

Rule	Current Rules of Professional Conduct	Possible Rules for Technology Providers	Notes
1.1	Competence		
a	A lawyer shall not intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence.	A legal technology provider shall not intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence.	
b	For purposes of this rule, “competence” in any legal service shall mean to apply the (i) learning and skill, and (ii) mental, emotional, and physical ability reasonably* necessary for the performance of such service.	For purposes of this rule, “competence” in any legal service shall mean for a legal technology provider, or their product, to apply the (i) learning and skill, and (ii) technical ability reasonably* necessary for the performance of such service.	
c	If a lawyer does not have sufficient learning and skill when the legal services are undertaken, the lawyer nonetheless may provide competent representation by (i) associating with or, where appropriate, professionally consulting another lawyer whom the lawyer reasonably believes* to be competent, (ii) acquiring sufficient learning and skill before performance is required, or (iii) referring the matter to another lawyer whom the lawyer reasonably believes* to be competent.	If a legal technology provider, or their product, does not have sufficient learning and skill when the legal services are undertaken, the legal technology provider nonetheless may provide competent service by (i) associating with or, where appropriate, professionally consulting a lawyer whom the legal technology provider reasonably believes* to be competent, or (ii) referring the matter to a lawyer whom the legal technology provider reasonably believes* to be competent.	Remove part (ii). For machines, performance is near instantaneous, providing little time to acquire and validate sufficient learning and skill.
d	In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required if referral to, or association or consultation with, another lawyer would be impractical. Assistance in an emergency must be limited to that reasonably* necessary in the circumstances.		Remove emergency exemption

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1.2 Scope of Representation and Allocation of Authority			
a	Subject to rule 1.2.1, a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by rule 1.4, shall reasonably* consult with the client as to the means by which they are to be pursued. Subject to Business and Professions Code section 6068, subdivision (e)(1) and rule 1.6, a lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation . A lawyer shall abide by a client's decision whether to settle a matter. Except as otherwise provided by law in a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.	Subject to rule 1.2.1, a legal technology provider shall abide by a client's decisions concerning the objectives of the legal service and, as required by rule 1.4, shall reasonably* consult with the client as to the means by which they are to be pursued. Subject to <u>Business and Professions Code section 6068, subdivision (e)(1)</u> and rule 1.6, a legal technology provider may take such action on behalf of the client as is impliedly authorized to carry out the legal service . A legal technology provider shall abide by a client's decision whether to settle a matter.	Criminal representation is beyond the scope of legal technology providers
b	A lawyer may limit the scope of the representation if the limitation is reasonable* under the circumstances, is not otherwise prohibited by law, and the client gives informed consent.*	A legal technology provider may limit the scope of the legal service if the limitation is reasonable* under the circumstances, is not otherwise prohibited by law, and the client gives informed consent.*	Most legal technology services will be extremely limited scope, but still require informed consent.

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1.2.1	Advising or Assisting the Violation of Law		
a	A lawyer shall not counsel a client to engage, or assist a client in conduct that the lawyer knows* is criminal, fraudulent,* or a violation of any law, rule, or ruling of a tribunal.*	Neither a legal technology provider , nor their product, shall counsel a client to engage, or assist a client in conduct that the legal technology provider knows* or reasonably should know* is criminal, fraudulent,* or a violation of any law, rule, or ruling of a tribunal.*	This sets a high bar for products like chatbots and may not be feasible with current technology. But, chatbots should not counsel clients to commit criminal acts. Still, machine reasoning over such complex scenarios may exist soon and should be available for consideration by reviewers.
b	Notwithstanding paragraph (a), a lawyer may: <ul style="list-style-type: none"> (1) discuss the legal consequences of any proposed course of conduct with a client; and (2) counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of a law, rule, or ruling of a tribunal.* 	Notwithstanding paragraph (a), a legal technology provider , through their approved product, may: <ul style="list-style-type: none"> (1) discuss the legal consequences of any proposed course of conduct with a client; and (2) counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of a law, rule, or ruling of a tribunal.* 	
1.3	Diligence		
a	A lawyer shall not intentionally, repeatedly, recklessly or with gross negligence fail to act with reasonable diligence in representing a client.	A legal technology provider shall not intentionally, repeatedly, recklessly or with gross negligence fail to act with reasonable diligence in providing legal services to a client.	
b	For purposes of this rule, “reasonable diligence” shall mean that a lawyer acts with commitment and dedication to the interests of the client and does not neglect or disregard, or unduly delay a legal matter entrusted to the lawyer .	For purposes of this rule, “reasonable diligence” shall mean that a legal technology provider acts with commitment and dedication to the interests of the client and does not neglect or disregard, or unduly delay a legal matter entrusted to the legal technology provider .	

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1.4 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.

A [legal technology provider, or their product](#), 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 of the legal service;
- (3) keep the client reasonably* informed about significant developments relating to the [legal service](#), 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 of the [legal technology product, or legal technology provider's](#) conduct when the [legal technology provider](#) 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](#).

A [legal technology provider, or their product](#), shall explain a matter to the extent reasonably* necessary to permit the client to make informed decisions regarding the [legal service](#).

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.

A [legal technology provider](#) may delay transmission of information to a client if the [legal technology provider](#) 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.

A [legal technology provider'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.

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1.4.1	Communication of Settlement Offers		
a	A lawyer shall promptly communicate to the lawyer's client: (1) all terms and conditions of a proposed plea bargain or other dispositive offer made to the client in a criminal matter; and (2) all amounts, terms, and conditions of any written* offer of settlement made to the client in all other matters.	A legal technology provider shall promptly communicate to their client all amounts, terms, and conditions of any written* offer of settlement made to the client.	Criminal representation is beyond the scope of legal technology providers
b	As used in this rule, "client" includes a person* who possesses the authority to accept an offer of settlement or plea, or, in a class action, all the named representatives of the class.	As used in this rule, "client" includes a person* who possesses the authority to accept an offer of settlement.	Both criminal and class representation are beyond the scope of legal technology providers

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1.4.2	Disclosure of Professional Liability Insurance		
a	A lawyer who knows* or reasonably should know* that the lawyer does not have professional liability insurance shall inform a client in writing,* at the time of the client's engagement of the lawyer , that the lawyer does not have professional liability insurance.	A legal technology provider who knows* or reasonably should know* that the legal technology provider does not have professional liability insurance shall inform a client in writing,* at the time of the client's engagement of the legal technology provider , that the legal technology provider does not have professional liability insurance.	
b	If notice under paragraph (a) has not been provided at the time of a client's engagement of the lawyer , the lawyer shall inform the client in writing* within thirty days of the date the lawyer knows* or reasonably should know* that the lawyer no longer has professional liability insurance during the representation of the client.	If notice under paragraph (a) has not been provided at the time of a client's engagement of the legal technology provider , the legal technology provider shall inform the client in writing* within thirty days of the date the legal technology provider knows* or reasonably should know* that the legal technology provider no longer has professional liability insurance during the provision of legal service to the client.	
c	This rule does not apply to: (1) a lawyer who knows* or reasonably should know* at the time of the client's engagement of the lawyer that the lawyer's legal representation of the client in the matter will not exceed four hours; provided that if the representation subsequently exceeds four hours, the lawyer must comply with paragraphs (a) and (b); (2) a lawyer who is employed as a government lawyer or in-house counsel when that lawyer is representing or providing legal advice to a client in that capacity;	This rule does not apply to: (1) a legal technology provider who knows* or reasonably should know* at the time of the client's engagement of the legal technology provider that the legal service for the matter will not exceed four hours or \$500 ; provided that if the legal service subsequently exceeds four hours or \$500 , the legal technology provider must comply with paragraphs (a) and (b); (2) a legal technology provider providing a legal service to a government lawyer or in-house counsel when that lawyer is representing or providing legal advice to a client in that capacity;	Add alternate \$500 limit
	(3) a lawyer who is rendering legal services in an emergency to avoid foreseeable prejudice to the rights or interests of the client ;		Remove emergency exemption
	(4) a lawyer who has previously advised the client in writing* under paragraph (a) or (b) that the lawyer does not have professional liability insurance.	(3) a legal technology provider who has previously advised the client in writing* under paragraph (a) or (b) that the legal technology provider does not have professional liability insurance.	

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1.5 Fees for Legal Services

a A **lawyer** shall not make an agreement for, charge, or collect an unconscionable or illegal fee.

b Unconscionability of a fee shall be determined on the basis of all the facts and circumstances existing at the time the agreement is entered into except where the parties contemplate that the fee will be affected by later events. The factors to be considered in determining the unconscionability of a fee include without limitation the following:

(1) whether the **lawyer** engaged in fraud* or overreaching in negotiating or setting the fee;

(2) whether the **lawyer** has failed to disclose material facts;

(3) the amount of the fee in proportion to the value of the services performed;

(4) the relative sophistication of the **lawyer** and the client;

(5) the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(6) the likelihood, if apparent to the client, that the acceptance of the particular **employment** will preclude **other employment** by the **lawyer**;

(7) the amount involved and the results obtained;

(8) the time limitations imposed by the client or by the circumstances;

(9) the nature and length of the professional relationship with the client;

(10) the experience, reputation, and ability of the **lawyer or lawyers** performing the services;

(11) whether the fee is fixed or contingent; (12) the time and labor required; and

(13) whether the client gave informed consent* to the fee.

A **legal technology provider** shall not make an agreement for, charge, or collect an unconscionable or illegal fee.

Unconscionability of a fee shall be determined on the basis of all the facts and circumstances existing at the time the agreement is entered into except where the parties contemplate that the fee will be affected by later events. The factors to be considered in determining the unconscionability of a fee include without limitation the following:

(1) whether the **legal technology provider** engaged in fraud* or overreaching in negotiating or setting the fee;

(2) whether the **legal technology provider** has failed to disclose material facts;

(3) the amount of the fee in proportion to the value of the services performed;

(4) the relative sophistication of the **legal technology provider** and the client;

(5) the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(6) the likelihood, if apparent to the client, that the acceptance of the particular **engagement** will preclude **provision of other legal services or engagements** by the **legal technology provider**;

(7) the amount involved and the results obtained;

(8) the time limitations imposed by the client or by the circumstances;

(9) the nature and length of the professional relationship with the client;

(10) the experience, reputation, and ability of the **legal technology provider, or its product**, in performing the services;

(11) whether the fee is fixed or contingent; (12) the time and labor required; and

(13) whether the client gave informed consent* to the fee.

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1.5 Fees for Legal Services (continued)

c A [lawyer](#) shall not make an agreement for, charge, or collect:

(1) any fee in a family law matter, the payment or amount of which is contingent upon the securing of a dissolution or declaration of nullity of a marriage or upon the amount of spousal or child support, or property settlement in lieu thereof;

or

(2) a contingent fee for representing a defendant in a criminal case.

A [legal technology provider](#) shall not make an agreement for, charge, or collect

any fee in a family law matter, the payment or amount of which is contingent upon the securing of a dissolution or declaration of nullity of a marriage or upon the amount of spousal or child support, or property settlement in lieu thereof.

Criminal representation is beyond scope

d A [lawyer](#) may make an agreement for, charge, or collect a fee that is denominated as “earned on receipt” or “non-refundable,” or in similar terms, only if the fee is a true retainer and the client agrees in writing* after disclosure that the client will not be entitled to a refund of all or part of the fee charged. A true retainer is a fee that a client pays to a lawyer to ensure the lawyer’s availability to the client during a specified period or on a specified matter, but not to any extent as compensation for legal services performed or to be performed.

A [legal technology provider](#) may make an agreement for, charge, or collect a fee that is denominated as “earned on receipt” or “non-refundable,” or in similar terms, only if the fee is a true retainer and the client agrees in writing* after disclosure that the client will not be entitled to a refund of all or part of the fee charged. A true retainer is a fee that a client pays to a [legal technology provider](#) to ensure the [legal service's](#) availability to the client during a specified period or on a specified matter, but not to any extent as compensation for legal services performed or to be performed.

As an example, a SaaS subscription provided by a legal technology provider could be a true retainer, but usually SaaS products include service consumption in addition to mere availability since technology products are often highly available.

e A [lawyer](#) may make an agreement for, charge, or collect a flat fee for specified legal services. A flat fee is a fixed amount that constitutes complete payment for the performance of described services regardless of the amount of work ultimately involved, and which may be paid in whole or in part in advance of the [lawyer](#) providing those services.

A [legal technology provider](#) may make an agreement for, charge, or collect a flat fee for specified legal services. A flat fee is a fixed amount that constitutes complete payment for the performance of described services regardless of the amount of work ultimately involved, and which may be paid in whole or in part in advance of the [legal technology provider](#) providing those services.

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a **Lawyers who are not in the same law firm*** shall not divide a fee for legal services unless:

(1) the **lawyers** enter into a written* agreement to divide the fee;

(2) the client has consented in writing,* either at the time the **lawyers** enter into the agreement to divide the fee or as soon thereafter as reasonably* practicable, after a full written* disclosure to the client of: (i) the fact that a division of fees will be made; (ii) the identity of the **lawyers or law firms* that are** parties to the division; and (iii) the terms of the division; and

(3) the total fee charged by **all lawyers** is not increased solely by reason of the agreement to divide fees.

b This rule does not apply to a division of fees pursuant to court order.

Legal technology providers shall not divide a fee for legal services **with a lawyer or law firm*** unless:

(1) the **legal technology provider and the lawyer or law firm*** enter into a written* agreement to divide the fee;

(2) the client has consented in writing,* either at the time the **legal technology provider and the lawyer or law firm*** enter into the agreement to divide the fee or as soon thereafter as reasonably* practicable, after a full written* disclosure to the client of: (i) the fact that a division of fees will be made; (ii) the identity of the parties to the division; and (iii) the terms of the division; and

(3) the total fee charged by the **legal technology provider and the lawyer or law firm*** is not increased solely by reason of the agreement to divide fees.

This rule does not apply to a division of fees pursuant to court order.