when the act is deliberate or malicious, the lawyer who contemplates making adverse disclosure of protected information may reasonably\* conclude that the compelling interests of the lawyer or others in their own personal safety preclude personal contact with the actor. Before counseling an actor who is a nonclient, the lawyer should, if reasonable\* under the circumstances, first advise the client of the lawyer's intended course of action. If a client or another person\* has already acted but the intended harm has not yet occurred, the lawyer should consider, if reasonable\* under the circumstances, efforts to persuade the client or third person\* to warn the victim or consider other appropriate action to prevent the harm. Even when the lawyer has concluded that paragraph (b) does not permit the lawyer to reveal information protected by section 6068, subdivision (e)(1), the lawyer nevertheless is permitted to counsel the client as to why it may be in the client's best interest to consent to the attorney's disclosure of that information.

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**RULES OF PROFESSIONAL CONDUCT**

*(effective November 1, 2018)*

*Informing client pursuant to ~~subparagraph~~ paragraph (c)(2) of lawyer's ability or decision to reveal information protected by Business and Professions Code section 6068, subdivision (e)(1)*

[9] A lawyer is required to keep a client reasonably\* informed about significant developments regarding the representation. (See rule 1.4; Bus. & Prof. Code, § 6068, subd. (m).) Paragraph (c)(2), however, recognizes that under certain circumstances, informing a client of the lawyer's ability or decision to reveal information protected by section 6068, subdivision (e)(1) as permitted in paragraph (b) would likely increase the risk of death or substantial\* bodily harm, not only to the originally-intended victims of the criminal act, but also to the client or members of the client's family, or to the lawyer or the lawyer's family or associates. Therefore, paragraph (c)(2) requires a lawyer to inform the client of the lawyer's ability or decision to reveal information protected by section 6068, subdivision (e)(1) as permitted in paragraph (b) only if it is reasonable\* to do so under the circumstances. Paragraph (c)(2) further recognizes that the appropriate time for the lawyer to inform the client may vary depending upon the circumstances. (See Comment [10] of this rule.) Among the factors to be considered in determining an appropriate time, if any, to inform a client are:

- (1) whether the client is an experienced user of legal services;
- (2) the frequency of the lawyer's contact with the client;
- (3) the nature and length of the professional relationship with the client;
- (4) whether the lawyer and client have discussed the lawyer's duty of confidentiality or any exceptions to that duty;
- (5) the likelihood that the client's matter will involve information within paragraph (b);
- (6) the lawyer's belief,\* if applicable, that so informing the client is likely to increase the likelihood that a criminal act likely to result in the death of, or substantial\* bodily harm to, an individual; and
- (7) the lawyer's belief,\* if applicable, that good faith efforts to persuade a client not to act on a threat have failed.

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*Other consequences of the lawyer's disclosure*

[12] Depending upon the circumstances of a lawyer's disclosure of information protected by Business and Professions Code section 6068, subdivision (e)(1) as permitted by this rule, there may be other important issues that a lawyer must address. For example, a lawyer who is likely to testify as a witness in a matter involving a client must comply with rule 3.7. Similarly, the lawyer must also consider his or her duties of loyalty and competence. (See rules 1.7 and 1.1.)

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**RULES OF PROFESSIONAL CONDUCT**

*(effective November 1, 2018)*

**Rule 1.7 Conflict of Interest: Current Clients**

\* \* \* \* \*

**Comment**

\* \* \* \* \*

[3] In *State Farm Mutual Automobile Insurance Company v. Federal Insurance Company* (1999) 72 Cal.App.4th 1422 [86 Cal.Rptr.2d 20], the court held that ~~subparagraph~~ paragraph (C) (3) of predecessor rule 3-310 was violated when a lawyer, retained by an insurer to defend one suit, and while that suit was still pending, filed a direct action against the same insurer in an unrelated action without securing the insurer's consent. Notwithstanding *State Farm*, paragraph (a) does not apply with respect to the relationship between an insurer and a lawyer when, in each matter, the insurer's interest is only as an indemnity provider and not as a direct party to the action.

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**Rule 1.8.1 Business Transactions with a Client and Pecuniary Interests Adverse to a Client**

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**Rule 1.8.2 Use of Current Client's Information**

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**Rule 1.8.3 Gifts From Client**

\* \* \* \* \*

**Rule 1.8.4 [Reserved]**

**Rule 1.8.5 Payment of Personal or Business Expenses Incurred by or for a Client**

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**Rule 1.8.6 Compensation from One Other Than Client**

\* \* \* \* \*

**Rule 1.8.7 Aggregate Settlements**

\* \* \* \* \*

**Rule 1.8.8 Limiting Liability to Client**

\* \* \* \* \*

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**Rule 1.8.9 Purchasing Property at a Foreclosure or a Sale Subject to Judicial Review**

\* \* \* \* \*

**Rule 1.8.10 Sexual Relations With Current Client**

\* \* \* \* \*

**Rule 1.8.11 Imputation of Prohibitions Under Rules 1.8.1 to 1.8.9**

\* \* \* \* \*

**Rule 1.9 Duties to Former Clients**

\* \* \* \* \*

**Rule 1.10 Imputation Of Conflicts Of Interest: General Rule**

\* \* \* \* \*

**Rule 1.11 Special Conflicts of Interest for Former and Current Government Officials and Employees**

\* \* \* \* \*

**Rule 1.12 Former Judge, Arbitrator, Mediator, Or Other Third-Party Neutral**

\* \* \* \* \*

**Rule 1.13 Organization as Client**

\* \* \* \* \*

**Rule 1.14 [Reserved]**

**Rule 1.15 Safekeeping Funds and Property of Clients and Other Persons\***

\* \* \* \* \*

- (e) The Board of Trustees of the State Bar shall have the authority to formulate and adopt standards as to what “records” shall be maintained by lawyers and law firms\* in accordance with ~~subparagraph~~ paragraph (d)(3). The standards formulated and adopted by the Board, as from time to time amended, shall be effective and binding on all lawyers.

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*Standards:*

Pursuant to this rule, the Board of Trustees of the State Bar adopted the following standards, effective \_\_\_\_\_, as to what “records” shall be maintained by lawyers and law firms\* in accordance with ~~subparagraph~~ paragraph (d)(3).

- (1) A lawyer shall, from the date of receipt of funds of the client or other person\* through the period ending five years from the date of appropriate disbursement of such funds, maintain:

\* \* \* \* \*

**Rule 1.16 Declining Or Terminating Representation**

\* \* \* \* \*

**Rule 1.17 Sale of a Law Practice**

\* \* \* \* \*

**Rule 1.18 Duties To Prospective Client**

\* \* \* \* \*

**CHAPTER 2. COUNSELOR**

**Rule 2.1 Advisor**

\* \* \* \* \*

**Rule 2.2 [Reserved]**

**Rule 2.3 [Reserved]**

**Rule 2.4 Lawyer as Third-Party Neutral**

\* \* \* \* \*

**Rule 2.4.1 Lawyer as Temporary Judge, Referee, or Court-Appointed Arbitrator**

\* \* \* \* \*



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**CHAPTER 3. ADVOCATE**

**Rule 3.1 Meritorious Claims and Contentions**

\* \* \* \* \*

**Rule 3.2 Delay of Litigation**

\* \* \* \* \*

**Rule 3.3 Candor Toward The Tribunal\***

(a) A lawyer shall not:

- (1) **knowingly\*** make a false statement of fact or law to a tribunal\* or fail to correct a false statement of material fact or law previously made to the tribunal\* by the lawyer;
- (2) fail to disclose to the tribunal\* legal authority in the controlling jurisdiction known\* to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel, or **knowingly\*** misquote to a tribunal\* the language of a book, statute, decision or other authority; or

\* \* \* \* \*

**Rule 3.4 Fairness to Opposing Party and Counsel**

\* \* \* \* \*

**Rule 3.5 Contact With Judges, Officials, Employees, and Jurors**

\* \* \* \* \*

**Rule 3.6 Trial Publicity**

\* \* \* \* \*

- (b) Notwithstanding paragraph (a), but only to the extent permitted by Business and Professions Code section 6068, subdivision (e) and rule 1.6, lawyer may state:

\* \* \* \* \*

- (7) in a criminal case, in addition to **subparagraphs** paragraphs (1) through (6):
- (i) the identity, general area of residence, and occupation of the accused;
  - (ii) if the accused has not been apprehended, the information necessary to aid in apprehension of that person;\*

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- (iii) the fact, time, and place of arrest; and
- (iv) the identity of investigating and arresting officers or agencies and the length of the investigation.

\* \* \* \* \*

**Rule 3.7 Lawyer as Witness**

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**Rule 3.8 Special Responsibilities of a Prosecutor**

\* \* \* \* \*

**Rule 3.9 Advocate in Nonadjudicative Proceedings**

\* \* \* \* \*

**Rule 3.10 Threatening Criminal, Administrative, or Disciplinary Charges**

\* \* \* \* \*

**CHAPTER 4. TRANSACTIONS WITH PERSONS\* OTHER THAN CLIENTS**

**Rule 4.1 Truthfulness in Statements to Others**

\* \* \* \* \*

**Rule 4.2 Communication With a Represented Person\***

\* \* \* \* \*

- (b) In the case of a represented corporation, partnership, association, or other private or governmental organization, this rule prohibits communications with:
  - (1) A current officer, director, partner,\*or managing agent of the organization; or
  - (2) A current employee, member, agent, or other constituent of the organization, if the subject of the communication is any act or omission of such ~~an~~-person\* in connection with the matter which may be binding upon or imputed to the organization for purposes of civil or criminal liability.

\* \* \* \* \*

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**Rule 4.3 Communicating with an Unrepresented Person\***

\* \* \* \* \*

**Rule 4.4 Duties Concerning Inadvertently Transmitted Writings\***

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**CHAPTER 5. LAW FIRMS\* AND ASSOCIATIONS**

**Rule 5.1 Responsibilities of Managerial and Supervisory Lawyers**

\* \* \* \* \*

**Rule 5.2 Responsibilities of a Subordinate Lawyer**

\* \* \* \* \*

**Rule 5.3 Responsibilities Regarding Nonlawyer Assistants**

\* \* \* \* \*

**Rule 5.3.1 Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Lawyer**

\* \* \* \* \*

**Rule 5.4 Financial and Similar Arrangements with Nonlawyers**

\* \* \* \* \*

**Rule 5.5 Unauthorized Practice of Law; Multijurisdictional Practice of Law**

\* \* \* \* \*

**Rule 5.6 Restrictions on a Lawyer's Right to Practice**

\* \* \* \* \*

**Rule 5.7 [Reserved]**

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**CHAPTER 6. PUBLIC SERVICE**

**Rule 6.1 [Reserved]**

**Rule 6.2 [Reserved]**

**Rule 6.3 Membership In Legal Services Organization**

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**Comment**

Lawyers should support and participate in legal service organizations. A lawyer who is an officer or a member of such an organization does not thereby have a ~~client-lawyer~~lawyer-client relationship with persons\* served by the organization. However, there is potential conflict between the interests of such persons\* and the interests of the lawyer's clients. If the possibility of such conflict disqualified a lawyer from serving on the board of a legal services organization, the profession's involvement in such organizations would be severely curtailed.

**Rule 6.4 [Reserved]**

**Rule 6.5 Limited Legal Services Programs**

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**CHAPTER 7. INFORMATION ABOUT LEGAL SERVICES**

**Rule 7.1 Communications Concerning a Lawyer's Services**

\* \* \* \* \*

**Rule 7.2 Advertising**

\* \* \* \* \*

**Rule 7.3 Solicitation of Clients**

\* \* \* \* \*

**Rule 7.4 Communication of Fields of Practice and Specialization**

\* \* \* \* \*

**Rule 7.5 Firm\* Names and Trade Names**

\* \* \* \* \*

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**CHAPTER 8. MAINTAINING THE INTEGRITY OF THE PROFESSION**

**Rule 8.1 False Statement Regarding Application for Admission to Practice Law**

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**Rule 8.1.1 Compliance with Conditions of Discipline and Agreements in Lieu of Discipline**

\* \* \* \* \*

**Rule 8.2 Judicial Officials**

\* \* \* \* \*

**Rule 8.3 [Reserved]**

**Rule 8.4 Misconduct**

\* \* \* \* \*

**Rule 8.4.1 Prohibited Discrimination, Harassment and Retaliation**

\* \* \* \* \*

**Rule 8.5 Disciplinary Authority; Choice of Law**

\* \* \* \* \*