



The State Bar *of California*

COMMITTEE ON PROFESSIONAL RESPONSIBILITY AND CONDUCT

Date: November 20, 2019

To: Members of COPRAC

From: Steve Bundy, Chair

Subject: Consideration Regarding Request to Adopt ABA Model Rule 8.3

The State Bar has recently received a request from Montie S. Day, Esq. asking that the State Bar revisit the question of whether to adopt a rule, similar to ABA Model Rule 8.3, which requires lawyers to report serious professional misconduct of their professional colleagues to the State Bar. The full correspondence relating to that request is attached.

Leadership and staff have conferred about this request and have drafted a proposed response for the Committee's consideration, which is also attached. The draft response reflects what we think are solid reasons why revisiting the very recent decision not to adopt a version of Rule 8.3 would be a mistake. We recognize that others may have different views that should inform the Committee's decision, and so we have placed the item on the agenda for discussion. Unless there is substantial opposition to this approach; however, we are hopeful that we can deal with this item promptly (Mr. Day's request is dated July 25) and expeditiously at the meeting.

ABA Model Rule 8.3 Reporting Professional Misconduct

- (a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.
- (b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.
- (c) This Rule does not require disclosure of information otherwise protected by Rule 1.6 or information gained by a lawyer or judge while participating in an approved lawyers assistance program.

Comment

[1] Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they know of a violation of the Rules of Professional Conduct. Lawyers have a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

[2] A report about misconduct is not required where it would involve violation of Rule 1.6. However, a lawyer should encourage a client to consent to disclosure where prosecution would not substantially prejudice the client's interests.

[3] If a lawyer were obliged to report every violation of the Rules, the failure to report any violation would itself be a professional offense. Such a requirement existed in many jurisdictions but proved to be unenforceable. This Rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this Rule. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware. A report should be made to the bar disciplinary agency unless some other agency, such as a peer review agency, is more appropriate in the circumstances. Similar considerations apply to the reporting of judicial misconduct.

[4] The duty to report professional misconduct does not apply to a lawyer retained to represent a lawyer whose professional conduct is in question. Such a situation is governed by the Rules applicable to the client-lawyer relationship.

[5] Information about a lawyer's or judge's misconduct or fitness may be received by a lawyer in the course of that lawyer's participation in an approved lawyers or judges assistance program. In that circumstance, providing for an exception to the reporting requirements of paragraphs (a) and (b) of this Rule encourages lawyers and judges to seek treatment through such a program. Conversely, without such an exception, lawyers and judges may hesitate to seek assistance from these programs, which may then result in additional harm to their professional careers and additional injury to the welfare of clients and the public. These Rules do not otherwise address the confidentiality of information received by a lawyer or judge participating in an approved lawyers assistance program; such an obligation, however, may be imposed by the rules of the program or other law.

2nd Commission's Reasons for Not Adopting Model Rule 8.3

Among the reasons for the Commission's decision not to recommend the adoption of Model Rule 8.3 are the following.

(1) Despite the recognition that reporting could be trumped by the duty of confidentiality with respect to information learned in the course of representation of a client, there remains a potential for conflict with that duty to the extent lawyers might feel obligated to seek a waiver of confidentiality to further the reporting interests of the lawyer rather than the client's own interests;

(2) The rule would pose a potential for conflicts with a lawyer's duty of loyalty in those specific instances where making the report would be detrimental to a current or former client's interests (for example, causing animosity with opposing counsel as the subject of a report that leads to the unwinding of a settlement that the client might otherwise have consummated); and

(3) The rule might be construed as inconsistent with the discretionary reporting policy reflected in Canon 3D(2) of the California Code of Judicial Ethics that states: "Whenever a judge has personal knowledge, or concludes in a judicial decision, that a lawyer has committed misconduct or has violated any provision of the Rules of Professional Conduct, the judge shall take appropriate corrective action, which *may include reporting the violation to the appropriate authority.*" (Emphasis added.)

At the Commission's June 2-3, 2016 meeting, the Commission members approved a recommendation not to adopt a version of Model Rule 8.3 (10-4-0).



The State Bar of California

COMMITTEE ON PROFESSIONAL RESPONSIBILITY AND CONDUCT

180 Howard Street, San Francisco, CA 94105

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November 20, 2019

Montie S. Day
Day Law Offices
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Dear Mr. Day:

I am writing on behalf of the Committee on Professional Responsibility and Conduct of the State Bar of California ("Committee"). The Committee is the entity within the State Bar that is charged with reviewing and suggesting changes to the Rules of Professional Conduct. In that capacity, we have been asked to consider your letter of May 25, 2019 to the State Bar and your further letter of July 15, 2019 to Soh-Yeon Lee of the State Bar requesting that the Bar revisit the question of whether California should adopt a version of American Bar Association model Rule 8.3. Rule 8.3(a) provides, in pertinent part:

A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

The Committee appreciates your concern for this important issue and the work you have put into your submissions. However, after carefully reviewing your request, we have decided not to recommend that the State Bar consider whether to enact a California version of Model Rule 8.3, for the following reasons.

1. Your request appears to suggest some misunderstanding of current California law. In part, Your July 15 letter states that California has "chosen to protect attorneys engaged in criminal conduct from being reported to the State Bar." In fact, California law includes several provisions where reporting attorney misconduct is required. (See, for example, Bus. & Prof. Code §§ 6101, 6086.7, and 6086.8.). Second, contrary to your May 25 letter, California did not "eliminate" any existing reporting requirements. Although California did decline to adopt a version of ABA Model Rule 8.3 as part of its recent rule revision

process, that result did not change or repeal any of the existing reporting requirements. It is important to note that California has never had a rule of professional conduct similar to ABA Model Rule 8.3.

2. The question of whether California should adopt a mandatory reporting requirement similar to ABA Model Rule 8.3 was recently the subject of extensive consideration by the Commission for the Revision of the Rules of Professional Conduct, a broadly representative group of lawyers (including a liaison from the State Bar's Office of Chief Trial Counsel), judges and non-lawyers with broad expertise in professional rules and discipline. The Commission recommended against the adoption of such a rule, for the reasons stated in Ms. Lee's letter to you. The State Bar concurred in that recommendation, and the Supreme Court also accepted it, approving the revised rules in early 2018, less than two years ago.
3. There does not appear to be any reason to revisit that decision at this time. The issue was carefully studied by experts. The resolution reached is supported by persuasive reasoning and was adopted by the Commission, the State Bar, and the Supreme Court. Little time has passed since that decision was made; certainly not enough to provide a fair test of experience under the new Rules.

For all these reasons, we do not think that revisiting the question of whether to enact a California version of ABA Model Rule 8.3 is appropriate at this time.

Thank you again for your interest and involvement in these important issues.

Very truly yours,

Stephen Bundy
Chair, Committee on Professional Responsibility and Conduct

cc: Members, Committee on Professional Responsibility and Conduct

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July 15, 2019

Soh-Yeon Lee
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State Bar of California
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RE: RULES OF PROFESSIONAL CONDUCT REPORTING OF MISCONDUCT BY ATTORNEYS

Dear Soh-Yeon Lee:

I have received your letter of June 25, 2019 attempting to explain why the Office of Professional Competence refused to adopt the ABA Rules of Professional Responsibility Rule 8.3 while choosing to protect attorneys engaged in criminal activities from being reported to the State Bar. I assume the same theory would mean that crimes cannot and/or should not be reported to other law enforcement officials and/or agencies, such as the District Attorney or the Attorney General. After more than 40 years of private practices which followed 12 years prior work as a criminal investigator for the U.S. Treasury Department Intelligence Division including work on the Mafia, I simply don't accept such justification.

The clients are victims of crime and the argument that the attorney who is engaged in criminal conduct may be upset if such is reported to the government is absolutely unbelievable. Query: If I, through my investigation discover that an attorney was participating in a plan to committed a murder and/or acts of terrorism would be a violation of my duty to report such to the State Bar if the attorney was involved in the criminal acts? How about law enforcement?

I have dealt with the State Bar's refusal and/or failure to even investigate the illegal action of attorneys before. In fact, the first time I had such a situation involved Jules Pearlman, a prominent attorney in the San Francisco area who was embezzling thousands of dollars from clients, ie grand theft. It was an ongoing criminal acts involving many individuals and business. When I reported such to the State Bar, the State Bar simply refused to take any action. I had filed an action on behalf of the victim, now my client. I was able to recover the stolen funds which if I recall was more than \$50,000.00. In the meantime, some other victims had reported such to other attorneys who also reported such to the State Bar without results. Eventually, and fortunately for the public and citizens of California, the District Attorney for the county filed

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criminal charges of grand theft which resulted in Mr. Pearlman's felony conviction. This of course took years while the State Bar did nothing. Only after the criminal conviction did the State Bar investigate the matter and suspend his license to practice law. Thereafter, for reasons unknown, I was contacted by the State Bar and asked how I recovered the money for my client—and I explained by actually investigating the matter and taking legal action. Others, in my view, who lost thousands of dollars had been victimized by both Mr. Pearlman as well as the California State Bar for sitting and refusing to take action for years.

Understand that I have a sensitivity to this "confidential" issue. I as a criminal investigator for U.S. Treasury have dealt with this "confidentiality" issue when I discovered that there was a planned murder of an innocent person, but government officials advised me not to share the information with State law enforcement as my investigation was "confidential" under statutes. I could not alert law enforcement by instruction of the government officials. This came from top government officials. I did not---and three persons were murdered but the good news was that they were not the intended victim but the three persons who were to do the killing targeted for murder killed after their failed attempt to kill the intended victim who had merely witnessed the killing of another person. I am not going into detail. I will also, however, state that one of the dirtiest investigation I conducted involved the practice of a California attorney in bribery of Superior Court judges in California, a case in which potential witnesses were intimidated to the extent of having bullets shot through their homes.

Along this same line dealing with confidentiality and the duties of attorney, I must admit that I have at least according to State Bar Rules disclosed information which was provided to me by my client in confidence notwithstanding the State Bar Rules of Professional Conduct. It involved a dispute and/or divorce case between the wife, my client, and her husband. I was provided a personal diary by my client containing notes and information of a confidential nature. One morning, I read in the newspaper on the BART train to San Francisco that her dead body was found in the Oakland hills and according to the police they had no leads as to who may have killed her. I then made contact with law enforcement and using my information, the husband was convicted of First Degree Murder. Sorry, but the reality is that "confidentiality" is not always the answer and yes he was upset at me.

However, I don't think the public would think the illegal conduct of attorneys licensed by the State Bar cannot be furnished to the State Bar or other law enforcement merely because it may upset the attorney engaged in criminal activities. I think the public and citizens would be more upset and distrustful of the legal system if they knew the State Bar of California under the control of the Supreme Court of the State of California was indifferent to illegal conduct committed by attorneys licensed to practice law in the State of California.

The argument that such may violate the duty of "confidentiality" with respect to

information in connection with representing a client is absolutely false. Actually, the information relating to the criminality activities of an attorney does not come from the victim of crime but from the conduct of the attorney engaged in criminal activities.

It would appear that either one of two things would be appropriate. One alternative would be for the California State Bar reconsider this matter promptly. The other alternative is that the public and potential victims, that is the Citizens of the State of California, be fully made aware of the California State Bar's position of protecting attorneys who are engaged in criminal activities. There are other alternatives but perhaps the State Bar should be concerned about the criminal activities of the legal profession especially when the victims are the citizens of the State of California as well as clients. I just don't believe that it is appropriate for the State Bar of California to turn a blind eye upon the illegal conduct of an attorney merely because the attorney may be upset if the illegal conduct is reported to the State Bar or, in act, other law enforcement officials.

Without simple law enforcement and holding those responsible for illegal activities accountable perhaps the reputation of the legal system and the trust in the legal system may benefit from appropriate action by law enforcement and the legal system and/or the supervision of the legal system. This must be viewed in light of some facts, such as there is obvious concern considering the non-enforcement of the legal system and law by those in charge of such enforcement. It appears that it is left to the private attorneys willing to take on the corruption of the judicial system to actually take action while the government officials refuse to enforce the law and refuses to take any action which may damages the financial interest of powerful organizations or the legal profession. This can be seen by the recent case of whereby, for example, State Farm Insurance, paid \$250,000,000.00 in connection with a civil racketeering case in Illinois, one which obviously involves the same type of conduct which goes on in California. For reasons unknown, the practices of the insurance industry in purchasing the influence of politicians as well as judges does not receive the notice which is should. To bring the matter more to date, the recent settlement by State Farm Insurance in the State of Illinois United States District Court is used as an example for recent history and to demonstrate the reach of such corruption. Let me summarize the case as I am sure it is unlikely there has been no concern by the government officials in California of the practice in California.

On September 4, 2018, State Farm agreed to pay \$250 million on the brink of a trial to customers who claimed the company tried to rig the Illinois justice system to wipe and eliminate more than \$1 billion in jury verdicts against State Farm. The fact is that the legal action was NOT filed by any state or federal agency or official who were charged with the responsibility of enforcing the laws as against the insurance industry but private attorneys stepped up to represent the individuals and the victims with such being filed a class action. Furthermore, the action was filed by individuals who were policy holders of State Farm and involved approximately 4.7 billion State Farm policy holders who held approximately \$1.5 billion in judgements which had been affirmed by the Illinois Appellate Courts. The action was filed in the United States District Court in Southern

District of Illinois, Illinois.

The biggest U.S. auto insurer was accused in the case of leading an effort to recruit a judge friendly to its cause for the Illinois Supreme Court, secretly funding Judge Lloyd Lloyd Karmeier's 2004 election campaign by funneling money through advocacy groups that didn't disclose donors. The action was filed under the federal Racketeer Influenced and Corrupt Organizations Act, also referred to as "R.I.C.O., seeking damages would have been tripled. The complaint alleged that State Farm with others conducted a criminal enterprise, a R.I.C.O. enterprise, form to enable State Farm in the evasion of the \$1.05 billions in judgment. The action also involved violations of other statutes including Illinois's Fraud Action, such acts designed to defraud the policy holders and class members of \$1.05 billions in the judgments against State Farm. By such, Judge Lloyd Karmeier gained the seat on the Illinois Superior Court and refused to disqualify himself, casting the vote overturning the \$1.05 billions in judgments and exonerating State Firm from the liability and wrong doing. The complaint alleged that State Farm had developed an elaborate plan to obtain the reversal of the judgment against them. This was the "pattern of racketeering activity" conducted in violation of Title 18, United States Code Section 1962(c), the Federal Racketeering statute which also involved mail fraud.

It is pointed out that State Farm company denied any wrongdoing in settling the claim and claim that the settlement was "made simply to bring an end to the entire litigation," and "to avoid protracted litigation and appeals that could continue for several more years." State Farm "has consistently denied participating in a RICO scheme and to this day denies any role in electing Judge Karmeier," according to statements attributed to attorney for the plaintiffs, but such counsel said in a statement that it should be recognized that State Farm agreed to pay a quarter of a billion dollars so the credibility of the denial should be considering when evaluation the honesty of State Farm. A point well taken. The settlement came after the jury was selected last week and just before opening statements were set to begin. That probably shows State Farm was spooked by the risk of an adverse verdict of even more liability. Simply put, corporate defendants generally don't part with that kind of money just before the opening statement of a trial unless they got a really negative vibe from the jury that was impaneled.

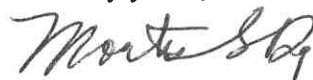
According to the plaintiffs in such action, State Farm spent more than \$3.5 million on Karmeier's election and continued to conceal its role even during the attempt to reinstate the original claim. Karmeier, 78, has been Illinois court's chief justice since 2016. He wasn't sued in the civil racketeering case, but he was scheduled to be a witness in the trial.

The case: Hale v. State Farm Mutual Automobile Insurance Co., 12-cv-00660, U.S. District Court, Southern District of Illinois (East St. Louis)

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In conclusion, I would suggest that the California State Bar revisit the refusal to adopt the ABA Model Rule 8.3. I also suggest that the State of California including both the State Bar and other law enforcement officials take more interest in protecting the Citizens of the State of California and the Judicial System that merely being concern that such would upset the attorneys who may be engaged in such activities.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Montie S. Day".

Montie S. Day, Attorney

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May 25, 2019

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**RULES OF PROFESSIONAL CONDUCT
REPORTING OF MISCONDUCT BY ATTORNEYS**

REQUEST FOR INFORMATION/EXPLANATION

Gentlemen:

On April 18, 2019, I sent a letter to the Judicial Council of the State of California of this same context as this letter attempting to request information and the explanation for the elimination of the reporting requirements for misconduct of attorneys as set forth above and as is typical the response was the mere shuffling of the obligation to other governmental agencies treating this as a complaint against a Judge instead of addressing the issues. One of the statements made in the letter is that the State Bar of California is responsible for the licensing and regulating of attorneys activities, misconduct and ethical standards stating that you are the responsible government entity and providing your address as above. As I understand the State of California Constitutes delegates the responsibility for the judicial system to the Supreme Court but over the years I have found that attorney misconduct even criminal misconduct is ignored by both the Courts as well as the California State Bar. In any event, I am resubmitting the request for information and an explanation to you to see if you are the responsible government entity or government organization who has information relating to this issue as the Citizens of the State of California continue to be damaged by the non-enforcement of the laws and regulations for the protection of the public as simply ignored or has been to date based upon my experiences over the last 45 years. As I see it, attorneys and the legal profession is not immune from the standards of conduct applicable to other citizens.

As you are likely aware, many citizens are victimized by the non-enforcement of the law and/or the continued disregard of the misconduct of attorneys who are specially retained by insurance companies and other business enterprises for the purpose of deceiving the Court and defrauding the public through various methods.

State Bar of California

May 25, 2019

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I am and believe that there is a major problem which for reasons unknown to me exists and now it appears there is a deliberate attempt to protect attorneys who engaged in wrongful and/or illegal conduct from being investigated and appropriate action taken by the California State Bar. I have run into this issue over the years in which in at least in some cases I have reported misconduct of attorneys when the State Bar refused to take any action for years later and then later only taken action only after the attorney was criminally convicted for major crimes. In the meantime, there were more victims of the criminal activities of committed by this attorney.

If the public and the citizens are expected to have faith in the Judicial System, the conduct of the Judicial System must be honest seeking truth and justice and those persons responsible assuring the citizens that the integrity of the judicial system will be protected. It is generally considered that any person who has an obligation to promote justice and effective operation of the judicial system, including judges and the attorneys who appear in court and are officers of the court. Thus, it is my opinion that lawyers have an absolute ethical duty to tell judges the truth, including avoiding dishonesty and/or violations of law merely to profit a client or themselves. It is the badge of any responsible citizen, and it is also the responsibility of the appropriate government officials, when notice of such wrong is presented, to investigate the matter and take appropriate action. In this connection, it would appear that a lawyer possessing knowledge or evidence, not protected as a confidence or secret, concerning another lawyer or a judge shall reveal fully such knowledge or evidence upon proper request of a tribunal or other authority empowered to investigate or act upon the conduct of lawyers or judges.

There is, of course, no reason why any citizen should conceal criminal and wrongful activity of which he or she has knowledge and/or condone such wrongful conduct. In *Roberts v. United States*, 445 U.S. 552, 557-558, the United States Supreme Court pointed out:

"Concealment of crime has been condemned throughout our history. The citizen's duty to 'raise the "hue and cry" and report felonies to the authorities,' *Branzburg v. Hayes*, 408 U.S. 665, 696 (1972), was an established tenet of Anglo-Saxon law at least as early as the 13th century. 2 W. Holdsworth, *History of English Law* 101-102 (3d ed. 1927); 4 id., at 521-522; see Statute of Westminster First, 3 Edw. 1, ch. 9, p. 43 (1275); Statute of Westminster Second, 13 Edw. 1, chs. 1, 4, and 6, pp. 112-115 (1285). The first Congress of the United States enacted a statute imposing criminal penalties upon anyone who, 'having knowledge of the actual commission of [certain felonies,] shall conceal, and not as soon as may be disclose and make known the same to [the appropriate] authority. . . .' Act of Apr. 30, 1790, § 6, 1 Stat. 113. Although the term 'misprison of felony' now has an archaic ring, gross indifference to the duty to report known criminal behavior remains a badge of irresponsible citizenship."

The Model Rules of Professional Conduct prepared and adopted by the American Bar Association states, in part:

August 17, 2018
Rule 8.3 Reporting Professional Misconduct - Comment

Maintaining The Integrity of The Profession

[1] Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they know of a violation of the Rules of Professional Conduct. Lawyers have a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

California Rules of Professional Conduct effective in 2018, however, while essentially adopting the ABA Model Rules, eliminates the above for reasons unknown.

The fact of the matter is that not to report such misconduct, especially if such involves criminal misconduct, to the State Bar or other appropriate government authority merely assist and encourages the misconduct and criminal activities. Likewise, the failure and/or refusal of the State Bar or other appropriate government authorities to investigate such matters and enforce the law assist and encourages such misconduct.

If the public and the citizens are expected to have faith in the Judicial System, the conduct of the Judicial System must be honest seeking truth and justice and those persons responsible assuring the citizens that the integrity of the judicial system will be protected.

It has been well documented that violations of the California Rules of Professional Conduct generally are never reported to the State Bar when obvious if such is within the knowledge of one attorney and involves another attorney. However, the misconduct and actions well documented by me over the years goes well beyond merely the violations of the Rules of Professional Conduct and actually involves criminal conduct and other wrongful conduct, which include, for examples:

1. California Business and Professions Code Section 6128 (Criminal Statute)

§ 6128. Misdemeanors in practice; Deception or corruption

Every attorney is guilty of a misdemeanor who either:

- (a) Is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party.**
- (b) Willfully delays his client's suit with a view to his own gain.**

(c) Willfully receives any money or allowance for or on account of any money which he has not laid out or become answerable for.

Any violation of the provisions of this section is punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both.

(Emphasis added)

Note: And now for the success of the Legislature's attempt to control the misuse of the legal justice systems by attorney-members of the State Bar. Since 1939, and for the last 80 years, there appears NO reported case of any criminal prosecution under this statute. As a result, legitimate litigates and citizens seeking justice are abused. In addition, every citizen of the State of California are victims, paying for a judicial system which, because of the non-enforcement of the laws and failure to control the abuse of the judicial, costs citizens millions of dollars to maintain an inefficient judicial system. The "judicial system" is also a victim in that as a result of the abuse of the judicial system, the citizens of the State of California justifiably has a loss of respect and/or trust for the judicial.

2. California Business and Professions Code Section 6068 (Civil Duty)

§ 6068. Duties as an attorney

It is the duty of an attorney to do all of the following:

- (a) To support the Constitution and laws of the United States and of this state.
- (b) To maintain the respect due to the courts of justice and judicial officers.
- (c) To counsel or maintain those actions, proceedings, or defenses only as appear to him or her legal or just, except the defense of a person charged with a public offense.
- (d) To employ, for the purpose of maintaining the causes confided to him or her those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law.
- (e) ...
- (f) To advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he or she is charged.

(g) ...

3. California Pen Code Section 118, 125 and Section 127 (Criminal Statutes)

§ 118. Perjury defined

(a) Every person who, having taken an oath that he or she will testify, declare, depose, or certify truly before any competent tribunal, officer, or person, in any of the cases in which the oath may by law of the State of California be administered, willfully and contrary to the oath, states as true any material matter which he or she knows to be false, and every person who testifies, declares, deposes, or certifies under penalty of perjury in any of the cases in which the testimony, declarations, depositions, or certification is permitted by law of the State of California under penalty of perjury and willfully states as true any material matter which he or she knows to be false, is guilty of perjury.

This subdivision is applicable whether the statement, or the testimony, declaration, deposition, or certification is made or subscribed within or without the State of California.

(b) No person shall be convicted of perjury where proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant. Proof of falsity may be established by direct or indirect evidence.

§ 125. Statement not known to be true

An unqualified statement of that which one does not know to be true is equivalent to a statement of that which one knows to be false.

§ 127. Subornation of perjury

Every person who willfully procures another person to commit perjury is guilty of subornation of perjury, and is punishable in the same manner as he would be if personally guilty of the perjury so procured.

4. Penal Code Section 653f. Soliciting Commission of Crimes

§ 653f. Soliciting commission of certain crimes; Punishment; Proof

(a) Every person who, with the intent that the crime be committed, solicits another to

offer, accept, or join in the offer or acceptance of a bribe, or to commit or join in the commission of carjacking, robbery, burglary, **grand theft**, receiving stolen property, extortion, **perjury**, **subornation of perjury**, forgery, kidnapping, arson or assault with a deadly weapon or instrument or by means of force likely to produce great bodily injury, or, by the use of force or a threat of force, to prevent or dissuade any person who is or may become a witness from attending upon, or testifying at, any trial, proceeding, or inquiry authorized by law, shall be punished by imprisonment in a county jail for not more than one year or pursuant to subdivision (h) of Section 1170, or by a fine of not more than ten thousand dollars (\$10,000), or the amount which could have been assessed for commission of the offense itself, whichever is greater, or by both the fine and imprisonment.

(b) ...

(Emphasis added)

5. California Code of Civil Procedures Section 128.7 (Attorney Certification to Court)

128.7. Signing of pleadings and motion papers by attorney; Signature as of specified conditions; Sanctions

(a) **Every pleading, petition, written notice of motion, or other similar paper shall be signed by at least one attorney of record in the attorney's individual name**, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Except when otherwise provided by law, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(b) **By presenting to the court, whether by signing, filing, submitting, or later advocating, a pleading, petition, written notice of motion, or other similar paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, all of the following conditions are met:**

(1) **It is not being presented primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.**

(2) **The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension,**

modification, or reversal of existing law or the establishment of new law.

(3) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

(4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) ...

6. California Supreme Court State Bar Rules

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

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence, and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal, unless disclosure is prohibited by Business and Professions Code section 6068, subdivision (e) and rule 1.6. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(b) A lawyer who represents a client in a proceeding before a tribunal and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures to the extent permitted by Business and Professions Code section 6068, subdivision (e) and rule 1.6.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the

proceeding.

(d) In an ex parte proceeding where notice to the opposing party in the proceeding is not required or given and the opposing party is not present, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse to the position of the client.

The above are only common examples and all have been documented as standard misconduct within the legal profession. Perjury, solicitation of perjury, and even solicitation of other to commit criminal acts are common practices. For example only, I have documented the fact that attorneys specially retained by the automobile insurance industry to assist the insurer will write claimants to advise them that their claims are denied for the loss of value of vehicle damages and repaired (diminution of value) and that they may recover their losses by selling the vehicle as a private individual to another unsuspecting buyer while concealing and not disclosing that the vehicle was involved in a prior accident or the extent of the prior damages. This is, if done by a private citizen, known as solicitation of the crime of "grand theft", but is done by attorneys for the insurance industry on a regular basis, as documented. This is simply "Solicitation of a criminal act" to protect the insurance company and its profits, by encouraging others to commit fraud and grand theft by claimants and forcing them, to recover their loss, to commit criminal acts.

I know it is likely you may get complaint by citizens and such may not always be justified. Accordingly, I am going to give you a brief summary of my background so that you just do not assume that this inquiry is merely some request which is made without serious consideration. At this particular time I am attempting to retire and slow down with my activities, I am attempting to determine if I can do something which may assist the public with respect to what I see as a confusing issue and/or at least one which raises serious questions.

Background:

I was admitted to the California Bar in 1977 and have been practicing law for 42 years. However, even prior thereto, I had specialized training as a Special Agent with the United States Treasury Department, Intelligence Division, Washington DC. I volunteered and became a member of the United States Federal Strike Force against Organized Crime in New York City where I was one of only of 23 agents from around the United States to take such an assignment (the Treasury Department was seeking 50 agents for the assignment, but only found 23 who would undertake the assignment). I was assigned and became involved in the investigation of the "Gambino" crime family of New York. I was thereafter appointed as a "Special Assistant United States Attorney-(Criminal Investigator/Special Prosecutor" in 1977 by U.S. Attorney General John Mitchell as trial attorney for both criminal and civil tax cases, but still involved as a

“criminal investigator” for U.S. Treasury Department. I left the government for private practice in 1978. As a result of my background, I do my own investigations with respect to legal issues and cases which I undertake.

Approximately 12 years ago I began my investigation and became involved in representing clients dealing with the automobile insurance industry. To be clear, and without reservation, I consider such industry to be engaged in larger organized crime than any other organization in the United States, including the Mafia etc.

Conclusion-Request

My Request for an Explanation----Refusal to Adopt ABA Rule 8.1 (Reporting Professional Misconduct - Maintaining The Integrity of The Profession)

The ABA rule is set forth above and is stated, self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they know of a violation of the Rules of Professional Conduct. As the Rule 8.1 states the reporting of violations are especially important in these situations. If the Citizens of the State of California are to have any trust in the Judicial System at least, the Judicial System should take the efforts to see to it that justice is promoted and that wrongful conduct by attorneys admitted to practice in California is controlled effectively.

I simply am asking for the explanation as to why this important standard is not adopted in California as I believe that the citizens are being abused by illegal practices of attorneys in the legal profession. If there is no explanation, then perhaps the public should know of the situation and perhaps the Legislature may consider making such mandatory. However, it is recognized that the Legislature has already did its job in passing the criminal and civil statutes which are essentially not enforced against the legal professionals (attorneys). This matter should be properly addressed, in my opinion, and it appears now is the time.

I am attaching the letter I received from the Judicial Council dated May 14, 2019 for your information but I am unaware of who prepared and sent this letter as you may note the letter is not signed nor identify the person who prepared the letter. You may note that one of the recommendations is that the responsibility for the criminal activities, according to the letter, lies with the “federal, state and local law enforcement” agencies and that such criminal activities should not be reported to them instead of other agencies or governments authorities which apparently mean that the matter should not be reported to the State Bar of California. I would seem to me that the State Bar of California should be advised of suspected criminal activities and misconduct by the attorneys licensed by the California State Bar notwithstanding the elimination of any requirement to report such as the California Rules of Professional Conduct eliminates the

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standard as suggested by the America Bar Association.

With respect to depending upon the State of California law enforcement actually enforcing the law as against the legal professions (attorneys), such as the District Attorney and/or Attorney General of the State of California, I think the records and history has proven that such simply does not occur. Lets take for example that fact that in **1939**, comforted with the ethical practice of attorneys using fraud and deceit to mislead the Courts creating injustice and the excessive financial burden upon the taxpayers who pays for such abuses, the California Legislature passed California *Business and Professions Code Section 6128* making such a criminal action. Thus as the attempt to curb such unethical and improper conduct the law as passed by the California Legislature states:

§ 6128. Misdemeanors in practice; Deception or corruption

Every attorney is guilty of a misdemeanor who either:


- (a) Is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party.
- (b) Willfully delays his client's suit with a view to his own gain.
- (c) Willfully receives any money or allowance for or on account of any money which he has not laid out or become answerable for.

Any violation of the provisions of this section is punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both.

With such criminal statute passed in **1939** as of **May 25, 2019**, **80 years later**, there is **NO reported case which reflects that there has ever been a criminal prosecution under the statute. Does anyone believe that this criminal statute has never been violated in 80 years such as to justify the use of the statute?**

I would appreciate a prompt response and explanation and thank you in advance for the response. I believe it is important that attorneys not be responsible for their misconduct which damages the public and that unless actual enforcement of the law and regulations for the control of the legal profession is enforced the public should be properly informed of the situation. With such there is and will be a likely continued decline and distrust of the public for the Judicial System.

Sincerely yours,


Montie S. Day, Attorney

enclosure



JUDICIAL COUNCIL OF CALIFORNIA

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TANI G. CANTIL-SAKAUYE
Chief Justice of California
Chair of the Judicial Council

MARTIN HOSHINO
Administrative Director

MILLICENT TIDWELL
Chief Deputy Director

DEBORAH C. BROWN
Chief Counsel, Legal Services

May 14, 2019

Montie Day
59 Damonte Ranch Parkway, Suite B-482
Reno, Nevada 89521

Dear Attorney Day,

This letter is in response to your recent correspondence addressed to the Judicial Council of California, the policymaking body of the California courts.

We are returning your correspondence because we are not the proper recipient. Further, California judicial branch entities are independent constitutional entities.

The Commission on Judicial Performance (CJP), not the Supreme Court of California or the Judicial Council, is the entity that is vested with authority under the California Constitution to discipline judges. Following a determination by the CJP, and only upon the granting of a petition for review filed by the subject judicial officer, the Supreme Court may review the determination of the CJP, at which point it may make an independent review of that determination. Otherwise, neither the Supreme Court nor the Judicial Council have the authority to discipline judges. Complaints may be filed with the CJP addressed to the Commission on Judicial Performance, 455 Golden Gate Avenue, Suite 14400, San Francisco, CA 94102. More information about the CJP and its processes is available online at <https://cjp.ca.gov/>.

Complaints about a Court Executive Officer (CEO) or about a subordinate judicial officer (SJO), such as a commissioner or referee, should be directed to the presiding judge of the court where the CEO or SJO works. Complaints about court employees should be addressed to the CEO of the court where the employees work. Contact information for all California courts is on the California Courts website, located at www.courts.ca.gov under "Courts."

Montie Day
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The State Bar of California is the entity responsible for licensing and regulating attorneys. The State Bar's main office is at 180 Howard Street, San Francisco, CA 94105, and their telephone number 1-800-843-9053. Information about the complaint process is available online at www.calbar.ca.gov.

Investigation of suspected criminal activity is the responsibility of federal, state, and local law enforcement agencies. If you suspect criminal activity is taking place, you should contact the appropriate law enforcement authorities.

Sincerely,

Judicial Council of California
Leadership Services Division | Legal Services Office