

# 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 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 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 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 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 licensed paraprofessional acting as a sole proprietorship; an association authorized to practice law; or 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 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 licensed paraprofessional means the conduct of a reasonably prudent and competent licensed paraprofessional.

(i) “Reasonable belief” or “reasonably believes” when used in reference to a licensed paraprofessional means that the licensed 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 licensed paraprofessional means that a licensed paraprofessional of reasonable prudence and competence would ascertain the matter in question.

(k) “Screened” means the isolation of a licensed 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 licensed 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 licensed 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>[FG1]</sup>.

#### **Comment**

[Reserved]

## CHAPTER 1. LICENSED PARAPROFESSIONAL-CLIENT RELATIONSHIP

### Rule 1.1 Competence

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

[FG2]Comment

[Reserved][FG3]

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

- (a) Subject to rule 1.2.1, a licensed 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 rule 1.6, a licensed paraprofessional may take such action on behalf of the client as is impliedly authorized to carry out the representation. A licensed paraprofessional shall abide by a client’s decision whether to settle a matter. [FG4].

- (b) A licensed 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[G5]

[Reserved]

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

- (a) A licensed paraprofessional shall not counsel a client to engage, or assist a client in conduct that the 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 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 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 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 licensed paraprofessional.

**Comment**

[Reserved]

**Rule 1.4 Communication with Clients**

(a) A licensed paraprofessional 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 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 licensed paraprofessional’s conduct when the licensed paraprofessional knows\* that the client expects assistance not permitted by these rules or other law.

(b) A licensed paraprofessional shall explain a matter to the extent reasonably\* necessary to permit the client to make informed decisions regarding the representation.

(c) A licensed paraprofessional may delay transmission of information to a client if the 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 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 licensed paraprofessional shall promptly communicate to the licensed paraprofessional’s client [FG6] all amounts, terms, and conditions of any written\* offer of settlement made to the client. |

[FG7] **Comment**

[Reserved]

#### Rule 1.4.2 Notice to Consumers Prior to Consultation with a Prospective Client

- (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,
- (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.

[Reserved[FG8]]

#### 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[FG9]"];
  - (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](#)<sup>[FG10]</sup>; 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**<sup>[FG11]</sup>

[Reserved]

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

- (a) A 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 licensed paraprofessional engaged in fraud\* or overreaching in negotiating or setting the fee; (2) whether the 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 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;
  - (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 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 shall not make an agreement for, charge, or collect 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:  .]

(d) A licensed paraprofessional 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. [FG12].]

(e) A 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 licensed paraprofessional providing those services.

**Comment**[FG13]

[Reserved]

### **Rule 1.5.1 Fee Divisions Among Licensed Paraprofessionals and With Lawyers**

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

- (1) the 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.
- (3) the client has consented in writing,\* either at the time the 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 licensed paraprofessionals 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 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; ~~and~~

(5) No fee shall be divided between a licensed paraprofessional and a lawyer under this rule may relate to any services performed which fall outside the scope of the licensed paraprofessional’s license, including but not limited to any services rendered in their capacity as a paralegal.-

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

**Comment**[FG14]

[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, 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; 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.



### Rule 1.6 Confidential Information of a Client

- (a) A licensed paraprofessional shall not reveal information 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 licensed paraprofessional may, but is not required to, reveal information relating to the representation of a client to the extent that the licensed paraprofessional reasonably believes\* the disclosure is necessary to prevent a criminal act that the 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 relating to the representation of a client to prevent a criminal act as provided in paragraph (b), a 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 licensed paraprofessional's ability or decision to reveal information relating to the representation of a client as provided in paragraph (b).
- (d) In revealing information relating to representation of a client as provided in paragraph (b), the licensed paraprofessional's disclosure must be no more than is necessary to prevent the criminal act, given the information known\* to the licensed paraprofessional at the time of the disclosure.
- (e) A licensed paraprofessional who does not reveal information permitted by paragraph (b) does not violate this rule.

#### Comment

[Reserved][FG15]

### Rule 1.7 Conflict of Interest: Current Clients

- (a) A 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 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 licensed paraprofessional's representation of the client will be materially limited by the licensed paraprofessional's responsibilities to or relationships with another client, a former client or a third person,\* or by the licensed paraprofessional's own interests.
- (c) Even when a significant risk requiring a licensed paraprofessional to comply with paragraph (b) is not present, a licensed paraprofessional shall not represent a client without written\* disclosure of the relationship to the client and compliance with paragraph (d) where:
- (1) the licensed paraprofessional has, or knows\* that another lawyer[FG16] or licensed paraprofessional in the 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 licensed paraprofessional knows\* or reasonably should know\* that another party's lawyer[FG17] or licensed paraprofessional is a spouse, parent, child, or sibling of the licensed paraprofessional, lives with the licensed paraprofessional, is a client of the licensed paraprofessional or another lawyer[FG18] or licensed paraprofessional in the licensed paraprofessional's firm,\* or has an intimate personal relationship with the licensed paraprofessional.

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

- (1) the licensed paraprofessional reasonably believes\* that the 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 licensed 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 licensed 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 licensed 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 licensed paraprofessional’s role in it.

**Comment**

[Reserved]

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

A licensed paraprofessional shall not use a client’s information protected by rule 1.6 to the disadvantage of the client unless the client gives informed consent,\* except as permitted by these rules or applicable law.

**Comment**

[Reserved]

### **Rule 1.8.3 Gifts from Client**

- (a) A licensed paraprofessional shall not solicit a client to make a substantial\* gift, including a testamentary gift, to the licensed paraprofessional or a person\* related to the licensed paraprofessional, unless the licensed paraprofessional or other recipient of the gift is related to the client.
- (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 licensed paraprofessional shall not directly or indirectly pay or agree to pay, guarantee, or represent that the licensed paraprofessional or licensed paraprofessional’s law firm\* will pay the personal or business expenses of a prospective or existing client.
- (b) Notwithstanding paragraph (a), a 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 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[FG19], provided the 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 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 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 licensed paraprofessional’s independent professional judgment or with the 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 licensed paraprofessional obtains the client's informed written consent\* at or before the time the licensed 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 licensed 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 licensed paraprofessional who represents two or more clients shall not enter into an aggregate settlement of the claims of or against the clients unless each client gives informed written consent.\* The licensed paraprofessional's disclosure shall include the existence and nature of all the claims involved and of the participation of each person\* in the settlement.

**Rule 1.8.8 Limiting Liability to Client**

A licensed paraprofessional shall not:

- (a) Contract with a client prospectively limiting the licensed paraprofessional's liability to the client for the licensed paraprofessional's professional malpractice; or
- (b) Settle a claim or potential claim for the licensed paraprofessional's liability to a client or former client for the licensed 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 licensed 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 licensed 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 licensed paraprofessional or any lawyer or licensed paraprofessional affiliated by reason of personal, business, or professional relationship with that licensed paraprofessional or with that licensed paraprofessional's law firm\* is acting as a lawyer for a party or as executor, receiver, trustee, administrator, guardian, or conservator.
- (b) This rule does not prohibit a 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 licensed paraprofessional shall not engage:
- (1) in sexual relations with a current client who is not the licensed paraprofessional's spouse or registered domestic partner, unless a consensual sexual relationship existed between them when the 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>[FG20]</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 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 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>[FG21]</sup>.

#### **Comment**<sup>[FG22]</sup>

[Reserved]

### **Rule 1.9 Duties to Former Clients**

- (a) A licensed 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 licensed paraprofessional shall not knowingly\* represent a person\* in the same or a substantially related matter in which a firm\* with which the licensed paraprofessional formerly was associated had previously represented a client
- (1) whose interests are materially adverse to that person;\* and
  - (2) about whom the licensed paraprofessional had acquired information protected by rules 1.6 and 1.9(c) that is material to the matter;
- unless the former client gives informed written consent.\*
- (c) A licensed 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 rule 1.6 acquired by virtue of the representation of the former client to the disadvantage of the former client except as these rules would permit with respect to a current client, or when the information has become generally known;\* or
- (2) reveal information protected by rule 1.6 acquired by virtue of the representation of the former client except as these rules permit with respect to a current client.

**Comment**

[Reserved]

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

(a) While 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](#)[\[FG23\]](#)

- (1) the prohibition is based on a personal interest of the prohibited licensed paraprofessional or lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining licensed paraprofessionals 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 licensed paraprofessional's or lawyer's association with a prior firm,\* and
  - (i) the prohibited licensed paraprofessional or lawyer did not substantially participate in the same or a substantially related matter;
  - (ii) the prohibited 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 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 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 licensed paraprofessional represented the client; and
- (2) any 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 associated in a firm\* with former or current government lawyer or former or current government licensed paraprofessional is governed by rule 1.11.

**Comment**[\[FG24\]](#)

[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 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 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 licensed paraprofessional is prohibited from representation under paragraph (a), no licensed paraprofessional or lawyer [FG25] in a firm\* with which that licensed paraprofessional is associated may knowingly\* undertake or continue representation in such a matter unless:

(1) the personally prohibited licensed 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 licensed paraprofessional who was a public official or employee and, during that employment, acquired information that the licensed 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 licensed paraprofessional is associated may undertake or continue representation in the matter only if the personally prohibited licensed 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 licensed 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 licensed 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 licensed paraprofessional is participating personally and substantially [FG26].

#### **Comment**

[Reserved]

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

(a) Except as stated in paragraph (d), a licensed paraprofessional shall not represent anyone in connection with a matter in which the licensed paraprofessional participated personally and substantially as an adjudicative officer or a judicial staff member 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 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 licensed paraprofessional is participating personally and substantially as an adjudicative officer, arbitrator, mediator, or other third party neutral. A licensed paraprofessional serving as a judicial staff member 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 member is participating personally and substantially, but only with the approval of the court.

(c) If a licensed paraprofessional is prohibited from representation by paragraph (a), other licensed paraprofessional or lawyers [FG27] in a firm\* with which that licensed paraprofessional is associated may knowingly\* undertake or continue representation in the matter only if:

(1) the prohibition does not arise from the licensed paraprofessional's service as a mediator;

(2) the prohibited 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]** [FG28]

#### **Rule 1.14 [Reserved]**

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

(a) All funds received or held by a licensed paraprofessional or a licensed paraprofessional's law firm\* for the benefit of a client, or other person\* to whom the 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 [FG29].

[FG30]

(b) Funds belonging to the 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 licensed paraprofessional or the licensed paraprofessional's law firm,\* in which case the portion belonging to the licensed paraprofessional or the paraprofessional's law firm\* must be withdrawn at the earliest reasonable\* time after the licensed paraprofessional or the licensed paraprofessional law firm's interest in that portion becomes fixed. However, if a client or other person\* disputes the 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.

(c) A licensed paraprofessional shall:

- (1) promptly notify a client or other person\* of the receipt of funds, securities, or other property in which the 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 licensed paraprofessional or the licensed paraprofessional's law firm\*;
- (4) promptly account in writing\* to the client or other person\* for whom the licensed paraprofessional or the licensed paraprofessional's law firm\* holds funds or property;
- (5) preserve records of all funds and property held by a licensed 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](#)<sup>[FG31]</sup>; and
- (7) promptly distribute, as requested by the client or other person\*, any undisputed funds or property in the possession of the licensed paraprofessional or the licensed paraprofessional's law firm\* that the client or other person\* is entitled to receive.

(d) 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 licensed 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 licensed paraprofessionals.

*Standards:*

Pursuant to this rule, [the Board of Trustees of the State Bar adopted](#) <sup>[FG32]</sup> the following standards, effective \_\_\_\_\_, as to what "records" shall be maintained by licensed paraprofessionals and licensed paraprofessionals' law firms\* in accordance with paragraph (d)(3).

- (1) A licensed 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 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**[FG33]

[Reserved]

### **Rule 1.16 Declining or Terminating Representation**

- (a) Except as stated in paragraph (c), a licensed paraprofessional shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
- (1) the licensed paraprofessional knows\* or reasonably should know\* that the client is bringing an action, conducting a defense or asserting a position in litigation, without probable cause and for the purpose of harassing or maliciously injuring any person\*;
  - (2) the licensed paraprofessional knows\* or reasonably should know\* that the representation will result in violation of these rules or other law[FG34];
  - (3) the licensed paraprofessional's mental or physical condition renders it unreasonably difficult to carry out the representation effectively; or
  - (4) the client discharges the 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 licensed 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 licensed paraprofessional's services to advance a course of conduct that the licensed paraprofessional reasonably believes\* was a crime or fraud;\*
  - (3) the client insists that the licensed paraprofessional pursue a course of conduct that is criminal or fraudulent;\*
  - (4) the client by other conduct renders it unreasonably difficult for the licensed paraprofessional to carry out the representation effectively;
  - (5) the client breaches a material term of an agreement with, or obligation, to the licensed paraprofessional relating to the representation, and the licensed paraprofessional has given the client a reasonable\* warning after the breach that the licensed 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 licensed paraprofessional's mental or physical condition renders it difficult for the licensed 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 applicable law; or
  - (10) the licensed 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 licensed paraprofessional shall not terminate a representation before that tribunal\* without its permission.
- (d) A licensed paraprofessional shall not terminate a representation until the licensed 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 representation, 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 licensed 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 licensed paraprofessional promptly shall refund any part of a fee or expense paid in advance that the licensed paraprofessional has not earned or incurred.

**Comment**[FG35]

[Reserved]

### **Rule 1.17 Sale of a Law Practice**

All or substantially\* all of the law practice of a licensed paraprofessional, living [FG36] 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 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 [FG37], 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, 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, 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 licensed paraprofessional for the purpose of retaining the licensed paraprofessional or securing legal service or advice from the licensed paraprofessional in the licensed paraprofessional's professional capacity, is a prospective client.

(b) Even when no licensed paraprofessional-client relationship ensues, a licensed paraprofessional who has communicated with a prospective client shall not use or reveal information protected by rule 1.6(a) that the 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 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 licensed paraprofessional received from the prospective client information protected by rule 1.6(a) that is material to the matter, except as provided in paragraph (d). If a licensed paraprofessional is prohibited from representation under this paragraph or a lawyer [FG38] is prohibited from representation under Lawyer RPC rule 1.18(c), no licensed paraprofessional in a firm\* with which that 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 licensed paraprofessional shall exercise independent professional judgment and render candid advice.

#### **Comment**

[Reserved]

### **Rule 2.2 [Reserved]**

### **Rule 2.3 [Reserved]**

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

(a) A licensed paraprofessional serves as a third-party neutral when the licensed paraprofessional assists two or more persons\* who are not clients of the 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 licensed paraprofessional to assist the parties to resolve the matter.

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

#### **Comment**

[Reserved]

#### **Rule 2.4.1 [Reserved]**

### **CHAPTER 3. ADVOCATE**

#### **Rule 3.1 Meritorious Claims and Contentions**

A licensed paraprofessional shall not:

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

#### **Rule 3.2 Delay of Litigation**

In representing a client, a licensed 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 licensed 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 licensed paraprofessional;
- (2) fail to disclose to the tribunal\* legal authority in the controlling jurisdiction known\* to the licensed paraprofessional to be directly adverse to the position of the client and not disclosed by opposing party, or knowingly\* misquote to a tribunal\* the language of a book, statute, decision or other authority; or

- (3) offer evidence that the licensed paraprofessional knows\* to be false. If a licensed paraprofessional or the licensed paraprofessional's client, has offered material evidence, and the licensed paraprofessional comes to know\* of its falsity, the licensed paraprofessional shall take reasonable\* remedial measures, including, if necessary, disclosure to the tribunal,\* unless disclosure is prohibited by rule 1.6. A licensed paraprofessional may refuse to offer evidence that the licensed paraprofessional reasonably believes\* is false.
- (b) A licensed 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 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 licensed paraprofessional shall inform the tribunal\* of all material facts known\* to the licensed paraprofessional 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 licensed 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 licensed paraprofessional shall not counsel or assist another person\* to do any such act;
- (b) suppress any evidence that the licensed paraprofessional or the licensed 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 licensed 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.
- (g) in trial, assert personal knowledge of facts in issue except when testifying as a witness[FG39].

**Comment**

[Reserved]

### **Rule 3.5 Contact with Judges, Officials, and Employees**

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

(2) in writing\* with a copy thereof furnished to all other represented and unrepresented parties in the matter.

(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.

#### **[FG40] Comment**

[Reserved]

### **Rule 3.6 Trial Publicity**

(a) A 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 rule 1.6, licensed paraprofessional may state:

(1) the claim 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.

(c) Notwithstanding paragraph (a), a licensed paraprofessional may make a statement that a reasonable\* licensed paraprofessional would believe\* is required to protect a client from the substantial\* undue prejudicial effect of recent



publicity not initiated by the licensed paraprofessional or the licensed paraprofessional'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 associated in a law firm\* with a licensed paraprofessional subject to paragraph (a) or a lawyer subject to Lawyer RPC rule 3.6(a) shall make a statement prohibited by paragraph (a).

[FG41]

#### **Comment**

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

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

- (1) the licensed paraprofessional's testimony relates to an uncontested issue or matter;
- (2) the licensed paraprofessional's testimony relates to the nature and value of legal services rendered in the case; or
- (3) the licensed paraprofessional has obtained informed written consent\* from the client.

(b) A licensed paraprofessional 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]**

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

A licensed paraprofessional 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 seeks information from an agency that is available to the public.

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

(a) A 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 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 rule 1.6.

#### **Comment**

[Reserved]

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

(a) In representing a client, a licensed paraprofessional shall not communicate directly or indirectly about the subject of the representation with a person\* the licensed paraprofessional knows\* to be represented by a lawyer [FG42] or another licensed paraprofessional in the matter, unless the 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 [FG43] or licensed paraprofessional, a licensed paraprofessional shall not state or imply that the licensed paraprofessional is disinterested. When the licensed paraprofessional knows\* or reasonably should know\* that the unrepresented person\* incorrectly believes\* the licensed paraprofessional is disinterested in the matter, the licensed paraprofessional shall make reasonable\* efforts to correct the misunderstanding. If the licensed paraprofessional knows\* or reasonably should know\* that the interests of the unrepresented person\* are in conflict with the interests of the client, the licensed paraprofessional shall not give legal advice to that person,\* except that the licensed paraprofessional may, but is not required to, advise the person\* to secure legal representation.

(b) In communicating on behalf of a client with a person\* who is not represented by a lawyer or licensed paraprofessional, a licensed paraprofessional shall not seek to obtain privileged or other confidential information the licensed paraprofessional knows\* or reasonably should know\* the person\* may not reveal without violating a duty to another or which the 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 licensed paraprofessional who receives a writing\* relating to a licensed paraprofessional's representation of a client that the writing\* was inadvertently sent or produced, and the licensed paraprofessional knows\* or reasonably should know\* that the writing\* is privileged or subject to the work product doctrine, the licensed 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 Licensed paraprofessionals**

(a) A licensed paraprofessional who individually [FG44] 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 licensed paraprofessionals in the firm\* comply with these rules and the State Bar Act.

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

(c) A licensed paraprofessional shall be responsible for another licensed paraprofessional's violation of these rules and applicable law if:

- (1) the licensed paraprofessional orders or, with knowledge of the relevant facts and of the specific conduct, ratifies the conduct involved; or
- (2) the licensed paraprofessional, individually or together with other licensed paraprofessionals or lawyers, possesses managerial authority in the law firm\* in which the other licensed paraprofessional practices, or has direct supervisory authority over the other 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 Licensed paraprofessional**

- (a) A licensed paraprofessional shall comply with these rules and notwithstanding that the licensed paraprofessional acts at the direction of a lawyer, another a licensed paraprofessional, or other person.\*
- (b) A subordinate licensed paraprofessional does not violate these rules if that 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 Assistants**

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

- (a) a 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 nonlicensee's conduct is compatible with the professional obligations of the licensed paraprofessional;
- (b) a licensed paraprofessional having direct supervisory authority over the nonlicensee, 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 licensed paraprofessional; and
- (c) a licensed paraprofessional shall be responsible for conduct of such a person\* that would be a violation of these rules if engaged in by a licensed paraprofessional if:
  - (1) the licensed paraprofessional orders or, with knowledge of the relevant facts and of the specific conduct, ratifies the conduct involved; or
  - (2) the 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<sup>[FG45]</sup> 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) “Licensee” means a licensee of the State Bar of California;
- (3) “Involuntarily inactive licensee” 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>[FG46]</sup>.31(d);
- (4) “Resigned licensee” means a licensee who has resigned from the State Bar while disciplinary charges are pending; and
- (5) “Ineligible person” means a licensee whose current status with the State Bar of California is disbarred, suspended, resigned, or involuntarily inactive.

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

(d) Prior to or at the time of employing, associating in practice with, or assisting a person\* the licensed paraprofessional knows\* or reasonably should know\* is an ineligible person, the licensed paraprofessional shall serve upon the State Bar written\* notice of the employment, including a full description of such person’s current 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 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 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 licensed paraprofessional’s employment by the client.

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

**Comment**[FG47]

[Reserved]

#### **Rule 5.4 Financial and Similar Arrangements with Lawyers and Nonlicensees**

(a) A licensed paraprofessional or law firm\* shall not share legal fees directly or indirectly with an 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 licensed paraprofessional with the 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 licensed paraprofessional's death, to the licensed paraprofessional's estate or to one or more specified persons\*;

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

(3) a licensed paraprofessional or law firm\* may include 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;

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

(5) a 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 licensed paraprofessional or law firm\* in the matter.

(6) [G48]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 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 licensed paraprofessional shall not form a partnership or other organization with a individual who is not a lawyer or licensed paraprofessional if any of the activities of the partnership or other organization consist of the practice of law.

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

(d) A licensed paraprofessional shall not practice with or in the form of a professional corporation or other organization<sup>[FG49]</sup> authorized to practice law for a profit if:

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

(3) an individual who is not a lawyer or a licensed paraprofessional has the right or authority to direct or control the 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) ~~any~~ licensed paraprofessionals possess ~~any majority~~ ownership interest or exercises ~~s~~ controlling managerial authority in the firm~~;~~

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

(g) A 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 licensed paraprofessional's independent professional judgment, or with the licensed paraprofessional-client relationship, or allows or aids any person\* to practice law in violation of these rules or 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

Licensed paraprofessionals admitted to practice law in California shall not:

(a) practice law in California beyond the permissible scope of their <sup>license</sup><sup>[FG50]</sup>;

(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

(d) knowingly\* assist a person\* in the unauthorized practice of law in California or any other jurisdiction.

**Comment**<sup>[FG51]</sup> 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 Licensed Paraprofessional's Right to Practice**

- (a) Unless authorized by law, a 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 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 licensed paraprofessional's right to practice in connection with a settlement of a client controversy, or otherwise.
- (b) A licensed paraprofessional shall not participate in offering or making an agreement which precludes the reporting of a violation of these rules.

<sup>[FG52]</sup>**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 licensed paraprofessional may serve as a director, officer or member of a legal services organization, apart from the law firm\* in which the licensed paraprofessional practices, notwithstanding that the organization serves persons\* having interests adverse to a client of the licensed paraprofessional. The 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 licensed paraprofessional's obligations to a client under 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 licensed paraprofessional.

**Comment**

[Reserved]

#### **Rule 6.4 [Reserved]**



## **Rule 6.5 Limited Legal Services Programs**

(a) A 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 licensed paraprofessional or the client that the licensed paraprofessional will provide continuing representation in the matter:

(1) is subject to rules 1.7 and 1.9(a) only if the 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 licensed paraprofessional knows\* that another licensed paraprofessional or a lawyer [FG53] associated with the 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 licensed paraprofessional participating in the program will not be imputed to other 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 Licensed paraprofessional's Services**

(a) A licensed paraprofessional shall not make a false or misleading communication about the licensed paraprofessional or the licensed 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, 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 licensed paraprofessional.

### **Comment**[FG54]

[Reserved]

### **Rule 7.2 Advertising**

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

(b) A 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 licensed paraprofessional or the licensed paraprofessional's law firm,\* except that a 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 or a qualified licensed paraprofessional referral service. A qualified licensed paraprofessional referral service is a licensed paraprofessional referral service established, sponsored and operated in accordance with the State Bar of California's Minimum Standards for a Licensed paraprofessional Referral Service in California;
  - (3) pay for a law practice in accordance with rule 1.17;
  - (4) refer clients to another licensed paraprofessional, a lawyer or a nonlawyer professional pursuant to an arrangement not otherwise prohibited under these rules that provides for the other person\* to refer clients or customers to the 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 licensed paraprofessional or the 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 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 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 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 licensed paraprofessional.
- (b) A 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 licensed paraprofessional a desire not to be solicited by the 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 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 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 licensed paraprofessional may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the 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.
- (f) 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 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] Rule 7.5 Firm\* Names and Trade Names**

- (a) A licensed paraprofessional shall not use a firm\* name, trade name or other professional designation that violates rule 7.1.
- (b) A 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 licensed paraprofessional shall not state or imply that the 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 licensed paraprofessional knows\* to be false, or make such a statement with reckless disregard as to its truth or falsity.
- (b) A licensed 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 licensed paraprofessional knows\* to be false.
- (c) An applicant for admission to practice law as a licensed paraprofessional, or a licensed 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 licensed paraprofessional to have created a material misapprehension in the matter, except that this rule does not authorize disclosure of information protected by rule 1.6.
- (d) As used in this rule, "admission to practice law" includes admission or readmission to licensure in the State Bar; reinstatement to active 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**

A licensed paraprofessional shall comply with the terms and conditions attached to any public reproof, or to other discipline administered by the State Bar pursuant[FG55] to.

#### **Comment**

[Reserved]

### **Rule 8.2 Judicial Officials**

A licensed paraprofessional shall not make a statement of fact that the licensed 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.

#### **Comment**

[Reserved]

### **Rule 8.3 [Reserved]**

### **Rule 8.4 Misconduct**

It is professional misconduct for a licensed paraprofessional to:

- (a) violate these rules, 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 licensed paraprofessional's honesty, trustworthiness, or fitness as a 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, 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 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 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 licensed 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 licensed paraprofessional who is the subject of a State Bar investigation or State Bar 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 disciplinary proceeding.

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

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

(2) providing advice and engaging in advocacy as otherwise required or permitted by these rules and applicable law.

#### **Comment**

[Reserved]

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

(a) Disciplinary Authority.

A licensed paraprofessional admitted to practice in California is subject to the disciplinary authority of California, regardless of where the licensed paraprofessional’s conduct occurs. . A licensed 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 licensed 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 licensed paraprofessional shall not be subject to discipline if the licensed paraprofessional’s conduct

conforms to the rules of a jurisdiction in which the licensed paraprofessional reasonably believes\* the predominant effect of the licensed paraprofessional's conduct will occur.

**Comment**

[Reserved]