



# The State Bar of California

## CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

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Date: June 25, 2021

To: California Paraprofessional Program Working Group

From: California Paraprofessional Working Group Staff

Subject: Draft Rules of Professional Conduct for Paraprofessional Licensees

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The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services \(ATILS\)](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, rules of professional conduct for paraprofessional licensees.

A current draft of these proposed rules is provided as Attachment 1 for CPPWG review and discussion; there will not be a vote taken on these rules at the CPPWG's June 25 meeting. The draft rules presented to the CPPWG at its April 19, 2021, meeting are provided as Attachment 2.

**RULES OF PROFESSIONAL CONDUCT FOR LICENSED PARAPROFESSIONALS****Rule 1.0 Purpose and Function of the Rules of Professional Conduct for Licensed Paraprofessionals****(a) Purpose.**

The following rules are intended to regulate professional conduct of ~~lawyer~~licensed paraprofessionals through discipline. They have been adopted by the Board of Trustees of the State Bar of California and approved by the Supreme Court of California ~~pursuant to Business and Professions Code sections 6076 and 6077~~ to protect the public, the courts, and the legal profession; protect the integrity of the legal system; and promote the administration of justice and confidence in the legal profession. These rules together with any standards adopted by the Board of Trustees pursuant to these rules shall be binding upon all ~~lawyer~~licensed paraprofessionals.

**(b) Function.**

(1) A willful violation of any of these rules is a basis for discipline.

(2) The prohibition of certain conduct in these rules is not exclusive. ~~Lawyer~~Licensed paraprofessionals are also bound by applicable law including relevant statutes, the California Rules of Court, and the State Bar Act (Bus. & Prof. Code, § 6000 et seq.) and opinions of California courts.

(3) A violation of a rule does not itself give rise to a cause of action for damages caused by failure to comply with the rule. Nothing in these rules or the Comments to the rules is intended to enlarge or to restrict the law regarding the liability of ~~lawyers~~ licensed paraprofessionals to others.

**(c) Purpose of Comments.**

The comments are not a basis for imposing discipline but are intended only to provide guidance for interpreting and practicing in compliance with the rules.

(d) These rules may be cited and referred to as the “California Rules of Professional Conduct for Licensed Paraprofessionals.”

**Comment**

[Reserved]

**Rule 1.0.1 Terminology**

(a) “Belief” or “believes” means that the person\* involved actually supposes the fact in question to be true. A person’s\* belief may be inferred from circumstances.

(b) “Licensed Paraprofessional” means a person\* licensed to engage in the limited practice of law pursuant to [ADD reference to CRC rule(s) and/or State Bar Act provisions defining licensing process and scope of permissible practice.]

(c) “Firm” or “law firm” means a licensed paraprofessional, licensed paraprofessionals, a lawyer, or lawyers in a law partnership; a professional law corporation; a ~~lawyer~~licensed paraprofessional acting as a sole proprietorship; an association authorized to practice law; or ~~lawyer~~licensed paraprofessionals ~~licensed paraprofessional~~ employed in a legal services organization or in the legal department, division or office of a corporation, of a government organization, or of another organization.

(d) “Fraud” or “fraudulent” means conduct that is fraudulent under the law of the applicable jurisdiction and has a purpose to deceive.

(e) “Informed consent” means a person’s\* agreement to a proposed course of conduct after the lawyerlicensed paraprofessional has communicated and explained (i) the relevant circumstances and (ii) the material risks, including any actual and reasonably\* foreseeable adverse consequences of the proposed course of conduct.

(e-1) “Informed written consent” means that the disclosures and the consent required by paragraph (e) must be in writing.\*

(f) “Knowingly,” “known,” or “knows” means actual knowledge of the fact in question. A person’s\* knowledge may be inferred from circumstances.

(g) “Partner” means a member of a partnership, a shareholder in a law firm\* organized as a professional corporation, or a member of an association authorized to practice law.

(g-1) “Person” has the meaning stated in Evidence Code section 175.

(h) “Reasonable” or “reasonably” when used in relation to conduct by a lawyerlicensed paraprofessional means the conduct of a reasonably prudent and competent lawyerlicensed paraprofessional.

(i) “Reasonable belief” or “reasonably believes” when used in reference to a lawyerlicensed paraprofessional means that the lawyerlicensed paraprofessional believes the matter in question and that the circumstances are such that the belief is reasonable.

(j) “Reasonably should know” when used in reference to a lawyerlicensed paraprofessional means that a lawyerlicensed paraprofessional of reasonable prudence and competence would ascertain the matter in question.

(k) “Screened” means the isolation of a lawyerlicensed paraprofessional from any participation in a matter, including the timely imposition of procedures within a law firm\* that are adequate under the circumstances (i) to protect information that the isolated lawyerlicensed paraprofessional is obligated to protect under these rules or other law; and (ii) to protect against other law firm\* lawyers, licensed paraprofessionals and nonlawyers, and non-licensed paraprofessional personnel communicating with the lawyerlicensed paraprofessional with respect to the matter.

(l) “Substantial” when used in reference to degree or extent means a material matter of clear and weighty importance.

(m) “Tribunal” means: (i) a court, an arbitrator, an administrative law judge, or an administrative body acting in an adjudicative capacity and authorized to make a decision that can be binding on the parties involved; or (ii) a special master or other person\* to whom a court refers one or more issues and whose decision or recommendation can be binding on the parties if approved by the court.

(n) “Writing” or “written” has the meaning stated in Evidence Code section 250. A “signed” writing includes an electronic sound, symbol, or process attached to or logically associated with a writing and executed, inserted, or adopted by or at the direction of a person\* with the intent to sign the writing.

(o) “Lawyer RPC” denotes the California Rules of Professional Conduct for Lawyers.

#### **Comment**

[Reserved]

**CHAPTER 1.**  
**LAWYERLICENSED PARAPROFESSIONAL-CLIENT RELATIONSHIP**

**Rule 1.1 Competence**

(a) A lawyerlicensed paraprofessional 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.

(c) If a lawyerlicensed paraprofessional does not have sufficient learning and skill when the legal services within the scope of the licensure are undertaken, the lawyerlicensed paraprofessional nonetheless may provide competent representation by (i) associating with or, where appropriate, professionally consulting another lawyerlicensed paraprofessional or a lawyer whom the lawyerlicensed paraprofessional reasonably believes\* to be competent, (ii) acquiring sufficient learning and skill before performance is required, or (iii) referring the matter to another lawyerlicensed paraprofessional or lawyer whom the lawyerlicensed paraprofessional reasonably believes\* to be competent.

~~(d) In an emergency a lawyerlicensed paraprofessional may give advice or assistance in a matter in which the lawyerlicensed paraprofessional does not have the skill ordinarily required if referral to, or association or consultation with, another lawyerlicensed paraprofessional or lawyer would be impractical. Assistance in an emergency must be limited to that reasonably\* necessary in the circumstances.~~

**Comment**

[Reserved]

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

(a) Subject to rule 1.2.1, a lawyerlicensed -paraprofessional 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 licensed paraprofessional lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A licensed paraprofessional 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.~~

(b) A lawyerlicensed paraprofessional 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.\*

**Comment**

[Reserved]

### Rule 1.2.1 Advising or Assisting the Violation of Law

- (a) A licensed paraprofessional ~~lawyer~~ shall not counsel a client to engage, or assist a client in conduct that the ~~lawyer~~licensed paraprofessional knows\* is criminal, fraudulent,\* or a violation of any law, rule, or ruling of a tribunal.\*
- (b) Notwithstanding paragraph (a), a licensed paraprofessional ~~lawyer~~ may:
- (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.\*

#### Comment

[Reserved]

### Rule 1.3 Diligence

- (a) A licensed paraprofessional ~~lawyer~~ shall not intentionally, repeatedly, recklessly or with gross negligence fail to act with reasonable diligence in representing a client.
- (b) For purposes of this rule, “reasonable diligence” shall mean that a ~~lawyer~~licensed paraprofessional 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~~licensed paraprofessional.

#### Comment

[Reserved]

### Rule 1.4 Communication with Clients

- (a) A licensed paraprofessional ~~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~~applicable law;
  - (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~~licensed paraprofessional’s conduct when the ~~lawyer~~licensed paraprofessional knows\* that the client expects assistance not permitted by ~~these rules~~ Rules of Professional Conduct or other law.
- (b) A ~~lawyer~~licensed paraprofessional shall explain a matter to the extent reasonably\* necessary to permit the client to make informed decisions regarding the representation.
- (c) A ~~lawyer~~licensed paraprofessional may delay transmission of information to a client if the ~~lawyer~~licensed paraprofessional 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~~ licensed paraprofessional'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.

**Comment**

[Reserved]

**Rule 1.4.1 Communication of Settlement Offers**

~~(a) A licensed paraprofessional lawyer shall promptly communicate to the lawyer licensed paraprofessional'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.~~

~~(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.~~

**Comment**

[Reserved]

**Rule 1.4.2 Notice to Consumers Prior to Consultation with a Prospective Client ~~Disclosure of Professional Liability Insurance~~**

(a) Prior to a prospective client's consultation with a licensed paraprofessional for the purpose of retaining the licensed paraprofessional or securing legal services or advice from the licensed paraprofessional in the licensed paraprofessional's professional capacity, the licensed paraprofessional shall disclose orally and provide the written\* disclosures to the prospective client in the prospective client's preferred language that:

(1) the licensed paraprofessional is not a lawyer;

(2) the licensed paraprofessional has a license to provide limited legal services, the area of practice in which the licensed paraprofessional is licensed, and that the licensed paraprofessional cannot provide all services that a lawyer can provide in this area of practice;

(3) the prospective client may need to hire a lawyer if the legal services that the prospective client seeks are beyond the limited scope of the licensed paraprofessional's license;

(4) there may be other alternative choices available for the prospective client to consider, including, but not limited to, a free consultation with a lawyer, limited-scope services from a lawyer, free services from a Self Help Center or Family Law Facilitator's Office or potentially free legal services from a local legal aid organization if the prospective client qualifies;

(5) a general description of the licensed paraprofessional's fee structure and billing methods; and

(6) whether the licensed paraprofessional does or does not have professional liability insurance based on the licensed paraprofessional's reasonable knowledge\* at the time of the disclosure,

~~(a) A licensed paraprofessional who knows\* or reasonably should know\* that the licensed paraprofessional does not have professional liability insurance shall inform a client in writing,\* at the time of the client's engagement of the licensed paraprofessional, that the licensed paraprofessional does not have professional liability insurance.~~

~~(b) If the licensed paraprofessional provides notice to the prospective client prior to consultation that the licensed paraprofessional does have professional liability insurance pursuant to paragraph (a)(6) and a licensed paraprofessional-client relationship is formed, the licensed paraprofessional shall inform the client in writing\* within thirty days of the date the licensed paraprofessional knows\* or reasonably should know\* that the licensed paraprofessional 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 licensed paraprofessional, the licensed paraprofessional shall inform the client in writing\* within thirty days of the date the licensed paraprofessional knows\* or reasonably should know\* that the licensed paraprofessional no longer has professional liability insurance during the representation of the client.~~

~~(c) This rule does not apply to:~~

~~(1) a licensed paraprofessional who knows\* or reasonably should know\* at the time of the client's engagement of the licensed paraprofessional that the licensed paraprofessional's legal representation of the client in the matter will not exceed four hours; provided that if the representation subsequently exceeds four hours, the licensed paraprofessional must comply with paragraphs (a) and (b);~~

~~(2) a licensed paraprofessional who is employed as a government licensed paraprofessional or in-house counsel when that licensed paraprofessional is representing or providing legal advice to a client in that capacity;~~

~~(3) a licensed paraprofessional who is rendering legal services in an emergency to avoid foreseeable prejudice to the rights or interests of the client;~~

~~(4) a licensed paraprofessional who has previously advised the client in writing\* under paragraph (a) or (b) that the licensed paraprofessional does not have professional liability insurance.~~

[Reserved]

### **Rule 1.4.3 Informed Written Consent\* to Representation**

(a) Prior to a prospective client's engagement of the licensed paraprofessional, the licensed paraprofessional shall obtain the prospective client's informed written consent\* to representation. This includes that the paraprofessional shall clearly communicate in the prospective client's preferred language available alternatives and material risks, including any actual and reasonably\* foreseeable adverse consequences of proceeding with a non-lawyer in this matter. The disclosures shall include, but not be limited to:

(1) A statement that the licensed paraprofessional is not a lawyer;

(2) Disclosure of other available choices for obtaining legal services, including the potential availability of a free consultation with a lawyer, limited-scope services from a lawyer, free services from a Self Help Center or Family Law Facilitator's Office, and that free legal services may be available to low-income individuals from a legal aid program if the client qualifies. [The following additional phrase recommended by Amos Hartston only: "with available contact information"];

(3) The potential need to hire a lawyer if needed services go beyond the limited scope of legal practice under the

paraprofessional's license;

(4) A statement that identifies the area of law in which the individual is licensed to practice, any prohibitions within that specific area of practice for the paraprofessional, and how these prohibitions may adversely affect the licensed paraprofessional's representation of the client in the matter; and

(5) the existence of any financial arrangements related to the representation that the licensed paraprofessional has with others, such as fee sharing.

(b) The informed written consent\* to representation required under paragraph (a) shall be in a separate writing\* from the written\* agreement to representation required under rule 1.5.2.

#### **Comments**

[Reserved]

### **Rule 1.5 Fees for Legal Services**

(a) A ~~lawyer~~licensed paraprofessional 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~~licensed paraprofessional engaged in fraud\* or overreaching in negotiating or setting the fee;
- (2) whether the ~~lawyer~~licensed paraprofessional 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 ~~licensed paraprofessional~~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 ~~licensed paraprofessional~~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 ~~licensed paraprofessional~~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.

(14) the fee customarily charged by licensed paraprofessionals and lawyers in the locality for similar legal service.



(c) A licensed paraprofessional~~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; a contingent fee except in an enforcement of judgment matter within the scope of the licensed paraprofessional's licensure. Any contingent fee permitted under this paragraph shall not exceed thirty-three and one-third percent of the total value of the judgment subject to the enforcement action. [alternative if adopted as a court rule or statute:       ]. -or~~

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

(d) A licensed paraprofessional ~~lawyer may~~shall not 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. .]~~

(e) A ~~lawyer~~licensed paraprofessional 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~~licensed paraprofessional providing those services.

#### Comment

[Reserved]

#### Rule 1.5.1 Fee Divisions Among Lawyer~~Licensed p~~Paraprofessionals and With Lawyers

(a) Lawyer~~Licensed paraprofessionals~~ who are not in the same law firm\* shall not divide a fee for legal services unless:

(1) the lawyer~~licensed paraprofessionals~~ enter into a written\* agreement to divide the fee;

~~(2) the division is in proportion to the legal services performed by each licensed paraprofessional or each licensed paraprofessional assumes joint responsibility for the representation.~~

~~(23) the client has consented in writing,\* either at the time the lawyer~~licensed paraprofessionals 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 ~~lawyer~~licensed paraprofessionals or law firms\* that are parties to the division; and (iii) the terms of the division; and

~~(34) the total fee charged by all lawyer~~licensed paraprofessionals is not increased solely by reason of the agreement to divide fees.

(b) A licensed paraprofessional and a lawyer who are not in the same law firm\* shall not divide a fee for legal services unless:

(1) the licensed paraprofessional and the lawyer enter into a written\* agreement to divide the fee;

(2) the division is in proportion to the legal services performed by each licensed paraprofessional and the lawyer;

(3) the client has consented in writing,\* either at the time the licensed paraprofessional and the lawyer 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 licensed paraprofessional, the lawyer, or law firms\* that are parties to the division; and (iii) the terms of the division; and

(4) the total fee charged by all licensed paraprofessionals and lawyers is not increased solely by reason of the agreement to divide fees.

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

#### **Comment**

[Reserved]

#### **Rule 1.5.2 Written Agreement to Representation**

Prior to the performance of legal services for a fee, the licensed paraprofessional shall enter into a written\* agreement with the client in a separate writing,\* provided in the prospective client's preferred language, and signed by both the client and the licensed paraprofessional, that provides the licensed paraprofessional's name, specialty area, mailing address, street address, telephone numbers, facsimile numbers, internet address, and license number-of the licensed paraprofessional, and includes the following provisions:

- (a) A clear and conspicuous disclosure that the licensed paraprofessional is not a lawyer and may only provide limited legal advice and services within the scope of the licensed paraprofessional's licensure. This statement shall be on the first page of the contract; in a type size, font, color, appearance, and location sufficiently noticeable for a client to read and comprehend them; in a print that contrasts with the background against which they appear; in larger type than the surrounding text; in a manner that clearly calls attention to the language;
- (b) An explanation of the general nature of the legal services to be provided to the client;
- (c) A reasonable estimate of the total fees, expenses, and costs of services provided by the licensed paraprofessional, and the basis of compensation including, but not limited to, hourly rates, statutory fees or flat fees, and other standard rates, fees, and charges applicable to the matter;
- (d) A statement that, pursuant to rule 1.4, the licensed paraprofessional must 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 pursuant to rule 1.16;
- (e) A statement describing the licensed paraprofessional's duty to protect the confidentiality of information related to the representation under rule 1.6, including information provided in confidence by the client and the licensed paraprofessional's work product associated with the legal services sought or provided by the licensed paraprofessional;
- (f) A statement that, pursuant to rule 1.16(a)(4), the client has the right to terminate the contract and services at any time, with or without cause, and receive a full refund of unearned fees pursuant to rule 1.16(e)(2);
- (g) A statement confirming that the licensed paraprofessional is required by [add rule of court reference] to carry a surety bond in the amount of \$100,000, the name of the surety bond carrier, and information on how to file a claim against the surety bond if necessary;
- (h) A statement confirming if the licensed paraprofessional has or does not have professional liability insurance. If the licensed paraprofessional has professional liability insurance, the name of the carrier, the amount of coverage, and how to file a claim if necessary;
- (i) A statement describing how to file a complaint with the State Bar of California;

- (j) A statement regarding the respective responsibilities of the licensed paraprofessional and the client as to the performance of the agreement; and
- (k) Any other disclosures, statements, or conditions required by the [Paraprofessional] Rules of Professional Conduct and the rules and regulations of the [Paraprofessional] Board.

## Comments

### **Rule 1.6 Confidential Information of a Client**

(a) A lawyerlicensed paraprofessional shall not reveal information ~~protected from disclosure by Business and Professions Code section 6068, subdivision (e)(1) relating to the representation of a client~~ unless the client gives informed consent,\* or the disclosure is permitted by paragraph (b) of this rule.

(b) A lawyerlicensed paraprofessional may, but is not required to, reveal information ~~protected by Business and Professions Code section 6068, subdivision (e)(1) relating to the representation of a client~~ to the extent that the lawyerlicensed paraprofessional reasonably believes\* the disclosure is necessary to prevent a criminal act that the lawyerlicensed paraprofessional reasonably believes\* is likely to result in death of, or substantial\* bodily harm to, an individual, as provided in paragraph (c).

(c) Before revealing information ~~protected by Business and Professions Code section 6068, subdivision (e)(1) relating to the representation of a client~~ to prevent a criminal act as provided in paragraph (b), a lawyerlicensed paraprofessional shall, if reasonable\* under the circumstances:

(1) make a good faith effort to persuade the client: (i) not to commit or to continue the criminal act; or (ii) to pursue a course of conduct that will prevent the threatened death or substantial\* bodily harm; or do both (i) and (ii); and

(2) inform the client, at an appropriate time, of the lawyerlicensed paraprofessional's ability or decision to reveal information ~~protected by Business and Professions Code section 6068, subdivision (e)(1) relating to the representation of a client~~ as provided in paragraph (b).

(d) In revealing information ~~protected by Business and Professions Code section 6068, subdivision (e)(1) relating to representation of a client~~ as provided in paragraph (b), the lawyerlicensed paraprofessional's disclosure must be no more than is necessary to prevent the criminal act, given the information known\* to the lawyerlicensed paraprofessional at the time of the disclosure.

(e) A lawyerlicensed paraprofessional who does not reveal information permitted by paragraph (b) does not violate this rule.

## **Comment**

[Reserved]

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

(a) A lawyerlicensed paraprofessional shall not, without informed written consent\* from each client and compliance with paragraph (d), represent a client if the representation is directly adverse to another client in the same or a separate matter.

(b) A lawyerlicensed paraprofessional shall not, without informed written consent\* from each affected client and compliance with paragraph (d), represent a client if there is a significant risk the lawyerlicensed paraprofessional's

representation of the client will be materially limited by the lawyerlicensed paraprofessional's responsibilities to or relationships with another client, a former client or a third person,\* or by the lawyerlicensed paraprofessional's own interests.

(c) Even when a significant risk requiring a lawyerlicensed paraprofessional to comply with paragraph (b) is not present, a lawyerlicensed paraprofessional shall not represent a client without written\* disclosure of the relationship to the client and compliance with paragraph (d) where:

(1) the lawyerlicensed paraprofessional has, or knows\* that another lawyer or licensed paraprofessional in the lawyerlicensed paraprofessional's firm\* has, a legal, business, financial, professional, or personal relationship with or responsibility to a party or witness in the same matter; or

(2) the lawyerlicensed paraprofessional knows\* or reasonably should know\* that another party's lawyer or licensed paraprofessional is a spouse, parent, child, or sibling of the lawyerlicensed paraprofessional, lives with the lawyerlicensed paraprofessional, is a client of the lawyerlicensed paraprofessional or another lawyer or licensed paraprofessional in the lawyerlicensed paraprofessional's firm,\* or has an intimate personal relationship with the lawyerlicensed paraprofessional.

(d) Representation is permitted under this rule only if the lawyerlicensed paraprofessional complies with paragraphs (a), (b), and (c), and:

(1) the lawyerlicensed paraprofessional reasonably believes\* that the lawyerlicensed paraprofessional will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law; and

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyerlicensed paraprofessional in the same litigation or other proceeding before a tribunal.

(e) For purposes of this rule, "matter" includes any judicial or other proceeding, application, request for a ruling or other determination, contract, transaction, claim, controversy, investigation, charge, accusation, arrest, or other deliberation, decision, or action that is focused on the interests of specific persons,\* or a discrete and identifiable class of persons.\*

#### **Comment**

[Reserved]

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

A lawyerlicensed paraprofessional shall not enter into a business transaction with a client, or knowingly\* acquire an ownership, possessory, security or other pecuniary interest adverse to a client, unless each of the following requirements has been satisfied:

(a) the transaction or acquisition and its terms are fair and reasonable\* to the client and the terms and the lawyerlicensed paraprofessional's role in the transaction or acquisition are fully disclosed and transmitted in writing\* to the client in a manner that should reasonably\* have been understood by the client;

(b) the client either is represented in the transaction or acquisition by an independent lawyer of the client's choice or the client is advised in writing\* to seek the advice of an independent lawyer of the client's choice and is given a reasonable\* opportunity to seek that advice; and

(c) the client thereafter provides informed written consent\* to the terms of the transaction or acquisition, and to the lawyerlicensed paraprofessional's role in it.

#### Comment

[Reserved]

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

A lawyerlicensed paraprofessional shall not use a client's information protected by ~~Business and Professions Code section 6068, subdivision (e)(1)~~rule 1.6 to the disadvantage of the client unless the client gives informed consent,\* except as permitted by these rules or ~~the State Bar Act~~applicable law.

#### Comment

[Reserved]

#### Rule 1.8.3 Gifts from Client

(a) A lawyerlicensed paraprofessional shall not:

~~(1)—solicit a client to make a substantial\* gift, including a testamentary gift, to the lawyerlicensed paraprofessional or a person\* related to the lawyerlicensed paraprofessional, unless the lawyerlicensed paraprofessional or other recipient of the gift is related to the client.~~or

~~(2)—prepare on behalf of a client an instrument giving the lawyer or a person\* related to the lawyer any substantial\* gift, unless (i) the lawyer or other recipient of the gift is related to the client, or (ii) the client has been advised by an independent lawyer who has provided a certificate of independent review that complies with the requirements of Probate Code section 21384.~~

(b) For purposes of this rule, related persons\* include a person\* who is "related by blood or affinity" as that term is defined in California Probate Code section 21374, subdivision (a).

#### Comment

[Reserved]

#### Rule 1.8.4 [Reserved]

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

(a) A lawyerlicensed paraprofessional shall not directly or indirectly pay or agree to pay, guarantee, or represent that the lawyerlicensed paraprofessional or lawyerlicensed paraprofessional's law firm\* will pay the personal or business expenses of a prospective or existing client.

(b) Notwithstanding paragraph (a), a lawyerlicensed paraprofessional may:

(1) pay or agree to pay such expenses to third persons,\* from funds collected or to be collected for the client as a result of the representation, with the consent of the client;

(2) after the lawyerlicensed paraprofessional is retained by the client, agree to lend money to the client based on the client's written\* promise to repay the loan, provided the lawyerlicensed paraprofessional complies with rules 1.7(b), 1.7(c), and 1.8.1 before making the loan or agreeing to do so;

- (3) advance the costs of prosecuting or defending a claim or action, or of otherwise protecting or promoting the client's interests, the repayment of which may be contingent on the outcome of the matter; and
  - (4) pay the costs of prosecuting or defending a claim or action, or of otherwise protecting or promoting the interests of an indigent person\* in a matter in which the lawyerlicensed paraprofessional represents the client.
- (c) "Costs" within the meaning of paragraphs (b)(3) and (b)(4) are not limited to those costs that are taxable or recoverable under any applicable statute or rule of court but may include any reasonable\* expenses of litigation, including court costs, and reasonable\* expenses in preparing for litigation or in providing other legal services to the client.
- (d) Nothing in this rule shall be deemed to limit the application of rule 1.8.9.

#### **Rule 1.8.6 Compensation from One Other than Client**

A lawyerlicensed paraprofessional shall not enter into an agreement for, charge, or accept compensation for representing a client from one other than the client unless:

- (a) there is no interference with the lawyerlicensed paraprofessional's independent professional judgment or with the lawyerlicensed paraprofessional-client relationship;
- (b) information is protected as required by Business and Professions Code section 6068, subdivision (e)(1) and rule 1.6; and
- (c) the lawyerlicensed paraprofessional obtains the client's informed written consent\* at or before the time the lawyerlicensed paraprofessional has entered into the agreement for, charged, or accepted the compensation, or as soon thereafter as reasonably\* practicable, provided that no disclosure or consent is required if:
  - (1) nondisclosure or the compensation is otherwise authorized by law or a court order; or
  - (2) the lawyerlicensed paraprofessional is rendering legal services on behalf of any public agency or nonprofit organization that provides legal services to other public agencies or the public.

#### **Comment**

[Reserved]

#### **Rule 1.8.7 Aggregate Settlements**

~~(a) A lawyerlicensed paraprofessional who represents two or more clients shall not enter into an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregate agreement as to guilty or nolo contendere pleas, unless each client gives informed written consent.\* The lawyerlicensed paraprofessional's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person\* in the settlement.~~

~~(b) This rule does not apply to class action settlements subject to court approval.~~

#### **Rule 1.8.8 Limiting Liability to Client**

A lawyerlicensed paraprofessional shall not:

- (a) Contract with a client prospectively limiting the lawyerlicensed paraprofessional's liability to the client for the lawyerlicensed paraprofessional's professional malpractice; or

(b) Settle a claim or potential claim for the lawyerlicensed paraprofessional's liability to a client or former client for the lawyerlicensed paraprofessional's professional malpractice, unless the client or former client is either:

- (1) represented by an independent lawyer concerning the settlement; or
- (2) advised in writing\* by the lawyerlicensed paraprofessional to seek the advice of an independent lawyer of the client's choice regarding the settlement and given a reasonable\* opportunity to seek that advice.

**Comment**

[Reserved]

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

(a) A lawyerlicensed paraprofessional shall not directly or indirectly purchase property at a probate, foreclosure, receiver's, trustee's, or judicial sale in an action or proceeding in which such lawyerlicensed paraprofessional or any lawyer or licensed paraprofessional affiliated by reason of personal, business, or professional relationship with that lawyerlicensed paraprofessional or with that lawyerlicensed paraprofessional's law firm\* is acting as a lawyer for a party or as executor, receiver, trustee, administrator, guardian, or conservator.

~~(b) A lawyer shall not represent the seller at a probate, foreclosure, receiver, trustee, or judicial sale in an action or proceeding in which the purchaser is a spouse or relative of the lawyer or of another lawyer in the lawyer's law firm\* or is an employee of the lawyer or the lawyer's law firm.\*~~

~~(eb)~~ This rule does not prohibit a lawyerlicensed paraprofessional's participation in transactions that are specifically authorized by and comply with Probate Code sections 9880 through 9885, but such transactions remain subject to the provisions of rules 1.8.1 and 1.7.

**Comment**

[Reserved]

**Rule 1.8.10 Sexual Relations with Current Client**

(a) A lawyerlicensed paraprofessional shall not engage:

- (1) -in sexual relations with a current client who is not the lawyerlicensed paraprofessional's spouse or registered domestic partner, unless a consensual sexual relationship existed between them when the lawyerlicensed paraprofessional-client relationship commenced;
- (2) exoressly or impliedly condition the performance of legal services for a current or prospective client upon the client's willingness to engage in sexual relations with the licensed paraprofessional; or
- (3) employ coercion, intimidation, or undue influence in entering into sexual relations with a client.

(b) For purposes of this rule, "sexual relations" means sexual intercourse or the touching of an intimate part of another person\* for the purpose of sexual arousal, gratification, or abuse.

(c) If a person\* other than the client alleges a violation of this rule, no Notice of Disciplinary Charges may be filed by the State Bar against a lawyerlicensed paraprofessional under this rule until the State Bar has attempted to obtain the client's statement regarding, and has considered, whether the client would be unduly burdened by further investigation or a charge.

#### Comment

[Reserved]

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

While licensed paraprofessionals ~~lawyers~~ are associated in a law firm,\* with other paraprofessionals or lawyers, a prohibition in rules 1.8.1 through 1.8.9 or in the Lawyer RPC, rules 1.8.1 through 1.8.9 that applies to any one of them shall apply to all of them.

#### Comment

[Reserved]

### Rule 1.9 Duties to Former Clients

(a) A lawyerlicensed paraprofessional who has formerly represented a client in a matter shall not thereafter represent another person\* in the same or a substantially related matter in which that person's\* interests are materially adverse to the interests of the former client unless the former client gives informed written consent.\*

(b) A lawyerlicensed paraprofessional shall not knowingly\* represent a person\* in the same or a substantially related matter in which a firm\* with which the lawyerlicensed paraprofessional formerly was associated had previously represented a client

(1) whose interests are materially adverse to that person;\* and

(2) about whom the lawyerlicensed paraprofessional had acquired information protected by Business and Professions Code section 6068, subdivision (e) and rules 1.6 and 1.9(c) that is material to the matter;

unless the former client gives informed written consent.\*

(c) A lawyerlicensed paraprofessional who has formerly represented a client in a matter or whose present or former firm\* has formerly represented a client in a matter shall not thereafter:

(1) use information protected by Business and Professions Code section 6068, subdivision (e) and rule 1.6 acquired by virtue of the representation of the former client to the disadvantage of the former client except as these rules ~~or the State Bar Act~~ would permit with respect to a current client, or when the information has become generally known;\* or

(2) reveal information protected by Business and Professions Code section 6068, subdivision (e) and rule 1.6 acquired by virtue of the representation of the former client except as these rules ~~or the State Bar Act~~ permit with respect to a current client.

#### Comment

[Reserved]



### Rule 1.10 Imputation of Conflicts of Interest: General Rule

(a) While ~~lawyers~~ licensed paraprofessionals are associated in a firm with other licensed paraprofessionals or lawyers,\* none of them shall knowingly\* represent a client when any one of them practicing alone would be prohibited from doing so by rules 1.7 or 1.9 or by the Lawyer Rules, rules 1.7 or 1.9 unless

(1) the prohibition is based on a personal interest of the prohibited ~~lawyer~~licensed paraprofessional or lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining licensed paraprofessionals or lawyers in the firm;\* or

(2) the prohibition is based upon rule 1.9(a) or (b) or the Lawyer RPC, rule 1.9(a) or (b), and arises out of the prohibited ~~lawyer~~licensed paraprofessional's or lawyer's association with a prior firm,\* and

(i) the prohibited ~~lawyer~~licensed paraprofessional or lawyer did not substantially participate in the same or a substantially related matter;

(ii) the prohibited ~~lawyer~~licensed paraprofessional or lawyer is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom; and

(iii) written\* notice is promptly given to any affected former client to enable the former client to ascertain compliance with the provisions of this rule, which shall include a description of the screening\* procedures employed; and an agreement by the firm\* to respond promptly to any written\* inquiries or objections by the former client about the screening\* procedures.

(b) When a ~~lawyer~~licensed paraprofessional has terminated an association with a firm,\* the firm\* is not prohibited from thereafter representing a person\* with interests materially adverse to those of a client represented by the formerly associated ~~lawyer~~licensed paraprofessional and not currently represented by the firm,\* unless:

(1) the matter is the same or substantially related to that in which the formerly associated ~~lawyer~~licensed paraprofessional represented the client; and

(2) any ~~lawyer~~licensed paraprofessional or lawyer remaining in the firm\* has information protected by rule 1.6 or 1.9(c), or by Business and Professions Code section 6068, subdivision (e) and the Lawyer RPC, rules 1.6 and 1.9(c), that is material to the matter.

(c) A prohibition under this rule may be waived by each affected client under the conditions stated in rule 1.7.

(d) The imputation of a conflict of interest to a licensed paraprofessional~~lawyers~~ associated in a firm\* with former or current government lawyer or former or current government licensed paraprofessionals is governed by rule 1.11.

#### Comment

[Reserved]

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

(a) Except as law may otherwise expressly permit, a ~~lawyer~~licensed paraprofessional who has formerly served as a public official or employee of the government:

(1) is subject to rule 1.9(c); and

(2) shall not otherwise represent a client in connection with a matter in which the ~~lawyer~~licensed paraprofessional participated personally and substantially as a public official or employee, unless the appropriate government agency

gives its informed written consent\* to the representation. This paragraph shall not apply to matters governed by rule 1.12(a).

(b) When a lawyerlicensed paraprofessional is prohibited from representation under paragraph (a), no lawyerlicensed paraprofessional or lawyer in a firm\* with which that lawyerlicensed paraprofessional is associated may knowingly\* undertake or continue representation in such a matter unless:

(1) the personally prohibited lawyerlicensed paraprofessional is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written\* notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule

(c) Except as law may otherwise expressly permit, a lawyerlicensed paraprofessional who was a public official or employee and, during that employment, acquired information that the lawyerlicensed paraprofessional knows\* is confidential government information about a person,\* may not represent a private client whose interests are adverse to that person\* in a matter in which the information could be used to the material disadvantage of that person.\* As used in this rule, the term “confidential government information” means information that has been obtained under governmental authority, that, at the time this rule is applied, the government is prohibited by law from disclosing to the public, or has a legal privilege not to disclose, and that is not otherwise available to the public. A firm\* with which that lawyerlicensed paraprofessional is associated may undertake or continue representation in the matter only if the personally prohibited lawyerlicensed paraprofessional is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom.

(d) Except as law may otherwise expressly permit, a lawyerlicensed paraprofessional currently serving as a public official or employee:

(1) is subject to rules 1.7 and 1.9; and

(2) shall not:

(i) participate in a matter in which the lawyerlicensed paraprofessional participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its informed written consent;\* or

(ii) negotiate for private employment with any person\* who is involved as a party, or as a lawyer or licensed paraprofessional for a party, or with a law firm\* for a party, in a matter in which the lawyerlicensed paraprofessional is participating personally and substantially, ~~except that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by rule 1.12(b) and subject to the conditions stated in rule 1.12(b).~~

#### Comment

[Reserved]

#### Rule 1.12 Former ~~Judge~~, Arbitrator, Mediator, or Other Third-Party Neutral

(a) Except as stated in paragraph (d), a lawyerlicensed paraprofessional shall not represent anyone in connection with a matter in which the lawyerlicensed paraprofessional participated personally and substantially as ~~an judge or other adjudicative officer, or a~~ judicial staff ~~attorney member or law clerk~~ to such a person,\* or as an arbitrator, mediator, or other third-party neutral, unless all parties to the proceeding give informed written consent.\*

(b) A ~~lawyer-licensed paraprofessional~~ shall not seek employment from any person\* who is involved as a party or as lawyer or licensed paraprofessional for a party, or with a law firm\* for a party, in a matter in which the ~~lawyer-licensed paraprofessional~~ is participating personally and substantially as ~~a judge or other an~~ adjudicative officer ~~or as an~~ arbitrator, mediator, or other third party neutral. A ~~lawyer-licensed paraprofessional~~ serving as a judicial staff ~~attorney member or law clerk~~ to a judge or other adjudicative officer may seek employment from a party, or with a lawyer, licensed paraprofessional, or a law firm\* for a party, in a matter in which the staff ~~attorney member or clerk~~ is participating personally and substantially, but only with the approval of the court.

(c) If a ~~lawyer-licensed paraprofessional~~ is prohibited from representation by paragraph (a), other licensed paraprofessional or lawyers in a firm\* with which that ~~lawyer-licensed paraprofessional~~ is associated may knowingly\* undertake or continue representation in the matter only if:

(1) the prohibition does not arise from the ~~lawyer-licensed paraprofessional~~'s service as a mediator ~~or settlement judge~~;

(2) the prohibited ~~lawyer-licensed paraprofessional~~ is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom; and

(3) written\* notice is promptly given to the parties and any appropriate tribunal\* to enable them to ascertain compliance with the provisions of this rule.

(d) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

#### Comment

[Reserved]

#### Rule 1.13 ~~[Reserved]~~ Organization as Client

~~(a) ——— A lawyer employed or retained by an organization shall conform his or her representation to the concept that the client is the organization itself, acting through its duly authorized directors, officers, employees, members, shareholders, or other constituents overseeing the particular engagement.~~

~~(b) ——— If a lawyer representing an organization knows\* that a constituent is acting, intends to act or refuses to act in a matter related to the representation in a manner that the lawyer knows\* or reasonably should know\* is (i) a violation of a legal obligation to the organization or a violation of law reasonably\* imputable to the organization, and (ii) likely to result in substantial\* injury to the organization, the lawyer shall proceed as is reasonably\* necessary in the best lawful interest of the organization. Unless the lawyer reasonably believes\* that it is not necessary in the best lawful interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act on behalf of the organization as determined by applicable law.~~

~~(c) In taking any action pursuant to paragraph (b), the lawyer shall not reveal information protected by Business and Professions Code section 6068, subdivision (c).~~

~~(d) If, despite the lawyer's actions in accordance with paragraph (b), the highest authority that can act on behalf of the organization insists upon action, or fails to act, in a manner that is a violation of a legal obligation to the~~

organization or a violation of law reasonably\* imputable to the organization, and is likely to result in substantial\* injury to the organization, the lawyer shall continue to proceed as is reasonably\* necessary in the best lawful interests of the organization. The lawyer's response may include the lawyer's right and, where appropriate, duty to resign or withdraw in accordance with rule 1.16.

(e) A lawyer who reasonably believes\* that he or she has been discharged because of the lawyer's actions taken pursuant to paragraph (b), or who resigns or withdraws under circumstances described in paragraph (d), shall proceed as the lawyer reasonably believes\* necessary to assure that the organization's highest authority is informed of the lawyer's discharge, resignation, or withdrawal.

(f) In dealing with an organization's constituents, a lawyer representing the organization shall explain the identity of the lawyer's client whenever the lawyer knows\* or reasonably should know\* that the organization's interests are adverse to those of the constituent(s) with whom the lawyer is dealing.

(g) A lawyer representing an organization may also represent any of its constituents, subject to the provisions of rules 1.7, 1.8.2, 1.8.6, and 1.8.7. If the organization's consent to the dual representation is required by any of these rules, the consent shall be given by an appropriate official, constituent, or body of the organization other than the individual who is to be represented, or by the shareholders.

Comment

[Reserved]

## Rule 1.14 [Reserved]

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

(a) All funds received or held by a ~~lawyer-licensed paraprofessional~~ or a licensed paraprofessional's law firm\* for the benefit of a client, or other person\* to whom the ~~lawyer-licensed paraprofessional~~ owes a contractual, statutory, or other legal duty, including advances for fees, costs and expenses, shall be deposited in one or more identifiable bank accounts labeled "Trust Account" or words of similar import, maintained in the State of California, or, with written\* consent of the client, in any other jurisdiction where there is a substantial\* relationship between the client or the client's business and the other jurisdiction.

~~(b) Notwithstanding paragraph (a), a flat fee paid in advance for legal services may be deposited in a paraprofessional's lawyer's or paraprofessional law firm's operating account, provided:~~

~~(c)~~ Funds belonging to the ~~lawyer-licensed paraprofessional~~ or the licensed paraprofessional's law firm\* shall not be deposited or otherwise commingled with funds held in a trust account except:

- (1) funds reasonably\* sufficient to pay bank charges; and
- (2) funds belonging in part to a client or other person\* and in part presently or potentially to the ~~lawyer-licensed paraprofessional~~ or the licensed paraprofessional's law firm\*, in which case the portion belonging to the ~~lawyer-licensed paraprofessional~~ or the paraprofessional's law firm\* must be withdrawn at the earliest reasonable\*

time after the lawyerlicensed paraprofessional or the licensed paraprofessional law firm's interest in that portion becomes fixed. However, if a client or other person\* disputes the lawyerlicensed paraprofessional or the licensed paraprofessional's law firm's right to receive a portion of trust funds, the disputed portion shall not be withdrawn until the dispute is finally resolved.

(dc) A lawyerlicensed paraprofessional shall:

- (1) promptly notify a client or other person\* of the receipt of funds, securities, or other property in which the lawyerlicensed paraprofessional knows\* or reasonably should know\* the client or other person\* has an interest;
- (2) identify and label securities and properties of a client or other person\* promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable;
- (3) maintain complete records of all funds, securities, and other property of a client or other person\* coming into the possession of the lawyerlicensed paraprofessional or the licensed paraprofessional's law firm;\*
- (4) promptly account in writing\* to the client or other person\* for whom the lawyerlicensed paraprofessional or the licensed paraprofessional's law firm\* holds funds or property;
- (5) preserve records of all funds and property held by a lawyerlicensed paraprofessional or the licensed paraprofessional's law firm\* under this rule for a period of no less than five years after final appropriate distribution of such funds or property;
- (6) comply with any order for an audit of such records issued pursuant to the Rules of Procedure of the State Bar; and
- (7) promptly distribute, as requested by the client or other person,\* any undisputed funds or property in the possession of the lawyerlicensed paraprofessional or the licensed paraprofessional's law firm\* that the client or other person\* is entitled to receive.

(ed) 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 lawyerlicensed paraprofessionals 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 lawyerlicensed paraprofessionals.

*Standards:*

Pursuant to this rule, the Board of Trustees of the State Bar adopted the following standards, effective November 1, 2018, as to what "records" shall be maintained by lawyerlicensed paraprofessionals and licensed paraprofessionals' law firms\* in accordance with paragraph (d)(3).

- (1) A lawyerlicensed paraprofessional 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:
  - (a) a written\* ledger for each client or other person\* on whose behalf funds are held that sets forth:
    - (i) the name of such client or other person;\*
    - (ii) the date, amount and source of all funds received on behalf of such client or other person;\*
    - (iii) the date, amount, payee and purpose of each disbursement made on behalf of such client or other person;\* and
    - (iv) the current balance for such client or other person;\*

- (b) a written\* journal for each bank account that sets forth:
  - (i) the name of such account;
  - (ii) the date, amount and client or other person\* affected by each debit and credit; and
  - (iii) the current balance in such account;
- (c) all bank statements and cancelled checks for each bank account; and
- (d) each monthly reconciliation (balancing) of (a), (b), and (c).

(2) A ~~lawyer~~licensed paraprofessional shall, from the date of receipt of all securities and other properties held for the benefit of client or other person\* through the period ending five years from the date of appropriate disbursement of such securities and other properties, maintain a written\* journal that specifies:

- (a) each item of security and property held;
- (b) the person\* on whose behalf the security or property is held;
- (c) the date of receipt of the security or property;
- (d) the date of distribution of the security or property; and
- (e) person\* to whom the security or property was distributed.

#### Comment

[Reserved]

#### Rule 1.16 Declining or Terminating Representation

(a) Except as stated in paragraph (c), a ~~lawyer~~licensed paraprofessional shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

- (1) the ~~lawyer~~licensed paraprofessional knows\* or reasonably should know\* that the client is bringing an action, conducting a defense, or asserting a position in litigation, ~~or taking an appeal,~~ without probable cause and for the purpose of harassing or maliciously injuring any person;\*
- (2) the ~~lawyer~~licensed paraprofessional knows\* or reasonably should know\* that the representation will result in violation of these rules or ~~of the State Bar Act~~applicable other law;
- (3) the ~~lawyer~~licensed paraprofessional's mental or physical condition renders it unreasonably difficult to carry out the representation effectively; or
- (4) the client discharges the ~~lawyer~~licensed paraprofessional; or

(5) the licensed paraprofessional knows or \*reasonably should know\* that the subject of the representation is beyond the scope of the defined practice area for which the licensed paraprofessional is licensed as set forth in [add CRC rule reference setting forth permissible scope of practice]. If the subject of the representation is beyond the scope of the licensed paraprofessional's defined practice area, the licensed paraprofessional shall not render any legal assistance and shall advise the client in writing to seek the services of a lawyer or licensed paraprofessional authorized to provide legal services on the subject of the representation.

- (b) Except as stated in paragraph (c), a lawyerlicensed paraprofessional may withdraw from representing a client if:
- (1) the client insists upon presenting a claim or defense in litigation, or asserting a position or making a demand in a non-litigation matter, that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law;
  - (2) the client either seeks to pursue a criminal or fraudulent\* course of conduct or has used the lawyerlicensed paraprofessional's services to advance a course of conduct that the lawyerlicensed paraprofessional reasonably believes\* was a crime or fraud;\*
  - (3) the client insists that the lawyerlicensed paraprofessional pursue a course of conduct that is criminal or fraudulent;\*
  - (4) the client by other conduct renders it unreasonably difficult for the lawyerlicensed paraprofessional to carry out the representation effectively;
  - (5) the client breaches a material term of an agreement with, or obligation, to the lawyerlicensed paraprofessional relating to the representation, and the lawyerlicensed paraprofessional has given the client a reasonable\* warning after the breach that the lawyerlicensed paraprofessional will withdraw unless the client fulfills the agreement or performs the obligation;
  - (6) the client knowingly\* and freely assents to termination of the representation;
  - (7) the inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal;
  - (8) the lawyerlicensed paraprofessional's mental or physical condition renders it difficult for the lawyerlicensed paraprofessional to carry out the representation effectively;or
  - (9) a continuation of the representation is likely to result in a violation of these rules or the State Bar Actapplicable law; or
  - (10) the lawyerlicensed paraprofessional believes\* in good faith, in a proceeding pending before a tribunal,\* that the tribunal\* will find the existence of other good cause for withdrawal.
- (c) If permission for termination of a representation is required by the rules of a tribunal,\* a lawyerlicensed paraprofessional shall not terminate a representation before that tribunal\* without its permission.
- (d) A lawyerlicensed paraprofessional shall not terminate a representation until the lawyerlicensed paraprofessional has taken reasonable\* steps to avoid reasonably\* foreseeable prejudice to the rights of the client, such as giving the client sufficient notice to permit the client to retain other counselrepresentation, and complying with paragraph (e).
- (e) Upon the termination of a representation for any reason:
- (1) subject to any applicable protective order, non-disclosure agreement, statute or regulation, the lawyerlicensed paraprofessional promptly shall release to the client, at the request of the client, all client materials and property. "Client materials and property" includes correspondence, pleadings, deposition transcripts, experts' reports and other writings,\* exhibits, and physical evidence, whether in tangible, electronic or other form, and other items reasonably\* necessary to the client's representation, whether the client has paid for them or not; and
  - (2) the lawyerlicensed paraprofessional promptly shall refund any part of a fee or expense paid in advance that the lawyerlicensed paraprofessional has not earned or incurred. ~~This provision is not applicable to a true retainer fee paid solely for the purpose of ensuring the availability of the lawyer for the matter.~~

#### Comment

[Reserved]

### Rule 1.17 Sale of a Law Practice

All or substantially\* all of the law practice of a ~~lawyer~~licensed paraprofessional, living or deceased, including goodwill, may be sold to another licensed paraprofessional, a lawyer or law firm\* subject to all the following conditions:

- (a) Fees charged to clients shall not be increased solely by reason of the sale.
- (b) If the sale contemplates the transfer of responsibility for work not yet completed or responsibility for client files or information protected by ~~Business and Professions Code section 6068, subdivision (e)(1), rule 1.6(a)~~, then;
  - (1) if the seller is deceased, or has a conservator or other person\* acting in a representative capacity, and no lawyer has been appointed to act for the seller ~~pursuant to Business and Professions Code section 6180.5~~, then prior to the transfer;
    - (i) the purchaser shall cause a written\* notice to be given to each client whose matter is included in the sale, stating that the interest in the law practice is being transferred to the purchaser; that the client has the right to retain other counsel; that the client may take possession of any client materials and property, as required by rule 1.16(e)(1); and that if no response is received to the notice within 90 days after it is sent, or if the client's rights would be prejudiced by a failure of the purchaser to act during that time, the purchaser may act on behalf of the client until otherwise notified by the client, and
    - (ii) the purchaser shall obtain the written\* consent of the client. If reasonable\* efforts have been made to locate the client and no response to the paragraph (b)(1)(i) notice is received within 90 days, consent shall be presumed until otherwise notified by the client.
  - (2) in all other circumstances, not less than 90 days prior to the transfer;
    - (i) the seller, or the lawyer appointed to act for the seller ~~pursuant to Business and Professions Code section 6180.5~~, shall cause a written\* notice to be given to each client whose matter is included in the sale, stating that the interest in the law practice is being transferred to the purchaser; that the client has the right to retain other counsel; that the client may take possession of any client materials and property, as required by rule 1.16(e)(1); and that if no response is received to the notice within 90 days after it is sent, or if the client's rights would be prejudiced by a failure of the purchaser to act during that time, the purchaser may act on behalf of the client until otherwise notified by the client, and
    - (ii) the seller, or the lawyer appointed to act for the seller ~~pursuant to Business and Professions Code section 6180.5~~, shall obtain the written\* consent of the client prior to the transfer. If reasonable\* efforts have been made to locate the client and no response to the paragraph (b)(2)(i) notice is received within 90 days, consent shall be presumed until otherwise notified by the client.
- (c) If substitution is required by the rules of a tribunal\* in which a matter is pending, all steps necessary to substitute a lawyer shall be taken.
- (d) The purchaser shall comply with the applicable requirements of rules 1.7 and 1.9.
- (e) Confidential information shall not be disclosed to a nonlawyer in connection with a sale under this rule.
- (f) This rule does not apply to the admission to or retirement from a law firm,\* retirement plans and similar arrangements, or sale of tangible assets of a law practice.

### Comment



[Reserved]

### Rule 1.18 Duties to Prospective Client

(a) A person\* who, directly or through an authorized representative, consults a lawyerlicensed paraprofessional for the purpose of retaining the lawyerlicensed paraprofessional or securing legal service or advice from the lawyerlicensed paraprofessional in the lawyerlicensed paraprofessional's professional capacity, is a prospective client.

(b) Even when no lawyerlicensed paraprofessional-client relationship ensues, a lawyerlicensed paraprofessional who has communicated with a prospective client shall not use or reveal information protected by ~~Business and Professions Code section 6068, subdivision (e) and~~ rule 1.6(a) that the lawyerlicensed paraprofessional learned as a result of the consultation, except as rule 1.9 would permit with respect to information of a former client.

(c) A lawyerlicensed paraprofessional subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyerlicensed paraprofessional received from the prospective client information protected by ~~Business and Professions Code section 6068, subdivision (e) and~~ rule 1.6(a) that is material to the matter, except as provided in paragraph (d). If a lawyerlicensed paraprofessional is prohibited from representation under this paragraph or a lawyer is prohibited from representation under Lawyer RPC rule 1.18(c), no lawyerlicensed paraprofessional in a firm\* with which that lawyerlicensed paraprofessional is associated may knowingly\* undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) When the lawyer or licensed paraprofessional has received information that prohibits representation as provided in paragraph (c), representation of the affected client is permissible if:

(1) both the affected client and the prospective client have given informed written consent,\* or

(2) the lawyer or licensed paraprofessional who received the information took reasonable\* measures to avoid exposure to more information than was reasonably\* necessary to determine whether to represent the prospective client; and

(i) the prohibited lawyer or licensed paraprofessional is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom; and

(ii) written\* notice is promptly given to the prospective client to enable the prospective client to ascertain compliance with the provisions of this rule.

#### Comment

[Reserved]

## CHAPTER 2. COUNSELOR

### Rule 2.1 Advisor

In representing a client, a lawyerlicensed paraprofessional shall exercise independent professional judgment and render candid advice.

#### Comment

[Reserved]

## Rule 2.2 [Reserved]

## Rule 2.3 [Reserved]

## Rule 2.4 LawyerLicensed Paraprofessional as Third-Party Neutral

(a) A lawyerlicensed paraprofessional serves as a third-party neutral when the lawyerlicensed paraprofessional assists two or more persons\* who are not clients of the lawyerlicensed paraprofessional to reach a resolution of a dispute, or other matter, that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the lawyerlicensed paraprofessional to assist the parties to resolve the matter.

(b) A lawyerlicensed paraprofessional serving as a third-party neutral shall inform unrepresented parties that the lawyerlicensed paraprofessional is not representing them. When the lawyerlicensed paraprofessional knows\* or reasonably should know\* that a party does not understand the lawyerlicensed paraprofessional's role in the matter, the lawyerlicensed paraprofessional shall explain the difference between the lawyerlicensed paraprofessional's role as a third-party neutral and a lawyerlicensed paraprofessional's role as one who represents a client.

### Comment

[Reserved]

## Rule 2.4.1 [Reserved]Lawyer as Temporary Judge, Referee, or Court Appointed Arbitrator

~~A lawyer who is serving as a temporary judge, referee, or court appointed arbitrator, and is subject to canon 6D of the California Code of Judicial Ethics, shall comply with the terms of that canon.~~

## CHAPTER 3. ADVOCATE

### Rule 3.1 Meritorious Claims and Contentions

~~(a)~~—A lawyerlicensed paraprofessional shall not:

~~(a1)~~ assist with bringing or ~~continue continuing~~ an action, conducting a defense, or asserting a position in litigation, ~~or take an appeal,~~ without probable cause and for the purpose of harassing or maliciously injuring any person;\* or

~~(b2)~~ assist with presenting a claim or defense in litigation that is not warranted under existing law, unless it can be supported by a good faith argument for an extension, modification, or reversal of the existing law.

~~(b)~~—A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, or involuntary commitment or confinement, may nevertheless defend the proceeding by requiring that every element of the case be established.

### Rule 3.2 Delay of Litigation

In representing a client, a lawyerlicensed paraprofessional shall not use means that have no substantial\* purpose other than to delay or prolong the proceeding or to cause needless expense.

## Comment

[Reserved]

### Rule 3.3 Candor Toward the Tribunal\*

(a) A lawyerlicensed paraprofessional 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 lawyerlicensed paraprofessional;
- (2) fail to disclose to the tribunal\* legal authority in the controlling jurisdiction known\* to the lawyerlicensed paraprofessional to be directly adverse to the position of the client and not disclosed by opposing counselparty, or knowingly\* misquote to a tribunal\* the language of a book, statute, decision or other authority; or
- (3) offer evidence that the lawyerlicensed paraprofessional knows\* to be false. If a lawyerlicensed paraprofessional or the lawyerlicensed paraprofessional's client, ~~or a witness called by the lawyer~~, has offered material evidence, and the lawyerlicensed paraprofessional comes to know\* of its falsity, the lawyerlicensed paraprofessional 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 lawyerlicensed paraprofessional may refuse to offer evidence, ~~other than the testimony of a defendant in a criminal matter,~~ that the lawyerlicensed paraprofessional reasonably believes\* is false.

(b) A lawyerlicensed paraprofessional 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 lawyerlicensed paraprofessional shall inform the tribunal\* of all material facts known\* to the licensed paraprofessional lawyer that will enable the tribunal\* to make an informed decision, whether or not the facts are adverse to the position of the client.

## Comment

[Reserved]

### Rule 3.4 Fairness to Opposing Party and Counsel

A lawyerlicensed paraprofessional shall not:

- (a) unlawfully obstruct another party's access to evidence, including a witness, or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyerlicensed paraprofessional shall not counsel or assist another person\* to do any such act;
- (b) suppress any evidence that the lawyerlicensed paraprofessional or the lawyerlicensed paraprofessional's client has a legal obligation to reveal or to produce;
- (c) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(d) directly or indirectly pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of the witness's testimony or the outcome of the case. Except where prohibited by law, a lawyerlicensed paraprofessional may advance, guarantee, or acquiesce in the payment of:

- (1) expenses reasonably\* incurred by a witness in attending or testifying;
- (2) reasonable\* compensation to a witness for loss of time in attending or testifying; or
- (3) a reasonable\* fee for the professional services of an expert witness;

(e) advise or directly or indirectly cause a person\* to secrete himself or herself or to leave the jurisdiction of a tribunal\* for the purpose of making that person\* unavailable as a witness therein; or

(f) knowingly\* disobey an obligation under the rules of a tribunal\* except for an open refusal based on an assertion that no valid obligation exists; ~~or~~

(g) in trial, assert personal knowledge of facts in issue except when testifying as a witness; ~~or state a personal opinion as to the guilt or innocence of an accused.~~

#### Comment

[Reserved]

### Rule 3.5 Contact with Judges, Officials, and Employees, ~~and Jurors~~

(a) Except as permitted by statute, an applicable code of judicial ethics or code of judicial conduct, or standards governing employees of a tribunal,\* a lawyerlicensed paraprofessional shall not directly or indirectly give or lend anything of value to a judge, official, or employee of a tribunal.\* This rule does not prohibit a lawyerlicensed paraprofessional from contributing to the campaign fund of a judge or judicial officer running for election or confirmation pursuant to applicable law pertaining to such contributions.

(b) Unless permitted to do so by law, an applicable code of judicial ethics or code of judicial conduct, a rule or ruling of a tribunal,\* or a court order, a lawyerlicensed paraprofessional shall not directly or indirectly communicate with or argue to a judge or judicial officer upon the merits of a contested matter pending before the judge or judicial officer, except:

~~(1) in open court;~~

(2) with the consent of all other counsel and any unrepresented parties in the matter;

~~(3) in the presence of all other counsel and any unrepresented parties in the matter;~~

(24) in writing\* with a copy thereof furnished to all other counsel-represented and ~~any~~ unrepresented parties in the matter; ~~or,~~

~~(5) in ex parte matters.~~

(c) As used in this rule, "judge" and "judicial officer" shall also include: (i) administrative law judges; (ii) neutral arbitrators; (iii) State Bar Court judges; (iv) members of an administrative body acting in an adjudicative capacity; and (v) law clerks, research attorneys, or other court personnel who participate in the decision-making process, including referees, special masters, or other persons\* to whom a court refers one or more issues and whose decision or recommendation can be binding on the parties if approved by the court.

~~(d) A lawyer connected with a case shall not communicate directly or indirectly with anyone the lawyer knows\* to be a member of the venire from which the jury will be selected for trial of that case.~~

- (e) ~~During trial, a lawyer connected with the case shall not communicate directly or indirectly with any juror.~~
- (f) ~~During trial, a lawyer who is not connected with the case shall not communicate directly or indirectly concerning the case with anyone the lawyer knows\* is a juror in the case.~~
- (g) ~~After discharge of the jury from further consideration of a case a lawyer shall not communicate directly or indirectly with a juror if:~~
- ~~(1) the communication is prohibited by law or court order;~~
  - ~~(2) the juror has made known\* to the lawyer a desire not to communicate; or~~
  - ~~(3) the communication involves misrepresentation, coercion, or duress, or is intended to harass or embarrass the juror or to influence the juror's actions in future jury service.~~
- (h) ~~A lawyer shall not directly or indirectly conduct an out of court investigation of a person\* who is either a member of a venire or a juror in a manner likely to influence the state of mind of such person\* in connection with present or future jury service.~~
- (i) ~~All restrictions imposed by this rule also apply to communications with, or investigations of, members of the family of a person\* who is either a member of a venire or a juror.~~
- (j) ~~A lawyer shall reveal promptly to the court improper conduct by a person\* who is either a member of a venire or a juror, or by another toward a person\* who is either a member of a venire or a juror or a member of his or her family, of which the lawyer has knowledge.~~
- (k) ~~This rule does not prohibit a lawyer from communicating with persons\* who are members of a venire or jurors as a part of the official proceedings.~~
- (l) ~~For purposes of this rule, "juror" means any empaneled, discharged, or excused juror.~~

#### Comment

[Reserved]

#### Rule 3.6 Trial Publicity

- (a) A lawyer-licensed paraprofessional who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows\* or reasonably should know\* will (i) be disseminated by means of public communication and (ii) have a substantial\* likelihood of materially prejudicing an adjudicative proceeding in the matter.
- (b) Notwithstanding paragraph (a), but only to the extent permitted by Business and Professions Code section 6068, subdivision (e) and rule 1.6, licensed paraprofessional lawyer may state:
- (1) the claim, ~~offense~~ or defense involved and, except when prohibited by law, the identity of the persons\* involved;
  - (2) information contained in a public record;
  - (3) that an investigation of a matter is in progress;
  - (4) the scheduling or result of any step in litigation;
  - (5) a request for assistance in obtaining evidence and information necessary thereto; and

(6) a warning of danger concerning the behavior of a person\* involved, when there is reason to believe\* that there exists the likelihood of substantial\* harm to an individual or to the public but only to the extent that dissemination by public communication is reasonably\* necessary to protect the individual or the public;~~;~~ **and**

~~(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;\*~~

~~(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.~~

(c) Notwithstanding paragraph (a), a ~~licensed paraprofessional lawyer~~ may make a statement that a reasonable\* ~~licensed paraprofessional lawyer~~ would believe\* is required to protect a client from the substantial\* undue prejudicial effect of recent publicity not initiated by the ~~licensed paraprofessional lawyer~~ or the ~~licensed paraprofessional's lawyer's~~ client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(d) No ~~licensed paraprofessional lawyer~~ associated in a law firm\* ~~or government agency~~ with a ~~licensed paraprofessional lawyer~~ subject to paragraph (a) or a lawyer subject to Lawyer RPC rule 3.6(a) shall make a statement prohibited by paragraph (a).

#### Comment

#### Rule 3.7 ~~Lawyer~~ Licensed Paraprofessional as Witness

(a) A ~~lawyer~~ licensed paraprofessional shall not act as an advocate in a trial in which the ~~lawyer~~ licensed paraprofessional is likely to be a witness unless:

(1) the licensed paraprofessional's ~~lawyer's~~ testimony relates to an uncontested issue or matter;

(2) the licensed paraprofessional ~~lawyer's~~ testimony relates to the nature and value of legal services rendered in the case; or

(3) the licensed paraprofessional ~~lawyer~~ has obtained informed written consent\* from the client. ~~If the lawyer represents the People or a governmental entity, the consent shall be obtained from the head of the office or a designee of the head of the office by which the lawyer is employed.~~

(b) A ~~licensed paraprofessional lawyer~~ may act as advocate in a trial in which another licensed paraprofessional or lawyer in the lawyer's firm\* is likely to be called as a witness unless precluded from doing so by rule 1.7 or rule 1.9.

#### Rule 3.8 [RESERVED] ~~Special Responsibilities of a Prosecutor~~

~~The prosecutor in a criminal case shall:~~

~~(a) not institute or continue to prosecute a charge that the prosecutor knows\* is not supported by probable cause;~~

~~(b) make reasonable\* efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable\* opportunity to obtain counsel;~~

~~(c) — not seek to obtain from an unrepresented accused a waiver of important pretrial rights unless the tribunal\* has approved the appearance of the accused in propria persona;~~

~~(d) — make timely disclosure to the defense of all evidence or information known\* to the prosecutor that the prosecutor knows\* or reasonably should know\* tends to negate the guilt of the accused, mitigate the offense, or mitigate the sentence, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;\* and~~

~~(e) — exercise reasonable\* care to prevent persons\* under the supervision or direction of the prosecutor, including investigators, law enforcement personnel, employees or other persons\* assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under rule 3.6.~~

~~(f) — When a prosecutor knows\* of new, credible and material evidence creating a reasonable\* likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:~~

~~(1) promptly disclose that evidence to an appropriate court or authority, and~~

~~(2) if the conviction was obtained in the prosecutor's jurisdiction,~~

~~(i) promptly disclose that evidence to the defendant unless a court authorizes delay, and~~

~~(ii) undertake further investigation, or make reasonable\* efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.~~

~~(g) — When a prosecutor knows\* of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.~~

#### **Comment**

**[RESERVED]**

### **Rule 3.9 Advocate in Nonadjudicative Proceedings**

A licensed paraprofessional lawyer representing a client before a legislative body or administrative agency in connection with a pending nonadjudicative matter or proceeding shall disclose that the appearance is in a representative capacity, except when the licensed paraprofessional lawyer seeks information from an agency that is available to the public.

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

(a) A lawyerlicensed paraprofessional shall not threaten to present criminal, administrative, or disciplinary charges to obtain an advantage in a civil dispute.

(b) As used in paragraph (a) of this rule, the term “administrative charges” means the filing or lodging of a complaint with any governmental organization that may order or recommend the loss or suspension of a license, or may impose or recommend the imposition of a fine, pecuniary sanction, or other sanction of a quasi-criminal nature but does not include filing charges with an administrative entity required by law as a condition precedent to maintaining a civil action.

(c) As used in this rule, the term “civil dispute” means a controversy or potential controversy over the rights and duties of two or more persons\* under civil law, whether or not an action has been commenced, and includes an administrative proceeding of a quasi-civil nature pending before a federal, state, or local governmental entity.

#### **Comment**

[Reserved]

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

### Rule 4.1 Truthfulness in Statements to Others

In the course of representing a client a ~~lawyer~~licensed paraprofessional shall not knowingly:\*

- (a) make a false statement of material fact or law to a third person;\* or
- (b) fail to disclose a material fact to a third person\* when disclosure is necessary to avoid assisting a criminal or fraudulent\* act by a client, unless disclosure is prohibited by ~~Business and Professions Code section 6068, subdivision (e)(1) or~~ rule 1.6.

#### Comment

[Reserved]

### Rule 4.2 Communication with a Represented Person\*

- (a) In representing a client, a ~~lawyer~~licensed paraprofessional shall not communicate directly or indirectly about the subject of the representation with a person\* the ~~lawyer~~licensed paraprofessional knows\* to be represented by ~~another lawyer or another licensed paraprofessional~~ in the matter, unless the ~~lawyer~~licensed paraprofessional has the consent of the other lawyer or licensed paraprofessional.
- (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.
- (c) This rule shall not prohibit:
  - (1) communications with a public official, board, committee, or body; or
  - (2) communications otherwise authorized by law or a court order.
- (d) For purposes of this rule:
  - (1) "Managing agent" means an employee, member, agent, or other constituent of an organization with substantial\* discretionary authority over decisions that determine organizational policy.
  - (2) "Public official" means a public officer of the United States government, or of a state, county, city, town, political subdivision, or other governmental organization, with the comparable decision-making authority and responsibilities as the organizational constituents described in paragraph (b)(1).

#### Comment

[Reserved]



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

(a) In communicating on behalf of a client with a person\* who is not represented by a lawyer or licensed paraprofessional ~~counsel~~, a lawyerlicensed paraprofessional shall not state or imply that the lawyerlicensed paraprofessional is disinterested. When the lawyerlicensed paraprofessional knows\* or reasonably should know\* that the unrepresented person\* incorrectly believes\* the lawyerlicensed paraprofessional is disinterested in the matter, the lawyerlicensed paraprofessional shall make reasonable\* efforts to correct the misunderstanding. If the lawyerlicensed paraprofessional knows\* or reasonably should know\* that the interests of the unrepresented person\* are in conflict with the interests of the client, the lawyerlicensed paraprofessional shall not give legal advice to that person,\* except that the lawyerlicensed paraprofessional may, but is not required to, advise the person\* to secure ~~counsel~~legal representation.

(b) In communicating on behalf of a client with a person\* who is not represented by ~~counsel~~a lawyer or licensed paraprofessional, a lawyerlicensed paraprofessional shall not seek to obtain privileged or other confidential information the lawyerlicensed paraprofessional knows\* or reasonably should know\* the person\* may not reveal without violating a duty to another or which the lawyerlicensed paraprofessional is not otherwise entitled to receive.

#### Comment

[Reserved]

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

Where it is reasonably\* apparent to a lawyerlicensed paraprofessional who receives a writing\* relating to a lawyerlicensed paraprofessional's representation of a client that the writing\* was inadvertently sent or produced, and the lawyerlicensed paraprofessional knows\* or reasonably should know\* that the writing\* is privileged or subject to the work product doctrine, the lawyerlicensed paraprofessional shall:

(a) refrain from examining the writing\* any more than is necessary to determine that it is privileged or subject to the work product doctrine, and

(b) promptly notify the sender.

#### Comment

[Reserved]

## CHAPTER 5. LAW FIRMS\* AND ASSOCIATIONS

### Rule 5.1 Responsibilities of Managerial and Supervisory LawyerLicensed paraprofessionals

(a) A lawyerlicensed paraprofessional who individually or together with other licensed paraprofessionals or lawyers possesses managerial authority in a law firm,\* shall make reasonable\* efforts to ensure that the firm\* has in effect measures giving reasonable\* assurance that all lawyerlicensed paraprofessionals in the firm\* comply with these rules and the State Bar Act.

(b) A lawyerlicensed paraprofessional having direct supervisory authority over another lawyerlicensed paraprofessional, whether or not a member or employee of the same law firm,\* shall make reasonable\* efforts to ensure that the other lawyerlicensed paraprofessional complies with these rules and ~~the State Bar Act~~applicable law.

(c) A ~~lawyer~~licensed paraprofessional shall be responsible for another ~~lawyer~~licensed paraprofessional's violation of these rules and ~~the State Bar Act~~applicable law if:

- (1) the ~~lawyer~~licensed paraprofessional orders or, with knowledge of the relevant facts and of the specific conduct, ratifies the conduct involved; or
- (2) the ~~lawyer~~licensed paraprofessional, individually or together with other licensed paraprofessionals or lawyers, possesses managerial authority in the law firm\* in which the other ~~lawyer~~licensed paraprofessional practices, or has direct supervisory authority over the other ~~lawyer~~licensed paraprofessional, whether or not a member or employee of the same law firm,\* and knows\* of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable\* remedial action.

#### Comment

[Reserved]

### Rule 5.2 Responsibilities of a Subordinate ~~Lawyer~~Licensed paraprofessional

(a) A ~~lawyer~~licensed paraprofessional shall comply with these rules and ~~the State Bar Act~~ notwithstanding that the ~~lawyer~~licensed paraprofessional acts at the direction of a lawyer, another ~~lawyer~~ a licensed paraprofessional, or other person.\*

(b) A subordinate ~~lawyer~~licensed paraprofessional does not violate these rules ~~or the State Bar Act~~ if that ~~lawyer~~licensed paraprofessional acts in accordance with a supervisory lawyer's or supervisory licensed paraprofessional's reasonable\* resolution of an arguable question of professional duty.

#### Comment

[Reserved]

### Rule 5.3 Responsibilities Regarding Non-~~Licensed~~ ~~lawyer~~ Assistants

With respect to an individual not licensed to practice law who is ~~nonlawyer~~ employed or retained by or associated with a ~~lawyer~~licensed paraprofessional:

(a) a ~~lawyer~~licensed paraprofessional who individually or together with other licensed paraprofessionals or lawyers possesses managerial authority in a law firm,\* shall make reasonable\* efforts to ensure that the firm\* has in effect measures giving reasonable\* assurance that the ~~nonlawyer's~~ nonlicensee's conduct is compatible with the professional obligations of the ~~lawyer~~licensed paraprofessional;

(b) a ~~lawyer~~licensed paraprofessional having direct supervisory authority over the non~~lawyer~~licensee, whether or not an employee of the same law firm,\* shall make reasonable\* efforts to ensure that the person's\* conduct is compatible with the professional obligations of the ~~lawyer~~licensed paraprofessional; and

(c) a ~~lawyer~~licensed paraprofessional shall be responsible for conduct of such a person\* that would be a violation of these rules ~~or the State Bar Act~~ if engaged in by a ~~lawyer~~licensed paraprofessional if:

- (1) the ~~lawyer~~licensed paraprofessional orders or, with knowledge of the relevant facts and of the specific conduct, ratifies the conduct involved; or
- (2) the ~~lawyer~~licensed paraprofessional, individually or together with other licensed paraprofessionals or lawyers, possesses managerial authority in the law firm\* in which the person\* is employed, or has direct supervisory authority over the person,\* whether or not an employee of the same law firm,\* and knows\* of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable\* remedial action.

## Comment

[Reserved]

### **Rule 5.3.1 Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Lawyers or Licensed Paraprofessionals**

(a) For purposes of this rule:

- (1) “Employ” means to engage the services of another, including employees, agents, independent contractors and consultants, regardless of whether any compensation is paid;
- (2) “MemberLicensee” means a member-licensee of the State Bar of California;
- (3) “Involuntarily inactive memberlicensee” means a member who is ineligible to practice law as a result of action taken pursuant to Business and Professions Code sections 6007, 6203, subdivision (d)(1), or California Rules of Court, rule 9.31(d);
- (4) “Resigned memberlicensee” means a member-licensee who has resigned from the State Bar while disciplinary charges are pending; and
- (5) “Ineligible person” means a member-licensee whose current status with the State Bar of California is disbarred, suspended, resigned, or involuntarily inactive.

(b) A lawyerlicensed paraprofessional shall not employ, associate in practice with, or assist a person\* the lawyerlicensed paraprofessional knows\* or reasonably should know\* is an ineligible person to perform the following on behalf of the lawyerlicensed paraprofessional’s client:

- (1) Render legal consultation or advice to the client;
- (2) Appear on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer;
- (3) Appear as a representative of the client at a deposition or other discovery matter;
- (4) Negotiate or transact any matter for or on behalf of the client with third parties;
- (5) Receive, disburse or otherwise handle the client’s funds; or
- (6) Engage in activities that constitute the practice of law.

(c) A lawyerlicensed paraprofessional may employ, associate in practice with, or assist an ineligible person to perform research, drafting or clerical activities, including but not limited to:

- (1) Legal work of a preparatory nature, such as legal research, the assemblage of data and other necessary information, drafting of pleadings, briefs, and other similar documents;
- (2) Direct communication with the client or third parties regarding matters such as scheduling, billing, updates, confirmation of receipt or sending of correspondence and messages; or

~~(3) Accompanying an active lawyerlicensed paraprofessional in attending a deposition or other discovery matter for the limited purpose of providing clerical assistance to the active lawyerlicensed paraprofessional who will appear as the representative of the client.~~

(d) Prior to or at the time of employing, associating in practice with, or assisting a person\* the licensed paraprofessional~~lawyer~~ knows\* or reasonably should know\* is an ineligible person, the lawyerlicensed paraprofessional

shall serve upon the State Bar written\* notice of the employment, including a full description of such person's current ~~bar licensee~~ status. The written\* notice shall also list the activities prohibited in paragraph (b) and state that the ineligible person will not perform such activities. The ~~licensed paraprofessional~~ ~~lawyer~~ shall serve similar written\* notice upon each client on whose specific matter such person\* will work, prior to or at the time of employing, associating with, or assisting such person\* to work on the client's specific matter. The ~~lawyer~~ ~~licensed paraprofessional~~ shall obtain proof of service of the client's written\* notice and shall retain such proof and a true and correct copy of the client's written\* notice for two years following termination of the ~~lawyer~~ ~~licensed paraprofessional~~'s employment by the client.

(e) A ~~lawyer~~ ~~licensed paraprofessional~~ may, without client or State Bar notification, employ, associate in practice with, or assist an ineligible person whose sole function is to perform office physical plant or equipment maintenance, courier or delivery services, catering, reception, typing or transcription, or other similar support activities.

(f) When the ~~lawyer~~ ~~licensed paraprofessional~~ no longer employs, associates in practice with, or assists the ineligible person, the ~~lawyer~~ ~~licensed paraprofessional~~ shall promptly serve upon the State Bar written\* notice of the termination.

#### Comment

[Reserved]

#### Rule 5.4 Financial and Similar Arrangements with Lawyers and Nonlawyer licensees

(a) A ~~lawyer~~ ~~licensed paraprofessional~~ or law firm\* shall not share legal fees directly or indirectly with an ~~nonlawyer~~ ~~person~~\*-individual who is not a lawyer or a licensed paraprofessional or with an organization that is not authorized to practice law, except that:

(1) an agreement by a ~~lawyer~~ ~~licensed paraprofessional~~ with the ~~lawyer~~ ~~licensed paraprofessional~~'s firm,\* partner,\* or associate may provide for the payment of money or other consideration over a reasonable\* period of time after the ~~lawyer~~ ~~licensed paraprofessional~~'s death, to the ~~lawyer~~ ~~licensed paraprofessional~~'s estate or to one or more specified persons;\*

(2) a ~~lawyer~~ ~~licensed paraprofessional~~ purchasing the practice of a deceased, disabled or disappeared ~~lawyer~~ ~~licensed paraprofessional~~ may pay the agreed-upon purchase price, pursuant to rule 1.17, to the ~~lawyer~~ ~~licensed paraprofessional~~'s estate or other representative;

(3) a ~~lawyer~~ ~~licensed paraprofessional~~ or law firm\* may include ~~nonlawyer~~-employees who are not lawyers or licensed paraprofessionals in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement, provided the plan does not otherwise violate these rules ~~or the State Bar Act~~;

(4) a ~~lawyer~~ ~~licensed paraprofessional~~ or law firm\* may pay a prescribed registration, referral, or other fee to a ~~lawyer~~ ~~licensed paraprofessional~~ referral service established, sponsored and operated in accordance with the State Bar of California's Minimum Standards for ~~Lawyer~~ ~~Licensed paraprofessional~~ Referral Services; or

(5) a ~~lawyer~~ ~~licensed paraprofessional~~ or law firm\* may share with or pay a court-awarded legal fee to a nonprofit organization that employed, retained or recommended employment of the ~~lawyer~~ ~~licensed paraprofessional~~ or law firm\* in the matter. \_\_

(6) a licensed paraprofessional or law firm\* may share with or pay a legal fee that is not court-awarded but arises from a settlement or other resolution of the matter with a nonprofit organization that employed, retained, recommended, or facilitated employment of the licensed paraprofessional or law firm\* in the matter provided:

(i) the nonprofit organization qualifies under section 501(c)(3) of the Internal Revenue Code;

(ii) the licensed paraprofessional or law firm\* enters into a written\* agreement to divide the fee with the nonprofit organization;

(iii) the licensed paraprofessional or law firm\* obtains the client's consent in writing,\* either at the time the licensed paraprofessional or law firm\* enters into the agreement with the nonprofit organization to divide the fee or as soon thereafter as reasonably\* practicable, after a full written\* disclosure to the client of the fact that a division of fees will be made, the identity of the licensed paraprofessional or law firm\* and the nonprofit organization that are parties to the division, and the terms of the division, including the restriction imposed under paragraph (a)(6)(iv); and

(iv) the total fee charged by the licensed paraprofessional or law firm\* is not increased solely by reason of the agreement to divide fees.

(b) A ~~lawyer~~licensed paraprofessional shall not form a partnership or other organization with a individual who is not a lawyer or licensed paraprofessional~~nonlawyer~~ if any of the activities of the partnership or other organization consist of the practice of law.

(c) A ~~lawyer~~licensed paraprofessional shall not permit a person\* who recommends, employs, or pays the ~~lawyer~~licensed paraprofessional to render legal services for another to direct or regulate the ~~lawyer~~licensed paraprofessional's independent professional judgment or interfere with the ~~lawyer~~licensed paraprofessional-client relationship in rendering legal services.

(d) A ~~lawyer~~licensed paraprofessional shall not practice with or in the form of a professional corporation or other organization authorized to practice law for a profit if:

(1) an individual who is not a lawyer or a licensed paraprofessional~~nonlawyer~~ owns any interest in it, except that a fiduciary representative of a lawyer's or licensed paraprofessional's estate may hold the lawyer's or licensed paraprofessional's stock or other interest for a reasonable\* time during administration;

(2) an individual who is not a lawyer or a licensed paraprofessional~~nonlawyer~~ is a director or officer of the corporation or occupies a position of similar responsibility in any other form of organization; or

(3) an ~~nonlawyer~~individual who is not a lawyer or a licensed paraprofessional has the right or authority to direct or control the ~~lawyer~~licensed paraprofessional's independent professional judgment.

(e) A licensed paraprofessional shall not practice in a law firm\* with a lawyer if:

(1) licensed paraprofessionals direct or regulate any lawyer's professional judgment in rendering legal services;

(2) licensed paraprofessionals have direct supervisory authority over any lawyer; or

(3) licensed paraprofessionals possess a majority ownership interest or exercise controlling managerial authority in the firm;

(f) The Board of Trustees of the State Bar shall formulate and adopt Minimum Standards for ~~Lawyer-Licensed Paraprofessional~~ Referral Services, which, as from time to time amended, shall be binding on ~~lawyer~~licensed paraprofessionals. A ~~lawyer~~licensed paraprofessional shall not accept a referral from, or otherwise participate in, a ~~lawyer~~licensed paraprofessional referral service unless it complies with such Minimum Standards for ~~Lawyer-Licensed Paraprofessional~~ Referral Services.

(g) A ~~lawyer~~licensed paraprofessional shall not practice with or in the form of a nonprofit legal aid, mutual benefit or advocacy group if the nonprofit organization allows any third person\* to interfere with the ~~lawyer~~licensed paraprofessional's independent professional judgment, or with the ~~lawyer~~licensed paraprofessional-client relationship, or allows or aids any person\* to practice law in violation of these rules or ~~the State Bar Act~~applicable law.

**Comment [GFF:** add a comment to clarify that PPs and lawyers can co-own law firms and share legal fees so long as they comply with paragraph (e). Pursuant to paragraph (e), a majority-PP-owned law firm cannot employ an attorney.]

[Reserved]

## Rule 5.5 Unauthorized Practice of Law; ~~Multijurisdictional Practice of Law~~

~~(a) A lawyer~~Licensed paraprofessionals admitted to practice law in California shall not:

~~(1a)~~ practice law in California beyond the permissible scope of their license;

~~(b)~~ hold out or otherwise represent to the public that the licensed paraprofessional is permitted to practice law beyond the permissible scope of their license;

~~(c)~~ practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction;  
or

~~(d2)~~ knowingly\* assist a person\* in the unauthorized practice of law in that jurisdictionCalifornia or any other jurisdiction.

~~(b) A paraprofessional lawyer who is not admitted to practice law in California shall not:~~

~~(1) except as authorized by these rules or other law, establish or maintain a resident office or other systematic or continuous presence in California for the practice of law; or~~

~~(2) hold out to the public or otherwise represent that the paraprofessional lawyer is admitted to practice law in California.~~

**Comment** Amos: consider adding a comment that explains that a PP when acting as solely as a paralegal are not engaging in UPL unless they are practicing law outside the scope when doing so.]

[Reserved]

## Rule 5.6 Restrictions on a ~~Lawyer~~Licensed Paraprofessional's Right to Practice

(a) Unless authorized by law, a ~~lawyer~~licensed paraprofessional shall not participate in offering or making:

(1) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a ~~lawyer~~licensed paraprofessional to practice after termination of the relationship, except an agreement that concerns benefits upon retirement; or

(2) an agreement that imposes a restriction on a ~~lawyer~~licensed paraprofessional's right to practice in connection with a settlement of a client controversy, or otherwise.

(b) A ~~lawyer~~licensed paraprofessional shall not participate in offering or making an agreement which precludes the reporting of a violation of these rules.

~~(c) This rule does not prohibit an agreement that is authorized by Business and Professions Code sections 6092.5, subdivision (i) or 6093.~~

**Comment**

[Reserved]

## Rule 5.7 [Reserved]

## CHAPTER 6. PUBLIC SERVICE

## Rule 6.1 [Reserved]

## Rule 6.2 [Reserved]

## Rule 6.3 Membership in Legal Services Organization

A ~~lawyer~~licensed paraprofessional may serve as a director, officer or member of a legal services organization, apart from the law firm\* in which the ~~lawyer~~licensed paraprofessional practices, notwithstanding that the organization serves persons\* having interests adverse to a client of the ~~lawyer~~licensed paraprofessional. The ~~lawyer~~licensed paraprofessional shall not knowingly\* participate in a decision or action of the organization:

- (a) if participating in the decision or action would be incompatible with the ~~lawyer~~licensed paraprofessional's obligations to a client under ~~Business and Professions Code section 6068, subdivision (e)(1) or~~ rules 1.6(a), 1.7, 1.9, or 1.18; or
- (b) where the decision or action could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the ~~lawyer~~licensed paraprofessional.

### Comment

[Reserved]

## Rule 6.4 [Reserved]

## Rule 6.5 Limited Legal Services Programs

(a) A ~~lawyer~~licensed paraprofessional who, under the auspices of a program sponsored by a court, government agency, bar association, law school, or nonprofit organization, provides short-term limited legal services to a client without expectation by either the ~~lawyer~~licensed paraprofessional or the client that the ~~lawyer~~licensed paraprofessional will provide continuing representation in the matter:

- (1) is subject to rules 1.7 and 1.9(a) only if the ~~lawyer~~licensed paraprofessional knows\* that the representation of the client involves a conflict of interest; and
- (2) is subject to rule 1.10 only if the ~~lawyer~~licensed paraprofessional knows\* that another ~~lawyer~~licensed paraprofessional or a lawyer associated with the ~~lawyer~~licensed paraprofessional in a law firm\* is prohibited from representation by rule 1.7 or 1.9(a) or Lawyer RPC rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), rule 1.10 is inapplicable to a representation governed by this rule.

(c) The personal disqualification of a ~~lawyer~~licensed paraprofessional participating in the program will not be imputed to other ~~paraprofessionals~~licensed paraprofessional or lawyers participating in the program.

### Comment

[Reserved] [Will need clarifying comments similar to CRPC 6.5 that this is not permission to ignore conflicts for the duration, i.e., this rule applies only to short-term legal information/advice scenarios, e.g., Law Day. If the PP wants to continue to represent the client, the PP must comply w/ the conflicts rules.]



## CHAPTER 7. INFORMATION ABOUT LEGAL SERVICES

### Rule 7.1 Communications Concerning a LawyerLicensed paraprofessional's Services

(a) A lawyerlicensed paraprofessional shall not make a false or misleading communication about the lawyerlicensed paraprofessional or the lawyerlicensed paraprofessional's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the communication considered as a whole not materially misleading.

(b) The Board of Trustees of the State Bar may formulate and adopt standards as to communications that will be presumed to violate rule 7.1, 7.2, 7.3, ~~7.4~~ or 7.5. The standards shall only be used as presumptions affecting the burden of proof in disciplinary proceedings involving alleged violations of these rules. "Presumption affecting the burden of proof" means that presumption defined in Evidence Code sections 605 and 606. Such standards formulated and adopted by the Board, as from time to time amended, shall be effective and binding on all lawyerlicensed paraprofessionals.

#### Comment

[Reserved]

### Rule 7.2 Advertising

(a) Subject to the requirements of rules 7.1 and 7.3, a lawyerlicensed paraprofessional may advertise services through any written,\* recorded or electronic means of communication, including public media.

(b) A lawyerlicensed paraprofessional shall not compensate, promise or give anything of value to a person\* for the purpose of recommending or securing the services of the lawyerlicensed paraprofessional or the lawyerlicensed paraprofessional's law firm,\* except that a lawyerlicensed paraprofessional may:

- (1) pay the reasonable\* costs of advertisements or communications permitted by this rule;
- (2) pay the usual charges of a legal services plan or a qualified lawyerlicensed paraprofessional referral service. A qualified lawyerlicensed paraprofessional referral service is a lawyerlicensed paraprofessional referral service established, sponsored and operated in accordance with the State Bar of California's Minimum Standards for a LawyerLicensed paraprofessional Referral Service in California;
- (3) pay for a law practice in accordance with rule 1.17;
- (4) refer clients to another lawyerlicensed paraprofessional, a lawyer or a nonlawyer-professional pursuant to an arrangement not otherwise prohibited under these ~~Rules-rules or the State Bar Act~~ that provides for the other person\* to refer clients or customers to the lawyerlicensed paraprofessional, if:
  - (i) the reciprocal referral arrangement is not exclusive; and
  - (ii) the client is informed of the existence and nature of the arrangement;
- (5) offer or give a gift or gratuity to a person\* having made a recommendation resulting in the employment of the lawyerlicensed paraprofessional or the lawyerlicensed paraprofessional's law firm,\* provided that the gift or gratuity was not offered or given in consideration of any promise, agreement, or understanding that such a gift or gratuity would be forthcoming or that referrals would be made or encouraged in the future.

(c) Any communication made pursuant to this rule shall include: (1) the name and ~~address-contact information~~ of at least one lawyer, licensed paraprofessional or law firm\* responsible for its content, (2) include in the communication at least one licensed paraprofessional's license number; and (3) include in the communication a clear and conspicuous statement that the licensed paraprofessional is not a lawyer.



## Comment

[Reserved]

### Rule 7.3 Solicitation of Clients

(a) A lawyerlicensed paraprofessional shall not by in-person, live telephone or real-time electronic contact solicit professional employment when a significant motive for doing so is the lawyerlicensed paraprofessional's pecuniary gain, unless the person\* contacted:

- (1) is a lawyer or a licensed paraprofessional; or
- (2) has a family, close personal, or prior professional relationship with the lawyerlicensed paraprofessional.

(b) A lawyerlicensed paraprofessional shall not solicit professional employment by written,\* recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

- (1) the person\* being solicited has made known\* to the lawyerlicensed paraprofessional a desire not to be solicited by the lawyerlicensed paraprofessional; or
- (2) the solicitation is transmitted in any manner which involves intrusion, coercion, duress or harassment.

(c) Every written,\* recorded or electronic communication from a lawyerlicensed paraprofessional soliciting professional employment from any person\* known\* to be in need of legal services in a particular matter shall include:

- (1) the word "Advertisement" or words of similar import on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person\* specified in paragraphs (a)(1) or (a)(2), or unless it is apparent from the context that the communication is an advertisement;
- (2) include the name, contact information, and license number of the licensed paraprofessional responsible for the content of the communication;
- (3) include a clear and conspicuous statement that the paraprofessional is not a lawyer; and
- (4) if an advertisement subject to this subdivision is in a language other than English, the statements required by this subdivision shall be in the same language as the advertisement.

(d) A licensed paraprofessional shall not act as a runner or capper for another licensed paraprofessional, nor solicit another person to act as a runner or capper for the licensed paraprofessional.

(1) For purposes of paragraph (d), a "runner or capper" is any person, firm, association, or corporation acting for consideration in any manner or in any capacity as an agent for an attorney, a paraprofessional, or a law firm, in the solicitation or procurement of business for the licensed paraprofessional except as otherwise authorized by these rules.

(2) Nothing in paragraph (d) shall be construed to prevent the recommendation of professional employment where that recommendation is not prohibited by these rules.

(e) Notwithstanding the prohibitions in paragraph (a), a lawyerlicensed paraprofessional may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyerlicensed paraprofessional that uses in-person, live telephone or real-time electronic contact to solicit memberships or subscriptions for the plan from persons\* who are not known\* to need legal services in a particular matter covered by the plan.

(ef) As used in this rule, the terms “solicitation” and “solicit” refer to an oral or written\* targeted communication initiated by or on behalf of the lawyerlicensed paraprofessional that is directed to a specific person\* and that offers to provide, or can reasonably\* be understood as offering to provide, legal services.

#### Comment

[Reserved]

### **Rule 7.4 ~~[RESERVED] Communication of Licensed Fields of Practice and Authorized Legal Services and Specialization~~**

~~(a) A lawyer shall not state that the lawyer is a certified specialist licensed to practice in a particular field of law, unless:~~

~~(1) the lawyer is currently certified currently licensed as a specialist by the Board of Legal Specialization, or any other entity accredited by the State Bar to practice in that particular field of law to designate specialists pursuant to standards adopted by the Board of Trustees; and~~

~~(2) the name of the certifying organization is clearly identified in the communication.~~

~~(b) Notwithstanding paragraph (a), a lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer may also communicate that his or her practice specializes in, is limited to, or is concentrated in a particular field of law, subject to the requirements of rule 7.1.~~

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

(a) A lawyerlicensed paraprofessional shall not use a firm\* name, trade name or other professional designation that violates rule 7.1.

(b) A lawyerlicensed paraprofessional in private practice shall not use a firm\* name, trade name or other professional designation that states or implies a relationship with a government agency or with a public or charitable legal services organization, or otherwise violates rule 7.1.

(c) A lawyerlicensed paraprofessional shall not state or imply that the lawyerlicensed paraprofessional practices in or has a professional relationship with a law firm\* or other organization unless that is the fact.

#### Comment

[Reserved]

### **Rule 7.6 [Reserved]**

\*\*NOTE FROM AMOS: IN CONNECTION WITH CONSIDERATION OF ADVERTISING LIMITATIONS, WE ALSO SHOULD CONSIDER THE NAME OF THE PROPOSED PARAPROFESSIONAL LICENSE. THE NAME OF THE PROGRAM AND LICENSE CAN HAVE SIGNIFICANT IMPACT ON WHETHER THE PUBLIC IS LIKELY TO BE MISLED ABOUT AVAILABLE SERVICES AND THE DIFFERENCES BETWEEN HIRING A PARAPROFESSIONAL AND HIRING A LAWYER. THIS IS AN IMPORTANT CONSIDERATION IN PROTECTIN OF THE PUBLIC.

## CHAPTER 8. MAINTAINING THE INTEGRITY OF THE PROFESSION

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

- (a) An applicant for admission to practice law as a licensed paraprofessional shall not, in connection with that person's\* own application for admission, make a statement of material fact that the lawyerlicensed paraprofessional knows\* to be false, or make such a statement with reckless disregard as to its truth or falsity.
- (b) A lawyerlicensed paraprofessional shall not, in connection with another person's\* application for admission to practice law as a lawyer or licensed paraprofessional, make a statement of material fact that the lawyerlicensed paraprofessional knows\* to be false.
- (c) An applicant for admission to practice law as a licensed paraprofessional, or a lawyerlicensed paraprofessional in connection with an application for admission, shall not fail to disclose a fact necessary to correct a statement known\* by the applicant or the lawyerlicensed paraprofessional to have created a material misapprehension in the matter, except that this rule does not authorize disclosure of information protected by ~~Business and Professions Code section 6068, subdivision (e) and~~ rule 1.6.
- (d) As used in this rule, "admission to practice law" includes admission or readmission to membership-licensure in the State Bar; reinstatement to active membership-licensure in the State Bar; and any similar process relating to admission or certification to practice law in California or elsewhere.

#### Comment

[Reserved]

### Rule 8.1.1 Compliance with Conditions of Discipline ~~and Agreements in Lieu of Discipline~~

A lawyerlicensed paraprofessional shall comply with the terms and conditions attached to ~~any agreement in lieu of discipline~~, any public ~~or private~~ reproof, or to other discipline administered by the State Bar pursuant to ~~Business and Professions Code sections 6077 and 6078 and California Rules of Court, rule 9.19.~~

#### Comment

[Reserved]

### Rule 8.2 Judicial Officials

~~(a) A lawyerlicensed paraprofessional shall not make a statement of fact that the lawyerlicensed paraprofessional knows\* to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge or judicial officer, or of a candidate for election or appointment to judicial office.~~

~~(b) A lawyer who is a candidate for judicial office in California shall comply with canon 5 of the California Code of Judicial Ethics. For purposes of this rule, "candidate for judicial office" means a lawyer seeking judicial office by election. The determination of when a lawyer is a candidate for judicial office by election is defined in the terminology section of the California Code of Judicial Ethics. A lawyer's duty to comply with this rule shall end when the lawyer announces withdrawal of the lawyer's candidacy or when the results of the election are final, whichever occurs first.~~

~~(c) A lawyer who seeks appointment to judicial office shall comply with canon 5B(1) of the California Code of Judicial Ethics. A lawyer becomes an applicant seeking judicial office by appointment at the time of first submission of an application or personal data questionnaire to the appointing authority. A lawyer's duty to comply with this rule shall end when the lawyer advises the appointing authority of the withdrawal of the lawyer's application.~~

## Comment

[Reserved]

### Rule 8.3 [Reserved]

### Rule 8.4 Misconduct

It is professional misconduct for a lawyer~~licensed paraprofessional~~ to:

- (a) violate these rules ~~or the State Bar Act~~, knowingly\* assist, solicit, or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer~~licensed paraprofessional~~'s honesty, trustworthiness, or fitness as a lawyer~~licensed paraprofessional~~ in other respects;
- (c) engage in conduct involving dishonesty, fraud,\* deceit, or reckless or intentional misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official, or to achieve results by means that violate these rules, ~~the State Bar Act~~, or other law; or
- (f) knowingly\* assist, solicit, or induce a judge or judicial officer in conduct that is a violation of an applicable code of judicial ethics or code of judicial conduct, or other law. For purposes of this rule, "judge" and "judicial officer" have the same meaning as in rule 3.5(c).

## Comment

[Reserved]

### Rule 8.4.1 Prohibited Discrimination, Harassment and Retaliation

- (a) In representing a client, or in terminating or refusing to accept the representation of any client, a lawyer~~licensed paraprofessional~~ shall not:
  - (1) unlawfully harass or unlawfully discriminate against persons\* on the basis of any protected characteristic; or
  - (2) unlawfully retaliate against persons.\*
- (b) In relation to a law firm's operations, a lawyer~~licensed paraprofessional~~ shall not:
  - (1) on the basis of any protected characteristic,
    - (i) unlawfully discriminate or knowingly\* permit unlawful discrimination;
    - (ii) unlawfully harass or knowingly\* permit the unlawful harassment of an employee, an applicant, an unpaid intern or volunteer, or a person\* providing services pursuant to a contract; or
    - (iii) unlawfully refuse to hire or employ a person\*, or refuse to select a person\* for a training program leading to employment, or bar or discharge a person\* from employment or from a training program leading to employment, or discriminate against a person\* in compensation or in terms, conditions, or privileges of employment; or
  - (2) unlawfully retaliate against persons.\*

(c) For purposes of this rule:

(1) “protected characteristic” means race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, military and veteran status, or other category of discrimination prohibited by applicable law, whether the category is actual or perceived;

(2) “knowingly permit” means to fail to advocate corrective action where the lawyerlicensed paraprofessional knows\* of a discriminatory policy or practice that results in the unlawful discrimination or harassment prohibited by paragraph (b);

(3) “unlawfully” and “unlawful” shall be determined by reference to applicable state and federal statutes and decisions making unlawful discrimination or harassment in employment and in offering goods and services to the public; and

(4) “retaliate” means to take adverse action against a person\* because that person\* has (i) opposed, or (ii) pursued, participated in, or assisted any action alleging, any conduct prohibited by paragraphs (a)(1) or (b)(1) of this rule.

(d) A lawyerlicensed paraprofessional who is the subject of a State Bar investigation or State Bar ~~Court-disciplinary~~ proceeding alleging a violation of this rule shall promptly notify the State Bar of any criminal, civil, or administrative action premised, whether in whole or part, on the same conduct that is the subject of the State Bar investigation or State Bar ~~Court-disciplinary~~ proceeding.

(e) Upon being issued a notice of a disciplinary charge under this rule, a lawyerlicensed paraprofessional shall:

(1) if the notice is of a disciplinary charge under paragraph (a) of this rule, provide a copy of the notice to the California Department of Fair Employment and Housing and the United States Department of Justice, Coordination and Review Section; or

(2) if the notice is of a disciplinary charge under paragraph (b) of this rule, provide a copy of the notice to the California Department of Fair Employment and Housing and the United States Equal Employment Opportunity Commission.

(f) This rule shall not preclude a lawyerlicensed paraprofessional from:

~~(1) representing a client alleged to have engaged in unlawful discrimination, harassment, or retaliation;~~

~~(2)~~ declining or withdrawing from a representation as required or permitted by rule 1.16; or

~~(3)~~ providing advice and engaging in advocacy as otherwise required or permitted by these rules and applicable law and the State Bar Act.

#### Comment

[Reserved]

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

(a) Disciplinary Authority.

A lawyerlicensed paraprofessional admitted to practice in California is subject to the disciplinary authority of California, regardless of where the lawyerlicensed paraprofessional’s conduct occurs. ~~A lawyer not admitted in California is also subject to the disciplinary authority of California if the lawyer provides or offers to provide any legal services in California.~~ A lawyerlicensed paraprofessional may be subject to the disciplinary authority of both California and another jurisdiction for the same conduct.

(b) Choice of Law.

In any exercise of the disciplinary authority of California, the rules of professional conduct to be applied shall be as follows:

- (1) for conduct in connection with a matter pending before a tribunal,\* the rules of the jurisdiction in which the tribunal\* sits, unless the rules of the tribunal\* provide otherwise; and
- (2) for any other conduct, the rules of the jurisdiction in which the lawyerlicensed paraprofessional's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyerlicensed paraprofessional shall not be subject to discipline if the lawyerlicensed paraprofessional's conduct conforms to the rules of a jurisdiction in which the lawyerlicensed paraprofessional reasonably believes\* the predominant effect of the lawyerlicensed paraprofessional's conduct will occur.

**Comment**

[Reserved]



# The State Bar of California

## CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

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Date: April 19, 2021

To: California Paraprofessional Program Working Group

From: Amos Hartston and Fariba Soroosh

Subject: Regulation Subcommittee Status Update and Draft Rules of Paraprofessional Conduct

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### EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, proposed rules of paraprofessional conduct. The CPPWG is asked to consider and provide feedback regarding a draft set of paraprofessional conduct rules at its April 19, 2021, meeting. A final set of paraprofessional conduct rules will be submitted to the CPPWG for a vote at its June meeting.

### BACKGROUND

The Regulation Subcommittee has a broad charge including the development of recommendations in the areas of continuing education, financial responsibility, ethical rules governing paraprofessional conduct, and proactive/risk-based regulation. The Subcommittee previously presented recommendations regarding Minimum Continuing Education (MCLE) requirements and financial responsibility that were voted on and approved by the Working Group. The Subcommittee has continued its work addressing other regulation issues.

On several issues including (1) requirements for a written agreement including mandatory disclosures, (2) requirements for pre-engagement informed consent, (3) advertising limitations, (4) fee limitations, (5) proactive risk-based regulation, (6) and rules of professional conduct, the Subcommittee first worked through policy decisions about potential regulations separate from

drafting proposed language and determining if the regulation should be located in court rules, rules of professional conduct, or proposed statutory changes. A summary of key Subcommittee policy decisions and deliberations is provided in Table 1.

**Table 1. Summary of Key Policy Decisions**

Topic	Status
Continuing legal education	Working Group approved at March 18, 2021, CPPWG meeting
Financial responsibility; bond requirement	Working Group approved at March 18, 2021, CPPWG meeting
Written agreement including specified mandatory disclosures	Draft ready for consideration at April 21, 2021, CPPWG meeting
Pre-engagement informed consent requirement	Draft ready for consideration at April 21, 2021, CPPWG meeting
Advertising limitations	Draft ready for consideration at April 21, 2021, CPPWG meeting
Fee limitations or possible fee caps	Pending; recommendations not finalized
Proactive/risk-based regulation	Pending; recommendations not finalized

With respect to development of draft rules of professional conduct, after making these policy decisions, the Subcommittee has worked closely with State Bar staff and the California Supreme Court's liaison to the Working Group to develop a draft set of rules of paraprofessional conduct (RPPC). As a foundational matter, the Subcommittee decided to structure the draft rules to track the rules of professional conduct for attorneys (RPC) specifically, and, more globally, the overall structure for the regulation of attorney conduct, which includes a web of the RPC's, discipline rules, and statutes. This approach differs from that taken by other jurisdictions with licensed legal paraprofessionals. The Regulation Subcommittee, in consultation with its staff support, determined that the benefits of mirroring the overall regulatory structure in place for California attorneys are significant. A working draft of the RPPC, with proposed changes relative to the RPC for attorneys shown in redline, is provided as Attachment A.

With proposed policy decisions regarding regulation of paraprofessionals and the decision regarding overall approach in mind, the Subcommittee, with staff support, put together a draft set of RPPC's for paraprofessionals that track the RPCs for attorneys. Where appropriate, modification or deletion of rules of professional conduct are being proposed to track policy decisions made about regulation of paraprofessionals or where RPCs were identified that were not clearly, or necessarily, applicable in the RPPC context. A summary of key policy recommendations made by the Subcommittee beyond those outlined in Table 1 above, is provided in Table 2 on the following page.



**Table 2. Summary of Additional Policy Recommendations**

Topic	Recommendation
Can paraprofessionals represent organizations?	Recommendation: No
Can paraprofessionals provide limited scope representation?	Recommendation: Yes
Can paraprofessionals charge advanced fees?	Recommendation: Yes
Can paraprofessionals charge contingency fees?	Recommendation: Yes, enforcement of judgment matters only and subject to a cap of 33.33% (or other cap to be determined)
Are paraprofessionals required to deposit unearned fees in a trust account?	Recommendation: Yes
Can paraprofessionals act as runners and cappers for attorneys or other paraprofessionals, or have runners and cappers working for them?	Recommendation: No
Must paraprofessionals work under direct supervision of a lawyer?	Recommendation: No
Can paraprofessionals co-own firms and share fees with other paraprofessionals within the same firm?	Recommendation: Yes
Can paraprofessionals in different firms split fees (true referral fees)?	Recommendation: Yes, with restrictions similar to attorneys
Can paraprofessionals and attorneys co-own firms and share fees between attorneys and paraprofessionals within the same firm?	Recommendation: Yes, with the restriction that paraprofessionals must have minority ownership
Can paraprofessionals share fees with attorneys who do not practice in the same law firm?	Recommendation: Yes, under the same restrictions that allow fee sharing among lawyers under rule 1.5.1
Can paraprofessionals sell interest in a firm to another paraprofessional or attorney?	Recommendation: Yes
Can paraprofessionals enter business transactions or obtain interests adverse to clients?	Recommendation: Undecided
Can paraprofessionals loan money to clients?	Recommendation: Undecided

## DISCUSSION

This section provides a brief overview of each policy issue and identifies the rule<sup>1</sup> and statutory implications of the decisions made by the Subcommittee.

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<sup>1</sup> In this memorandum, rule generally refers to the Rules of Professional Conduct. While there has been an attempt to make clear distinctions throughout, in some circumstances rule may refer to Rules of Court or State Bar Rules.

## Paraprofessional-Client Relationship<sup>2</sup>

Policy 1: Whether paraprofessionals need to make certain **disclosures** to prospective clients and must they obtain their **informed written consent** prior initiating representation?

Answer: Yes. The Subcommittee recommends that the paraprofessional obtain a client's acknowledgement of certain disclosures and obtain written consent to representation in a separate writing from the mandatory written agreement, discussed *post*. The informed consent requirement is set forth in a proposed rule 1.4.2, which incorporates a professional liability insurance disclosure requirement similar to that found under the lawyer version of the rule while also including the certain other unique disclosures for paraprofessionals (i.e., that the paraprofessional is not a lawyer, the reasonable alternatives to obtaining legal assistance from a paraprofessional, the risks of obtaining legal assistance from a paraprofessional, the potential need to obtain assistance from a lawyer or another paraprofessional if need for assistance goes beyond scope of licensure, existence of other financial arrangements related to representation, reasonable estimate of legal costs.)

Informed of risks of hiring a paraprofessional. Form that can be used by the paraprofessional. What triggers the disclosure.

Additional, practice specific, disclosures, may be warranted.

Rules affected: New rule 1.4.2.

Policy 2: Does a paraprofessional need to enter into a **written agreement** with a client at the initiation of representation?

Answer: Yes. Currently lawyers are required to enter into written agreement if it anticipated the cost of legal services will exceed \$1,000 or it involves a contingency fee based on the outcome of the matter. Business and Professions

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<sup>2</sup> In addition to the issues described in this section, the Regulation Subcommittee discussed Code of Civil Procedure section 284(2) requires a client to either submit a substitution of counsel form signed by their lawyer to clerical change the attorney of record or file a noticed motion to obtain a court order dismissing a lawyer. This provision seems to conflict with the absolute right of a client to discharge their attorney because there are anecdotal instances in which a counsel of record refuses to sign a substitution of counsel form to obtain some advantage over their client. While this would clearly be a disciplinable offense, clients often cannot wait to for resolution of a State Bar complaint or have the wherewithal to seek a court order by noticed motion. The Regulation Subcommittee will consider proposing an amendment to section 284(2) to address this problem.

Code (BPC) sections 6147 and 6148. The rules do not require lawyers to enter into a written agreement with clients when the cost of legal services is not anticipated to exceed \$1,000 except when they are splitting legal fees (See rule 1.5.1).

Rules affected: New rule 1.5.2 reflects the Subcommittee's recommendation for written agreement requirements.

Statutes that may be affected: BPC 6147 and 6148 to the extent the CPPWG wishes to seek amendments to these statutes to make a failure to enter into a written agreement with a client voidable at the client's election.

Policy 3: Can paraprofessionals charge **contingency fees** and if so, under what circumstances?

Answer: Yes, they should be permitted to charge contingency fees in enforcement of final judgment actions only, subject to a fee cap (to be decided).

Rules affected: Rule 1.5 (Fees for Legal Services) and new rule 1.4.1 (Informed Consent) and rule 1.4.2 (Written Agreement).

Statutes that may be affected: BPC section 6147 requires lawyers to enter into a written agreement with the client and to include provisions that comply with the statute.

Policy 4: Can paraprofessionals charge **advanced fees** to cover fees, costs, and expenses?

Answer: Yes, under the same circumstances that a lawyer can charge such fees, with no exceptions. There is an exception for lawyers that allow them to obtain informed consent if the client agrees to allow them to place advance fee in operating account. This exception not included.

Rules affected: Rule 1.15 setting forth the trust account obligations and rule 1.16(e) setting forth the obligation to return unearned fees. Rule 1.8.5 allows an attorney to pay costs and expenses to third parties using advance fees with client consent.

Statutes that may be affected: The IOLTA statutes (BPC section 6210, 6211) need to be amended to include paraprofessional trust accounts within the scope of the program.

Policy 5: Can paraprofessionals place ***advanced fees in their operating account*** if the client consents just as lawyers are permitted to do under rule 1.15(b)?

Answer: No. This exception for lawyers was specifically carved out to accommodate concerns of criminal defense and bankruptcy attorneys that placing advance fees in trust accounts might subject them to government seizure or forfeiture. Neither of these areas of law are contemplated as being within permissible scope of practice of paraprofessionals.

Rules affected: Rule 1.15(b) should be removed from the RPPC version, thus paragraph (a) will require placement in the trust account and paragraph (c) will require the paraprofessional to move funds to the operating account as earned.

Policy 6: Can paraprofessionals charge ***true retainer fees***?

Answer: No. Lawyers are prohibited from designating an advance fee as “earned upon receipt” or “nonrefundable” unless it is a true retainer fee, defined as “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.”

Paraprofessionals will not be permitted to charge true retainer so no advance fee can ever be designated as “earned upon receipt” or “non-refundable.”

Rules affected: Rule 1.5(d).

Policy 7: Can paraprofessionals ***pay personal or business expenses*** owed to third parties with advance funds with the client’s consent?

Answer: Yes. This is an exception to the general prohibition on a lawyer directly or indirectly paying or agree to pay personal or business expenses of a prospective or existing client. (RPC rule 1.8.5(a), (b)(1).) Consent to do so can be verbal. The Subcommittee also wishes to retain the same exceptions under rule 1.8.5(b)(3) allowing cost repayment contingent on outcome and rule 1.8.5(b)(4) allowing payment of costs and expenses of an indigent client without expectation of repayment.

Rules affected: Rule 1.8.5.

Policy 8: Can paraprofessionals enter ***business transactions*** or obtain a ***pecuniary interest adverse to a client*** and if so, under what circumstances? FC2033

Answer: Undecided. Under rule 1.8.1, lawyers can only enter into a business transaction or knowingly acquire an ownership interest adverse to a client unless: (i) terms are fair and reasonable and lawyer's role in the transaction is fully disclosed in writing in a manner reasonably understood; (ii) client is represented by other counsel or his advised in writing to seek independent advice and given an opportunity to do so; and (iii) the client gives informed written consent. (These requirements are consistent with BPC section 6175.3 governing a lawyer's sale of financial product to current or former clients who are elder or dependent adults.) One example that might be contemplated is if a paraprofessional obtains an assignment of a final money judgment from a client in an effort to enforce the judgment. The Subcommittee intends to seek additional information to determine the impact of a complete prohibition.

Rules affected: Rule 1.8.1 and 1.8.5.

Statutes that may be affected: BPC section 6175.3.

Policy 9: Can paraprofessionals ***loan money to existing clients*** and if so, under what circumstances?

Answer: Undecided. Lawyers are able to do so if it does not create a conflict of interest under rule 1.7 and they comply with the ethical obligations under rule 1.8.1 governing business transactions with clients. The Regulation Subcommittee intends to ask other subcommittees to determine whether or not this rule is necessary to facilitate access. To the extent it is allowed, the Subcommittee may propose to regulate the interest rate that can be charged (note that rule 1.8.1 (a) already requires the terms of any transaction with a client must be "fair and reasonable").

Rules affected: Rule 1.8.1 and 1.8.5.

Policy 10: Can a paraprofessional ***solicit a substantial gift*** from a client and if so, under what circumstances?

Answer: Yes, but only under the limited circumstances allowed for lawyers (i.e., if lawyer or the recipient of the gift is related to the client). There is no need for the additional prohibition on a paraprofessional drafting an instrument that conveys a substantial gift to the paraprofessional or a relative of the paraprofessional because they will not be authorized to draft such instruments.

Rules affected: Rule 1.8.3

Policy 11: Can a paraprofessional ***purchase a property at a foreclosure or judicial sale*** if the paraprofessional is acting as legal representative in the transaction or as an executor, receiver, trustee, administrator, guardian, or conservator?

Answer: No, following rule 1.8.9, which prohibits a lawyer or anyone affiliated with the lawyer from purchasing a property at foreclosure or judicial sale under these circumstances. However, such transactions may be permissible under Probate Code sections 9880 through 9885 so long as the lawyer complies with rules 1.8.1 and 1.7.

Rules affected: Rules 1.8.9, 1.8.1, 1.7.

Statutes that may be affected: Probate Code sections 9880 through 9885.

Policy 12: Whether paraprofessional can ***represent organizations***?

Answer: No, paraprofessional can only represent individuals.

Rules affected: Rules 1.13 (Organization as Client).

Policy 13: Should paraprofessionals be permitted to provide limited scope representation?

Answer: Yes. Rules of Court, rules 3.35-3.37 (limited scope rule applicable in civil matters generally), 5.425 [limited scope rule applicable in family law matters] permitting the unbundling of legal services were intended to lower costs for clients by reducing the amount of time a lawyer puts into a legal matter.

Rules affected: Rule 1.2(b) (Scope of Representation and Allocation of Authority) permits a lawyer to limit the scope of representation if limitation is reasonable, permitted by law, and client gives informed consent.

Statutes and other Rules affected: Rules of Court, rules 3.35-3.37, 5.425 would have to be amended to allow this level of limited scope representation by paraprofessionals.

### **Relationships Among Paraprofessionals**

Policy 14: Can paraprofessionals ***co-own a law firm*** with other paraprofessionals?

Answer: Yes, subject to the same rules that apply to lawyers governing conflicts of interest, sale of firm, supervision of staff, prohibitions on unlawful harassment, discrimination, and retaliation in firm operations, etc. Statutory

changes may be needed to ensure registration of such LLP and PCs with the State Bar.

Rules affected: Rule 1.0.1(c), (g), (k) [definitions of a “law firm,” “partner,” and “screened”]; rules 1.7 (Conflicts of Interest: Current Client); 1.8.11 (Imputation of Conflicts under rules 1.8.1 through 1.8.10); 1.9 (Duties to Former Clients); 1.10 (Imputation of Conflicts of Interest: General Rule); 1.11 (Special Conflicts of Interest for Former and Current Government Officials and Employees); 1.12 (Former Arbitrator, Mediator, or Third-Party Neutral); 1.15 (Safekeeping Funds and Property of Clients and Other Persons); 1.17 (Sale of a Law Practice); 1.18 (Duties to Prospective Clients); 5.1 (Responsibilities of Managerial and Supervisory Paraprofessionals); 5.2 (Responsibilities of a Subordinate Licensed Paraprofessional); 5.3 (Responsibilities Regarding Non-Licensed Assistants); 5.3.1 (Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Lawyers or Paraprofessionals); 5.4 (Financial and Similar Arrangements with Lawyers and Nonlicensees); 7.2 (Advertising); 7.5 (Firm Names and Trade Names); 8.4.1 (Prohibited Discrimination, Harassment and Retaliation)

Statutes and other Rules that may be affected: BPC sections 6174, 6174.5 and State Bar Rules 3.170 et seq. [governing registration of maintenance attorney LLPs]; BPC section 6160 et seq and State Bar Rules 3.150 et seq. [Law corporations organized under Corporate Code section 13400 et seq. must be registered with and certified by the State Bar]; BPC 6175 et seq. [Provision of Financial Services by Lawyers].

Policy 15: Can paraprofessionals ***sell their interest in a law firm*** to another paraprofessional or a lawyer?

Answer: Yes, subject to the same requirements applicable to lawyers selling interest in their law firms under rule 1.17.

Rules affected: Rules 1.17 (Sale of a Law Practice), 1.16 (Declining or Terminating Representation, 5.4(a)(2) (Financial and Similar Arrangements with Nonlawyers), 7.2(a)(3) (Advertising).

Statutes and other Rules that may be affected: BPC sections 6174, 6174.5 and State Bar Rules 3.170 et seq. [governing registration of maintenance attorney LLPs]; BPC section 6160 et seq and State Bar Rules 3.150 et seq. [Law corporations organized under Corporate Code section 13400 et seq. must be registered with and certified by the State Bar].

Policy 16: Can paraprofessionals who work in ***different law firms split fees?***

Answer: Yes, based on the same criteria that applies to lawyers, meaning that pure referral fees are permissible.

Rules affected: Rules 1.5.1, 5.4, and 7.2. Rule 7.2(b) states that a lawyer may not “compensate, give, or promise anything of value” to another person, including a lawyer, for recommending or securing the referral of business to a lawyer or law firm with some exceptions, including that a lawyer may make a referral to another lawyer or nonlawyer so long as it does not violate the rule or State Bar Act, it is a reciprocal referral arrangement is not exclusive, and the client is informed of the existence and nature. Rule 5.4 prohibits fee direct or indirect fee sharing with nonlawyers with certain exception not applicable here. Finally, rule 1.5.1 provides lawyers not in the same firm can split legal fees so long as (1) they enter into a written agreement to do so; (2) the client consents in a writing that provides full disclosure of the fact that the division will be made, the identity of the lawyers or firms that are parties to the division and the terms of the division; and (3) the total fee charged to the client does not increase as a result solely due to the agreement to divide the fees. Consequences of failure to comply is that the lawyers may be subject to discipline and the agreement may not be enforceable on public policy grounds. (*Scolinos v. Kolts* (1995) 37 Cal.App.4th 635, 639; *Chambers v. Kay* (2002) 29 Cal.4th 142, 156.) Importantly, unlike the Model Rule 1.5(e) and the versions of the rule in most other jurisdictions, California does not require a division of fees in proportion to the services performed by each lawyer or they each take responsibility for the representation. This opens the door for sharing fees with another lawyer for a client referral alone so long as they comply with rules 1.5.1 and 7.2(b). The rationale for allowing such forwarding or pure referral fees is well-stated in *Moran v. Harris* (1982) 131 Cal.App.3d 913, 921–922: “If the ultimate goal is to assure the best possible representation for a client, a forwarding fee is an economic incentive to less capable lawyers to seek out experienced specialists to handle a case. Thus, with marketplace forces at work, the specialist develops a continuing source of business, the client is benefited and the conscientious, but less experienced lawyer is subsidized to competently handle the cases he retains and to assure his continued search for referral of complex cases to the best lawyers in particular fields.” The duty of competence includes the exercise of care in referrals under rule 1.1(c).

Statutes that may be affected: BPC section 6154 prohibits runners and cappers for lawyers unless otherwise permitted under the RPC. No such prohibition exists for runners and cappers for paraprofessionals. BPC section 6148 may be indirectly implicated as well because it requires a written agreement for any provision of legal services where it is reasonably foreseeable that the total cost to the client will exceed \$1,000. The agreement must explain the fee structure.



## Relationships with Lawyers

Policy 17: Whether paraprofessionals must practice under the ***direct supervision of a lawyer?***

Answer: No.

Rules affected: Rules 1.2 (Scope of Representation and Allocation of Authority), rules 5.1 (Responsibilities of Managerial and Supervisory Paraprofessionals), 5.2 (Responsibilities of Subordinate Paraprofessionals), 5.3 (Responsibilities Regarding Nonlawyer Assistants), and 5.5 (Unauthorized Practice of Law).

Policy 18: Whether ***lawyers and paraprofessionals can co-own the same law firm?***

Answer: Yes. The subcommittee has decided that paraprofessionals can hold less than 50 percent ownership in a law firm co-owned with attorneys and may supervise nonlawyer staff.

Rules affected: Most importantly, rule 5.4 which has been amended to permit paraprofessionals and lawyers to co-own law firms. See new paragraphs (e) and (f) to rule 5.4. Additionally, the following rules are affected by this decision: rules 1.0.1(c), (g), (k) [definitions of a “law firm,” “partner,” and “screened”]; 1.7 (Conflicts of Interest: Current Client); 1.8.11 (Imputation of Conflicts under rules 1.8.1 through 1.8.10); 1.9 (Duties to Former Clients); 1.10 (Imputation of Conflicts of Interest: General Rule); 1.11 (Special Conflicts of Interest for Former and Current Government Officials and Employees); 1.12 (Former Arbitrator, Mediator, or Third-Party Neutral); 1.15 (Safekeeping Funds and Property of Clients and Other Persons); 1.17 (Sale of a Law Practice); 1.18 (Duties to Prospective Clients); 5.1 (Responsibilities of Managerial and Supervisory Paraprofessionals); 5.2 (Responsibilities of a Subordinate Licensed Paraprofessional); 5.3 (Responsibilities Regarding Non-Licensed Assistants); 5.3.1 (Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Lawyers or Paraprofessionals); 5.4 (Financial and Similar Arrangements with Lawyers and Nonlicensees); 7.2 (Advertising); 7.5 (Firm Names and Trade Names); 8.4.1 (Prohibited Discrimination, Harassment and Retaliation).

Statutes that may be affected: BPC section 6174, 6174.5 and State Bar Rules 3.170 et seq. [governing registration of maintenance attorney LLPs]; BPC section 6160 et seq and State Bar Rules 3.150 et seq. [Law corporations organized under Corporate Code section 13400 et seq. must be registered with and certified by the State Bar]; BPC section 6175 et seq. [Provision of Financial Services by Lawyers]

Policy 19: Whether paraprofessionals can ***share legal fees with lawyers*** who do not practice in the same law firm and if so, under what circumstances?

Answer: Yes, under the same rules that allow fee sharing among lawyers under rule 1.5.1.

Rules and statutes affected: See response to Question #16.

### **Advertising and Solicitation**

Policy 20: Whether the same ethical standards that apply to lawyers regarding ***communication, solicitation, and advertising of legal services*** should apply to paraprofessionals?

Answer: Yes and additional obligations should also be imposed. Under rules 7.2(c) and 7.3(c), all advertising and solicitation communications placed by a licensed paraprofessional regarding the availability of legal services must include the name and contact information for the licensed paraprofessional or law firm responsible for the content, the paraprofessional's license number and a clear and conspicuous statement indicating that the licensed paraprofessional is not a lawyer.

Rules affected: Rules 7.1, 7.2, and 7.3.

Policy 21: Whether there should be a prohibition on licensed paraprofessionals acting as a ***runner or capper*** for another paraprofessional or attorney?

Answer: Yes. Currently BPC section 6152 prohibits any person from acting as a runner or capper for any attorney and prohibits any person from soliciting another person to act as a runner or capper for an attorney. There is no current prohibition from a person acting as a runner or capper for a licensed paraprofessional or soliciting someone to act as a runner or capper for a licensed paraprofessional. The regulation subcommittee recommends adopting an amended version of rule 7.3 to fill this regulatory gap.

Rules affected: Rule 7.3 (Solicitation of Clients).

Statutes that may be affected: BPC section 6152.

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## Rule 1.0 Purpose and Function of the Rules of Professional Conduct for Licensed Paraprofessionals

### (a) Purpose.

The following rules are intended to regulate professional conduct of ~~lawyer~~licensed paraprofessionals through discipline. They have been adopted by the Board of Trustees of the State Bar of California and approved by the Supreme Court of California ~~pursuant to Business and Professions Code sections 6076 and 6077~~ to protect the public, the courts, and the legal profession; protect the integrity of the legal system; and promote the administration of justice and confidence in the legal profession. These rules together with any standards adopted by the Board of Trustees pursuant to these rules shall be binding upon all licensed paraprofessionals.

### (b) Function.

(1) A willful violation of any of these rules is a basis for discipline.

(2) The prohibition of certain conduct in these rules is not exclusive. Licensed paraprofessionals are also bound by applicable law including relevant statutes, the California Rules of Court, and the State Bar Act (Bus. & Prof. Code, § 6000 et seq.) and opinions of California courts.

(3) A violation of a rule does not itself give rise to a cause of action for damages caused by failure to comply with the rule. Nothing in these rules or the Comments to the rules is intended to enlarge or to restrict the law regarding the liability of ~~lawyers~~ licensed paraprofessionals to others.

### (c) Purpose of Comments.

The comments are not a basis for imposing discipline but are intended only to provide guidance for interpreting and practicing in compliance with the rules.

(d) These rules may be cited and referred to as the “California Rules of Professional Conduct for Licensed Paraprofessionals.”

### Comment

[Reserved]

## Rule 1.0.1 Terminology

(a) “Belief” or “believes” means that the person\* involved actually supposes the fact in question to be true. A person’s\* belief may be inferred from circumstances.

(b) ~~[Reserved]~~ [FG1]

(c) “Firm” or “law firm” means a licensed paraprofessional, licensed paraprofessionals, a lawyer, or lawyers in a law partnership; a professional law corporation; a ~~lawyer~~licensed paraprofessional-licensed paraprofessional acting as a sole proprietorship; an association authorized to practice law; or ~~lawyer~~licensed paraprofessionals- licensed paraprofessional employed in a legal services organization or in the legal department, division or office of a corporation, of a government organization, or of another organization.

(d) “Fraud” or “fraudulent” means conduct that is fraudulent under the law of the applicable jurisdiction and has a purpose to deceive.

(e) “Informed consent” means a person’s\* agreement to a proposed course of conduct after the ~~lawyer~~licensed paraprofessional has communicated and explained (i) the relevant circumstances and (ii) the material risks, including any actual and reasonably\* foreseeable adverse consequences of the proposed course of conduct.

(e-1) “Informed written consent” means that the disclosures and the consent required by paragraph (e) must be in writing.\*

(f) “Knowingly,” “known,” or “knows” means actual knowledge of the fact in question. A person’s\* knowledge may be inferred from circumstances.

(g) “Partner” means a member of a partnership, a shareholder in a law firm\* organized as a professional corporation, or a member of an association authorized to practice law.

(g-1) “Person” has the meaning stated in Evidence Code section 175.

(h) “Reasonable” or “reasonably” when used in relation to conduct by a lawyerlicensed paraprofessional means the conduct of a reasonably prudent and competent lawyerlicensed paraprofessional.

(i) “Reasonable belief” or “reasonably believes” when used in reference to a lawyerlicensed paraprofessional means that the lawyerlicensed paraprofessional believes the matter in question and that the circumstances are such that the belief is reasonable.

(j) “Reasonably should know” when used in reference to a lawyerlicensed paraprofessional means that a lawyerlicensed paraprofessional of reasonable prudence and competence would ascertain the matter in question.

(k) “Screened” means the isolation of a lawyerlicensed paraprofessional from any participation in a matter, including the timely imposition of procedures within a law firm\* that are adequate under the circumstances (i) to protect information that the isolated lawyerlicensed paraprofessional is obligated to protect under these rules or other law; and (ii) to protect against other law firm\* lawyers, licensed paraprofessionals and nonlawyers, and non-licensed paraprofessional personnel communicating with the lawyerlicensed paraprofessional with respect to the matter.

(l) “Substantial” when used in reference to degree or extent means a material matter of clear and weighty importance.

(m) “Tribunal” means: (i) a court, an arbitrator, an administrative law judge, or an administrative body acting in an adjudicative capacity and authorized to make a decision that can be binding on the parties involved; or (ii) a special master or other person\* to whom a court refers one or more issues and whose decision or recommendation can be binding on the parties if approved by the court.

(n) “Writing” or “written” has the meaning stated in Evidence Code section 250. A “signed” writing includes an electronic sound, symbol, or process attached to or logically associated with a writing and executed, inserted, or adopted by or at the direction of a person\* with the intent to sign the writing.

(o) “Lawyer RPC” denotes the California Rules of Professional Conduct for Lawyers<sup>[FG2]</sup>.

#### Comment

[Reserved]

## CHAPTER 1.

### LAWYERLICENSED PARAPROFESSIONAL-CLIENT RELATIONSHIP

#### Rule 1.1 Competence

(a) A lawyerlicensed paraprofessional 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.

(c) If a lawyerlicensed paraprofessional does not have sufficient learning and skill when the legal services within the scope of the licensure are undertaken, the lawyerlicensed paraprofessional nonetheless may provide competent representation by (i) associating with or, where appropriate, professionally consulting another lawyerlicensed paraprofessional or a lawyer whom the lawyerlicensed paraprofessional reasonably believes\* to be competent, (ii) acquiring sufficient learning and skill before performance is required, or (iii) referring the matter to another lawyerlicensed paraprofessional or lawyer whom the lawyerlicensed paraprofessional reasonably believes\* to be competent.

(d) In an emergency a lawyerlicensed paraprofessional may give advice or assistance in a matter in which the lawyerlicensed paraprofessional does not have the skill ordinarily required if referral to, or association or consultation with, another lawyerlicensed paraprofessional or lawyer would be impractical. Assistance in an emergency must be limited to that reasonably\* necessary in the circumstances<sup>[FG3]</sup>.

#### Comment

[Reserved<sup>[FG4]</sup>]

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

(a) Subject to rule 1.2.1, a lawyerlicensed -paraprofessional 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 licensed paraprofessional lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A licensed paraprofessional 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~~<sup>[FG5]</sup>.

(b) A lawyerlicensed paraprofessional 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.\*

#### Comment

[Reserved]

#### Rule 1.2.1 Advising or Assisting the Violation of Law

(a) A licensed paraprofessional lawyer shall not counsel a client to engage, or assist a client in conduct that the lawyerlicensed paraprofessional knows\* is criminal, fraudulent,\* or a violation of any law, rule, or ruling of a tribunal.\*

(b) Notwithstanding paragraph (a), a licensed paraprofessional lawyer may:

- (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.\*

#### Comment

[Reserved]

### Rule 1.3 Diligence

- (a) A licensed paraprofessional ~~lawyer~~ shall not intentionally, repeatedly, recklessly or with gross negligence fail to act with reasonable diligence in representing a client.
- (b) For purposes of this rule, “reasonable diligence” shall mean that a ~~lawyer~~licensed paraprofessional 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~~licensed paraprofessional.

#### Comment

[Reserved]

### Rule 1.4 Communication with Clients

- (a) A licensed paraprofessional ~~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~~applicable law;
  - (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~~licensed paraprofessional’s conduct when the ~~lawyer~~licensed paraprofessional knows\* that the client expects assistance not permitted by these ~~rules~~ Rules of Professional Conduct or other law.
- (b) A ~~lawyer~~licensed paraprofessional shall explain a matter to the extent reasonably\* necessary to permit the client to make informed decisions regarding the representation.
- (c) A ~~lawyer~~licensed paraprofessional may delay transmission of information to a client if the ~~lawyer~~licensed paraprofessional 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~~licensed paraprofessional’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.

#### Comment

[Reserved]

#### Rule 1.4.1 Communication of Settlement Offers

- ~~(a)~~—A licensed paraprofessional ~~lawyer~~ shall promptly communicate to the ~~lawyer~~licensed paraprofessional’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~~ [FG6]
- ~~(2)~~—all amounts, terms, and conditions of any written\* offer of settlement made to the client in all other matters.



(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~~<sup>[FG7]</sup>.

#### Comment

[Reserved]

#### Rule 1.4.2 Mandatory Disclosures and Informed Consent of Professional Liability Insurance

(a) Prior to a prospective client’s engagement of the licensed paraprofessional, the licensed paraprofessional shall provide certain written disclosures in the prospective client’s preferred language and obtain the prospective client’s informed written consent\* to representation. The written disclosures shall include the following:

- (1) A statement that the licensed paraprofessional is not a lawyer;
- (2) Reasonable\* disclosure of available alternative choices, including the availability of a lawyer as an alternative<sup>[FG8]</sup>, the availability of a free consultation with a lawyer, the possible availability of limited-scope services from a lawyer, and the possibility that free legal services may be available if the client qualifies;
- (3) The risks of agreeing to obtaining legal services from a licensed paraprofessional in language that the client can understand<sup>[FG9]</sup>;
- (4) The potential need to hire a lawyer or another licensed paraprofessional if needed services go beyond the limited license of the licensed paraprofessional;
- (5) the existence of any financial arrangements such as referral fees or fee sharing that the [paraprofessional] has with others; and<sup>[FG10]</sup>
- (6) a reasonable estimate of the total costs of services<sup>[FG11]</sup>.
- (7) If the licensed paraprofessional knows\* or reasonably should know\* that the licensed paraprofessional does not have professional liability insurance, the licensed paraprofessional shall inform a client in writing\* at the time of the engagement of the licensed paraprofessional, that the licensed paraprofessional does not have professional liability insurance.

~~(a) A paraprofessional lawyer who knows\* or reasonably should know\* that the paraprofessional 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 paraprofessional lawyer does not have professional liability insurance.~~

(b) ~~If notice under paragraph (a)(7) has not been provided at the time of prior to a client’s engagement of the lawyer~~<sup>licensed paraprofessional</sup>, the ~~lawyer~~<sup>licensed paraprofessional</sup> shall inform the client in writing\* within thirty days of the date the ~~lawyer~~<sup>licensed paraprofessional</sup> knows\* or reasonably should know\* that the ~~lawyer~~<sup>licensed paraprofessional</sup> no longer has professional liability insurance during the representation of the client.

(c) ~~This rule~~<sup>Notwithstanding paragraphs (a)(7) and (b), the obligation to disclose that a licensed paraprofessional does not have professional liability insurance</sup> does not apply to:

- (1) a lawyer<sup>licensed paraprofessional</sup> who knows\* or reasonably should know\* at the time of the client’s engagement of the ~~lawyer~~<sup>licensed paraprofessional</sup> that the ~~lawyer~~<sup>licensed paraprofessional</sup>’s legal representation of the client in

the matter will not exceed four hours; provided that if the representation subsequently exceeds four hours, the lawyerlicensed paraprofessional must comply with paragraphs (a)(7) 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~~ [FG12];

(32) a lawyerlicensed paraprofessional who is rendering legal services in an emergency to avoid foreseeable prejudice to the rights or interests of the client;

(43) a lawyerlicensed paraprofessional who has previously advised the client in writing\* under paragraph (a)(7) or (b) that the lawyerlicensed paraprofessional does not have professional liability insurance.

#### Comment

[Reserved] [FG13]

### Rule 1.5 Fees for Legal Services

(a) A lawyerlicensed paraprofessional 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 lawyerlicensed paraprofessional engaged in fraud\* or overreaching in negotiating or setting the fee;
- (2) whether the lawyerlicensed paraprofessional 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 licensed paraprofessional~~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 licensed paraprofessional~~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 licensed paraprofessional~~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.

~~(12) whether the fee charged is less than the fee customarily charged by licensed paraprofessionals in the locality for similar legal services~~ [FG14]

(c) A licensed paraprofessional~~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.~~

~~(dc) A licensed paraprofessional lawyer may shall not 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. [Reserved] [FG15].]~~

~~(ed) A lawyer licensed paraprofessional 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 licensed paraprofessional providing those services.~~

**Comment** [FG16]

[Reserved]

#### **Rule 1.5.1 Fee Divisions Among Lawyer Licensed paraprofessionals**

- (a) ~~Lawyer Licensed paraprofessional~~s who are not in the same law firm\* shall not divide a fee for legal services unless:
- (1) the ~~lawyer licensed paraprofessional~~s enter into a written\* agreement to divide the fee;
  - (2) the client has consented in writing,\* either at the time the ~~lawyer licensed paraprofessional~~s 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 ~~lawyer licensed paraprofessional~~s or law firms\* that are parties to the division; and (iii) the terms of the division; and
  - (3) the total fee charged by all ~~lawyer licensed paraprofessional~~s 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.

**Comment**

[Reserved]

#### **Rule 1.5.2 Written Agreement**

~~(a) Prior to the performance of legal services for a fee, the licensed paraprofessional shall enter into a written\* agreement with the client, signed by both the client and the licensed paraprofessional, that provides the name, specialty area, and license number of the licensed paraprofessional, and includes the following provisions:~~

- ~~(1) An explanation of the general nature of the legal services to be provided to the client [FG17];~~
- ~~(2) A clear and conspicuous disclosure that the licensed paraprofessional is not a lawyer, may only provide limited legal advice, and will provide limited advice and assistance with preparation of court documents and related tasks [FG18]. This statement shall be on the first page of the contract; in a type size, font, color, appearance, and location sufficiently noticeable for a client to read and comprehend them; in a print that contrasts with the~~

background against which they appear; in larger type than the surrounding text; in a manner that clearly calls attention to the language[FG19].

- (3) Any basis of compensation including, but not limited to, hourly rates, statutory fees or flat fees, and other standard rates, fees, and charges applicable to the matter; [FG20]
- (4) A statement that, pursuant to rule 1.4, the licensed paraprofessional must 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 pursuant to rule 1.16;
- (5) A statement describing the licensed paraprofessional's duty to protect the confidentiality of information related to the representation under rule 1.6, including information provided in confidence by the client and the licensed paraprofessional's work product associated with the legal services sought or provided by the licensed paraprofessional;
- (6) A statement that, pursuant to rule 1.16(a)(4), the client has the right to terminate the contract and services at any time, with or without cause, and receive a full refund of unearned fees pursuant to rule 1.16(e)(2). This statement shall be clearly and conspicuously set forth in the contract[FG21];
- (7) A statement confirming that the licensed paraprofessional has surety bond as required by [add rule of court reference].
- (8) detailed and clear information about how to file a complaint about the licensed paraprofessional's service;
- (9) A statement regarding the respective responsibilities of the licensed paraprofessional and the client as to the performance of the agreement[FG22]; and
- (10) Any other disclosures, statements, or conditions required by the [Paraprofessional] Rules of Professional Conduct and the rules and regulations of the [Paraprofessional] Board.

#### Comments[FG23]

Add: An example of an acceptable disclosure required under paragraph (a) will be provided by the Paraprofessional Board; [We recommend developing a mandatory disclosure attaching a description of what the licensed paraprofessional can and can't do, which must be made clear, as specifically authorized by the scope of practice regulations for the approved practice area in which the licensed paraprofessional is licensed, currently under development.;

### Rule 1.6 Confidential Information of a Client

- (a) A ~~lawyer~~licensed paraprofessional shall not reveal information ~~protected from disclosure by Business and Professions Code section 6068, subdivision (e)(1) relating to the representation of a client~~ unless the client gives informed consent,\* or the disclosure is permitted by paragraph (b) of this rule.
- (b) A ~~lawyer~~licensed paraprofessional may, but is not required to, reveal information ~~protected by Business and Professions Code section 6068, subdivision (e)(1) relating to the representation of a client~~ to the extent that the ~~lawyer~~licensed paraprofessional reasonably believes\* the disclosure is necessary to prevent a criminal act that the ~~lawyer~~licensed paraprofessional reasonably believes\* is likely to result in death of, or substantial\* bodily harm to, an individual, as provided in paragraph (c).

(c) Before revealing information ~~protected by Business and Professions Code section 6068, subdivision (e)(1) relating to the representation of a client~~ to prevent a criminal act as provided in paragraph (b), a ~~lawyer~~licensed paraprofessional shall, if reasonable\* under the circumstances:

(1) make a good faith effort to persuade the client: (i) not to commit or to continue the criminal act; or (ii) to pursue a course of conduct that will prevent the threatened death or substantial\* bodily harm; or do both (i) and (ii); and

(2) inform the client, at an appropriate time, of the ~~lawyer~~licensed paraprofessional's ability or decision to reveal information ~~protected by Business and Professions Code section 6068, subdivision (e)(1) relating to the representation of a client~~ as provided in paragraph (b).

(d) In revealing information ~~protected by Business and Professions Code section 6068, subdivision (e)(1) relating to representation of a client~~ as provided in paragraph (b), the ~~lawyer~~licensed paraprofessional's disclosure must be no more than is necessary to prevent the criminal act, given the information known\* to the ~~lawyer~~licensed paraprofessional at the time of the disclosure.

(e) A ~~lawyer~~licensed paraprofessional who does not reveal information permitted by paragraph (b) does not violate this rule.

#### Comment

[Reserved][FG24]]

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

(a) A ~~lawyer~~licensed paraprofessional shall not, without informed written consent\* from each client and compliance with paragraph (d), represent a client if the representation is directly adverse to another client in the same or a separate matter.

(b) A ~~lawyer~~licensed paraprofessional shall not, without informed written consent\* from each affected client and compliance with paragraph (d), represent a client if there is a significant risk the ~~lawyer~~licensed paraprofessional's representation of the client will be materially limited by the ~~lawyer~~licensed paraprofessional's responsibilities to or relationships with another client, a former client or a third person,\* or by the ~~lawyer~~licensed paraprofessional's own interests.

(c) Even when a significant risk requiring a ~~lawyer~~licensed paraprofessional to comply with paragraph (b) is not present, a ~~lawyer~~licensed paraprofessional shall not represent a client without written\* disclosure of the relationship to the client and compliance with paragraph (d) where:

(1) the ~~lawyer~~licensed paraprofessional has, or knows\* that another ~~lawyer~~[FG25] or licensed paraprofessional in the ~~lawyer~~licensed paraprofessional's firm\* has, a legal, business, financial, professional, or personal relationship with or responsibility to a party or witness in the same matter; or

(2) the ~~lawyer~~licensed paraprofessional knows\* or reasonably should know\* that another party's ~~lawyer~~[FG26] or licensed paraprofessional is a spouse, parent, child, or sibling of the ~~lawyer~~licensed paraprofessional, lives with the ~~lawyer~~licensed paraprofessional, is a client of the ~~lawyer~~licensed paraprofessional or another ~~lawyer~~[FG27] or licensed paraprofessional in the ~~lawyer~~licensed paraprofessional's firm,\* or has an intimate personal relationship with the ~~lawyer~~licensed paraprofessional.

(d) Representation is permitted under this rule only if the ~~lawyer~~licensed paraprofessional complies with paragraphs (a), (b), and (c), and:

(1) the ~~lawyer~~licensed paraprofessional reasonably believes\* that the ~~lawyer~~licensed paraprofessional will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law; and

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyerlicensed paraprofessional in the same litigation or other proceeding before a tribunal.

(e) For purposes of this rule, “matter” includes any judicial or other proceeding, application, request for a ruling or other determination, contract, transaction, claim, controversy, investigation, charge, accusation, arrest, or other deliberation, decision, or action that is focused on the interests of specific persons,\* or a discrete and identifiable class of persons.\*

**Comment**

[Reserved]

**Rule 1.8.1 Business [FG28] Transactions with a Client and Pecuniary Interests Adverse to a Client**

A lawyerlicensed paraprofessional shall not enter into a business transaction with a client, or knowingly\* acquire an ownership, possessory, security or other pecuniary interest adverse to a client, unless each of the following requirements has been satisfied:

(a) the transaction or acquisition and its terms are fair and reasonable\* to the client and the terms and the lawyerlicensed paraprofessional’s role in the transaction or acquisition are fully disclosed and transmitted in writing\* to the client in a manner that should reasonably\* have been understood by the client;

(b) the client either is represented in the transaction or acquisition by an independent lawyer [FG29] of the client’s choice or the client is advised in writing\* to seek the advice of an independent lawyer of the client’s choice and is given a reasonable\* opportunity to seek that advice; and

(c) the client thereafter provides informed written consent\* to the terms of the transaction or acquisition, and to the lawyerlicensed paraprofessional’s role in it.

**Comment**

[Reserved]

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

A lawyerlicensed paraprofessional shall not use a client’s information protected by Business and Professions Code section 6068, subdivision (e)(1) rule 1.6 to the disadvantage of the client unless the client gives informed consent,\* except as permitted by these rules or the State Bar Act applicable law.

**Comment**

[Reserved]

**Rule 1.8.3 Gifts from Client**

(a) A lawyerlicensed paraprofessional shall not:

(1) solicit a client to make a substantial\* gift, including a testamentary gift, to the lawyerlicensed paraprofessional or a person\* related to the lawyerlicensed paraprofessional, unless the lawyerlicensed paraprofessional or other recipient of the gift is related to the client, or

(2) prepare on behalf of a client an instrument [FG30] giving the lawyerlicensed paraprofessional or a person\* related to the lawyerlicensed paraprofessional any substantial\* gift, unless (i) the lawyerlicensed paraprofessional or other

recipient of the gift is related to the client, or (ii) the client has been advised by an independent lawyer who has provided a certificate of independent review that complies with the requirements of Probate Code section 21384.

- (b) For purposes of this rule, related persons\* include a person\* who is “related by blood or affinity” as that term is defined in California Probate Code section 21374, subdivision (a).

**Comment**

[Reserved]

**Rule 1.8.4 [Reserved]**

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

- (a) A ~~lawyer~~licensed paraprofessional shall not directly or indirectly pay or agree to pay, guarantee, or represent that the ~~lawyer~~licensed paraprofessional or ~~lawyer~~licensed paraprofessional's law firm\* will pay the personal or business expenses of a prospective or existing client.
- (b) Notwithstanding paragraph (a), a ~~lawyer~~licensed paraprofessional may:
- (1) pay or agree to pay such expenses to third persons,\* from funds collected or to be collected for the client as a result of the representation, with the consent of the client;
  - (2) after the ~~lawyer~~licensed paraprofessional is retained by the client, agree to lend money to the client based on the client's written\* promise to repay the loan<sup>[PG31]</sup>, provided the ~~lawyer~~licensed paraprofessional complies with rules 1.7(b), 1.7(c), and 1.8.1 before making the loan or agreeing to do so;
  - (3) advance the costs of prosecuting or defending a claim or action, or of otherwise protecting or promoting the client's interests, the repayment of which may be contingent on the outcome of the matter; and
  - (4) pay the costs of prosecuting or defending a claim or action, or of otherwise protecting or promoting the interests of an indigent person\* in a matter in which the ~~lawyer~~licensed paraprofessional represents the client.
- (c) “Costs” within the meaning of paragraphs (b)(3) and (b)(4) are not limited to those costs that are taxable or recoverable under any applicable statute or rule of court but may include any reasonable\* expenses of litigation, including court costs, and reasonable\* expenses in preparing for litigation or in providing other legal services to the client.
- (d) Nothing in this rule shall be deemed to limit the application of rule 1.8.9.

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

A ~~lawyer~~licensed paraprofessional shall not enter into an agreement for, charge, or accept compensation for representing a client from one other than the client unless:

- (a) there is no interference with the ~~lawyer~~licensed paraprofessional's independent professional judgment or with the ~~lawyer~~licensed paraprofessional-client relationship;
- (b) information is protected as required by Business and Professions Code section 6068, subdivision (e)(1) and rule 1.6; and

(c) the lawyerlicensed paraprofessional obtains the client's informed written consent\* at or before the time the lawyerlicensed paraprofessional has entered into the agreement for, charged, or accepted the compensation, or as soon thereafter as reasonably\* practicable, provided that no disclosure or consent is required if:

- (1) nondisclosure or the compensation is otherwise authorized by law or a court order; or
- (2) the lawyerlicensed paraprofessional is rendering legal services on behalf of any public agency or nonprofit organization that provides legal services to other public agencies or the public.

#### Comment

[Reserved]

### Rule 1.8.7 Aggregate Settlements

~~(a) A lawyerlicensed paraprofessional who represents two or more clients shall not enter into an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregate agreement as to guilty or nolo contendere pleas, unless each client gives informed written consent.\* The lawyerlicensed paraprofessional's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person\* in the settlement.~~

~~(b) This rule does not apply to class action settlements subject to court approval. [FG32]~~

### Rule 1.8.8 Limiting Liability to Client

A lawyerlicensed paraprofessional shall not:

- (a) Contract with a client prospectively limiting the lawyerlicensed paraprofessional's liability to the client for the lawyerlicensed paraprofessional's professional malpractice; or
- (b) Settle a claim or potential claim for the lawyerlicensed paraprofessional's liability to a client or former client for the lawyerlicensed paraprofessional's professional malpractice, unless the client or former client is either:
  - (1) represented by an independent lawyer [FG33] concerning the settlement; or
  - (2) advised in writing\* by the lawyerlicensed paraprofessional to seek the advice of an independent lawyerlicensed paraprofessional of the client's choice regarding the settlement and given a reasonable\* opportunity to seek that advice.

#### Comment

[Reserved]

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

(a) A lawyerlicensed paraprofessional shall not directly or indirectly purchase property at a probate, foreclosure, receiver's, trustee's, or judicial sale in an action or proceeding in which such lawyerlicensed paraprofessional or any lawyer or licensed paraprofessional affiliated by reason of personal, business, or professional relationship with that lawyerlicensed paraprofessional or with that lawyerlicensed paraprofessional's law firm\* is acting as a lawyer [FG34] or licensed paraprofessional for a party or as executor, receiver, trustee, administrator, guardian, or conservator.

(b) A lawyerlicensed paraprofessional shall not represent the seller [FG35] at a probate, foreclosure, receiver, trustee, or judicial sale in an action or proceeding in which the purchaser is a spouse or relative of the lawyerlicensed paraprofessional



or of another ~~lawyer~~licensed paraprofessional or lawyer in the ~~lawyer~~licensed paraprofessional's law firm\* or is an employee of the ~~lawyer~~licensed paraprofessional or the ~~lawyer~~licensed paraprofessional's law firm.\*

(c) This rule does not prohibit a ~~lawyer~~licensed paraprofessional's participation in transactions that are specifically authorized by and comply with Probate Code sections 9880 through 9885, but such transactions remain subject to the provisions of rules 1.8.1 and 1.7.

#### **Comment**

[Reserved]

#### **Rule 1.8.10 Sexual Relations with Current Client**

(a) A ~~lawyer~~licensed paraprofessional shall not engage:

(1) in sexual relations with a current client who is not the ~~lawyer~~licensed paraprofessional's spouse or registered domestic partner, unless a consensual sexual relationship existed between them when the ~~lawyer~~licensed paraprofessional-client relationship commenced.

(2) expressly or impliedly condition the performance of legal services for a current or prospective client upon the client's willingness to engage in sexual relations with the licensed paraprofessional; or

(3) employ coercion, intimidation, or undue influence in entering into sexual relations with a client.<sup>G361.</sup>

(b) For purposes of this rule, "sexual relations" means sexual intercourse or the touching of an intimate part of another person\* for the purpose of sexual arousal, gratification, or abuse.

(c) If a person\* other than the client alleges a violation of this rule, no Notice of Disciplinary Charges may be filed by the State Bar against a ~~lawyer~~licensed paraprofessional under this rule until the State Bar has attempted to obtain the client's statement regarding, and has considered, whether the client would be unduly burdened by further investigation or a charge.

#### **Comment**

[Reserved]

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

While ~~licensed paraprofessionals lawyers~~ are associated in a law firm,\* with other paraprofessionals or lawyers, a prohibition in rules 1.8.1 through 1.8.9 or in the Lawyer RPC, rules 1.8.1 through 1.8.9 that applies to any one of them shall apply to all of them<sup>FG37</sup>.

#### **Comment**

[Reserved]

### Rule 1.9 Duties to Former Clients

- (a) A lawyerlicensed paraprofessional who has formerly represented a client in a matter shall not thereafter represent another person\* in the same or a substantially related matter in which that person's\* interests are materially adverse to the interests of the former client unless the former client gives informed written consent.\*
- (b) A lawyerlicensed paraprofessional shall not knowingly\* represent a person\* in the same or a substantially related matter in which a firm\* with which the lawyerlicensed paraprofessional formerly was associated had previously represented a client
- (1) whose interests are materially adverse to that person;\* and
  - (2) about whom the lawyerlicensed paraprofessional had acquired information protected by Business and Professions Code section 6068, subdivision (e) and rules 1.6 and 1.9(c) that is material to the matter;
- unless the former client gives informed written consent.\*
- (c) A lawyerlicensed paraprofessional who has formerly represented a client in a matter or whose present or former firm\* has formerly represented a client in a matter shall not thereafter:
- (1) use information protected by Business and Professions Code section 6068, subdivision (e) and rule 1.6 acquired by virtue of the representation of the former client to the disadvantage of the former client except as these rules or the State Bar Act would permit with respect to a current client, or when the information has become generally known;\* or
  - (2) reveal information protected by Business and Professions Code section 6068, subdivision (e) and rule 1.6 acquired by virtue of the representation of the former client except as these rules or the State Bar Act permit with respect to a current client.

#### Comment

[Reserved]

### Rule 1.10 Imputation of Conflicts of Interest: General Rule

- (a) While lawyers licensed paraprofessionals are associated in a firm with other licensed paraprofessionals or lawyers,\* none of them shall knowingly\* represent a client when any one of them practicing alone would be prohibited from doing so by rules 1.7 or 1.9 or by the Lawyer Rules, rules 1.7 or 1.9 unless[FG38]
- (1) the prohibition is based on a personal interest of the prohibited lawyerlicensed paraprofessional or lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining licensed paraprofessionals or lawyers in the firm;\* or
  - (2) the prohibition is based upon rule 1.9(a) or (b) or the Lawyer RPC, rule 1.9(a) or (b), and arises out of the prohibited lawyerlicensed paraprofessional's or lawyer's association with a prior firm,\* and
    - (i) the prohibited lawyerlicensed paraprofessional or lawyer did not substantially participate in the same or a substantially related matter;
    - (ii) the prohibited lawyerlicensed paraprofessional or lawyer is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom; and
    - (iii) written\* notice is promptly given to any affected former client to enable the former client to ascertain compliance with the provisions of this rule, which shall include a description of the screening\* procedures

employed; and an agreement by the firm\* to respond promptly to any written\* inquiries or objections by the former client about the screening\* procedures.

(b) When a lawyerlicensed paraprofessional has terminated an association with a firm,\* the firm\* is not prohibited from thereafter representing a person\* with interests materially adverse to those of a client represented by the formerly associated lawyerlicensed paraprofessional and not currently represented by the firm,\* unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyerlicensed paraprofessional represented the client; and

(2) any lawyerlicensed paraprofessional or lawyer remaining in the firm\* has information protected by rule 1.6 or 1.9(c), or by Business and Professions Code section 6068, subdivision (e) and the Lawyer RPC, rules 1.6 and 1.9(c), that is material to the matter.

(c) A prohibition under this rule may be waived by each affected client under the conditions stated in rule 1.7.

(d) The imputation of a conflict of interest to a licensed paraprofessional ~~lawyers~~ associated in a firm\* with former or current government lawyer or former or current government licensed paraprofessionals is governed by rule 1.11.

#### Comment

[Reserved]

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

(a) Except as law may otherwise expressly permit, a lawyerlicensed paraprofessional who has formerly served as a public official or employee of the government:

(1) is subject to rule 1.9(c); and

(2) shall not otherwise represent a client in connection with a matter in which the lawyerlicensed paraprofessional participated personally and substantially as a public official or employee, unless the appropriate government agency gives its informed written consent\* to the representation. This paragraph shall not apply to matters governed by rule 1.12(a).

(b) When a lawyerlicensed paraprofessional is prohibited from representation under paragraph (a), no lawyerlicensed paraprofessional or lawyer ~~FG39~~ in a firm\* with which that lawyerlicensed paraprofessional is associated may knowingly\* undertake or continue representation in such a matter unless:

(1) the personally prohibited lawyerlicensed paraprofessional is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written\* notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule

(c) Except as law may otherwise expressly permit, a lawyerlicensed paraprofessional who was a public official or employee and, during that employment, acquired information that the lawyerlicensed paraprofessional knows\* is confidential government information about a person,\* may not represent a private client whose interests are adverse to that person\* in a matter in which the information could be used to the material disadvantage of that person.\* As used in this rule, the term “confidential government information” means information that has been obtained under governmental authority, that, at the time this rule is applied, the government is prohibited by law from disclosing to the public, or has a legal privilege not to disclose, and that is not otherwise available to the public. A firm\* with which that lawyerlicensed paraprofessional is associated may undertake or continue representation in the matter only if the personally prohibited lawyerlicensed paraprofessional is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom.

(d) Except as law may otherwise expressly permit, a lawyerlicensed paraprofessional currently serving as a public official or employee:

(1) is subject to rules 1.7 and 1.9; and

(2) shall not:

(i) participate in a matter in which the lawyerlicensed paraprofessional participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its informed written consent;\* or

(ii) negotiate for private employment with any person\* who is involved as a party, or as a lawyer or licensed paraprofessional for a party, or with a law firm\* for a party, in a matter in which the lawyerlicensed paraprofessional is participating personally and substantially, ~~except that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by rule 1.12(b) and subject to the conditions stated in rule 1.12(b)~~ [FG40].

#### Comment

[Reserved]

#### Rule 1.12 Former ~~Judge~~, Arbitrator, Mediator, or Other Third-Party Neutral

(a) Except as stated in paragraph (d), a lawyerlicensed paraprofessional shall not represent anyone in connection with a matter in which the lawyerlicensed paraprofessional participated personally and substantially as ~~an judge or other~~ adjudicative officer, ~~or a~~ judicial staff attorney member or law clerk to such a person,\* or as an arbitrator, mediator, or other third-party neutral, unless all parties to the proceeding give informed written consent.\*

(b) A lawyerlicensed paraprofessional shall not seek employment from any person\* who is involved as a party or as lawyer or licensed paraprofessional for a party, or with a law firm\* for a party, in a matter in which the lawyerlicensed paraprofessional is participating personally and substantially as ~~a judge or other an~~ adjudicative officer ~~or as an~~, arbitrator, mediator, or other third party neutral. A lawyerlicensed paraprofessional serving as a judicial staff attorney member or law clerk to a judge or other adjudicative officer may seek employment from a party, or with a lawyer, licensed paraprofessional, or a law firm\* for a party, in a matter in which the staff attorney member or clerk is participating personally and substantially, but only with the approval of the court.

(c) If a lawyerlicensed paraprofessional is prohibited from representation by paragraph (a), other licensed paraprofessional or lawyers [FG41] in a firm\* with which that lawyerlicensed paraprofessional is associated may knowingly\* undertake or continue representation in the matter only if:

(1) the prohibition does not arise from the lawyerlicensed paraprofessional's service as a mediator ~~or settlement judge~~;

(2) the prohibited lawyerlicensed paraprofessional is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom; and

(3) written\* notice is promptly given to the parties and any appropriate tribunal\* to enable them to ascertain compliance with the provisions of this rule.

(d) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

**Comment**

[Reserved]

**Rule 1.13** ~~[Reserved] Organization as Client~~ [FG42]

~~(a) ————— A lawyer employed or retained by an organization shall conform his or her representation to the concept that the client is the organization itself, acting through its duly authorized directors, officers, employees, members, shareholders, or other constituents overseeing the particular engagement.~~

~~(b) ————— If a lawyer representing an organization knows\* that a constituent is acting, intends to act or refuses to act in a matter related to the representation in a manner that the lawyer knows\* or reasonably should know\* is (i) a violation of a legal obligation to the organization or a violation of law reasonably\* imputable to the organization, and (ii) likely to result in substantial\* injury to the organization, the lawyer shall proceed as is reasonably\* necessary in the best lawful interest of the organization. Unless the lawyer reasonably believes\* that it is not necessary in the best lawful interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act on behalf of the organization as determined by applicable law.~~

~~(c) In taking any action pursuant to paragraph (b), the lawyer shall not reveal information protected by Business and Professions Code section 6068, subdivision (e).~~

~~(d) If, despite the lawyer's actions in accordance with paragraph (b), the highest authority that can act on behalf of the organization insists upon action, or fails to act, in a manner that is a violation of a legal obligation to the organization or a violation of law reasonably\* imputable to the organization, and is likely to result in substantial\* injury to the organization, the lawyer shall continue to proceed as is reasonably\* necessary in the best lawful interests of the organization. The lawyer's response may include the lawyer's right and, where appropriate, duty to resign or withdraw in accordance with rule 1.16.~~

~~(e) A lawyer who reasonably believes\* that he or she has been discharged because of the lawyer's actions taken pursuant to paragraph (b), or who resigns or withdraws under circumstances described in paragraph (d), shall proceed as the lawyer reasonably believes\* necessary to assure that the organization's highest authority is informed of the lawyer's discharge, resignation, or withdrawal.~~

~~(f) In dealing with an organization's constituents, a lawyer representing the organization shall explain the identity of the lawyer's client whenever the lawyer knows\* or reasonably should know\* that the organization's interests are adverse to those of the constituent(s) with whom the lawyer is dealing.~~

~~(g) A lawyer representing an organization may also represent any of its constituents, subject to the provisions of rules 1.7, 1.8.2, 1.8.6, and 1.8.7. If the organization's consent to the dual representation is required by any of these rules, the consent shall be given by an appropriate official, constituent, or body of the organization other than the individual who is to be represented, or by the shareholders.~~

Comment

[Reserved]

#### Rule 1.14 [Reserved]

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

(a) All funds received or held by a lawyer-licensed paraprofessional or a licensed paraprofessional's law firm\* for the benefit of a client, or other person\* to whom the lawyer-licensed paraprofessional owes a contractual, statutory, or other legal duty, including advances for fees, costs and expenses, shall be deposited in one or more identifiable bank accounts labeled "Trust Account" or words of similar import, maintained in the State of California, or, with written\* consent of the client, in any other jurisdiction where there is a substantial\* relationship between the client or the client's business and the other jurisdiction[FG43].

~~(b) Notwithstanding paragraph (a), a flat fee paid in advance for legal services may be deposited in a paraprofessional's [FG44] lawyer's or paraprofessional law firm's operating account, provided:~~

~~(1) the paraprofessional lawyer or paraprofessional law firm\* discloses to the client in writing\* (i) that the client has a right under paragraph (a) to require that the flat fee be deposited in an identified trust account until the fee is earned, and (ii) that the client is entitled to a refund of any amount of the fee that has not been earned in the event the representation is terminated or the services for which the fee has been paid are not completed; and~~

~~(2) if the flat fee exceeds \$1,000.00, the client's agreement to deposit the flat fee in the paraprofessional's lawyer's operating account and the disclosures required by paragraph (b)(1) are set forth in a writing\* signed by the client.~~

(c) Funds belonging to the lawyer-licensed paraprofessional or the licensed paraprofessional's law firm\* shall not be deposited or otherwise commingled with funds held in a trust account except:

(1) funds reasonably\* sufficient to pay bank charges; and

(2) funds belonging in part to a client or other person\* and in part presently or potentially to the lawyer-licensed paraprofessional or the licensed paraprofessional's law firm,\* in which case the portion belonging to the lawyer-licensed paraprofessional or the paraprofessional's law firm\* must be withdrawn at the earliest reasonable\* time after the lawyer-licensed paraprofessional or the licensed paraprofessional law firm's interest in that portion becomes fixed. However, if a client or other person\* disputes the lawyer-licensed paraprofessional or the licensed paraprofessional's law firm's right to receive a portion of trust funds, the disputed portion shall not be withdrawn until the dispute is finally resolved.

(d) A lawyer-licensed paraprofessional shall:

(1) promptly notify a client or other person\* of the receipt of funds, securities, or other property in which the lawyer-licensed paraprofessional knows\* or reasonably should know\* the client or other person\* has an interest;

(2) identify and label securities and properties of a client or other person\* promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable;

(3) maintain complete records of all funds, securities, and other property of a client or other person\* coming into the possession of the lawyer-licensed paraprofessional or the licensed paraprofessional's law firm;\*

- (4) promptly account in writing\* to the client or other person\* for whom the lawyerlicensed paraprofessional or the licensed paraprofessional's law firm\* holds funds or property;
  - (5) preserve records of all funds and property held by a lawyerlicensed paraprofessional or the licensed paraprofessional's law firm\* under this rule for a period of no less than five years after final appropriate distribution of such funds or property;
  - (6) comply with any order for an audit of such records issued pursuant to the Rules of Procedure of the State Bar[FG45]; and
  - (7) promptly distribute, as requested by the client or other person,\* any undisputed funds or property in the possession of the lawyerlicensed paraprofessional or the licensed paraprofessional's law firm\* that the client or other person\* is entitled to receive.
- (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 lawyerlicensed paraprofessionals 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 lawyerlicensed paraprofessionals.

*Standards:*

Pursuant to this rule, the Board of Trustees of the State Bar adopted [FG46] the following standards, effective November 1, 2018, as to what "records" shall be maintained by lawyerlicensed paraprofessionals and licensed paraprofessionals' law firms\* in accordance with paragraph (d)(3).

- (1) A lawyerlicensed paraprofessional 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:
  - (a) a written\* ledger for each client or other person\* on whose behalf funds are held that sets forth:
    - (i) the name of such client or other person\*;
    - (ii) the date, amount and source of all funds received on behalf of such client or other person\*;
    - (iii) the date, amount, payee and purpose of each disbursement made on behalf of such client or other person\* and
    - (iv) the current balance for such client or other person\*;
  - (b) a written\* journal for each bank account that sets forth:
    - (i) the name of such account;
    - (ii) the date, amount and client or other person\* affected by each debit and credit; and
    - (iii) the current balance in such account;
  - (c) all bank statements and cancelled checks for each bank account; and
  - (d) each monthly reconciliation (balancing) of (a), (b), and (c).
- (2) A lawyerlicensed paraprofessional shall, from the date of receipt of all securities and other properties held for the benefit of client or other person\* through the period ending five years from the date of appropriate disbursement of such securities and other properties, maintain a written\* journal that specifies:

- (a) each item of security and property held;
- (b) the person\* on whose behalf the security or property is held;
- (c) the date of receipt of the security or property;
- (d) the date of distribution of the security or property; and
- (e) person\* to whom the security or property was distributed.

#### Comment

[Reserved]

#### Rule 1.16 Declining or Terminating Representation

(a) Except as stated in paragraph (c), a lawyerlicensed paraprofessional shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the lawyerlicensed paraprofessional knows\* or reasonably should know\* that the client is bringing an action, conducting a defense, or asserting a position in litigation, ~~or taking an appeal,~~ without probable cause and for the purpose of harassing or maliciously injuring any person;\*

(2) the lawyerlicensed paraprofessional knows\* or reasonably should know\* that the representation will result in violation of these rules or ~~of the State Bar Act~~ applicable law;

(3) the lawyerlicensed paraprofessional's mental or physical condition renders it unreasonably difficult to carry out the representation effectively; or

(4) the client discharges the lawyerlicensed paraprofessional; or

(5) the licensed paraprofessional knows or reasonably should know that the subject of the representation is beyond the scope of the defined practice area for which the licensed paraprofessional is licensed as set forth in [FG47]. If the subject of the representation is beyond the scope of the licensed paraprofessional's defined practice area, the licensed paraprofessional shall not render any legal assistance and shall advise the client to seek the services of a lawyer or licensed paraprofessional authorized to provide legal services on the subject of the representation.

(b) Except as stated in paragraph (c), a lawyerlicensed paraprofessional may withdraw from representing a client if:

(1) the client insists upon presenting a claim or defense in litigation, or asserting a position or making a demand in a non-litigation matter, that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law;

(2) the client either seeks to pursue a criminal or fraudulent\* course of conduct or has used the lawyerlicensed paraprofessional's services to advance a course of conduct that the lawyerlicensed paraprofessional reasonably believes\* was a crime or fraud;\*

(3) the client insists that the lawyerlicensed paraprofessional pursue a course of conduct that is criminal or fraudulent;\*

(4) the client by other conduct renders it unreasonably difficult for the lawyerlicensed paraprofessional to carry out the representation effectively;



- (5) the client breaches a material term of an agreement with, or obligation, to the lawyerlicensed paraprofessional relating to the representation, and the lawyerlicensed paraprofessional has given the client a reasonable\* warning after the breach that the lawyerlicensed paraprofessional will withdraw unless the client fulfills the agreement or performs the obligation;
  - (6) the client knowingly\* and freely assents to termination of the representation;
  - (7) the inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal;
  - (8) the lawyerlicensed paraprofessional's mental or physical condition renders it difficult for the lawyerlicensed paraprofessional to carry out the representation effectively; or
  - (9) a continuation of the representation is likely to result in a violation of these rules or the State Bar Act applicable law; or
  - (10) the lawyerlicensed paraprofessional believes\* in good faith, in a proceeding pending before a tribunal,\* that the tribunal\* will find the existence of other good cause for withdrawal.
- (c) If permission for termination of a representation is required by the rules of a tribunal,\* a lawyerlicensed paraprofessional shall not terminate a representation before that tribunal\* without its permission.
- (d) A lawyerlicensed paraprofessional shall not terminate a representation until the lawyerlicensed paraprofessional has taken reasonable\* steps to avoid reasonably\* foreseeable prejudice to the rights of the client, such as giving the client sufficient notice to permit the client to retain other counselrepresentation, and complying with paragraph (e).
- (e) Upon the termination of a representation for any reason:
- (1) subject to any applicable protective order, non-disclosure agreement, statute or regulation, the lawyerlicensed paraprofessional promptly shall release to the client, at the request of the client, all client materials and property. "Client materials and property" includes correspondence, pleadings, deposition transcripts, experts' reports and other writings,\* exhibits, and physical evidence, whether in tangible, electronic or other form, and other items reasonably\* necessary to the client's representation, whether the client has paid for them or not; and
  - (2) the lawyerlicensed paraprofessional promptly shall refund any part of a fee or expense paid in advance that the lawyerlicensed paraprofessional has not earned or incurred. This provision is not applicable to a true retainer fee paid solely for the purpose of ensuring the availability of the lawyer for the matter.

**Comment**[FG48]

[Reserved]

### Rule 1.17 Sale of a Law Practice

All or substantially\* all of the law practice of a lawyerlicensed paraprofessional, living [FG49] or deceased, including goodwill, may be sold to another licensed paraprofessional, a lawyer or law firm\* subject to all the following conditions:

- (a) Fees charged to clients shall not be increased solely by reason of the sale.
- (b) If the sale contemplates the transfer of responsibility for work not yet completed or responsibility for client files or information protected by Business and Professions Code section 6068, subdivision (e)(1), rule 1.6(a), then;

(1) if the seller is deceased, or has a conservator or other person\* acting in a representative capacity, and no lawyer has been appointed to act for the seller ~~pursuant to Business and Professions Code section 6180.5~~, then prior to the transfer;

(i) the purchaser shall cause a written\* notice to be given to each client whose matter is included in the sale, stating that the interest in the law practice is being transferred to the purchaser; that the client has the right to retain other counsel; that the client may take possession of any client materials and property, as required by rule 1.16(e)(1); and that if no response is received to the notice within 90 days after it is sent, or if the client's rights would be prejudiced by a failure of the purchaser to act during that time, the purchaser may act on behalf of the client until otherwise notified by the client, and

(ii) the purchaser shall obtain the written\* consent of the client. If reasonable\* efforts have been made to locate the client and no response to the paragraph (b)(1)(i) notice is received within 90 days, consent shall be presumed until otherwise notified by the client.

(2) in all other circumstances, not less than 90 days prior to the transfer;

(i) the seller, or the lawyer appointed to act for the seller ~~pursuant to Business and Professions Code section 6180.5~~, shall cause a written\* notice to be given to each client whose matter is included in the sale, stating that the interest in the law practice is being transferred to the purchaser; that the client has the right to retain other counsel; that the client may take possession of any client materials and property, as required by rule 1.16(e)(1); and that if no response is received to the notice within 90 days after it is sent, or if the client's rights would be prejudiced by a failure of the purchaser to act during that time, the purchaser may act on behalf of the client until otherwise notified by the client, and

(ii) the seller, or the lawyer appointed to act for the seller ~~pursuant to Business and Professions Code section 6180.5~~, shall obtain the written\* consent of the client prior to the transfer. If reasonable\* efforts have been made to locate the client and no response to the paragraph (b)(2)(i) notice is received within 90 days, consent shall be presumed until otherwise notified by the client.

(c) If substitution is required by the rules of a tribunal\* in which a matter is pending, all steps necessary to substitute a lawyer shall be taken.

(d) The purchaser shall comply with the applicable requirements of rules 1.7 and 1.9.

(e) Confidential information shall not be disclosed to a nonlawyer in connection with a sale under this rule.

(f) This rule does not apply to the admission to or retirement from a law firm,\* retirement plans and similar arrangements, or sale of tangible assets of a law practice.

#### Comment

[Reserved]

#### Rule 1.18 Duties to Prospective Client

(a) A person\* who, directly or through an authorized representative, consults a ~~lawyer~~licensed paraprofessional for the purpose of retaining the ~~lawyer~~licensed paraprofessional or securing legal service or advice from the ~~lawyer~~licensed paraprofessional in the ~~lawyer~~licensed paraprofessional's professional capacity, is a prospective client.

(b) Even when no ~~lawyer~~licensed paraprofessional-client relationship ensues, a ~~lawyer~~licensed paraprofessional who has communicated with a prospective client shall not use or reveal information protected by ~~Business and Professions Code~~

~~section 6068, subdivision (e) and~~ rule 1.6(a) that the lawyer licensed paraprofessional learned as a result of the consultation, except as rule 1.9 would permit with respect to information of a former client.

(c) A lawyer licensed paraprofessional subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer licensed paraprofessional received from the prospective client information protected by ~~Business and Professions Code section 6068, subdivision (e) and~~ rule 1.6(a) that is material to the matter, except as provided in paragraph (d). If a lawyer licensed paraprofessional is prohibited from representation under this paragraph or a lawyer [FG51] is prohibited from representation under Lawyer RPC rule 1.18(c), no lawyer licensed paraprofessional in a firm\* with which that lawyer licensed paraprofessional is associated may knowingly\* undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) When the lawyer or licensed paraprofessional has received information that prohibits representation as provided in paragraph (c), representation of the affected client is permissible if:

- (1) both the affected client and the prospective client have given informed written consent,\* or
- (2) the lawyer or licensed paraprofessional who received the information took reasonable\* measures to avoid exposure to more information than was reasonably\* necessary to determine whether to represent the prospective client; and
  - (i) the prohibited lawyer or licensed paraprofessional is timely screened\* from any participation in the matter and is apportioned no part of the fee therefrom; and
  - (ii) written\* notice is promptly given to the prospective client to enable the prospective client to ascertain compliance with the provisions of this rule.

#### Comment

[Reserved]

## CHAPTER 2. COUNSELOR

### Rule 2.1 Advisor

In representing a client, a lawyer licensed paraprofessional shall exercise independent professional judgment and render candid advice.

#### Comment

[Reserved]

### Rule 2.2 [Reserved]

### Rule 2.3 [Reserved]

### Rule 2.4 Lawyer Licensed Paraprofessional as Third-Party Neutral

(a) A lawyer licensed paraprofessional serves as a third-party neutral when the lawyer licensed paraprofessional assists two or more persons\* who are not clients of the lawyer licensed paraprofessional to reach a resolution of a dispute, or other

matter, that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the lawyerlicensed paraprofessional to assist the parties to resolve the matter.

(b) A lawyerlicensed paraprofessional serving as a third-party neutral shall inform unrepresented parties that the lawyerlicensed paraprofessional is not representing them. When the lawyerlicensed paraprofessional knows\* or reasonably should know\* that a party does not understand the lawyerlicensed paraprofessional's role in the matter, the lawyerlicensed paraprofessional shall explain the difference between the lawyerlicensed paraprofessional's role as a third-party neutral and a lawyerlicensed paraprofessional's role as one who represents a client.

#### Comment

[Reserved]

#### Rule 2.4.1 ~~[Reserved] Lawyer as Temporary Judge, Referee, or Court-Appointed Arbitrator~~

~~A lawyer who is serving as a temporary judge, referee, or court-appointed arbitrator, and is subject to canon 6D of the California Code of Judicial Ethics, shall comply with the terms of that canon.~~

## CHAPTER 3. ADVOCATE

### Rule 3.1 Meritorious Claims and Contentions

~~(a)~~—A lawyerlicensed paraprofessional shall not:

~~(a1)~~ assist with bring~~ing~~ or ~~continue-continuing~~ an action, conduct~~ing~~ a defense, or assert~~ing~~ a position in litigation, ~~or take an appeal,~~ without probable cause and for the purpose of harassing or maliciously injuring any person;\* or

~~(b2)~~ assist with present~~ing~~ a claim or defense in litigation that is not warranted under existing law, unless it can be supported by a good faith argument for an extension, modification, or reversal of the existing law.

~~(b)—A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, or involuntary commitment or confinement, may nevertheless defend the proceeding by requiring that every element of the case be established.~~

### Rule 3.2 Delay of Litigation

In representing a client, a lawyerlicensed paraprofessional shall not use means that have no substantial\* purpose other than to delay or prolong the proceeding or to cause needless expense.

#### Comment

[Reserved]

### Rule 3.3 Candor Toward the Tribunal\*

(a) A lawyerlicensed paraprofessional 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 lawyerlicensed paraprofessional;

- (2) fail to disclose to the tribunal\* legal authority in the controlling jurisdiction known\* to the lawyerlicensed paraprofessional to be directly adverse to the position of the client and not disclosed by opposing counselparty, or knowingly\* misquote to a tribunal\* the language of a book, statute, decision or other authority; or
- (3) offer evidence that the lawyerlicensed paraprofessional knows\* to be false. If a lawyerlicensed paraprofessional or the lawyerlicensed paraprofessional's client, ~~or a witness called by the lawyer~~, has offered material evidence, and the lawyerlicensed paraprofessional comes to know\* of its falsity, the lawyerlicensed paraprofessional 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 lawyerlicensed paraprofessional may refuse to offer evidence, ~~other than the testimony of a defendant in a criminal matter,~~ that the lawyerlicensed paraprofessional reasonably believes\* is false.
- (b) A lawyerlicensed paraprofessional 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.~~ [FG52]

#### Comment

[Reserved]

### Rule 3.4 Fairness to Opposing Party and Counsel

A lawyerlicensed paraprofessional shall not:

- (a) unlawfully obstruct another party's access to evidence, including a witness, or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyerlicensed paraprofessional shall not counsel or assist another person\* to do any such act;
- (b) suppress any evidence that the lawyerlicensed paraprofessional or the lawyerlicensed paraprofessional's client has a legal obligation to reveal or to produce;
- (c) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;
- (d) directly or indirectly pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of the witness's testimony or the outcome of the case. Except where prohibited by law, a lawyerlicensed paraprofessional may advance, guarantee, or acquiesce in the payment of:
- (1) expenses reasonably\* incurred by a witness in attending or testifying;
  - (2) reasonable\* compensation to a witness for loss of time in attending or testifying; or
  - (3) a reasonable\* fee for the professional services of an expert witness;
- (e) advise or directly or indirectly cause a person\* to secrete himself or herself or to leave the jurisdiction of a tribunal\* for the purpose of making that person\* unavailable as a witness therein; or

(f) knowingly\* disobey an obligation under the rules of a tribunal\* except for an open refusal based on an assertion that no valid obligation exists;~~or~~

(g) in trial, assert personal knowledge of facts in issue except when testifying as a witness,~~or state a personal opinion as to the guilt or innocence of an accused~~ [FG53].

#### Comment

[Reserved]

### Rule 3.5 Contact with Judges, Officials, and Employees,~~and Jurors~~

(a) Except as permitted by statute, an applicable code of judicial ethics or code of judicial conduct, or standards governing employees of a tribunal,\* a lawyerlicensed paraprofessional shall not directly or indirectly give or lend anything of value to a judge, official, or employee of a tribunal.\* This rule does not prohibit a lawyerlicensed paraprofessional from contributing to the campaign fund of a judge or judicial officer running for election or confirmation pursuant to applicable law pertaining to such contributions.

(b) Unless permitted to do so by law, an applicable code of judicial ethics or code of judicial conduct, a rule or ruling of a tribunal,\* or a court order, a lawyerlicensed paraprofessional shall not directly or indirectly communicate with or argue to a judge or judicial officer upon the merits of a contested matter pending before the judge or judicial officer, except:

~~(1) in open court;~~

~~(2) with the consent of all other counsel and any unrepresented parties in the matter;~~

~~(3) in the presence of all other counsel and any unrepresented parties in the matter;~~

~~(4) in writing\* with a copy thereof furnished to all other counsel represented and any unrepresented parties in the matter; or,~~

~~(5) in ex parte matters.~~

(c) As used in this rule, “judge” and “judicial officer” shall also include: (i) administrative law judges; (ii) neutral arbitrators; (iii) State Bar Court judges; (iv) members of an administrative body acting in an adjudicative capacity; and (v) law clerks, research attorneys, or other court personnel who participate in the decision-making process, including referees, special masters, or other persons\* to whom a court refers one or more issues and whose decision or recommendation can be binding on the parties if approved by the court.

~~(d) A lawyer connected with a case shall not communicate directly or indirectly with anyone the lawyer knows\* to be a member of the venire from which the jury will be selected for trial of that case.~~

~~(e) During trial, a lawyer connected with the case shall not communicate directly or indirectly with any juror.~~

~~(f) During trial, a lawyer who is not connected with the case shall not communicate directly or indirectly concerning the case with anyone the lawyer knows\* is a juror in the case.~~

~~(g) After discharge of the jury from further consideration of a case a lawyer shall not communicate directly or indirectly with a juror if:~~

~~(1) the communication is prohibited by law or court order;~~

~~(2) the juror has made known\* to the lawyer a desire not to communicate; or~~

~~(3) — the communication involves misrepresentation, coercion, or duress, or is intended to harass or embarrass the juror or to influence the juror's actions in future jury service.~~

~~(h) — A lawyer shall not directly or indirectly conduct an out of court investigation of a person\* who is either a member of a venire or a juror in a manner likely to influence the state of mind of such person\* in connection with present or future jury service.~~

~~(i) — All restrictions imposed by this rule also apply to communications with, or investigations of, members of the family of a person\* who is either a member of a venire or a juror.~~

~~(j) — A lawyer shall reveal promptly to the court improper conduct by a person\* who is either a member of a venire or a juror, or by another toward a person\* who is either a member of a venire or a juror or a member of his or her family, of which the lawyer has knowledge.~~

~~(k) — This rule does not prohibit a lawyer from communicating with persons\* who are members of a venire or jurors as a part of the official proceedings.~~

~~(l) — For purposes of this rule, "juror" means any empaneled, discharged, or excused juror.~~ [FG54]

#### Comment

[Reserved]

#### Rule 3.6 **[Reserved]** Trial Publicity

~~(a) — A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows\* or reasonably should know\* will (i) be disseminated by means of public communication and (ii) have a substantial\* likelihood of materially prejudicing an adjudicative proceeding in the matter.~~

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

~~(1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons\* involved;~~

~~(2) information contained in a public record;~~

~~(3) that an investigation of a matter is in progress;~~

~~(4) the scheduling or result of any step in litigation;~~

~~(5) a request for assistance in obtaining evidence and information necessary thereto;~~

~~(6) a warning of danger concerning the behavior of a person\* involved, when there is reason to believe\* that there exists the likelihood of substantial\* harm to an individual or to the public but only to the extent that dissemination by public communication is reasonably\* necessary to protect the individual or the public; and~~

~~(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;\*~~

~~(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.~~

~~(c) — Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable\* lawyer would believe\* is required to protect a client from the substantial\* undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.~~

~~(d) No lawyer associated in a law firm\* or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).~~

#### **Comment**

### **Rule 3.7 ~~Lawyer~~ Licensed Paraprofessional as Witness**

(a) A ~~lawyer~~ licensed paraprofessional shall not act as an advocate in a trial in which the lawyer is likely to be a witness unless:

(1) the licensed paraprofessional's ~~lawyer's~~ testimony relates to an uncontested issue or matter;

(2) the licensed paraprofessional ~~lawyer's~~ testimony relates to the nature and value of legal services rendered in the case; or

(3) the licensed paraprofessional ~~lawyer~~ has obtained informed written consent\* from the client. ~~If the lawyer represents the People or a governmental entity, the consent shall be obtained from the head of the office or a designee of the head of the office by which the lawyer is employed.~~

(b) A licensed paraprofessional ~~lawyer~~ may act as advocate in a trial in which another licensed paraprofessional or lawyer in the lawyer's firm\* is likely to be called as a witness unless precluded from doing so by rule 1.7 or rule 1.9.

### **Rule 3.8 ~~[RESERVED]~~ Special Responsibilities of a Prosecutor**

~~The prosecutor in a criminal case shall:~~

~~(a) — not institute or continue to prosecute a charge that the prosecutor knows\* is not supported by probable cause;~~

~~(b) — make reasonable\* efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable\* opportunity to obtain counsel;~~

~~(c) — not seek to obtain from an unrepresented accused a waiver of important pretrial rights unless the tribunal\* has approved the appearance of the accused in propria persona;~~

~~(d) — make timely disclosure to the defense of all evidence or information known\* to the prosecutor that the prosecutor knows\* or reasonably should know\* tends to negate the guilt of the accused, mitigate the offense, or mitigate the sentence, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;\* and~~

~~(e) — exercise reasonable\* care to prevent persons\* under the supervision or direction of the prosecutor, including investigators, law enforcement personnel, employees or other persons\* assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under rule 3.6.~~

~~(f) — When a prosecutor knows\* of new, credible and material evidence creating a reasonable\* likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:~~

~~(1) promptly disclose that evidence to an appropriate court or authority, and~~

~~(2) if the conviction was obtained in the prosecutor's jurisdiction,~~



~~(i) promptly disclose that evidence to the defendant unless a court authorizes delay, and~~

~~(ii) undertake further investigation, or make reasonable\* efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.~~

~~(g) When a prosecutor knows\* of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.~~

#### **Comment**

~~[RESERVED]~~

### **Rule 3.9 Advocate in Nonadjudicative Proceedings**

A licensed paraprofessional ~~lawyer~~ representing a client before a legislative body or administrative agency in connection with a pending nonadjudicative matter or proceeding shall disclose that the appearance is in a representative capacity, except when the licensed paraprofessional ~~lawyer~~ seeks information from an agency that is available to the public.

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

(a) A ~~lawyer~~licensed paraprofessional shall not threaten to present criminal, administrative, or disciplinary charges to obtain an advantage in a civil dispute.

(b) As used in paragraph (a) of this rule, the term “administrative charges” means the filing or lodging of a complaint with any governmental organization that may order or recommend the loss or suspension of a license, or may impose or recommend the imposition of a fine, pecuniary sanction, or other sanction of a quasi-criminal nature but does not include filing charges with an administrative entity required by law as a condition precedent to maintaining a civil action.

(c) As used in this rule, the term “civil dispute” means a controversy or potential controversy over the rights and duties of two or more persons\* under civil law, whether or not an action has been commenced, and includes an administrative proceeding of a quasi-civil nature pending before a federal, state, or local governmental entity.

#### **Comment**

[Reserved]

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

### **Rule 4.1 Truthfulness in Statements to Others**

In the course of representing a client a ~~lawyer~~licensed paraprofessional shall not knowingly:\*

(a) make a false statement of material fact or law to a third person;\* or

(b) fail to disclose a material fact to a third person\* when disclosure is necessary to avoid assisting a criminal or fraudulent\* act by a client, unless disclosure is prohibited by ~~Business and Professions Code section 6068, subdivision (e)(1)~~ or rule 1.6.

## Comment

[Reserved]

### Rule 4.2 Communication with a Represented Person\*

(a) In representing a client, a ~~lawyer~~licensed paraprofessional shall not communicate directly or indirectly about the subject of the representation with a person\* the ~~lawyer~~licensed paraprofessional knows\* to be represented by ~~another lawyer~~ [FG55] or another licensed paraprofessional in the matter, unless the ~~lawyer~~licensed paraprofessional has the consent of the other lawyer or licensed paraprofessional.

(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.

(c) This rule shall not prohibit:

(1) communications with a public official, board, committee, or body; or

(2) communications otherwise authorized by law or a court order.

(d) For purposes of this rule:

(1) "Managing agent" means an employee, member, agent, or other constituent of an organization with substantial\* discretionary authority over decisions that determine organizational policy.

(2) "Public official" means a public officer of the United States government, or of a state, county, city, town, political subdivision, or other governmental organization, with the comparable decision-making authority and responsibilities as the organizational constituents described in paragraph (b)(1).

## Comment

[Reserved]

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

(a) In communicating on behalf of a client with a person\* who is not represented by a lawyer [FG56] or licensed paraprofessional ~~counsel~~, a ~~lawyer~~licensed paraprofessional shall not state or imply that the ~~lawyer~~licensed paraprofessional is disinterested. When the ~~lawyer~~licensed paraprofessional knows\* or reasonably should know\* that the unrepresented person\* incorrectly believes\* the ~~lawyer~~licensed paraprofessional is disinterested in the matter, the ~~lawyer~~licensed paraprofessional shall make reasonable\* efforts to correct the misunderstanding. If the ~~lawyer~~licensed paraprofessional knows\* or reasonably should know\* that the interests of the unrepresented person\* are in conflict with the interests of the client, the ~~lawyer~~licensed paraprofessional shall not give legal advice to that person,\* except that the ~~lawyer~~licensed paraprofessional may, but is not required to, advise the person\* to secure ~~counsel~~legal representation.

(b) In communicating on behalf of a client with a person\* who is not represented by ~~counsel~~a lawyer or licensed paraprofessional, a ~~lawyer~~licensed paraprofessional shall not seek to obtain privileged or other confidential information the ~~lawyer~~licensed paraprofessional knows\* or reasonably should know\* the person\* may not reveal without violating a duty to another or which the ~~lawyer~~licensed paraprofessional is not otherwise entitled to receive.

#### Comment

[Reserved]

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

Where it is reasonably\* apparent to a lawyerlicensed paraprofessional who receives a writing\* relating to a lawyerlicensed paraprofessional's representation of a client that the writing\* was inadvertently sent or produced, and the lawyerlicensed paraprofessional knows\* or reasonably should know\* that the writing\* is privileged or subject to the work product doctrine, the lawyerlicensed paraprofessional shall:

- (a) refrain from examining the writing\* any more than is necessary to determine that it is privileged or subject to the work product doctrine, and
- (b) promptly notify the sender.

#### Comment

[Reserved]

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

#### Rule 5.1 Responsibilities of Managerial and Supervisory LawyerLicensed paraprofessionals

- (a) A lawyerlicensed paraprofessional who individually [FG57] or together with other licensed paraprofessionals or lawyers possesses managerial authority in a law firm,\* shall make reasonable\* efforts to ensure that the firm\* has in effect measures giving reasonable\* assurance that all lawyerlicensed paraprofessionals in the firm\* comply with these rules and the State Bar Act.
- (b) A lawyerlicensed paraprofessional having direct supervisory authority over another lawyerlicensed paraprofessional, whether or not a member or employee of the same law firm,\* shall make reasonable\* efforts to ensure that the other lawyerlicensed paraprofessional complies with these rules and the State Bar Act applicable law.
- (c) A lawyerlicensed paraprofessional shall be responsible for another lawyerlicensed paraprofessional's violation of these rules and the State Bar Act applicable law if:
  - (1) the lawyerlicensed paraprofessional orders or, with knowledge of the relevant facts and of the specific conduct, ratifies the conduct involved; or
  - (2) the lawyerlicensed paraprofessional, individually or together with other licensed paraprofessionals or lawyers, possesses managerial authority in the law firm\* in which the other lawyerlicensed paraprofessional practices, or has direct supervisory authority over the other lawyerlicensed paraprofessional, whether or not a member or employee of the same law firm,\* and knows\* of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable\* remedial action.

#### Comment

[Reserved]

#### Rule 5.2 Responsibilities of a Subordinate LawyerLicensed paraprofessional

(a) A lawyerlicensed paraprofessional shall comply with these rules and ~~the State Bar Act~~ notwithstanding that the lawyerlicensed paraprofessional acts at the direction of a lawyer, another lawyer, a licensed paraprofessional, or other person.\*

(b) A subordinate lawyerlicensed paraprofessional does not violate these rules ~~or the State Bar Act~~ if that lawyerlicensed paraprofessional acts in accordance with a supervisory lawyer's or supervisory licensed paraprofessional's reasonable\* resolution of an arguable question of professional duty.

#### Comment

[Reserved]

### Rule 5.3 Responsibilities Regarding Non-Licensed ~~lawyer~~ Assistants

With respect to an individual not licensed to practice law who is nonlawyer employed or retained by or associated with a lawyerlicensed paraprofessional:

(a) a lawyerlicensed paraprofessional who individually or together with other licensed paraprofessionals or lawyers possesses managerial authority in a law firm,\* shall make reasonable\* efforts to ensure that the firm\* has in effect measures giving reasonable\* assurance that the nonlawyer's nonlicensee's conduct is compatible with the professional obligations of the lawyerlicensed paraprofessional;

(b) a lawyerlicensed paraprofessional having direct supervisory authority over the nonlawyerlicensee, whether or not an employee of the same law firm,\* shall make reasonable\* efforts to ensure that the person's\* conduct is compatible with the professional obligations of the lawyerlicensed paraprofessional; and

(c) a lawyerlicensed paraprofessional shall be responsible for conduct of such a person\* that would be a violation of these rules ~~or the State Bar Act~~ if engaged in by a lawyerlicensed paraprofessional if:

(1) the lawyerlicensed paraprofessional orders or, with knowledge of the relevant facts and of the specific conduct, ratifies the conduct involved; or

(2) the lawyerlicensed paraprofessional, individually or together with other licensed paraprofessionals or lawyers, possesses managerial authority in the law firm\* in which the person\* is employed, or has direct supervisory authority over the person,\* whether or not an employee of the same law firm,\* and knows\* of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable\* remedial action.

#### Comment

[Reserved]

### Rule 5.3.1 Employment <sup>[FG58]</sup> of Disbarred, Suspended, Resigned, or Involuntarily Inactive Lawyers s or Licensed Paraprofessionals

(a) For purposes of this rule:

(1) "Employ" means to engage the services of another, including employees, agents, independent contractors and consultants, regardless of whether any compensation is paid;

(2) "MemberLicensee" means a memberlicensee of the State Bar of California;

(3) "Involuntarily inactive memberlicensee" means a member who is ineligible to practice law as a result of action taken pursuant to Business and Professions Code sections 6007, 6203, subdivision (d)(1), or California Rules of Court, rule 9 <sup>[FG59]</sup>.31(d);

- (4) “Resigned member-licensee” means a member-licensee who has resigned from the State Bar while disciplinary charges are pending; and
- (5) “Ineligible person” means a member-licensee whose current status with the State Bar of California is disbarred, suspended, resigned, or involuntarily inactive.
- (b) A lawyer-licensed paraprofessional shall not employ, associate in practice with, or assist a person\* the lawyer-licensed paraprofessional knows\* or reasonably should know\* is an ineligible person to perform the following on behalf of the lawyer-licensed paraprofessional’s client:
- (1) Render legal consultation or advice to the client;
  - (2) Appear on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer;
  - (3) Appear as a representative of the client at a deposition or other discovery matter;
  - (4) Negotiate or transact any matter for or on behalf of the client with third parties;
  - (5) Receive, disburse or otherwise handle the client’s funds; or
  - (6) Engage in activities that constitute the practice of law.
- (c) A lawyer-licensed paraprofessional may employ, associate in practice with, or assist an ineligible person to perform research, drafting or clerical activities, including but not limited to:
- (1) Legal work of a preparatory nature, such as legal research, the assemblage of data and other necessary information, drafting of pleadings, briefs, and other similar documents;
  - (2) Direct communication with the client or third parties regarding matters such as scheduling, billing, updates, confirmation of receipt or sending of correspondence and messages; or
  - (3) Accompanying an active lawyer-licensed paraprofessional in attending a deposition or other discovery matter for the limited purpose of providing clerical assistance to the active lawyer-licensed paraprofessional who will appear as the representative of the client.
- (d) Prior to or at the time of employing, associating in practice with, or assisting a person\* the licensed paraprofessional-lawyer knows\* or reasonably should know\* is an ineligible person, the lawyer-licensed paraprofessional shall serve upon the State Bar written\* notice of the employment, including a full description of such person’s current bar-licensee status. The written\* notice shall also list the activities prohibited in paragraph (b) and state that the ineligible person will not perform such activities. The licensed paraprofessional-lawyer shall serve similar written\* notice upon each client on whose specific matter such person\* will work, prior to or at the time of employing, associating with, or assisting such person\* to work on the client’s specific matter. The lawyer-licensed paraprofessional shall obtain proof of service of the client’s written\* notice and shall retain such proof and a true and correct copy of the client’s written\* notice for two years following termination of the lawyer-licensed paraprofessional’s employment by the client.
- (e) A lawyer-licensed paraprofessional may, without client or State Bar notification, employ, associate in practice with, or assist an ineligible person whose sole function is to perform office physical plant or equipment maintenance, courier or delivery services, catering, reception, typing or transcription, or other similar support activities.
- (f) When the lawyer-licensed paraprofessional no longer employs, associates in practice with, or assists the ineligible person, the lawyer-licensed paraprofessional shall promptly serve upon the State Bar written\* notice of the termination.

#### Comment

[Reserved]

#### Rule 5.4 Financial and Similar Arrangements with Lawyers and Nonlawyer Licensees

(a) A lawyerlicensed paraprofessional or law firm\* shall not share legal fees directly or indirectly with a nonlawyerperson\* who is not a lawyer or a licensed paraprofessional or with an organization that is not authorized to practice law, except that:

(1) an agreement by a lawyerlicensed paraprofessional with the lawyerlicensed paraprofessional's firm,\* partner,\* or associate may provide for the payment of money or other consideration over a reasonable\* period of time after the lawyerlicensed paraprofessional's death, to the lawyerlicensed paraprofessional's estate or to one or more specified persons;\*

(2) a lawyerlicensed paraprofessional purchasing the practice of a deceased, disabled or disappeared lawyerlicensed paraprofessional may pay the agreed-upon purchase price, pursuant to rule 1.17, to the lawyerlicensed paraprofessional's estate or other representative;

(3) a lawyerlicensed paraprofessional or law firm\* may include nonlawyer employees who are not lawyers or licensed paraprofessionals in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement, provided the plan does not otherwise violate these rules ~~or the State Bar Act~~;

(4) a lawyerlicensed paraprofessional or law firm\* may pay a prescribed registration, referral, or other fee to a lawyerlicensed paraprofessional referral service established, sponsored and operated in accordance with the State Bar of California's Minimum Standards for LawyerLicensed paraprofessional Referral Services; or

(5) a lawyerlicensed paraprofessional or law firm\* may share with or pay a court-awarded legal fee to a nonprofit organization that employed, retained or recommended employment of the lawyerlicensed paraprofessional or law firm\* in the matter. \_\_

(6) [G60] a licensed paraprofessional or law firm\* may share with or pay a legal fee that is not court-awarded but arises from a settlement or other resolution of the matter with a nonprofit organization that employed, retained, recommended, or facilitated employment of the licensed paraprofessional or law firm\* in the matter provided:

(i) the nonprofit organization qualifies under section 501(c)(3) of the Internal Revenue Code;

(ii) the licensed paraprofessional or law firm\* enters into a written\* agreement to divide the fee with the nonprofit organization;

(iii) the licensed paraprofessional or law firm\* obtains the client's consent in writing,\* either at the time the licensed paraprofessional or law firm\* enters into the agreement with the nonprofit organization to divide the fee or as soon thereafter as reasonably\* practicable, after a full written\* disclosure to the client of the fact that a division of fees will be made, the identity of the licensed paraprofessional or law firm\* and the nonprofit organization that are parties to the division, and the terms of the division, including the restriction imposed under paragraph (a)(6)(iv); and

(iv) the total fee charged by the licensed paraprofessional or law firm\* is not increased solely by reason of the agreement to divide fees.

(b) A lawyerlicensed paraprofessional shall not form a partnership or other organization with a individual who is not a lawyer or licensed paraprofessional ~~nonlawyer~~ if any of the activities of the partnership or other organization consist of the practice of law.

(c) A lawyerlicensed paraprofessional shall not permit a person\* who recommends, employs, or pays the lawyerlicensed paraprofessional to render legal services for another to direct or regulate the lawyerlicensed paraprofessional's independent professional judgment or interfere with the lawyerlicensed paraprofessional-client relationship in rendering legal services.

(d) A lawyerlicensed paraprofessional shall not practice with or in the form of a professional corporation or other organization [EG61] authorized to practice law for a profit if:

- (1) ~~an individual who is not a lawyer or a licensed paraprofessional~~~~nonlawyer~~ owns any interest in it, except that a fiduciary representative of a lawyer's or licensed paraprofessional's estate may hold the lawyer's or licensed paraprofessional's stock or other interest for a reasonable\* time during administration;
  - (2) ~~an individual who is not a lawyer or a licensed paraprofessional~~~~nonlawyer~~ is a director or officer of the corporation or occupies a position of similar responsibility in any other form of organization; or
  - (3) ~~an nonlawyer~~~~individual who is not a lawyer or a licensed paraprofessional~~ has the right or authority to direct or control the ~~lawyer~~~~licensed paraprofessional~~'s independent professional judgment.
- (e) A licensed paraprofessional may:
- (1) share fees with a lawyer who is in the same firm as the licensed paraprofessional;
  - (2) form a partnership with a lawyer where the activities of the partnership consist of the practice of law; or
  - (3) practice with or in the form of a professional corporation, association, or other business structure authorized to practice law for a profit in which a lawyer owns an interest or serves as a corporate director or officer or occupies a position of similar responsibility.
- (f) A licensed paraprofessional and a lawyer may practice in a jointly owned firm or other business structure authorized by paragraph (e) of this rule only if: [G62]
- (1) licensed paraprofessionals do not direct or regulate any lawyer's professional judgment in rendering legal services;
  - (2) licensed paraprofessionals have no direct supervisory authority over any lawyer;
  - (3) licensed paraprofessionals do not possess a majority ownership interest or exercise controlling managerial authority in the firm; and
  - (4) licensed paraprofessional with managerial authority in the firm expressly undertake responsibility for the conduct of licensed paraprofessional partners or owners to the same extent they are responsible for the conduct of lawyers in the firm under Lawyer RPC rule 5.1.
- (g) The Board of Trustees of the State Bar shall formulate and adopt Minimum Standards for ~~Lawyer-Licensed Paraprofessional~~ Referral Services, which, as from time to time amended, shall be binding on ~~lawyerlicensed paraprofessionals~~. A ~~lawyerlicensed paraprofessional~~ shall not accept a referral from, or otherwise participate in, a ~~lawyerlicensed paraprofessional~~ referral service unless it complies with such Minimum Standards for ~~Lawyer-Licensed Paraprofessional~~ Referral Services.
- (f) A ~~lawyerlicensed paraprofessional~~ shall not practice with or in the form of a nonprofit legal aid, mutual benefit or advocacy group if the nonprofit organization allows any third person\* to interfere with the ~~lawyerlicensed paraprofessional~~'s independent professional judgment, or with the ~~lawyerlicensed paraprofessional~~-client relationship, or allows or aids any person\* to practice law in violation of these rules or ~~the State Bar Act~~applicable law.

#### Comment

[Reserved]

#### Rule 5.5 Unauthorized Practice of Law; ~~Multijurisdictional Practice of Law~~

- ~~(a) A lawyer~~Licensed paraprofessionals admitted to practice law in California shall not:
- ~~(1a)~~ practice law in California beyond the permissible scope of their ~~license~~ [FG63];

(b) hold out or otherwise represent to the public that the **licensed** paraprofessional is permitted to practice law beyond the permissible scope of their license;

(c) practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction; or

(d2) knowingly\* assist a person\* in the unauthorized practice of law in ~~that jurisdiction~~ California or any other jurisdiction.

~~(b) A paraprofessional lawyer who is not admitted to practice law in California shall not:~~

~~(1) except as authorized by these rules or other law, establish or maintain a resident office or other systematic or continuous presence in California for the practice of law; or~~

~~(2) hold out to the public or otherwise represent that the paraprofessional lawyer is admitted to practice law in California.~~

**Comment** [FG64]

[Reserved]

## **Rule 5.6 Restrictions on a ~~Lawyer~~ Licensed paraprofessional's Right to Practice**

(a) Unless authorized by law, a ~~lawyer~~ licensed paraprofessional shall not participate in offering or making:

(1) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a ~~lawyer~~ licensed paraprofessional to practice after termination of the relationship, except an agreement that concerns benefits upon retirement; or

(2) an agreement that imposes a restriction on a ~~lawyer~~ licensed paraprofessional's right to practice in connection with a settlement of a client controversy, or otherwise.

(b) A ~~lawyer~~ licensed paraprofessional shall not participate in offering or making an agreement which precludes the reporting of a violation of these rules.

~~(c) This rule does not prohibit an agreement that is authorized by **Business** [FG65] and Professions Code sections 6092.5, subdivision (i) or 6093.~~

**Comment**

[Reserved]

## **Rule 5.7 [Reserved]**

## **Rule 5.8 BUSINESS STRUCTURES INVOLVING LLLT AND LAWYER OWNERSHIP** [G66]

# **CHAPTER 6. PUBLIC SERVICE**

## **Rule 6.1 [Reserved]**

## **Rule 6.2 [Reserved]**



### Rule 6.3 Membership in Legal Services Organization

A lawyerlicensed paraprofessional may serve as a director, officer or member of a legal services organization, apart from the law firm\* in which the lawyerlicensed paraprofessional practices, notwithstanding that the organization serves persons\* having interests adverse to a client of the lawyerlicensed paraprofessional. The lawyerlicensed paraprofessional shall not knowingly\* participate in a decision or action of the organization:

- (a) if participating in the decision or action would be incompatible with the lawyerlicensed paraprofessional's obligations to a client under ~~Business and Professions Code section 6068, subdivision (e)(1)~~ or rules 1.6(a), 1.7, 1.9, or 1.18; or
- (b) where the decision or action could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyerlicensed paraprofessional.

#### Comment

[Reserved]

### Rule 6.4 [Reserved]

### Rule 6.5 Limited Legal Services Programs

(a) A lawyerlicensed paraprofessional who, under the auspices of a program sponsored by a court, government agency, bar association, law school, or nonprofit organization, provides short-term limited legal services to a client without expectation by either the lawyerlicensed paraprofessional or the client that the lawyerlicensed paraprofessional will provide continuing representation in the matter:

- (1) is subject to rules 1.7 and 1.9(a) only if the lawyerlicensed paraprofessional knows\* that the representation of the client involves a conflict of interest; and
  - (2) is subject to rule 1.10 only if the lawyerlicensed paraprofessional knows\* that another lawyerlicensed paraprofessional or a lawyer ~~FG67~~ associated with the lawyerlicensed paraprofessional in a law firm\* is prohibited from representation by rule 1.7 or 1.9(a) or Lawyer RPC rule 1.7 or 1.9(a) with respect to the matter.
- (b) Except as provided in paragraph (a)(2), rule 1.10 is inapplicable to a representation governed by this rule.
- (c) The personal disqualification of a lawyerlicensed paraprofessional participating in the program will not be imputed to other paraprofessionals licensed paraprofessional or lawyers participating in the program.

#### Comment

[Reserved]

## CHAPTER 7. INFORMATION ABOUT LEGAL SERVICES

### Rule 7.1 Communications Concerning a LawyerLicensed paraprofessional's Services

(a) A lawyerlicensed paraprofessional shall not make a false or misleading communication about the lawyerlicensed paraprofessional or the lawyerlicensed paraprofessional's services. A communication is false or misleading if it contains a

material misrepresentation of fact or law, or omits a fact necessary to make the communication considered as a whole not materially misleading.

(b) The Board of Trustees of the State Bar may formulate and adopt standards as to communications that will be presumed to violate rule 7.1, 7.2, 7.3, ~~7.4~~ or 7.5. The standards shall only be used as presumptions affecting the burden of proof in disciplinary proceedings involving alleged violations of these rules. "Presumption affecting the burden of proof" means that presumption defined in Evidence Code sections 605 and 606. Such standards formulated and adopted by the Board, as from time to time amended, shall be effective and binding on all ~~lawyer~~licensed paraprofessionals.

**Comment** [FG68]

[Reserved]

## Rule 7.2 Advertising

(a) Subject to the requirements of rules 7.1 and 7.3, a ~~lawyer~~licensed paraprofessional may advertise services through any written,\* recorded or electronic means of communication, including public media.

(b) A ~~lawyer~~licensed paraprofessional shall not compensate, promise or give anything of value to a person\* for the purpose of recommending or securing the services of the ~~lawyer~~licensed paraprofessional or the ~~lawyer~~licensed paraprofessional's law firm,\* except that a ~~lawyer~~licensed paraprofessional may:

(1) pay the reasonable\* costs of advertisements or communications permitted by this rule;

(2) pay the usual charges of a legal services plan [FG69] or a qualified ~~lawyer~~licensed paraprofessional referral service. A qualified ~~lawyer~~licensed paraprofessional referral service [FG70] is a ~~lawyer~~licensed paraprofessional referral service established, sponsored and operated in accordance with the State Bar of California's Minimum Standards for a ~~Lawyer~~Licensed paraprofessional Referral Service in California;

(3) pay for a law practice in accordance with rule 1.17;

(4) refer clients to another ~~lawyer~~licensed paraprofessional, a ~~lawyer~~ or a nonlawyer-professional pursuant to an arrangement not otherwise prohibited under these ~~Rules~~rules or the ~~State Bar Act~~ that provides for the other person\* to refer clients or customers to the ~~lawyer~~licensed paraprofessional, if:

(i) the reciprocal referral arrangement is not exclusive; and

(ii) the client is informed of the existence and nature of the arrangement;

(5) offer or give a gift or gratuity to a person\* having made a recommendation resulting in the employment of the ~~lawyer~~licensed paraprofessional or the ~~lawyer~~licensed paraprofessional's law firm,\* provided that the gift or gratuity was not offered or given in consideration of any promise, agreement, or understanding that such a gift or gratuity would be forthcoming or that referrals would be made or encouraged in the future.

(c) Any communication made pursuant to this rule shall include: (1) the name and ~~address~~contact information of at least one ~~lawyer~~licensed paraprofessional or law firm\* responsible for its content, (2) include in the communication at least one licensed paraprofessional's license number; and (3) include in the communication a clear and conspicuous statement that the licensed paraprofessional is not a lawyer.

**Comment**

[Reserved]

## Rule 7.3 Solicitation of Clients

(a) A ~~lawyer~~licensed paraprofessional shall not by in-person, live telephone or real-time electronic contact solicit professional employment when a significant motive for doing so is the ~~lawyer~~licensed paraprofessional's pecuniary gain, unless the person\* contacted:

(1) is a lawyer or a licensed paraprofessional; or

(2) has a family, close personal, or prior professional relationship with the ~~lawyer~~licensed paraprofessional.

(b) A ~~lawyer~~licensed paraprofessional shall not solicit professional employment by written,\* recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

(1) the person\* being solicited has made known\* to the ~~lawyer~~licensed paraprofessional a desire not to be solicited by the ~~lawyer~~licensed paraprofessional; or

(2) the solicitation is transmitted in any manner which involves intrusion, coercion, duress or harassment.

(c) Every written,\* recorded or electronic communication from a ~~lawyer~~licensed paraprofessional soliciting professional employment from any person\* known\* to be in need of legal services in a particular matter shall include:

(1) the word "Advertisement" or words of similar import on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person\* specified in paragraphs (a)(1) or (a)(2), or unless it is apparent from the context that the communication is an advertisement.

(2) -include the name, contact information, and license number of the licensed paraprofessional responsible for the content of the communication;

(3) -include a clear and conspicuous statement that the paraprofessional is not a lawyer; and

(4)- if an advertisement subject to this subdivision is in a language other than English, the statements required by this subdivision shall be in the same language as the advertisement.

(d) A licensed paraprofessional shall not act as a runner or capper other licensed paraprofessional, nor solicit another person to act as a runner or capper for a licensed paraprofessional.

(1) For purposes of paragraph (d), a "runner or capper" is any person, firm, association, or corporation acting for consideration in any manner or in any capacity as an agent for an attorney, a paraprofessional, or a law firm, in the solicitation or procurement of business for the licensed paraprofessional except as otherwise authorized by these rules.

(2) Nothing in paragraph (d) shall be construed to prevent the recommendation of professional employment where that recommendation is not prohibited by these rules.

(e) Notwithstanding the prohibitions in paragraph (a), a ~~lawyer~~licensed paraprofessional may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the ~~lawyer~~licensed paraprofessional that uses in-person, live telephone or real-time electronic contact to solicit memberships or subscriptions for the plan from persons\* who are not known\* to need legal services in a particular matter covered by the plan.

(ef) As used in this rule, the terms "solicitation" and "solicit" refer to an oral or written\* targeted communication initiated by or on behalf of the ~~lawyer~~licensed paraprofessional that is directed to a specific person\* and that offers to provide, or can reasonably\* be understood as offering to provide, legal services.

**Comment**

[Reserved]

**Rule 7.4 ~~[RESERVED] Communication of Licensed Fields of Practice and Authorized Legal Services and Specialization~~**

~~(a) — A lawyer shall not state that the lawyer is a certified specialist licensed to practice in a particular field of law, unless:~~

~~(1) — the lawyer is currently certified currently licensed as a specialist by the Board of Legal Specialization, or any other entity accredited by the State Bar to practice in that particular field of law to designate specialists pursuant to standards adopted by the Board of Trustees; and~~

~~(2) — the name of the certifying organization is clearly identified in the communication.~~

~~(b) — Notwithstanding paragraph (a), a lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer may also communicate that his or her practice specializes in, is limited to, or is concentrated in a particular field of law, subject to the requirements of rule 7.1.~~

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

(a) A ~~lawyer~~ licensed paraprofessional shall not use a firm\* name, trade name or other professional designation that violates rule 7.1.

(b) A ~~lawyer~~ licensed paraprofessional in private practice shall not use a firm\* name, trade name or other professional designation that states or implies a relationship with a government agency or with a public or charitable legal services organization, or otherwise violates rule 7.1.

(c) A ~~lawyer~~ licensed paraprofessional shall not state or imply that the ~~lawyer~~ licensed paraprofessional practices in or has a professional relationship with a law firm\* or other organization unless that is the fact.

**Comment**

[Reserved]

**Rule 7.6 ~~[Reserved]~~**

\*\*NOTE FROM AMOS: IN CONNECTION WITH CONSIDERATION OF ADVERTISING LIMITATIONS, WE ALSO SHOULD CONSIDER THE NAME OF THE PROPOSED PARAPROFESSIONAL LICENSE. THE NAME OF THE PROGRAM AND LICENSE CAN HAVE SIGNIFICANT IMPACT ON WHETHER THE PUBLIC IS LIKELY TO BE MISLED ABOUT AVAILABLE SERVICES AND THE DIFFERENCES BETWEEN HIRING A PARAPROFESSIONAL AND HIRING A LAWYER. THIS IS AN IMPORTANT CONSIDERATION IN PROTECTIN OF THE PUBLIC.

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

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

- (a) An applicant for admission to practice law as a licensed paraprofessional shall not, in connection with that person's\* own application for admission, make a statement of material fact that the lawyerlicensed paraprofessional knows\* to be false, or make such a statement with reckless disregard as to its truth or falsity.
- (b) A lawyerlicensed paraprofessional shall not, in connection with another person's\* application for admission to practice law as a lawyer or licensed paraprofessional, make a statement of material fact that the lawyerlicensed paraprofessional knows\* to be false.
- (c) An applicant for admission to practice law as a licensed paraprofessional, or a lawyerlicensed paraprofessional in connection with an application for admission, shall not fail to disclose a fact necessary to correct a statement known\* by the applicant or the lawyerlicensed paraprofessional to have created a material misapprehension in the matter, except that this rule does not authorize disclosure of information protected by ~~Business and Professions Code section 6068, subdivision (e) and~~ rule 1.6.
- (d) As used in this rule, "admission to practice law" includes admission or readmission to membership-licensure in the State Bar; reinstatement to active membership-licensure in the State Bar; and any similar process relating to admission or certification to practice law in California or elsewhere.

#### Comment

[Reserved]

#### Rule 8.1.1 Compliance with Conditions of Discipline ~~and Agreements in Lieu of Discipline~~

A lawyerlicensed paraprofessional shall comply with the terms and conditions attached to ~~any agreement in lieu of discipline,~~ any public ~~or private~~ reproof, or to other discipline administered by the State Bar pursuant ~~[FG72]~~ to ~~Business and Professions Code sections 6077 and 6078 and California Rules of Court, rule 9.19.~~

#### Comment

[Reserved]

#### Rule 8.2 Judicial Officials

~~(a) A lawyerlicensed paraprofessional shall not make a statement of fact that the lawyerlicensed paraprofessional knows\* to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge or judicial officer, or of a candidate for election or appointment to judicial office.~~

~~(b) A lawyer who is a candidate for judicial office in California shall comply with canon 5 of the California Code of Judicial Ethics. For purposes of this rule, "candidate for judicial office" means a lawyer seeking judicial office by election. The determination of when a lawyer is a candidate for judicial office by election is defined in the terminology section of the California Code of Judicial Ethics. A lawyer's duty to comply with this rule shall end when the lawyer announces withdrawal of the lawyer's candidacy or when the results of the election are final, whichever occurs first.~~

~~(c) A lawyer who seeks appointment to judicial office shall comply with canon 5B(1) of the California Code of Judicial Ethics. A lawyer becomes an applicant seeking judicial office by appointment at the time of first submission of an application or personal data questionnaire to the appointing authority. A lawyer's duty to comply with this rule shall end when the lawyer advises the appointing authority of the withdrawal of the lawyer's application.~~

#### Comment

[Reserved]

#### Rule 8.3 [Reserved]

## Rule 8.4 Misconduct

It is professional misconduct for a lawyerlicensed paraprofessional to:

- (a) violate these rules ~~or the State Bar Act~~, knowingly\* assist, solicit, or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyerlicensed paraprofessional's honesty, trustworthiness, or fitness as a lawyerlicensed paraprofessional in other respects;
- (c) engage in conduct involving dishonesty, fraud,\* deceit, or reckless or intentional misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official, or to achieve results by means that violate these rules, ~~the State Bar Act~~, or other law; or
- (f) knowingly\* assist, solicit, or induce a judge or judicial officer in conduct that is a violation of an applicable code of judicial ethics or code of judicial conduct, or other law. For purposes of this rule, "judge" and "judicial officer" have the same meaning as in rule 3.5(c).

### Comment

[Reserved]

### Rule 8.4.1 Prohibited Discrimination, Harassment and Retaliation

- (a) In representing a client, or in terminating or refusing to accept the representation of any client, a lawyerlicensed paraprofessional shall not:
  - (1) unlawfully harass or unlawfully discriminate against persons\* on the basis of any protected characteristic; or
  - (2) unlawfully retaliate against persons.\*
- (b) In relation to a law firm's operations, a lawyerlicensed paraprofessional shall not:
  - (1) on the basis of any protected characteristic,
    - (i) unlawfully discriminate or knowingly\* permit unlawful discrimination;
    - (ii) unlawfully harass or knowingly\* permit the unlawful harassment of an employee, an applicant, an unpaid intern or volunteer, or a person\* providing services pursuant to a contract; or
    - (iii) unlawfully refuse to hire or employ a person\*, or refuse to select a person\* for a training program leading to employment, or bar or discharge a person\* from employment or from a training program leading to employment, or discriminate against a person\* in compensation or in terms, conditions, or privileges of employment; or
  - (2) unlawfully retaliate against persons.\*
- (c) For purposes of this rule:
  - (1) "protected characteristic" means race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual

orientation, age, military and veteran status, or other category of discrimination prohibited by applicable law, whether the category is actual or perceived;

- (2) “knowingly permit” means to fail to advocate corrective action where the lawyerlicensed paraprofessional knows\* of a discriminatory policy or practice that results in the unlawful discrimination or harassment prohibited by paragraph (b);
  - (3) “unlawfully” and “unlawful” shall be determined by reference to applicable state and federal statutes and decisions making unlawful discrimination or harassment in employment and in offering goods and services to the public; and
  - (4) “retaliate” means to take adverse action against a person\* because that person\* has (i) opposed, or (ii) pursued, participated in, or assisted any action alleging, any conduct prohibited by paragraphs (a)(1) or (b)(1) of this rule.
- (d) A lawyerlicensed paraprofessional who is the subject of a State Bar investigation or State Bar ~~Court-disciplinary~~ proceeding alleging a violation of this rule shall promptly notify the State Bar of any criminal, civil, or administrative action premised, whether in whole or part, on the same conduct that is the subject of the State Bar investigation or State Bar ~~Court~~ disciplinary proceeding.
- (e) Upon being issued a notice of a disciplinary charge under this rule, a lawyerlicensed paraprofessional shall:
- (1) if the notice is of a disciplinary charge under paragraph (a) of this rule, provide a copy of the notice to the California Department of Fair Employment and Housing and the United States Department of Justice, Coordination and Review Section; or
  - (2) if the notice is of a disciplinary charge under paragraph (b) of this rule, provide a copy of the notice to the California Department of Fair Employment and Housing and the United States Equal Employment Opportunity Commission.
- (f) This rule shall not preclude a lawyerlicensed paraprofessional from:
- ~~(1) representing a client alleged to have engaged in unlawful discrimination, harassment, or retaliation;~~
  - ~~(2)~~ declining or withdrawing from a representation as required or permitted by rule 1.16; or
  - ~~(3)~~ providing advice and engaging in advocacy as otherwise required or permitted by these rules and applicable law and the State Bar Act.

#### Comment

[Reserved]

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

- (a) Disciplinary Authority.

A lawyerlicensed paraprofessional admitted to practice in California is subject to the disciplinary authority of California, regardless of where the lawyerlicensed paraprofessional’s conduct occurs. ~~A lawyer not admitted in California is also subject to the disciplinary authority of California if the lawyer provides or offers to provide any legal services in California.~~ A lawyerlicensed paraprofessional may be subject to the disciplinary authority of both California and another jurisdiction for the same conduct.

- (b) Choice of Law.

In any exercise of the disciplinary authority of California, the rules of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a matter pending before a tribunal,\* the rules of the jurisdiction in which the tribunal\* sits, unless the rules of the tribunal\* provide otherwise; and

(2) for any other conduct, the rules of the jurisdiction in which the lawyerlicensed paraprofessional's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyerlicensed paraprofessional shall not be subject to discipline if the lawyerlicensed paraprofessional's conduct conforms to the rules of a jurisdiction in which the lawyerlicensed paraprofessional reasonably believes\* the predominant effect of the lawyerlicensed paraprofessional's conduct will occur.

**Comment**

[Reserved]