



The State Bar of California

OPEN SESSION AGENDA ITEM 704 NOVEMBER 2022

DATE: November 17, 2022

TO: Members, Board of Trustees

FROM: Randall Difuntorum, Program Director, Office of Professional Competence
Erika Doherty, Managing Attorney, Office of Professional Competence

SUBJECT: Proposed Amendments to Rule 9.7 of the California Rules of Court and the Rules of Professional Conduct Based on Recommendations by the California Civility Task Force: Request to Circulate for Public Comment

EXECUTIVE SUMMARY

At the March 24, 2022, Board of Trustees meeting, the Board approved a recommended [action plan](#) to evaluate and advance the recommendations of the California Civility Task Force (CCTF), including a new civility training requirement for Minimum Continuing Legal Education (MCLE), amendments to the Rules of Professional Conduct, and to require each lawyer to annually affirm or reaffirm their civility oath.¹ At the September 22, 2022, meeting, the Board engaged in [discussion](#) related to possible changes to one of the four recommendations from the CCTF – changes to the civility oath. Based on those discussions, this item recommends the Board authorize for a 60-day public comment period on proposed amendments to rule 9.7 of the California Rules of Court that would require certain licensees and specially admitted attorneys to submit a declaration affirming their commitment to civility and require all licensees and specially admitted attorneys to take the civility pledge annually when paying annual licensing or registration fees.

Additionally, as directed by the Board, the Committee on Professional Responsibility and Conduct (COPRAC) evaluated CCTF's proposed amendments to the California Rules of Professional Conduct and proposes amendments to two of the rules, rules 1.2 Comment [1] (Scope of Representation and Allocation of Authority) and 8.4 Comment [6] (Misconduct). In

¹ These recommendations are provided in CCTF's initial report, "[Beyond the Oath: Recommendations for Improving Civility](#)."

the alternative, COPRAC recommends a new standalone rule addressing civility, rule 8.4.2, and a related amendment to rule 8.4 Comment [4] to cross-reference the new rule, which have been prepared by staff. Staff recommends that the Board authorize both alternatives for a 60-day public comment period.

BACKGROUND

The CCTF is a joint project of the California Judges Association (CJA) and the California Lawyers Association (CLA). At the March 24, 2022, Board [meeting](#), State Bar staff presented a detailed overview of the CCTF's report and recommendations and, based on further staff recommendations, the Board approved a proposed action plan that provided for:

1. staff to review the proposal to add a new civility training requirement for minimum continuing legal education;²
2. COPRAC to review the proposal to amend the California Rules of Professional Conduct to address lawyer conduct that constitutes repeated incivility and to clarify that civility is not inconsistent with a lawyer's zealous representation of a client; and
3. staff to review the proposal to add a requirement that each lawyer annually affirm or reaffirm their commitment as an officer of the court to conduct themselves with dignity, courtesy, and integrity.

This agenda item concerns items two and three: proposed amendments to the California Rules of Professional Conduct and to rule 9.7 of the California Rules of Court.

DISCUSSION

PROPOSED AMENDMENTS TO RULE 9.7 OF THE CALIFORNIA RULES OF COURT TO REQUIRE AN INITIAL CIVILITY DECLARATION AND ANNUAL AFFIRMATION

As brief background, the attorney oath was last revised in 2014 to include a civility pledge, which states, "As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy and integrity."³ The rule was submitted to the Supreme Court and approved effective May 27, 2014. Only licensees who were admitted to practice after that date have taken the oath with the civility pledge. There are an estimated 237,000 licensees, 150,000 whom are on active status and have not taken the oath with civility language, and an estimated 48,000 licensees who have taken the oath with the civility language.

² The recommendations regarding a civility requirement for MCLE are being presented to the Board in Agenda Item 705.

³ More information regarding the attorney oath is posted on the State Bar's website on a [webpage](#) dedicated to attorney civility and professionalism resources.

At the September 22, 2022, meeting, staff presented for the Board's discussion and input three possible amendments to rule 9.7.⁴ Each option would require attorneys practicing in California to affirm or reaffirm their commitment to conduct themselves with dignity, courtesy, and integrity in the practice of law ("the civility pledge"). Following staff presentation and Board discussion, the Board recommended that staff prepare an item that would recommend an initial declaration requirement containing the civility pledge for all attorneys who have not taken the civility oath, followed by an annual affirmation for all attorneys, regardless of whether they had already taken the civility oath, during the licensing fee or registration process.

More specifically, the amendments would (1) require that licensees who have not taken the oath with the civility pledge to submit a declaration affirming their commitment to the civility pledge by February 1, 2024; (2) extend the civility requirement to special admissions attorneys⁵ as part of their application or renewal application to practice law in California; and (3) require all licensees and specially admitted attorneys to take the civility pledge annually when paying annual licensing or registration fees. Similarly, an inactive licensee would also be required to submit a declaration affirming their commitment to the civility pledge when returning to active status.

The proposed rule would also direct the State Bar to develop rules and procedures related to implementation, including how the attorney would affirm the civility pledge and when an attorney must demonstrate compliance. Staff recommends that a licensee or special admissions attorney could sign and submit the initial declaration electronically using the State Bar's DocuSign feature. An attorney who has not previously taken the civility oath and who fails to submit the initial declaration or an attorney who fails to affirm the annual civility pledge in the manner established by the State Bar would face possible late fees and involuntary inactive enrollment or having their special admissions registration suspended or terminated.

Clean and redline versions of the proposed amendments to rule 9.7 of the California Rules of Court are provided in Attachments A and B, respectively.

PROPOSED AMENDMENTS TO THE CALIFORNIA RULES OF PROFESSIONAL CONDUCT TO ADDRESS CIVILITY

CCTF proposed several amendments to the text and comments of the Rules of Professional Conduct to clarify that civility is consistent with zealous advocacy, including proposed amendments to rules 1.0.1 (Terminology), 1.2 (Scope of Representation and Allocation of

⁴ Option one would have required every licensee who had not already taken the civility oath to retake their attorney oath with the civility language, as well as require all special admissions attorneys to take the civility oath. Option three would have required all licensees and special admissions attorneys to acknowledge their civility obligations through an annual affirmation when paying annual licensing or registration fees. Option two was recommended by the Board and is presented in this item.

⁵ Special admissions attorneys are attorneys authorized to practice law in California pursuant to a Rule of Court, including registered military spouse attorneys (rule 9.41.1), registered foreign legal consultants (rule 9.44), registered legal aid attorneys (rule 9.45), and registered in-house counsel (rule 9.46).

Authority), 1.3 (Diligence), 3.3 (Candor Toward the Tribunal), 3.4 (Fairness to Opposing Party and Counsel), 3.5 (Contact with Judges, Officials, Employees, and Jurors), and 8.4 (Misconduct). In proposing amendments to the rules, CCTF indicated its hope that “the mere existence of a disciplinary rule prohibiting incivility will spur civility,” but acknowledged that its proposed amendments could be controversial, potentially raise First Amendment concerns, and create concerns that a single misstep could lead to discipline. (CCTF Report, pp. 12-13.)

After receiving CCTF’s report and recommendation, the Board directed COPRAC to “review the proposal to amend the California Rules of Professional Conduct to address lawyer conduct that constitutes repeated incivility and to clarify that civility is not inconsistent with a lawyer’s zealous representation of a client.” In accordance with the Board’s action, COPRAC formed a drafting team to analyze and propose revisions to CCTF’s proposed rule amendments; they were evaluated by the full committee during COPRAC’s June 3, July 29, September 9, and October 14, 2022, meetings.

In its transmittal memo,⁶ COPRAC expresses concerns that CCTF’s proposed amendments would pose interpretation issues, be difficult to enforce as disciplinary standards, and chill a lawyer’s protected activities under the First Amendment of the United States Constitution. They also do not believe that many of CCTF’s proposed amendments fall within the scope and purpose of the rules in which they are proposed. As such, COPRAC provides three possible options for the Board. First, as an alternative to CCTF’s proposed amendments, COPRAC recommends amendments to the comment sections of rules 1.2 and 8.4 of the Rules of Professional Conduct. COPRAC believes that these amendments are consistent with the purpose and function of the rules as disciplinary standards. (See rule 1.0(a) and Bus. & Prof. Code, § 6077.) Second, if the Board believes that the text of the rules, not only the comments, should be revised, COPRAC recommends that the Board consider a standalone rule addressing civility that would be similar to rule 8.4.1 of the Rules of Professional Conduct, which prohibits discrimination, harassment, and retaliation in the legal profession. Finally, COPRAC also provides edits to CCTF’s proposed rule amendments, in the event the Board elects to move forward with CCTF’s recommendations; however, COPRAC does not support the adoption of these amendments.

Staff has reviewed CCTF’s proposed amendments to the Rules of Professional Conduct and COPRAC’s transmittal memo and has discussed the proposal with the Office of Chief Trial Counsel (OCTC) to seek input about potential implementation and enforcement of the proposed amendments. OCTC shares COPRAC’s concerns about potential interpretation issues with the proposed amendments and that the rule changes may be difficult to enforce as disciplinary standards given the ambiguity inherent in CCTF’s proposed definition of incivility: “discourteous, abusive, or harassing or other significantly unprofessional conduct.” For these reasons, OCTC supports COPRAC’s proposed changes to rules 1.2 Comment [1] and 8.4 Comment [6]. Alternatively, if there is a desire to incorporate incivility into rule language, as opposed to comments as proposed by COPRAC, OCTC is also in favor of a standalone rule instead of changes to several existing rules.

⁶ COPRAC’s transmittal memo is provided as Attachment C.

Accordingly, staff recommends that two options for proposed amendments be issued for public comment: (1) COPRAC's recommended proposed amendments to rules 1.2 Comment [1] and 8.4 Comment [6], provided in Attachments D (clean) and E (redline); and (2) a staff-drafted proposed standalone rule and an amendment to rule 8.4 Comment [4] that provides a cross-reference to the standalone rule, provided in Attachment F.⁷ The staff-drafted standalone rule attempts to strike a balance between CCTF's belief that there needs to be rule language that addresses civility, as opposed to limiting this language to comments to the rules, and concerns expressed by COPRAC and acknowledged by CCTF related to First Amendment issues, interpretation, and enforcement.

FISCAL/PERSONNEL IMPACT

If adopted by the Supreme Court, the proposed amendments to rule 9.7 and the necessary State Bar implementing rules and procedures would result in an increased workload for State Bar staff. These changes would primarily impact the Office of Information Technology (IT) and the Division of Regulation (Regulation). For example, IT and Regulation would work together to develop the method of submission of the civility pledge declaration and the annual civility pledge confirmation. Similarly, Regulation would process a licensee's noncompliance with the civility pledge requirements by enrolling licensees as inactive and later transferring licensees back to active status once compliance occurs and noncompliance fees are paid. It is anticipated that the staff and resource needs associated with implementing these civility requirements can be addressed through the existing budget.

There are no anticipated costs associated with the proposed amendments to the Rules of Professional Conduct.

AMENDMENTS TO RULES OF COURT

Rule 9.7

AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

Rules 1.2 and 8.4

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS

Goal 3. Protect the Public by Regulating the Legal Profession

⁷ A redline table comparison of CCTF's proposed amendments to the Rules of Professional Conduct, COPRAC's proposed amendments to the Rules of Professional Conduct, and COPRAC's proposed edits to CCTF's proposed amendments to the Rules of Professional Conduct is provided at Attachment F.

RECOMMENDATIONS

- I. **Should the Board of Trustees concur in the proposed action on the proposed amendments to Rule of Court 9.7, staff recommends that the Board of Trustees adopt the following resolutions:**

RESOLVED, that the Board of Trustees authorizes staff to make available for public comment, for a period of 60 days, proposed amendments to rule 9.7 of the California Rules of Court as set forth in Attachment A; and it is

FURTHER RESOLVED, that this authorization for release of public comment is not, and shall not be construed as, a statement or recommendation of approval of the proposed amended Rule of Court.

- II. **Should the Board of Trustees concur in the proposed action on the Rules of Professional Conduct, staff recommends that the Board of Trustees adopt the following resolutions:**

RESOLVED, that the Board of Trustees authorizes staff to make available for public comment, for a period of 60 days, proposed amended rules 1.2 and 8.4 of the California Rules of Professional Conduct as set forth in Attachment D and proposed new rule 8.4.2 and amended rule 8.4 Comment [4], as alternative proposals, as set forth in Attachment F; and it is

FURTHER RESOLVED, that this authorization for release of public comment is not, and shall not be construed as, a statement or recommendation of approval of the proposed amended Rules of Professional Conduct.

ATTACHMENTS LIST

- A. Proposed Amendments to Rule 9.7 of the California Rules of Court – Clean Version
- B. Proposed Amendments to Rule 9.7 of the California Rules of Court – Redline Version
- C. COPRAC Memorandum
- D. COPRAC Proposed Amendments to Rules 1.2 and 8.4 of the Rules of Professional Conduct – Clean Version
- E. COPRAC Proposed Amendments to Rules 1.2 and 8.4 of the Rules of Professional Conduct – Redline Version
- F. Proposed New Rule 8.4.2 of the Rules of Professional Conduct
- G. Redline Table Comparison of the Rules of Professional Conduct

PROPOSED AMENDED RULE 9.7 OF THE CALIFORNIA RULES OF COURT – CLEAN VERSION

Rule 9.7. Attorney Oath and Reaffirmation of Oath

(a) Oath required when admitted to practice law

In addition to the language required by Business and Professions Code section 6067, the oath to be taken by every person on admission to practice law is to conclude with the following: "As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy and integrity."

(b) Declaration requirements for admitted and special admissions attorneys

- (1) Each attorney whose license is on active status with the State Bar ("active licensed attorney") and each attorney permitted to practice law in the State of California under rule 9.41.1, 9.44, 9.45, or 9.46 of the California Rules of Court ("special admissions attorney") who has not taken the oath required by subparagraph (a) of this rule must, pursuant to the procedure identified by the State Bar, submit a declaration containing the language set forth in subparagraph (a).
- (2) An attorney whose license is on inactive status with the State Bar or who is not eligible to practice law, except for those attorneys who have taken the oath required by subparagraph (a) of this rule, must, pursuant to the procedure identified by the State Bar, submit a declaration containing the language set forth in subparagraph (a) prior to being placed on active status.

(c) Reaffirmation of civility pledge

Each active licensed attorney and special admissions attorney must, pursuant to the procedure identified by the State Bar, reaffirm the civility pledge described in subparagraph (a) of this rule on an annual basis pursuant to the procedure identified by the State Bar.

(d) Implementation schedule and penalty for failure to comply

- (1) The State Bar must develop a schedule for implementation that requires all active licensed attorneys who must submit a declaration under (b) of this rule to submit such declaration by February 1, 2024. The State Bar must develop a schedule for implementation that requires all special admissions attorneys who must submit a declaration under (b) of this rule to submit such declaration by the renewal of their application to practice law in the State of California.
- (2) An active licensed attorney who fails to submit the required declaration or reaffirm the civility pledge as required by this rule must be enrolled as an inactive licensee of the State Bar under rules adopted by the Board of Trustees of the State Bar. A special admissions attorney who fails to submit the required declaration or reaffirm the civility pledge as required by this rule must have their registration suspended or terminated under rules adopted by the Board of Trustees of the State Bar.

(e) Authorization for the Board of Trustees of the State Bar to adopt rules and procedures

The Board of Trustees of the State Bar is authorized to adopt such rules and procedures as it deems necessary and appropriate in order to comply with this rule.

(f) Fees and penalties

The State Bar has the authority to set and collect appropriate fees and penalties.

PROPOSED AMENDED RULE 9.7 OF THE CALIFORNIA RULES OF COURT – REDLINE VERSION**Rule 9.7. Attorney Oath and Reaffirmation of Oath****(a) Oath required when admitted to practice law**

In addition to the language required by Business and Professions Code section 6067, the oath to be taken by every person on admission to practice law is to conclude with the following: "As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy and integrity."

(b) Declaration requirements for admitted and special admissions attorneys

- (1) Each attorney whose license is on active status with the State Bar ("active licensed attorney") and each attorney permitted to practice law in the State of California under rule 9.41.1, 9.44, 9.45, or 9.46 of the California Rules of Court ("special admissions attorney") who has not taken the oath required by subparagraph (a) of this rule must, pursuant to the procedure identified by the State Bar, submit a declaration containing the language set forth in subparagraph (a).
- (2) An attorney whose license is on inactive status with the State Bar or who is not eligible to practice law, except for those attorneys who have taken the oath required by subparagraph (a) of this rule, must, pursuant to the procedure identified by the State Bar, submit a declaration containing the language set forth in subparagraph (a) prior to being placed on active status.

(c) Reaffirmation of Civility Pledge

Each active licensed attorney and special admissions attorney must, pursuant to the procedure identified by the State Bar, reaffirm the civility pledge described in subparagraph (a) of this rule on an annual basis pursuant to the procedure identified by the State Bar.

(d) Implementation schedule and penalty for failure to comply

- (1) The State Bar must develop a schedule for implementation that requires all active licensed attorneys who must submit a declaration under (b) of this rule to submit such declaration by February 1, 2024. The State Bar must develop a schedule for implementation that requires all special admissions attorneys who must submit a declaration under (b) of this rule to submit such declaration by the renewal of their application to practice law in the State of California.
- (2) An active licensed attorney who fails to submit the required declaration or reaffirm the civility pledge as required by this rule must be enrolled as an inactive licensee of the State Bar under rules adopted by the Board of Trustees of the State Bar. A special admissions attorney who fails to submit the required declaration or reaffirm the civility pledge as required by this rule must have their registration suspended or terminated under rules adopted by the Board of Trustees of the State Bar.

(e) Authorization for the Board of Trustees of the State Bar to adopt rules and procedures

The Board of Trustees of the State Bar is authorized to adopt such rules and procedures as it deems necessary and appropriate in order to comply with this rule.

(f) Fees and penalties

The State Bar has the authority to set and collect appropriate fees and penalties.



The State Bar of California

COMMITTEE ON PROFESSIONAL RESPONSIBILITY AND CONDUCT

ATTACHMENT C

DATE: October 25, 2022

TO: Members, Board of Trustees

FROM: Committee on Professional Responsibility and Conduct

SUBJECT: Comments and Suggested Edits to Civility Task Force's Proposed Revisions to Rules of Professional Conduct, Rules 1.0.1, 1.2, 1.3, 3.3, 3.4, 3.5, and 8.4.

BACKGROUND

The California Civility Task Force (CCTF), a joint project of the California Judges Association and the California Lawyers Association, proposed changes to the California Rules of Professional Conduct¹ along with other proposals to increase civility in the practice of law. At the March 24, 2022, Board of Trustees meeting, the Board agreed upon an action plan that included COPRAC's review of CCTF's recommendations to amend the rules to "address lawyer conduct that constitutes repeated incivility and to clarify that civility is not inconsistent with zealous representation of a client." At the May 13, 2022, Committee on Professional Responsibility and Conduct (COPRAC) meeting, the committee began its review of CCTF's recommendations. A working group was formed to analyze and propose revisions to CCTF's proposed amendments for discussion at COPRAC's June 3, July 29, September 9, and October 14, 2022, meetings. Following this evaluation, COPRAC recommends amendments to the comment section of rules 1.2 and 8.4. COPRAC believes these amendments would be more consistent with the purpose and function of the rules as disciplinary standards.

In the alternative and as described in more detail below, COPRAC recommends that the Board consider a standalone Rule of Professional Conduct to address civility, rather than incorporating various civility standards and guidance as part of disparate rules or comments.

Finally, as requested by the Board, COPRAC provides proposed revisions to CCTF's proposed amendments to rules 1.0.1, 1.2, 1.3, 3.3, 3.4, 3.5 and 8.4. However, COPRAC does not recommend these revisions for the reasons set forth in the "COPRAC Comments" sections following each rule.

¹ All further references to rules are to the California Rules of Professional Conduct unless otherwise indicated.

DISCUSSION

COPRAC is concerned that CCTF's proposed amendments would pose interpretation issues, be difficult to enforce as disciplinary standards, and chill a lawyer's protected activities. In addition, COPRAC does not believe that many of CCTF's proposed amendments fall within the scope and intended purpose of the rules. As such, COPRAC does not recommend that all of CCTF's proposed amendments be further considered or presented for public comment. Instead, COPRAC recommends that CCTF's proposed amendments to rules 1.0.1, 1.3, 3.3, 3.4, and 3.5 be incorporated conceptually into new rule 8.4, comment [6]. COPRAC also recommends that the Board adopt CCTF's proposed amendment to rule 1.2, comment [1], with modifications. COPRAC's proposed amendments to rules 1.2, comment [1], and 8.4, comment [6], as well as suggested edits to CCTF's proposed amendments to the other rules, which COPRAC does not recommend, are provided below.

If the Board believes that the text of the rules should be revised in addition to the comments, COPRAC suggests that the Board consider adopting a single standalone rule addressing civility, similar to rule 8.4.1 prohibiting discrimination, harassment, and retaliation in the legal profession. Many COPRAC members believe that a standalone rule would be more powerful and instructive in promoting civility in the legal profession and that incorporating multiple civility provisions into disparate rules tends to dilute their strength. As one member explained, trying to force civility rules into multiple rules addressing separate conduct is like trying to put a square peg in a round hole. In addition, the same conduct could lead to multiple rule violations. Given the limited time available to evaluate CCTF's proposed amendments and the limitation of our mandate to provide feedback on the proposed amendments, COPRAC has not prepared a proposed standalone rule for the Board's consideration.

If the Board intends to move forward with CCTF's recommendations, the following displays COPRAC's suggested edits to CCTF's proposed civility amendments. CCTF's recommended amendments to the current rules are displayed in redline below, with COPRAC's proposed additions in green highlighting and its deletions in strikethrough. At the end of each rule, COPRAC included a section labeled "COPRAC Comments" to explain the reasoning supporting COPRAC's proposed changes.

COPRAC Recommended Proposed Amendments

CHAPTER 1. LAWYER-CLIENT RELATIONSHIP

Rule 1.2 Scope of Representation and Allocation of Authority

(a) Subject to rule 1.2.1, a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by rule 1.4, shall reasonably* consult with the client as to the means by which they are to be pursued. Subject to Business and Professions Code section 6068, subdivision (e)(1) and rule 1.6, a lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. Except as otherwise provided by law in a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer may limit the scope of the representation if the limitation is reasonable* under the circumstances, is not otherwise prohibited by law, and the client gives informed consent.*

Comment

Allocation of Authority between Client and Lawyer

[1] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. (See, e.g., Cal. Const., art. I, § 16; Pen. Code, § 1018.) A lawyer retained to represent a client is authorized to act on behalf of the client, such as in procedural matters and in making certain tactical decisions. **Notwithstanding a client's direction, a lawyer retains the authority to agree** ~~does not violate this rule by acceding to~~ **reasonable** requests of opposing counsel that do not prejudice the rights of the client, **being** ~~being~~ punctual in fulfilling all professional commitments, avoiding offensive tactics, and **treating with courtesy and consideration** ~~treating with courtesy and~~ all persons involved in the legal process **with dignity, courtesy, and integrity**. **However, a** lawyer is not authorized merely by virtue of the lawyer's retention to impair the client's substantive rights or the client's claim itself. (*Blanton v. Womancare, Inc.* (1985) 38 Cal.3d 396, 404 [212 Cal.Rptr. 151, 156].)

[2] At the outset of, or during a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to rule 1.4, a lawyer may rely on such an advance authorization. The client may revoke such authority at any time.

Independence from Client's Views or Activities

[3] A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

Agreements Limiting Scope of Representation

[4] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. (See, e.g., rules 1.1, 1.8.1, 5.6; see also Cal. Rules of Court, rules 3.35-3.37 [limited scope rules applicable in civil matters generally], 5.425 [limited scope rule applicable in family law matters].)

COPRAC Comments:

COPRAC recommends moving CCTF's proposed addition to rule 1.2 to a Comment because the rules set forth minimum standards for discipline. The proposed additional language does not set forth a minimum disciplinary standard but provides helpful guidance for lawyers. COPRAC suggests CCTF's proposed addition be incorporated as part of comment [1] to provide an example of the lawyer's authority as to procedural matters and certain tactical decisions. For similar reasons, COPRAC revised CCTF's proposed language "does not violate this rule by" to state that a lawyer "retains the authority to agree to reasonable requests of opposing counsel"

COPRAC also recommends adding "reasonable" before "requests of opposing counsel," which tracks language of other states that have adopted similar language in their equivalent version of California's rule 1.2. *See, e.g., Massachusetts* ("A lawyer does not violate this Rule, however, by acceding to reasonable requests of opposing counsel which do not prejudice the rights of his or her client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process."); *Michigan* ("A lawyer does not violate this rule by acceding to reasonable requests of opposing counsel that do not prejudice the rights of the client, by being punctual in fulfilling all professional commitments, or by avoiding offensive tactics.").

COPRAC further recommends incorporating parallel language from California Rules of Court, rule 9.7 – "dignity, courtesy, and integrity."

CHAPTER 8. MAINTAINING THE INTEGRITY OF THE PROFESSION

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

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

Comment

[1] A violation of this rule can occur when a lawyer is acting in propria persona or when a lawyer is not practicing law or acting in a professional capacity.

[2] Paragraph (a) does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

[3] A lawyer may be disciplined for criminal acts as set forth in Business and Professions Code sections 6101 et seq., or if the criminal act constitutes “other misconduct warranting discipline” as defined by California Supreme Court case law. (See *In re Kelley* (1990) 52 Cal.3d 487 [276 Cal.Rptr. 375].)

[4] A lawyer may be disciplined under Business and Professions Code section 6106 for acts involving moral turpitude, dishonesty, or corruption, whether intentional, reckless, or grossly negligent.

[5] Paragraph (c) does not apply where a lawyer advises clients or others about, or supervises, lawful covert activity in the investigation of violations of civil or criminal law or constitutional rights, provided the lawyer’s conduct is otherwise in compliance with these rules and the State Bar Act.

[6] A lawyer violates paragraph (d) by repeated incivility while engaged in significantly unprofessional conduct that is abusive or harassing in the practice of law or related professional activities. A lawyer does not violate paragraph (d) by standing firm in the position of the client, protecting the record for subsequent review, or preserving professional integrity.

For further guidance, a lawyer should consult the current California Attorney Guidelines of Civility and Professionalism and other applicable civility authorities.

[7] This rule does not prohibit those activities of a particular lawyer that are protected by the First Amendment to the United States Constitution or by Article I, section 2 of the California Constitution.

COPRAC Comments:

COPRAC has incorporated some of the provisions from CCTF’s proposed amendments to rules 3.3 through 3.5 (as modified by COPRAC) into a comment to rule 8.4(d) to provide guidance on uncivil conduct that would result in a violation of rule 8.4(d). As noted in connection with our comments to CCTF’s proposed amendments to rule 3.3, COPRAC also suggests the Board consider prohibiting “severe” incivility in addition to “repeated” incivility.” The phrase “significantly unprofessional conduct that is abusive or harassing” is intended to encompass severe or repeated incivility. Additionally, the last sentence of comment [6] uses substantially similar language to rule 3.3, comment [10] to provide examples of conduct that would not violate rule 8.4(d).

104 COPRAC Revisions to Other CCF Proposed Amendments

105 As described above, the following are COPRAC's suggested edits to CCF's proposed amendments to rules
106 1.0.1, 1.3, 3.3, 3.4, and 3.5. COPRAC does not recommend that these be adopted for the reasons
107 previously stated.

108 Rule 1.0.1 Terminology

109 (a) "Belief" or "believes" means that the person* involved actually supposes the fact in question to be
110 true. A person's* belief may be inferred from circumstances.

111 (b) [Reserved]

112 (c) "Firm" or "law firm" means a law partnership; a professional law corporation; a lawyer acting as a
113 sole proprietorship; an association authorized to practice law; or lawyers employed in a legal services
114 organization or in the legal department, division or office of a corporation, of a government organization,
115 or of another organization.

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

118 (*) "Incivility" means **significantly unprofessional conduct that is** discourteous, abusive, **or** harassing,
119 ~~or other significantly unprofessional conduct.~~

120 (e) "Informed consent" means a person's* agreement to a proposed course of conduct after the
121 lawyer has communicated and explained (i) the relevant circumstances and (ii) the material risks, including
122 any actual and reasonably* foreseeable adverse consequences of the proposed course of conduct.

123 (e-1) "Informed written consent" means that the disclosures and the consent required by paragraph (e)
124 must be in writing.*

125 (f) "Knowingly," "known," or "knows" means actual knowledge of the fact in question. A person's*
126 knowledge may be inferred from circumstances.

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

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

130 (h) "Reasonable" or "reasonably" when used in relation to conduct by a lawyer means the conduct of
131 a reasonably prudent and competent lawyer.

132 (i) "Reasonable belief" or "reasonably believes" when used in reference to a lawyer means that the
133 lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

134 (j) "Reasonably should know" when used in reference to a lawyer means that a lawyer of reasonable
135 prudence and competence would ascertain the matter in question.

136 (k) "Screened" means the isolation of a lawyer from any participation in a matter, including the timely
137 imposition of procedures within a law firm* that are adequate under the circumstances (i) to protect
138 information that the isolated lawyer is obligated to protect under these rules or other law; and (ii) to

139 protect against other law firm* lawyers and nonlawyer personnel communicating with the lawyer with
140 respect to the matter.

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

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

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

150 **Comment**

151 *Firm* or Law Firm**

152 [1] Practitioners who share office space and occasionally consult or assist each other ordinarily would
153 not be regarded as constituting a law firm.* However, if they present themselves to the public in a way
154 that suggests that they are a law firm* or conduct themselves as a law firm,* they may be regarded as a
155 law firm* for purposes of these rules. The terms of any formal agreement between associated lawyers are
156 relevant in determining whether they are a firm,* as is the fact that they have mutual access to
157 information concerning the clients they serve.

158 [2] The term “of counsel” implies that the lawyer so designated has a relationship with the law firm,*
159 other than as a partner* or associate, or officer or shareholder, that is close, personal, continuous, and
160 regular. Whether a lawyer who is denominated as “of counsel” or by a similar term should be deemed a
161 member of a law firm* for purposes of these rules will also depend on the specific facts. (Compare *People*
162 *ex rel. Department of Corporations v. Speedee Oil Change Systems, Inc.* (1999) 20 Cal.4th 1135 [86
163 Cal.Rptr.2d 816] with *Chambers v. Kay* (2002) 29 Cal.4th 142 [126 Cal.Rptr.2d 536].)

164 *Fraud**

165 [3] When the terms “fraud”* or “fraudulent”* are used in these rules, it is not necessary that anyone
166 has suffered damages or relied on the misrepresentation or failure to inform because requiring the proof
167 of those elements of fraud* would impede the purpose of certain rules to prevent fraud* or avoid a lawyer
168 assisting in the perpetration of a fraud,* or otherwise frustrate the imposition of discipline on lawyers who
169 engage in fraudulent* conduct. The term “fraud”* or “fraudulent”* when used in these rules does not
170 include merely negligent misrepresentation or negligent failure to apprise another of relevant information.

171 *Incivility*

172 [4] This definition does not apply to conduct protected by the First Amendment to the United States
173 Constitution or by Article I, section 2 of the California Constitution. This definition includes conduct that
174 violates an attorney’s duties under Business and Professions Code section 6068, subdivisions (b) and (f).
175 (See California Code of Judicial Ethics, Canon 3B, advisory commentary: Canon 3B(2) regarding/for a
176 judge’s responsibility to require lawyers under the judge’s direction and control to be patient, dignified,
177 and courteous to litigants, jurors, witnesses, lawyers, and others.)

178 *Informed Consent* and Informed Written Consent**

179 [5] The communication necessary to obtain informed consent* or informed written consent* will vary
180 according to the rule involved and the circumstances giving rise to the need to obtain consent.

181 *Screened**

182 [6] The purpose of screening* is to assure the affected client, former client, or prospective client that
183 confidential information known* by the personally prohibited lawyer is neither disclosed to other law
184 firm* lawyers or nonlawyer personnel nor used to the detriment of the person* to whom the duty of
185 confidentiality is owed. The personally prohibited lawyer shall acknowledge the obligation not to
186 communicate with any of the other lawyers and nonlawyer personnel in the law firm* with respect to the
187 matter. Similarly, other lawyers and nonlawyer personnel in the law firm* who are working on the matter
188 promptly shall be informed that the screening* is in place and that they may not communicate with the
189 personally prohibited lawyer with respect to the matter. Additional screening* measures that are
190 appropriate for the particular matter will depend on the circumstances. To implement, reinforce and
191 remind all affected law firm* personnel of the presence of the screening,* it may be appropriate for the
192 law firm* to undertake such procedures as a written* undertaking by the personally prohibited lawyer to
193 avoid any communication with other law firm* personnel and any contact with any law firm* files or other
194 materials relating to the matter, written* notice and instructions to all other law firm* personnel
195 forbidding any communication with the personally prohibited lawyer relating to the matter, denial of
196 access by that lawyer to law firm* files or other materials relating to the matter, and periodic reminders of
197 the screen* to the personally prohibited lawyer and all other law firm* personnel.

198 [7] In order to be effective, screening* measures must be implemented as soon as practical after a
199 lawyer or law firm* knows* or reasonably should know* that there is a need for screening.*

200 **COPRAC Comments:**

201 COPRAC proposes to strike “discourteous” and “other significantly unprofessional conduct” from the
202 definition of incivility because this word and phrase are too vague, subjective, and overbroad for a
203 disciplinary standard. We are concerned about potential First Amendment implications. We believe that
204 the proposed clarification that incivility means “significantly unprofessional conduct that is abusive or
205 harassing” provides clearer guidance to lawyers.

206 COPRAC proposes to add comment [4] to help ensure the incivility rule amendments are not applied to
207 protected First Amendment activities. The first sentence of this comment tracks comment [4] to rule
208 8.4.1.

209 **CHAPTER 1.**
210 **LAWYER-CLIENT RELATIONSHIP**

211 **Rule 1.3 Diligence**

212 (a) A lawyer shall not intentionally, repeatedly, recklessly or with gross negligence fail to act with
213 reasonable diligence in representing a client.

214 (b) For purposes of this rule, “reasonable diligence” shall mean that a lawyer acts with commitment
215 and dedication to the interests of the client and does not neglect or disregard, or unduly delay a legal
216 matter entrusted to the lawyer.

217 **Comment**

[1] This rule addresses only a lawyer's responsibility for his or her own professional diligence. See rules 5.1 and 5.3 with respect to a lawyer's disciplinary responsibility for supervising subordinate lawyers and nonlawyers.

[2] See rule 1.1 with respect to a lawyer's duty to perform legal services with competence.

~~[3] A lawyer's duty to act with reasonable diligence does not eliminate a lawyer's other professional obligations and lawyers should strive to treat all persons involved in the legal process with dignity, courtesy, and integrity respect.~~

COPRAC Comments:

As an initial matter, COPRAC believes that this comment does not necessarily fit within the scope and intended purpose of rule 1.3, which is focused on diligence in representing a client. As noted in the first two introductory paragraphs to this section, the Board should consider moving this provision to a comment to rule 8.4 or incorporating it as part of a standalone rule.

In the event the Board elects to consider CCTF's proposed amendments to rule 1.3, COPRAC suggests the edits shown above. COPRAC recommends that "strive" be removed from the proposed Comment language because this word is too vague and subjective. Additionally, COPRAC believes the proposed language — "A lawyer's duty to act with reasonable diligence does not eliminate a lawyer's other professional obligations" — is too vague for purposes of a disciplinary standard, particularly where "other professional obligations" is not defined. While COPRAC recommends this language be stricken, if it remains, COPRAC recommends that "eliminate" be changed to "diminish."

COPRAC also proposes incorporating parallel language from California Rules of Court, rule 9.7 — "dignity, courtesy, and integrity."

CHAPTER 3. ADVOCATE

Rule 3.3 Candor Toward the Tribunal*

(a) A lawyer shall not:

(1) knowingly* make a false statement of fact or law to a tribunal* or fail to correct a false statement of material fact or law previously made to the tribunal* by the lawyer;

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

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

(b) A lawyer who represents a client in a proceeding before a tribunal* and who knows* that a person* intends to engage, is engaging or has engaged in criminal or fraudulent* conduct related to the

259 proceeding shall take reasonable* remedial measures to the extent permitted by Business and
260 Professions Code section 6068, subdivision (e) and rule 1.6.

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

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

266 (e) In appearing as a lawyer before a tribunal,* a lawyer shall not:

267 ~~(1) engage in a pattern of incivility;~~

268 ~~(2) intentionally or habitually violate any established rule of procedure or of evidence; or~~

269 ~~(3) engage in conduct solely~~ intended to disrupt the tribunal.*

270 **Comment**

271 [1] This rule governs the conduct of a lawyer in proceedings of a tribunal,* including ancillary
272 proceedings such as a deposition conducted pursuant to a tribunal's* authority. See rule 1.0.1(m) for
273 the definition of "tribunal."

274 [2] The prohibition in paragraph (a)(1) against making false statements of law or failing to correct a
275 material misstatement of law includes citing as authority a decision that has been overruled or a statute
276 that has been repealed or declared unconstitutional, or failing to correct such a citation previously made
277 to the tribunal* by the lawyer.

278 *Legal Argument*

279 [3] Legal authority in the controlling jurisdiction may include legal authority outside the jurisdiction
280 in which the tribunal* sits, such as a federal statute or case that is determinative of an issue in a state
281 court proceeding or a Supreme Court decision that is binding on a lower court.

282 [4] The duties stated in paragraphs (a) and (b) apply to all lawyers, including defense counsel in
283 criminal cases. If a lawyer knows* that a client intends to testify falsely or wants the lawyer to introduce
284 false evidence, the lawyer should seek to persuade the client that the evidence should not be offered
285 and, if unsuccessful, must refuse to offer the false evidence. If a criminal defendant insists on testifying,
286 and the lawyer knows* that the testimony will be false, the lawyer may offer the testimony in a
287 narrative form if the lawyer made reasonable* efforts to dissuade the client from the unlawful course of
288 conduct and the lawyer has sought permission from the court to withdraw as required by rule 1.16.
289 (See, e.g., *People v. Johnson* (1998) 62 Cal.App.4th 608 [72 Cal.Rptr.2d 805]; *People v. Jennings* (1999) 70
290 Cal.App.4th 899 [83 Cal.Rptr.2d 33].) The obligations of a lawyer under these rules and the State Bar Act
291 are subordinate to applicable constitutional provisions.

292 *Remedial Measures*

293 [5] Reasonable* remedial measures under paragraphs (a)(3) and (b) refer to measures that are
294 available under these rules and the State Bar Act, and which a reasonable* lawyer would consider
295 appropriate under the circumstances to comply with the lawyer's duty of candor to the tribunal.* (See,
296 e.g., rules 1.2.1, 1.4(a)(4), 1.16(a), 8.4; Bus. & Prof. Code, §§ 6068, subd. (d), 6128.) Remedial measures
297 also include explaining to the client the lawyer's obligations under this rule and, where applicable, the
298 reasons for the lawyer's decision to seek permission from the tribunal* to withdraw, and remonstrating

further with the client to take corrective action that would eliminate the need for the lawyer to withdraw. If the client is an organization, the lawyer should also consider the provisions of rule 1.13. Remedial measures do not include disclosure of client confidential information, which the lawyer is required to protect under Business and Professions Code section 6068, subdivision (e) and rule 1.6.

Duration of Obligation

[6] A proceeding has concluded within the meaning of this rule when a final judgment in the proceeding has been affirmed on appeal or the time for review has passed. A prosecutor may have obligations that go beyond the scope of this rule. (See, e.g., rule 3.8(f) and (g).)

Ex Parte Communications

[7] Paragraph (d) does not apply to ex parte communications that are not otherwise prohibited by law or the tribunal.*

Withdrawal

[8] A lawyer's compliance with the duty of candor imposed by this rule does not require that the lawyer withdraw from the representation. The lawyer may, however, be required by rule 1.16 to seek permission of the tribunal* to withdraw if the lawyer's compliance with this rule results in a deterioration of the lawyer-client relationship such that the lawyer can no longer competently and diligently represent the client, or where continued employment will result in a violation of these rules. A lawyer must comply with Business and Professions Code section 6068, subdivision (e) and rule 1.6 with respect to a request to withdraw that is premised on a client's misconduct.

[9] In addition to this rule, lawyers remain bound by Business and Professions Code sections 6068, subdivision (d) and 6106.

[10] A lawyer does not violate paragraph (e) by standing firm in the position of the client, protecting the record for subsequent review, or preserving professional integrity. A lawyer's violation of paragraph (e) may also constitute a violation of rule 8.4(d).

COPRAC Comments:

As explained further in the introductory paragraphs to this section, COPRAC recommends that certain aspects of CCTF's proposed amendments to rules 3.3 through 3.5 be incorporated into rule 8.4. As an alternative, COPRAC suggests that certain aspects be incorporated into a standalone rule addressing civility.

In the event the Board decides to consider CCTF's proposed amendments to Rule 3.3, COPRAC suggests the above edits. COPRAC recommends that the majority of CCTF's proposed new paragraph (e) be deleted. COPRAC suggests that CCTF's proposed new paragraph (e) be limited to prohibiting "conduct solely intended to disrupt the tribunal," which is more palatable as a disciplinary rule. Adding "solely" before "intended to disrupt the tribunal" clarifies that conduct consistent with an attorney's duty to zealously advocate on behalf of a client will not violate the rule.

If the Board chooses to retain more of the CCTF proposed amendment as a comment or in the text of the rule, COPRAC proposes other clarifying revisions that it believes are more consistent with the purpose and function of the rules as disciplinary standards and will help avoid interfering with a lawyer's zealous advocacy on behalf of a client. COPRAC recommends removing the phrase "pattern of incivility" because this phrase is problematic when construed as a disciplinary rule as "pattern" is not defined. COPRAC suggests replacing "pattern of incivility" with "repeatedly" engaging in incivility. COPRAC also

considered the term “habitually” used in CCTF’s proposed amendments. However, concerns were raised about “habitually” being misconstrued given the precise meaning of this term in the criminal context. We believe the term “repeatedly” is clearer. “Repeatedly” is also used in rules 1.1 and 1.3 regarding the lawyer’s duties of competence and diligence. COPRAC suggests that the Board also consider prohibiting incivility that is “severe” even if it is not “repeated” as an isolated incident of incivility may be sufficiently severe to warrant discipline. By analogy, California employment law standards prohibit “severe or pervasive” harassment and COPRAC believes these established standards are also appropriate in evaluating uncivil conduct that is sufficiently severe or pervasive to warrant discipline.

COPRAC does not believe that CCTF’s proposed prohibition on “intentionally or habitually violat[ing] any established rule or procedure or evidence” is necessary as the parties and assigned judge to a proceeding already have other available tools and remedies to address this type of conduct. If the Board further considers this prohibition, COPRAC suggests removing “habitually” from the prohibition on violating established rules of procedure or evidence for the reasons explained above. In addition, if the Board further considers this prohibition, COPRAC believes the prohibition should be limited to intentionally violating established rules of procedure or evidence, so discipline is not imposed for a lawyer’s inadvertent or unknowing violation of a rule of procedure or evidence. The use of the term “intentionally” may need to be defined in the context of this rule and to distinguish this term from the definition of “willful” in rule 1.0, which does not require a lawyer’s bad faith or actual knowledge of the rule provision which is violated. However, COPRAC notes that the term “intentionally” is already used in rules 1.1 and 1.3. As an alternative, rule 8.4 uses the term “knowingly” in subsections (a) and (f) which should also be considered in place of “intentionally.”

Rule 3.4 Fairness to Opposing Party and Counsel

A lawyer 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 lawyer shall not counsel or assist another person* to do any such act;

(b) suppress any evidence that the lawyer or the lawyer’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 lawyer 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;

(f) A lawyer shall not ask any question **engage in conduct solely** intended to degrade a witness or other person ~~except where the lawyer reasonably* believes that the question will lead to relevant and admissible evidence;~~

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

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

Comment

[1] Paragraph (a) applies to evidentiary material generally, including computerized information. It is a criminal offense to destroy material for purpose of impairing its availability in a pending proceeding or one whose commencement can be foreseen. (See, e.g., Pen. Code, § 135; 18 U.S.C. §§ 1501-1520.) Falsifying evidence is also generally a criminal offense. (See, e.g., Pen. Code, § 132; 18 U.S.C. § 1519.) Applicable law may permit a lawyer to take temporary possession of physical evidence of client crimes for the purpose of conducting a limited examination that will not alter or destroy material characteristics of the evidence. Applicable law may require a lawyer to turn evidence over to the police or other prosecuting authorities, depending on the circumstances. (See *People v. Lee* (1970) 3 Cal.App.3d 514, 526 [83 Cal.Rptr. 715]; *People v. Meredith* (1981) 29 Cal.3d 682 [175 Cal.Rptr. 612].)

[2] A violation of a civil or criminal discovery rule or statute does not by itself establish a violation of this rule. See rule 3.8 for special disclosure responsibilities of a prosecutor.

[3] Paragraph (f) does not apply to impeaching a witness or developing theories intended to impeach a witness, or where the question seeks relevant information that is reasonably calculated to lead to relevant and admissible evidence. The language in paragraph (f) is purposefully narrow to avoid interference with an attorney's duties of zealous advocacy. A lawyer's violation of paragraph (f) may also constitute a violation of rule 8.4(d).

COPRAC Comments:

As stated in COPRAC's comments to rule 3.3, COPRAC recommends that certain aspects of CCTF's proposed amendments to rules 3.3 through 3.5 be incorporated into rule 8.4. As an alternative, COPRAC suggests that certain aspects be incorporated into a standalone rule addressing civility.

In the event the Board decides to consider CCTF's proposed amendments to rule 3.4, COPRAC suggests the above edits. Consistent with CORPAC's recommended edits to rule 3.3, we recommend "solely" be added to CCTF's proposed new subsection (f) to help ensure that the rule is not interpreted to apply to conduct consistent with a lawyer's duty of zealous advocacy. For similar reasons, COPRAC recommends adding comment [3]. COPRAC's proposed new comment includes language about the scope of relevant discovery derived from California Code of Civil Procedure section 2017.010 in addition to impeachment. The remaining suggested language is intended to avoid chilling an advocate's legitimate strategies.

As COPRAC noted in connection with its proposed revisions to CCTF's proposed amendments to rule 3.3, COPRAC also believes the Board should consider "knowingly" in place of "intended." Similar to our comments above, COPRAC also believes that this aspect of the rule will be difficult to enforce as a disciplinary standard, and the assigned judge already has established tools and remedies for curbing an attorney's uncivil conduct in questioning a witness.

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

(a) Except as permitted by statute, an applicable code of judicial ethics or code of judicial conduct, or standards governing employees of a tribunal,* a lawyer 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 lawyer from

422 contributing to the campaign fund of a judge or judicial officer running for election or confirmation
 423 pursuant to applicable law pertaining to such contributions.

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

428 (1) in open court;

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

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

431 (4) in writing* with a copy thereof furnished to all other counsel and any unrepresented parties in the
 432 matter; or

433 (5) in ex parte matters.

434 ~~(c) A lawyer shall not engage in a pattern of incivility that is degrading to a tribunal.*~~

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

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

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

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

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

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

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

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

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

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

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

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

(m) For purposes of this rule, “juror” means any empaneled, discharged, or excused juror.

Comment

[1] An applicable code of judicial ethics or code of judicial conduct under this rule includes the California Code of Judicial Ethics and the Code of Conduct for United States Judges. Regarding employees of a tribunal* not subject to judicial ethics or conduct codes, applicable standards include the Code of Ethics for the Court Employees of California and 5 United States Code section 7353 (Gifts to Federal employees). The statutes applicable to adjudicatory proceedings of state agencies generally are contained in the Administrative Procedure Act (Gov. Code, § 11340 et seq.; see Gov. Code, § 11370 [listing statutes with the act].) State and local agencies also may adopt their own regulations and rules governing communications with members or employees of a tribunal.*

[2] For guidance on permissible communications with a juror in a criminal action after discharge of the jury, see Code of Civil Procedure section 206.

[3] It is improper for a lawyer to communicate with a juror who has been removed, discharged, or excused from an empaneled jury, regardless of whether notice is given to other counsel, until such time as the entire jury has been discharged from further service or unless the communication is part of the official proceedings of the case.

~~[4] The advocate’s function is to present evidence and argument so that the cause may be decided according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate’s right to speak on behalf of litigants. In the event that any judicial officer is impatient, undignified, or discourteous, the lawyer may continue to advocate on behalf of the client and stand firm in the position of the client, but this shall not provide justification for the lawyer engaging in any violations of this rule.~~

~~[5] The duty to refrain from incivility applies to any proceeding of a tribunal,* including a deposition.~~

COPRAC Comments:

As stated in COPRAC’s comments to rules 3.3 and 3.4, COPRAC recommends that certain aspects of CCTF’s proposed amendments to rules 3.3 through 3.5 be incorporated into rule 8.4. As an alternative, COPRAC suggests that certain aspects be incorporated into a standalone rule addressing civility.

COPRAC does not recommend adoption of CCTF’s proposed new subsection (c) or proposed comments [4] and [5]. This rule generally addresses *ex parte* communications and related procedural issues relating to the manner of communicating with judicial officers. The proposed addition does not belong in this rule. In addition, “pattern of incivility” is undefined. As a disciplinary rule, this rule will likely have a chilling effect on zealous advocacy.

COPRAC PROPOSED CHANGES TO RULES OF PROFESSIONAL CONDUCT - CLEAN

**CHAPTER 1.
LAWYER-CLIENT RELATIONSHIP**

Rule 1.2 Scope of Representation and Allocation of Authority

(a) Subject to rule 1.2.1, a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by rule 1.4, shall reasonably* consult with the client as to the means by which they are to be pursued. Subject to Business and Professions Code section 6068, subdivision (e)(1) and rule 1.6, a lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. Except as otherwise provided by law in a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer may limit the scope of the representation if the limitation is reasonable* under the circumstances, is not otherwise prohibited by law, and the client gives informed consent.*

Comment

Allocation of Authority between Client and Lawyer

[1] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. (See, e.g., Cal. Const., art. I, § 16; Pen. Code, § 1018.) A lawyer retained to represent a client is authorized to act on behalf of the client, such as in procedural matters and in making certain tactical decisions. Notwithstanding a client's direction, a lawyer retains the authority to agree to reasonable requests of opposing counsel that do not prejudice the rights of the client, be punctual in fulfilling all professional commitments, avoid offensive tactics, and treat all persons involved in the legal process with dignity, courtesy, and integrity. However, a lawyer is not authorized merely by virtue of the lawyer's retention to impair the client's substantive rights or the client's claim itself. (*Blanton v. Womancare, Inc.* (1985) 38 Cal.3d 396, 404 [212 Cal.Rptr. 151, 156].)

[2] At the outset of, or during a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to rule 1.4, a lawyer may rely on such an advance authorization. The client may revoke such authority at any time.

Independence from Client's Views or Activities

[3] A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

Agreements Limiting Scope of Representation

[4] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. (See, e.g., rules 1.1, 1.8.1, 5.6; see also Cal. Rules of Court, rules

CLEAN – COPRAC RECOMMENDED AMENDMENTS

3.35-3.37 [limited scope rules applicable in civil matters generally], 5.425 [limited scope rule applicable in family law matters].)

CHAPTER 8. MAINTAINING THE INTEGRITY OF THE PROFESSION

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

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

Comment

[1] A violation of this rule can occur when a lawyer is acting in propria persona or when a lawyer is not practicing law or acting in a professional capacity.

[2] Paragraph (a) does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

[3] A lawyer may be disciplined for criminal acts as set forth in Business and Professions Code sections 6101 et seq., or if the criminal act constitutes "other misconduct warranting discipline" as defined by California Supreme Court case law. (See *In re Kelley* (1990) 52 Cal.3d 487 [276 Cal.Rptr. 375].)

[4] A lawyer may be disciplined under Business and Professions Code section 6106 for acts involving moral turpitude, dishonesty, or corruption, whether intentional, reckless, or grossly negligent.

[5] Paragraph (c) does not apply where a lawyer advises clients or others about, or supervises, lawful covert activity in the investigation of violations of civil or criminal law or constitutional rights, provided the lawyer's conduct is otherwise in compliance with these rules and the State Bar Act.

[6] A lawyer violation of paragraph (d) includes engaging in significantly unprofessional conduct that is abusive or harassing in the practice of law or related professional activities. A lawyer does not violate paragraph (d) by standing firm in the position of the client, protecting the record for subsequent review, or preserving professional integrity.

CLEAN – COPRAC RECOMMENDED AMENDMENTS

For further guidance, a lawyer should consult the current California Attorney Guidelines of Civility and Professionalism and other applicable civility authorities.

[7] This rule does not prohibit those activities of a particular lawyer that are protected by the First Amendment to the United States Constitution or by Article I, section 2 of the California Constitution.

**COPRAC PROPOSED CHANGES TO RULES OF PROFESSIONAL CONDUCT -
REDLINE**

**CHAPTER 1.
LAWYER-CLIENT RELATIONSHIP**

Rule 1.2 Scope of Representation and Allocation of Authority

(a) Subject to rule 1.2.1, a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by rule 1.4, shall reasonably* consult with the client as to the means by which they are to be pursued. Subject to Business and Professions Code section 6068, subdivision (e)(1) and rule 1.6, a lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. Except as otherwise provided by law in a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer may limit the scope of the representation if the limitation is reasonable* under the circumstances, is not otherwise prohibited by law, and the client gives informed consent.*

Comment

Allocation of Authority between Client and Lawyer

[1] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. (See, e.g., Cal. Const., art. I, § 16; Pen. Code, § 1018.) A lawyer retained to represent a client is authorized to act on behalf of the client, such as in procedural matters and in making certain tactical decisions. Notwithstanding a client's direction, a lawyer retains the authority to agree to reasonable requests of opposing counsel that do not prejudice the rights of the client, be punctual in fulfilling all professional commitments, avoid offensive tactics, and treat all persons involved in the legal process with dignity, courtesy, and integrity. However, a lawyer is not authorized merely by virtue of the lawyer's retention to impair the client's substantive rights or the client's claim itself. (*Blanton v. Womancare, Inc.* (1985) 38 Cal.3d 396, 404 [212 Cal.Rptr. 151, 156].)

[2] At the outset of, or during a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to rule 1.4, a lawyer may rely on such an advance authorization. The client may revoke such authority at any time.

Independence from Client's Views or Activities

[3] A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

Agreements Limiting Scope of Representation

[4] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. (See, e.g., rules 1.1, 1.8.1, 5.6; see also Cal. Rules of Court, rules

REDLINE – COPRAC RECOMMENDED AMENDMENTS

3.35-3.37 [limited scope rules applicable in civil matters generally], 5.425 [limited scope rule applicable in family law matters].)

CHAPTER 8. MAINTAINING THE INTEGRITY OF THE PROFESSION

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

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

Comment

[1] A violation of this rule can occur when a lawyer is acting in propria persona or when a lawyer is not practicing law or acting in a professional capacity.

[2] Paragraph (a) does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

[3] A lawyer may be disciplined for criminal acts as set forth in Business and Professions Code sections 6101 et seq., or if the criminal act constitutes "other misconduct warranting discipline" as defined by California Supreme Court case law. (See *In re Kelley* (1990) 52 Cal.3d 487 [276 Cal.Rptr. 375].)

[4] A lawyer may be disciplined under Business and Professions Code section 6106 for acts involving moral turpitude, dishonesty, or corruption, whether intentional, reckless, or grossly negligent.

[5] Paragraph (c) does not apply where a lawyer advises clients or others about, or supervises, lawful covert activity in the investigation of violations of civil or criminal law or constitutional rights, provided the lawyer's conduct is otherwise in compliance with these rules and the State Bar Act.

[6] A lawyer violation of paragraph (d) includes engaging in significantly unprofessional conduct that is abusive or harassing in the practice of law or related professional activities. A lawyer does not violate paragraph (d) by standing firm in the position of the client, protecting the record for subsequent review, or preserving professional integrity.

REDLINE – COPRAC RECOMMENDED AMENDMENTS

For further guidance, a lawyer should consult the current California Attorney Guidelines of Civility and Professionalism and other applicable civility authorities.

[7] This rule does not prohibit those activities of a particular lawyer that are protected by the First Amendment to the United States Constitution or by Article I, section 2 of the California Constitution.

STAFF PROPOSED CHANGES TO RULES OF PROFESSIONAL CONDUCT

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

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

Comment

[1] A violation of this rule can occur when a lawyer is acting in propria persona or when a lawyer is not practicing law or acting in a professional capacity.

[2] Paragraph (a) does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

[3] A lawyer may be disciplined for criminal acts as set forth in Business and Professions Code sections 6101 et seq., or if the criminal act constitutes "other misconduct warranting discipline" as defined by California Supreme Court case law. (See *In re Kelley* (1990) 52 Cal.3d 487 [276 Cal.Rptr. 375].)

[4] A lawyer may be disciplined under Business and Professions Code section 6106 for acts involving moral turpitude, dishonesty, or corruption, whether intentional, reckless, or grossly negligent. Regarding significantly unprofessional conduct that is abusive or harassing, see rule 8.4.2.

[5] Paragraph (c) does not apply where a lawyer advises clients or others about, or supervises, lawful covert activity in the investigation of violations of civil or criminal law or constitutional

rights, provided the lawyer's conduct is otherwise in compliance with these rules and the State Bar Act.

[6] This rule does not prohibit those activities of a particular lawyer that are protected by the First Amendment to the United States Constitution or by Article I, section 2 of the California Constitution.

Rule 8.4.2 Prohibited Incivility

(a) In representing a client, a lawyer shall not engage in incivility in the practice of law or related professional activities.

(b) In appearing as a lawyer before a tribunal,* a lawyer shall not engage in incivility by conduct solely intended to:

(1) disrupt the tribunal;* or

(2) degrade a witness or other person.

(c) For purposes of this rule, "incivility" means significantly unprofessional conduct that is abusive or harassing and shall be determined on the basis of all the facts and circumstances surrounding the conduct.

Comment

[1] For guidance on conduct that may be significantly unprofessional, a lawyer should consult the current California Attorney Guidelines of Civility and Professionalism and other applicable civility authorities.

[2] A lawyer does not violate this rule by standing firm in the position of the client, protecting the record for subsequent review, or preserving professional integrity.

[3] A lawyer's violation of this rule may also constitute a violation of rule 8.4(d).

[4] Paragraph (b)(2) does not apply to questioning of a witness reasonably directed to impeaching that witness or developing theories to impeach that witness, or where the questioning seeks relevant information that is reasonably calculated to lead to relevant and admissible evidence. The language in paragraph (b)(2) is narrow to avoid interference with an attorney's duties of zealous advocacy.

[5] "Incivility" as used in this rule does not apply to conduct protected by the First Amendment to the United States Constitution or by Article I, section 2 of the California Constitution. "Incivility" as used in this rule includes conduct that violates an attorney's duties under Business and Professions Code section 6068, subdivisions (b) and (f). (See California Code of

Judicial Ethics, Canon 3B, advisory commentary: Canon 3B(2) regarding/for a judge's responsibility to require lawyers under the judge's direction and control to be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others.)

[5] A disciplinary investigation or proceeding for conduct coming within this rule may also be initiated and maintained if such conduct warrants discipline under California Business and Professions Code sections 6106 and 6068, the California Supreme Court's inherent authority to impose discipline, or other disciplinary standard.

Proposed CCTF Amendments to Rules of Professional Conduct	Proposed COPRAC Amendments to the Rules of Professional Conduct (Shown in Redline from CCTF Recommendation Where Applicable)	Proposed COPRAC edits to CCTF Recommended Amendments (Alternative Option, Shown in Redline from CCTF Recommendation)
Rule 1.0.1 Terminology		
<p>(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.</p> <p>(b) [Reserved]</p> <p>(c) “Firm” or “law firm” means a law partnership; a professional law corporation; a lawyer acting as a sole proprietorship; an association authorized to practice law; or lawyers 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.</p> <p>(d) “Fraud” or “fraudulent” means conduct that is fraudulent under the law of the applicable jurisdiction and has a purpose to deceive.</p> <p>(*) “Incivility” means discourteous, abusive, harassing, or other significantly unprofessional conduct.</p> <p>(e) “Informed consent” means a person’s* agreement to a proposed course of conduct after the lawyer 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.</p>	<p>No changes proposed.</p>	<p>(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.</p> <p>(b) [Reserved]</p> <p>(c) “Firm” or “law firm” means a law partnership; a professional law corporation; a lawyer acting as a sole proprietorship; an association authorized to practice law; or lawyers 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.</p> <p>(d) “Fraud” or “fraudulent” means conduct that is fraudulent under the law of the applicable jurisdiction and has a purpose to deceive.</p> <p>(*) “Incivility” means significantly unprofessional conduct that is discourteous, abusive, or harassing, or other significantly unprofessional conduct.</p> <p>(e) “Informed consent” means a person’s* agreement to a proposed course of conduct after the lawyer 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.</p>

<p>(e-1) “Informed written consent” means that the disclosures and the consent required by paragraph (e) must be in writing.*</p> <p>(f) “Knowingly,” “known,” or “knows” means actual knowledge of the fact in question. A person’s* knowledge may be inferred from circumstances.</p> <p>(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.</p> <p>(g-1) “Person” has the meaning stated in Evidence Code section 175.</p> <p>(h) “Reasonable” or “reasonably” when used in relation to conduct by a lawyer means the conduct of a reasonably prudent and competent lawyer.</p> <p>(i) “Reasonable belief” or “reasonably believes” when used in reference to a lawyer means that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.</p> <p>(j) “Reasonably should know” when used in reference to a lawyer means that a lawyer of reasonable prudence and competence would ascertain the matter in question.</p> <p>(k) “Screened” means the isolation of a lawyer 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 lawyer is obligated to protect under these rules or other law; and (ii) to protect against other law firm* lawyers and nonlawyer personnel communicating with the lawyer with respect to the matter.</p>		<p>(e-1) “Informed written consent” means that the disclosures and the consent required by paragraph (e) must be in writing.*</p> <p>(f) “Knowingly,” “known,” or “knows” means actual knowledge of the fact in question. A person’s* knowledge may be inferred from circumstances.</p> <p>(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.</p> <p>(g-1) “Person” has the meaning stated in Evidence Code section 175.</p> <p>(h) “Reasonable” or “reasonably” when used in relation to conduct by a lawyer means the conduct of a reasonably prudent and competent lawyer.</p> <p>(i) “Reasonable belief” or “reasonably believes” when used in reference to a lawyer means that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.</p> <p>(j) “Reasonably should know” when used in reference to a lawyer means that a lawyer of reasonable prudence and competence would ascertain the matter in question.</p> <p>(k) “Screened” means the isolation of a lawyer 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 lawyer is obligated to protect under these rules or other law; and (ii) to protect against other law firm* lawyers and nonlawyer personnel communicating with the lawyer with respect to the matter.</p>
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<p>(l) “Substantial” when used in reference to degree or extent means a material matter of clear and weighty importance.</p> <p>(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.</p> <p>(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.</p> <p>Comment</p> <p><i>Firm* or Law Firm*</i></p> <p>[1] Practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a law firm.* However, if they present themselves to the public in a way that suggests that they are a law firm* or conduct themselves as a law firm,* they may be regarded as a law firm* for purposes of these rules. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm,* as is the fact that they have mutual access to information concerning the clients they serve.</p> <p>[2] The term “of counsel” implies that the lawyer so designated has a relationship with the law firm,* other than as a partner* or associate, or</p>		<p>(l) “Substantial” when used in reference to degree or extent means a material matter of clear and weighty importance.</p> <p>(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.</p> <p>(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.</p> <p>Comment</p> <p><i>Firm* or Law Firm*</i></p> <p>[1] Practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a law firm.* However, if they present themselves to the public in a way that suggests that they are a law firm* or conduct themselves as a law firm,* they may be regarded as a law firm* for purposes of these rules. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm,* as is the fact that they have mutual access to information concerning the clients they serve.</p> <p>[2] The term “of counsel” implies that the lawyer so designated has a relationship with the law firm,* other than as a partner* or associate, or</p>
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officer or shareholder, that is close, personal, continuous, and regular. Whether a lawyer who is denominated as “of counsel” or by a similar term should be deemed a member of a law firm* for purposes of these rules will also depend on the specific facts. (Compare *People ex rel. Department of Corporations v. Speedee Oil Change Systems, Inc.* (1999) 20 Cal.4th 1135 [86 Cal.Rptr.2d 816] with *Chambers v. Kay* (2002) 29 Cal.4th 142 [126 Cal.Rptr.2d 536].)

*Fraud**

[3] When the terms “fraud”* or “fraudulent”* are used in these rules, it is not necessary that anyone has suffered damages or relied on the misrepresentation or failure to inform because requiring the proof of those elements of fraud* would impede the purpose of certain rules to prevent fraud* or avoid a lawyer assisting in the perpetration of a fraud,* or otherwise frustrate the imposition of discipline on lawyers who engage in fraudulent* conduct. The term “fraud”* or “fraudulent”* when used in these rules does not include merely negligent misrepresentation or negligent failure to apprise another of relevant information.

Informed Consent and Informed Written Consent**

[4] The communication necessary to obtain informed consent* or informed written consent* will vary according to the rule involved and the circumstances giving rise to the need to obtain consent.

*Screened**

[5] The purpose of screening* is to assure the affected client, former client, or prospective client that confidential information known* by the

officer or shareholder, that is close, personal, continuous, and regular. Whether a lawyer who is denominated as “of counsel” or by a similar term should be deemed a member of a law firm* for purposes of these rules will also depend on the specific facts. (Compare *People ex rel. Department of Corporations v. Speedee Oil Change Systems, Inc.* (1999) 20 Cal.4th 1135 [86 Cal.Rptr.2d 816] with *Chambers v. Kay* (2002) 29 Cal.4th 142 [126 Cal.Rptr.2d 536].)

*Fraud**

[3] When the terms “fraud”* or “fraudulent”* are used in these rules, it is not necessary that anyone has suffered damages or relied on the misrepresentation or failure to inform because requiring the proof of those elements of fraud* would impede the purpose of certain rules to prevent fraud* or avoid a lawyer assisting in the perpetration of a fraud,* or otherwise frustrate the imposition of discipline on lawyers who engage in fraudulent* conduct. The term “fraud”* or “fraudulent”* when used in these rules does not include merely negligent misrepresentation or negligent failure to apprise another of relevant information.

Incivility

[4] This definition does not apply to conduct protected by the First Amendment to the United States Constitution or by Article I, section 2 of the California Constitution. This definition includes conduct that violates an attorney’s duties under Business and Professions Code section 6068, subdivisions (b) and (f). (See California Code of Judicial Ethics, Canon 3B, advisory commentary: Canon 3B(2) regarding/for a judge’s responsibility to require lawyers under the judge’s direction and

personally prohibited lawyer is neither disclosed to other law firm* lawyers or nonlawyer personnel nor used to the detriment of the person* to whom the duty of confidentiality is owed. The personally prohibited lawyer shall acknowledge the obligation not to communicate with any of the other lawyers and nonlawyer personnel in the law firm* with respect to the matter. Similarly, other lawyers and nonlawyer personnel in the law firm* who are working on the matter promptly shall be informed that the screening* is in place and that they may not communicate with the personally prohibited lawyer with respect to the matter. Additional screening* measures that are appropriate for the particular matter will depend on the circumstances. To implement, reinforce and remind all affected law firm* personnel of the presence of the screening,* it may be appropriate for the law firm* to undertake such procedures as a written* undertaking by the personally prohibited lawyer to avoid any communication with other law firm* personnel and any contact with any law firm* files or other materials relating to the matter, written* notice and instructions to all other law firm* personnel forbidding any communication with the personally prohibited lawyer relating to the matter, denial of access by that lawyer to law firm* files or other materials relating to the matter, and periodic reminders of the screen* to the personally prohibited lawyer and all other law firm* personnel.

[6] In order to be effective, screening* measures must be implemented as soon as practical after a lawyer or law firm* knows* or reasonably should know* that there is a need for screening.*


control to be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others.)

Informed Consent and Informed Written Consent**

[25] The communication necessary to obtain informed consent* or informed written consent* will vary according to the rule involved and the circumstances giving rise to the need to obtain consent.

*Screened**

[26] The purpose of screening* is to assure the affected client, former client, or prospective client that confidential information known* by the personally prohibited lawyer is neither disclosed to other law firm* lawyers or nonlawyer personnel nor used to the detriment of the person* to whom the duty of confidentiality is owed. The personally prohibited lawyer shall acknowledge the obligation not to communicate with any of the other lawyers and nonlawyer personnel in the law firm* with respect to the matter. Similarly, other lawyers and nonlawyer personnel in the law firm* who are working on the matter promptly shall be informed that the screening* is in place and that they may not communicate with the personally prohibited lawyer with respect to the matter. Additional screening* measures that are appropriate for the particular matter will depend on the circumstances. To implement, reinforce and remind all affected law firm* personnel of the presence of the screening,* it may be appropriate for the law firm* to undertake such procedures as a written* undertaking by the personally prohibited lawyer to avoid any communication with other law firm* personnel and any contact with any law firm* files or other materials relating to the matter, written* notice and instructions to all other law firm* personnel forbidding any communication with the

		<p>personally prohibited lawyer relating to the matter, denial of access by that lawyer to law firm* files or other materials relating to the matter, and periodic reminders of the screen* to the personally prohibited lawyer and all other law firm* personnel.</p> <p> In order to be effective, screening* measures must be implemented as soon as practical after a lawyer or law firm* knows* or reasonably should know* that there is a need for screening.*</p>
Rule 1.2 Scope of Representation and Allocation of Authority		
<p>(a) Subject to rule 1.2.1, a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by rule 1.4, shall reasonably* consult with the client as to the means by which they are to be pursued. Subject to Business and Professions Code section 6068, subdivision (e)(1) and rule 1.6, a lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. Except as otherwise provided by law in a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify. A lawyer does not violate this rule by acceding to requests of opposing counsel that do not prejudice the rights of the client, being punctual in fulfilling all professional commitments, avoiding offensive tactics, and treating with courtesy and consideration all persons involved in the legal process.</p> <p>(b) A lawyer may limit the scope of the representation if the limitation is reasonable* under</p>	<p>(a) Subject to rule 1.2.1, a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by rule 1.4, shall reasonably* consult with the client as to the means by which they are to be pursued. Subject to Business and Professions Code section 6068, subdivision (e)(1) and rule 1.6, a lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. Except as otherwise provided by law in a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify. A lawyer does not violate this rule by acceding to requests of opposing counsel that do not prejudice the rights of the client, being punctual in fulfilling all professional commitments, avoiding offensive tactics, and treating with courtesy and consideration all persons involved in the legal process.</p> <p>(b) A lawyer may limit the scope of the representation if the limitation is reasonable* under</p>	<p>Same as column 2.</p>

the circumstances, is not otherwise prohibited by law, and the client gives informed consent.*

Comment

Allocation of Authority between Client and Lawyer

[1] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. (See, e.g., Cal. Const., art. I, § 16; Pen. Code, § 1018.) A lawyer retained to represent a client is authorized to act on behalf of the client, such as in procedural matters and in making certain tactical decisions. A lawyer is not authorized merely by virtue of the lawyer's retention to impair the client's substantive rights or the client's claim itself. (*Blanton v. Womancare, Inc.* (1985) 38 Cal.3d 396, 404 [212 Cal.Rptr. 151, 156].)

[2] At the outset of, or during a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to rule 1.4, a lawyer may rely on such an advance authorization. The client may revoke such authority at any time.

Independence from Client's Views or Activities

[3] A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

Agreements Limiting Scope of Representation

[4] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. (See, e.g., rules 1.1, 1.8.1, 5.6; see also Cal. Rules of Court,

the circumstances, is not otherwise prohibited by law, and the client gives informed consent.*

Comment

Allocation of Authority between Client and Lawyer

[1] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. (See, e.g., Cal. Const., art. I, § 16; Pen. Code, § 1018.) A lawyer retained to represent a client is authorized to act on behalf of the client, such as in procedural matters and in making certain tactical decisions. ~~Notwithstanding a client's direction, a lawyer retains the authority to agree~~ ~~does not violate this rule by acceding to~~ ~~reasonable requests of opposing counsel that do not prejudice the rights of the client, by being punctual in fulfilling all professional commitments, avoiding offensive tactics, and~~ ~~treating with courtesy and consideration all persons involved in the legal process with dignity, courtesy, and integrity.~~ ~~However, a~~ A lawyer is not authorized merely by virtue of the lawyer's retention to impair the client's substantive rights or the client's claim itself. (*Blanton v. Womancare, Inc.* (1985) 38 Cal.3d 396, 404 [212 Cal.Rptr. 151, 156].)

[2] At the outset of, or during a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to rule 1.4, a lawyer may rely on such an advance authorization. The client may revoke such authority at any time.

Independence from Client's Views or Activities

<p>rules 3.35-3.37 [limited scope rules applicable in civil matters generally], 5.425 [limited scope rule applicable in family law matters].)</p>	<p>[3] A lawyer’s representation of a client, including representation by appointment, does not constitute an endorsement of the client’s political, economic, social or moral views or activities.</p> <p><i>Agreements Limiting Scope of Representation</i></p> <p>[4] All agreements concerning a lawyer’s representation of a client must accord with the Rules of Professional Conduct and other law. (See, e.g., rules 1.1, 1.8.1, 5.6; see also Cal. Rules of Court, rules 3.35-3.37 [limited scope rules applicable in civil matters generally], 5.425 [limited scope rule applicable in family law matters].)</p>	
<p>Rule 1.3 Diligence</p>		
<p>(a) A lawyer shall not intentionally, repeatedly, recklessly or with gross negligence fail to act with reasonable diligence in representing a client.</p> <p>(b) For purposes of this rule, “reasonable diligence” shall mean that a lawyer acts with commitment and dedication to the interests of the client and does not neglect or disregard, or unduly delay a legal matter entrusted to the lawyer.</p> <p>Comment</p> <p>[1] This rule addresses only a lawyer’s responsibility for his or her own professional diligence. See rules 5.1 and 5.3 with respect to a lawyer’s disciplinary responsibility for supervising subordinate lawyers and nonlawyers.</p> <p>[2] See rule 1.1 with respect to a lawyer’s duty to perform legal services with competence.</p>	<p>No changes proposed.</p>	<p>(a) A lawyer shall not intentionally, repeatedly, recklessly or with gross negligence fail to act with reasonable diligence in representing a client.</p> <p>(b) For purposes of this rule, “reasonable diligence” shall mean that a lawyer acts with commitment and dedication to the interests of the client and does not neglect or disregard, or unduly delay a legal matter entrusted to the lawyer.</p> <p>Comment</p> <p>[1] This rule addresses only a lawyer’s responsibility for his or her own professional diligence. See rules 5.1 and 5.3 with respect to a lawyer’s disciplinary responsibility for supervising subordinate lawyers and nonlawyers.</p> <p>[2] See rule 1.1 with respect to a lawyer’s duty to perform legal services with competence.</p>

<p>[3] A lawyer's duty to act with reasonable diligence does not eliminate a lawyer's other professional obligations and lawyers should strive to treat all persons involved in the legal process with courtesy and respect.</p>		<p>[3] A lawyer's duty to act with reasonable diligence does not eliminate a lawyer's other professional obligations and lawyers should strive to treat all persons involved in the legal process with dignity, courtesy, and integrity respect.</p>
<p>Rule 3.3 Candor Toward the Tribunal*</p>		
<p>(a) A lawyer shall not:</p> <p>(1) knowingly* make a false statement of fact or law to a tribunal* or fail to correct a false statement of material fact or law previously made to the tribunal* by the lawyer;</p> <p>(2) fail to disclose to the tribunal* legal authority in the controlling jurisdiction known* to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel, or knowingly* misquote to a tribunal* the language of a book, statute, decision or other authority; or</p> <p>(3) offer evidence that the lawyer knows* to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence, and the lawyer comes to know* of its falsity, the lawyer shall take reasonable* remedial measures, including, if necessary, disclosure to the tribunal,* unless disclosure is prohibited by Business and Professions Code section 6068, subdivision (e) and rule 1.6. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes* is false.</p> <p>(b) A lawyer who represents a client in a proceeding before a tribunal* and who knows*</p>	<p>No changes proposed.</p>	<p>(a) A lawyer shall not:</p> <p>(1) knowingly* make a false statement of fact or law to a tribunal* or fail to correct a false statement of material fact or law previously made to the tribunal* by the lawyer;</p> <p>(2) fail to disclose to the tribunal* legal authority in the controlling jurisdiction known* to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel, or knowingly* misquote to a tribunal* the language of a book, statute, decision or other authority; or</p> <p>(3) offer evidence that the lawyer knows* to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence, and the lawyer comes to know* of its falsity, the lawyer shall take reasonable* remedial measures, including, if necessary, disclosure to the tribunal,* unless disclosure is prohibited by Business and Professions Code section 6068, subdivision (e) and rule 1.6. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes* is false.</p> <p>(b) A lawyer who represents a client in a proceeding before a tribunal* and who knows*</p>

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

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

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

(e) In appearing as a lawyer before a tribunal,* a lawyer shall not:

(1) engage in a pattern of incivility;

(2) intentionally or habitually violate any established rule of procedure or of evidence;
or

(3) engage in conduct intended to disrupt the tribunal.*

Comment

[1] This rule governs the conduct of a lawyer in proceedings of a tribunal,* including ancillary proceedings such as a deposition conducted pursuant to a tribunal's* authority. See rule 1.0.1(m) for the definition of "tribunal."

[2] The prohibition in paragraph (a)(1) against making false statements of law or failing to correct a material misstatement of law includes citing as

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

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[1] This rule governs the conduct of a lawyer in proceedings of a tribunal,* including ancillary proceedings such as a deposition conducted pursuant to a tribunal's* authority. See rule 1.0.1(m) for the definition of "tribunal."

[2] The prohibition in paragraph (a)(1) against making false statements of law or failing to correct a material misstatement of law includes citing as

authority a decision that has been overruled or a statute that has been repealed or declared unconstitutional, or failing to correct such a citation previously made to the tribunal* by the lawyer.

Legal Argument

[3] Legal authority in the controlling jurisdiction may include legal authority outside the jurisdiction in which the tribunal* sits, such as a federal statute or case that is determinative of an issue in a state court proceeding or a Supreme Court decision that is binding on a lower court.

[4] The duties stated in paragraphs (a) and (b) apply to all lawyers, including defense counsel in criminal cases. If a lawyer knows* that a client intends to testify falsely or wants the lawyer to introduce false evidence, the lawyer should seek to persuade the client that the evidence should not be offered and, if unsuccessful, must refuse to offer the false evidence. If a criminal defendant insists on testifying, and the lawyer knows* that the testimony will be false, the lawyer may offer the testimony in a narrative form if the lawyer made reasonable* efforts to dissuade the client from the unlawful course of conduct and the lawyer has sought permission from the court to withdraw as required by rule 1.16. (See, e.g., *People v. Johnson* (1998) 62 Cal.App.4th 608 [72 Cal.Rptr.2d 805]; *People v. Jennings* (1999) 70 Cal.App.4th 899 [83 Cal.Rptr.2d 33].) The obligations of a lawyer under these rules and the State Bar Act are subordinate to applicable constitutional provisions.

Remedial Measures

[5] Reasonable* remedial measures under paragraphs (a)(3) and (b) refer to measures that

authority a decision that has been overruled or a statute that has been repealed or declared unconstitutional, or failing to correct such a citation previously made to the tribunal* by the lawyer.

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Remedial Measures

[5] Reasonable* remedial measures under paragraphs (a)(3) and (b) refer to measures that

are available under these rules and the State Bar Act, and which a reasonable* lawyer would consider appropriate under the circumstances to comply with the lawyer's duty of candor to the tribunal.* (See, e.g., rules 1.2.1, 1.4(a)(4), 1.16(a), 8.4; Bus. & Prof. Code, §§ 6068, subd. (d), 6128.) Remedial measures also include explaining to the client the lawyer's obligations under this rule and, where applicable, the reasons for the lawyer's decision to seek permission from the tribunal* to withdraw, and remonstrating further with the client to take corrective action that would eliminate the need for the lawyer to withdraw. If the client is an organization, the lawyer should also consider the provisions of rule 1.13. Remedial measures do not include disclosure of client confidential information, which the lawyer is required to protect under Business and Professions Code section 6068, subdivision (e) and rule 1.6.

Duration of Obligation

[6] A proceeding has concluded within the meaning of this rule when a final judgment in the proceeding has been affirmed on appeal or the time for review has passed. A prosecutor may have obligations that go beyond the scope of this rule. (See, e.g., rule 3.8(f) and (g).)

Ex Parte Communications

[7] Paragraph (d) does not apply to ex parte communications that are not otherwise prohibited by law or the tribunal.*

Withdrawal

[8] A lawyer's compliance with the duty of candor imposed by this rule does not require that the lawyer withdraw from the representation. The lawyer may, however, be required by rule 1.16 to

are available under these rules and the State Bar Act, and which a reasonable* lawyer would consider appropriate under the circumstances to comply with the lawyer's duty of candor to the tribunal.* (See, e.g., rules 1.2.1, 1.4(a)(4), 1.16(a), 8.4; Bus. & Prof. Code, §§ 6068, subd. (d), 6128.) Remedial measures also include explaining to the client the lawyer's obligations under this rule and, where applicable, the reasons for the lawyer's decision to seek permission from the tribunal* to withdraw, and remonstrating further with the client to take corrective action that would eliminate the need for the lawyer to withdraw. If the client is an organization, the lawyer should also consider the provisions of rule 1.13. Remedial measures do not include disclosure of client confidential information, which the lawyer is required to protect under Business and Professions Code section 6068, subdivision (e) and rule 1.6.

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[7] Paragraph (d) does not apply to ex parte communications that are not otherwise prohibited by law or the tribunal.*

Withdrawal

[8] A lawyer's compliance with the duty of candor imposed by this rule does not require that the lawyer withdraw from the representation. The lawyer may, however, be required by rule 1.16 to

<p>seek permission of the tribunal* to withdraw if the lawyer's compliance with this rule results in a deterioration of the lawyer-client relationship such that the lawyer can no longer competently and diligently represent the client, or where continued employment will result in a violation of these rules. A lawyer must comply with Business and Professions Code section 6068, subdivision (e) and rule 1.6 with respect to a request to withdraw that is premised on a client's misconduct.</p> <p>[9] In addition to this rule, lawyers remain bound by Business and Professions Code sections 6068, subdivision (d) and 6106.</p>		<p>seek permission of the tribunal* to withdraw if the lawyer's compliance with this rule results in a deterioration of the lawyer-client relationship such that the lawyer can no longer competently and diligently represent the client, or where continued employment will result in a violation of these rules. A lawyer must comply with Business and Professions Code section 6068, subdivision (e) and rule 1.6 with respect to a request to withdraw that is premised on a client's misconduct.</p> <p>[9] In addition to this rule, lawyers remain bound by Business and Professions Code sections 6068, subdivision (d) and 6106.</p> <p>[10] A lawyer does not violate paragraph (e) by standing firm in the position of the client, protecting the record for subsequent review, or preserving professional integrity. A lawyer's violation of paragraph (e) may also constitute a violation of rule 8.4(d).</p>
<p>Rule 3.4 Fairness to Opposing Party and Counsel</p>		
<p>A lawyer shall not:</p> <p>(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 lawyer shall not counsel or assist another person* to do any such act;</p> <p>(b) suppress any evidence that the lawyer or the lawyer's client has a legal obligation to reveal or to produce;</p>	<p>No changes proposed.</p>	<p>A lawyer shall not:</p> <p>(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 lawyer shall not counsel or assist another person* to do any such act;</p> <p>(b) suppress any evidence that the lawyer or the lawyer's client has a legal obligation to reveal or to produce;</p>

<p>(c) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;</p> <p>(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 lawyer may advance, guarantee, or acquiesce in the payment of:</p> <ul style="list-style-type: none"> (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; <p>(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;</p> <p>(f) A lawyer shall not ask any question intended to degrade a witness or other person except where the lawyer reasonably* believes that the question will lead to relevant and admissible evidence;</p> <p>(fg) knowingly* disobey an obligation under the rules of a tribunal* except for an open refusal based on an assertion that no valid obligation exists; or</p> <p>(gh) in trial, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the guilt or innocence of an accused.</p>		<p>(c) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;</p> <p>(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 lawyer may advance, guarantee, or acquiesce in the payment of:</p> <ul style="list-style-type: none"> (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; <p>(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;</p> <p>(f) A lawyer shall not ask any question intended to degrade a witness or other person engage in conduct solely intended to degrade a witness or other person except where the lawyer reasonably* believes that the question will lead to relevant and admissible evidence;</p> <p>(fg) knowingly* disobey an obligation under the rules of a tribunal* except for an open refusal based on an assertion that no valid obligation exists; or</p> <p>(gh) in trial, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the guilt or innocence of an accused.</p>
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Comment

[1] Paragraph (a) applies to evidentiary material generally, including computerized information. It is a criminal offense to destroy material for purpose of impairing its availability in a pending proceeding or one whose commencement can be foreseen. (See, e.g., Pen. Code, § 135; 18 U.S.C. §§ 1501-1520.) Falsifying evidence is also generally a criminal offense. (See, e.g., Pen. Code, § 132; 18 U.S.C. § 1519.) Applicable law may permit a lawyer to take temporary possession of physical evidence of client crimes for the purpose of conducting a limited examination that will not alter or destroy material characteristics of the evidence. Applicable law may require a lawyer to turn evidence over to the police or other prosecuting authorities, depending on the circumstances. (See *People v. Lee* (1970) 3 Cal.App.3d 514, 526 [83 Cal.Rptr. 715]; *People v. Meredith* (1981) 29 Cal.3d 682 [175 Cal.Rptr. 612].)

[2] A violation of a civil or criminal discovery rule or statute does not by itself establish a violation of this rule. See rule 3.8 for special disclosure responsibilities of a prosecutor.

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[2] A violation of a civil or criminal discovery rule or statute does not by itself establish a violation of this rule. See rule 3.8 for special disclosure responsibilities of a prosecutor.

[3] Paragraph (f) does not apply to impeaching a witness or developing theories intended to impeach a witness, or where the question seeks relevant information that is reasonably calculated to lead to relevant and admissible evidence. The language in paragraph (f) is purposefully narrow to avoid interference with an attorney's duties of zealous advocacy. A lawyer's violation of paragraph (f) may also constitute a violation of rule 8.4(d).

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

(a) Except as permitted by statute, an applicable code of judicial ethics or code of judicial conduct, or standards governing employees of a tribunal,* a lawyer 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 lawyer 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 lawyer shall not directly or indirectly communicate with or argue to a judge or judicial officer upon the merits of a contested matter pending before the judge or judicial officer, except:

- (1) in open court;
- (2) with the consent of all other counsel and any unrepresented parties in the matter;
- (3) in the presence of all other counsel and any unrepresented parties in the matter;
- (4) in writing* with a copy thereof furnished to all other counsel and any unrepresented parties in the matter; or
- (5) in ex parte matters.

(c) A lawyer shall not engage in a pattern of incivility that is degrading to a tribunal.*

No changes proposed.

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- (5) in ex parte matters.

~~(c) A lawyer shall not engage in a pattern of incivility that is degrading to a tribunal.*~~

<p>(ed) 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.</p> <p>(de) A lawyer connected with a case shall not communicate directly or indirectly with anyone the lawyer knows* to be a member of the venire from which the jury will be selected for trial of that case.</p> <p>(ef) During trial, a lawyer connected with the case shall not communicate directly or indirectly with any juror.</p> <p>(fg) During trial, a lawyer who is not connected with the case shall not communicate directly or indirectly concerning the case with anyone the lawyer knows* is a juror in the case.</p> <p>(gh) After discharge of the jury from further consideration of a case a lawyer shall not communicate directly or indirectly with a juror if:</p> <ul style="list-style-type: none"> (1) the communication is prohibited by law or court order; (2) the juror has made known* to the lawyer a desire not to communicate; or (3) the communication involves misrepresentation, coercion, or duress, or is intended to harass or embarrass the juror or to influence the juror’s actions in future jury service. 		<p>(d) 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.</p> <p>(e) A lawyer connected with a case shall not communicate directly or indirectly with anyone the lawyer knows* to be a member of the venire from which the jury will be selected for trial of that case.</p> <p>(f) During trial, a lawyer connected with the case shall not communicate directly or indirectly with any juror.</p> <p>(g) During trial, a lawyer who is not connected with the case shall not communicate directly or indirectly concerning the case with anyone the lawyer knows* is a juror in the case.</p> <p>(h) After discharge of the jury from further consideration of a case a lawyer shall not communicate directly or indirectly with a juror if:</p> <ul style="list-style-type: none"> (1) the communication is prohibited by law or court order; (2) the juror has made known* to the lawyer a desire not to communicate; or (3) the communication involves misrepresentation, coercion, or duress, or is intended to harass or embarrass the juror or to influence the juror’s actions in future jury service.
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<p>(hi) A lawyer shall not directly or indirectly conduct an out of court investigation of a person* who is either a member of a venire or a juror in a manner likely to influence the state of mind of such person* in connection with present or future jury service.</p> <p>(hj) All restrictions imposed by this rule also apply to communications with, or investigations of, members of the family of a person* who is either a member of a venire or a juror.</p> <p>(hk) A lawyer shall reveal promptly to the court improper conduct by a person* who is either a member of a venire or a juror, or by another toward a person* who is either a member of a venire or a juror or a member of his or her family, of which the lawyer has knowledge.</p> <p>(hl) This rule does not prohibit a lawyer from communicating with persons* who are members of a venire or jurors as a part of the official proceedings.</p> <p>(hm) For purposes of this rule, “juror” means any empaneled, discharged, or excused juror.</p>		<p>(i) A lawyer shall not directly or indirectly conduct an out of court investigation of a person* who is either a member of a venire or a juror in a manner likely to influence the state of mind of such person* in connection with present or future jury service.</p> <p>(j) All restrictions imposed by this rule also apply to communications with, or investigations of, members of the family of a person* who is either a member of a venire or a juror.</p> <p>(k) A lawyer shall reveal promptly to the court improper conduct by a person* who is either a member of a venire or a juror, or by another toward a person* who is either a member of a venire or a juror or a member of his or her family, of which the lawyer has knowledge.</p> <p>(l) This rule does not prohibit a lawyer from communicating with persons* who are members of a venire or jurors as a part of the official proceedings.</p> <p>(m) For purposes of this rule, “juror” means any empaneled, discharged, or excused juror.</p>
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<p>Comment</p> <p>[1] An applicable code of judicial ethics or code of judicial conduct under this rule includes the California Code of Judicial Ethics and the Code of Conduct for United States Judges. Regarding employees of a tribunal* not subject to judicial ethics or conduct codes, applicable standards include the Code of Ethics for the Court Employees of California and 5 United States Code section 7353 (Gifts to Federal employees). The statutes applicable to adjudicatory proceedings of state agencies generally are contained in the Administrative Procedure Act (Gov. Code, § 11340 et seq.; see Gov. Code, § 11370 [listing statutes with the act].) State and local agencies also may adopt their own regulations and rules governing communications with members or employees of a tribunal.*</p> <p>[2] For guidance on permissible communications with a juror in a criminal action after discharge of the jury, see Code of Civil Procedure section 206.</p> <p>[3] It is improper for a lawyer to communicate with a juror who has been removed, discharged, or excused from an empaneled jury, regardless of whether notice is given to other counsel, until such time as the entire jury has been discharged from further service or unless the communication is part of the official proceedings of the case.</p> <p>[4] The advocate's function is to present evidence and argument so that the cause may be decided according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants. In the event that any judicial officer is impatient, undignified, or discourteous, the lawyer may continue to advocate on behalf of the client and</p>		<p>Comment</p> <p>[1] An applicable code of judicial ethics or code of judicial conduct under this rule includes the California Code of Judicial Ethics and the Code of Conduct for United States Judges. Regarding employees of a tribunal* not subject to judicial ethics or conduct codes, applicable standards include the Code of Ethics for the Court Employees of California and 5 United States Code section 7353 (Gifts to Federal employees). The statutes applicable to adjudicatory proceedings of state agencies generally are contained in the Administrative Procedure Act (Gov. Code, § 11340 et seq.; see Gov. Code, § 11370 [listing statutes with the act].) State and local agencies also may adopt their own regulations and rules governing communications with members or employees of a tribunal.*</p> <p>[2] For guidance on permissible communications with a juror in a criminal action after discharge of the jury, see Code of Civil Procedure section 206.</p> <p>[3] It is improper for a lawyer to communicate with a juror who has been removed, discharged, or excused from an empaneled jury, regardless of whether notice is given to other counsel, until such time as the entire jury has been discharged from further service or unless the communication is part of the official proceedings of the case.</p> <p>[4] The advocate's function is to present evidence and argument so that the cause may be decided according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants. In the event that any judicial officer is impatient, undignified, or discourteous, the lawyer may continue to advocate on behalf of the client and</p>
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<p>stand firm in the position of the client, but this shall not provide justification for the lawyer engaging in any violations of this rule.</p> <p>[5] The duty to refrain from incivility applies to any proceeding of a tribunal,* including a deposition.</p>		<p>stand firm in the position of the client, but this shall not provide justification for the lawyer engaging in any violations of this rule.</p> <p>[5]——The duty to refrain from incivility applies to any proceeding of a tribunal,* including a deposition.</p>
Rule 8.4 Misconduct		
<p>It is professional misconduct for a lawyer to:</p> <p>(a) violate these rules or the State Bar Act, knowingly* assist, solicit, or induce another to do so, or do so through the acts of another;</p> <p>(b) commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects;</p> <p>(c) engage in conduct involving dishonesty, fraud,* deceit, or reckless or intentional misrepresentation;</p> <p>(d) engage in conduct that is prejudicial to the administration of justice;</p> <p>(e) state or imply an ability to influence improperly a government agency or official, or to achieve results by means that violate these rules, the State Bar Act, or other law; or</p> <p>(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).</p>	<p>It is professional misconduct for a lawyer to:</p> <p>(a) violate these rules or the State Bar Act, knowingly* assist, solicit, or induce another to do so, or do so through the acts of another;</p> <p>(b) commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects;</p> <p>(c) engage in conduct involving dishonesty, fraud,* deceit, or reckless or intentional misrepresentation;</p> <p>(d) engage in conduct that is prejudicial to the administration of justice;</p> <p>(e) state or imply an ability to influence improperly a government agency or official, or to achieve results by means that violate these rules, the State Bar Act, or other law; or</p> <p>(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).</p>	<p>Same as column 2.</p>

<p>Comment</p> <p>[1] A violation of this rule can occur when a lawyer is acting in propria persona or when a lawyer is not practicing law or acting in a professional capacity.</p> <p>[2] Paragraph (a) does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.</p> <p>[3] A lawyer may be disciplined for criminal acts as set forth in Business and Professions Code sections 6101 et seq., or if the criminal act constitutes “other misconduct warranting discipline” as defined by California Supreme Court case law. (See <i>In re Kelley</i> (1990) 52 Cal.3d 487 [276 Cal.Rptr. 375].)</p> <p>[4] A lawyer may be disciplined under Business and Professions Code section 6106 for acts involving moral turpitude, dishonesty, or corruption, whether intentional, reckless, or grossly negligent.</p> <p>[5] Paragraph (c) does not apply where a lawyer advises clients or others about, or supervises, lawful covert activity in the investigation of violations of civil or criminal law or constitutional rights, provided the lawyer’s conduct is otherwise in compliance with these rules and the State Bar Act.</p> <p>[6] A lawyer violates paragraph (d) by repeated incivility while engaged in the practice of law or related professional activities.</p> <p>[67] This rule does not prohibit those activities of a particular lawyer that are protected by the First Amendment to the United States Constitution or by Article I, section 2 of the California Constitution.</p>	<p>Comment</p> <p>[1] A violation of this rule can occur when a lawyer is acting in propria persona or when a lawyer is not practicing law or acting in a professional capacity.</p> <p>[2] Paragraph (a) does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.</p> <p>[3] A lawyer may be disciplined for criminal acts as set forth in Business and Professions Code sections 6101 et seq., or if the criminal act constitutes “other misconduct warranting discipline” as defined by California Supreme Court case law. (See <i>In re Kelley</i> (1990) 52 Cal.3d 487 [276 Cal.Rptr. 375].)</p> <p>[4] A lawyer may be disciplined under Business and Professions Code section 6106 for acts involving moral turpitude, dishonesty, or corruption, whether intentional, reckless, or grossly negligent.</p> <p>[5] Paragraph (c) does not apply where a lawyer advises clients or others about, or supervises, lawful covert activity in the investigation of violations of civil or criminal law or constitutional rights, provided the lawyer’s conduct is otherwise in compliance with these rules and the State Bar Act.</p> <p>[6] A lawyer violates violation of paragraph (d) by repeated incivility while engaged includes engaging in significantly unprofessional conduct that is abusive or harassing in the practice of law or related professional activities. A lawyer does not violate paragraph (d) by standing firm in the position of the client, protecting the record for subsequent review, or preserving professional integrity.</p> <p>For further guidance, a lawyer should consult the current California Attorney Guidelines of Civility and</p>	
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	<p>Professionalism and other applicable civility authorities</p> <p>[7] This rule does not prohibit those activities of a particular lawyer that are protected by the First Amendment to the United States Constitution or by Article I, section 2 of the California Constitution.</p>	
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