

THE CALIFORNIA RULES OF PROFESSIONAL CONDUCT AS AMENDED IN 2018

WHAT YOU NEED TO KNOW

Special Thanks for Superior Court Judge John Soldati

CALIFORNIA'S PROFESSIONAL RESPONSIBILITY SCHEME

- Mix of Statutes and Rules promulgated by the Supreme Court
- Business and Professions Code 6068 — and many others

BUSINESS & PROFESSIONS CODE 6068

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

- (a) To support the Constitution and laws of the United States and of this state.
- (b) To maintain the respect due to the courts of justice and judicial officers.
- (c) To counsel or maintain those actions, proceedings, or defenses only as appear to him or her legal or just, except the defense of a person charged with a public offense.
- (d) To employ, for the purpose of maintaining the causes confided to him or her those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law.

Business & Professions Code 6068

CONTINUED

(e) (1) To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client.

(2) Notwithstanding paragraph (1), an attorney may, but is not required to, reveal confidential information relating to the representation of a client to the extent that the attorney reasonably believes the disclosure is necessary to prevent a criminal act that the attorney reasonably believes is likely to result in death of, or substantial bodily harm to, an individual.

(f) To advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he or she is charged.

(g) Not to encourage either the commencement or the continuance of an action or proceeding from any corrupt motive of passion or interest.

Business & Professions Code 6068

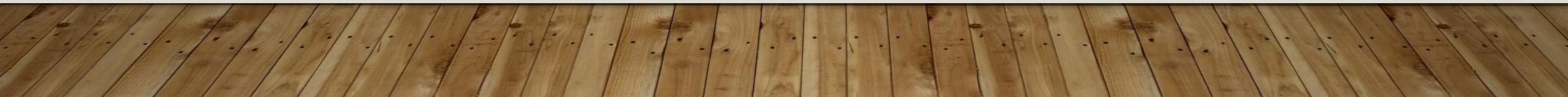
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- (h) Never to reject, for any consideration personal to himself or herself, the cause of the defenseless or the oppressed.
 - (i) To cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against himself or herself...
 - (j) To comply with the requirements of Section 6002.1.
 - (k) To comply with all conditions attached to any disciplinary probation, including a probation imposed with the concurrence of the attorney.
 - (l) To keep all agreements made in lieu of disciplinary prosecution with the State Bar.
 - (m) To respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.
 - (n) To provide copies to the client of certain documents under time limits and as prescribed in a rule of professional conduct which the board shall adopt.
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Business & Professions Code 6068

CONTINUED

(o) To report to the State Bar, in writing, within 30 days of the time the attorney has knowledge of any of the following:

- (1) The filing of three or more lawsuits in a 12-month period against the attorney for malpractice or other wrongful conduct committed in a professional capacity.
 - (2) The entry of judgment against the attorney in a civil action for fraud, misrepresentation, breach of fiduciary duty, or gross negligence committed in a professional capacity.
 - (3) The imposition of judicial sanctions against the attorney, except for sanctions for failure to make discovery or monetary sanctions of less than one thousand dollars (\$1,000).
 - (4) The bringing of an indictment or information charging a felony against the attorney.
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Business & Professions Code 6068

CONTINUED

(5) The conviction of the attorney, including any verdict of guilty, or plea of guilty or no contest, of a felony, or a misdemeanor committed ... in which a client of the attorney was the victim, or a necessary element of which ... involves improper conduct of an attorney, including dishonesty or other moral turpitude...

(6) The imposition of discipline against the attorney by a professional or occupational disciplinary agency or licensing board, whether in California or elsewhere.

(7) Reversal of judgment in a proceeding based in whole or in part upon misconduct, grossly incompetent representation, or willful misrepresentation by an attorney.

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CALIFORNIA RULES OF PROFESSIONAL CONDUCT

- Divided into 5 Chapters:
 - Professional Integrity
 - Relationships among Members
 - Professional Relationship with Clients
 - Financial Relationships
 - Advocacy & Representations

TABLE OF CONTENTS

CHAPTER I

- Chapter I. Professional Integrity in General
 - Rule I-100 Rules of Professional Conduct, in General
 - Rule I-110 Disciplinary Authority of the State Bar
 - Rule I-120 Assisting, Soliciting, or Inducing Violations
 - Rule I-200 False Statement Regarding Admission to the State Bar
 - Rule I-300 Unauthorized Practice of Law
 - Rule I-310 Forming a Partnership with a Non-Lawyer
 - Rule I-311 Employment of Disbarred, Suspended, Resigned, or
Involuntarily Inactive Members
 - Rule I-320 Financial Arrangements with Non-Lawyers

Table of Contents

Chapter I

CONTINUED

- Rule I-400 Advertising and Solicitation
- Rule I-500 Agreements Restricting a Member's Practice
- Rule I-600 Legal Service Programs
- Rule I-700 Member as Candidate for Judicial Office
- Rule I-710 Member as Temporary Judge, Referee, or Court Appointed Arbitrator

Table of Contents

Chapter 2

- Chapter 2. Relationship Among Members
 - Rule 2-100 Communication with a Represented Member
 - Rule 2-200 Financial Arrangements Among Lawyers
 - Rule 2-300 Sale or Purchase of a Law Practice of a Member, Living or Deceased
 - Rule 2-400 Prohibited Discriminatory Conduct in a Law Practice

TABLE OF CONTENTS

CHAPTER 3

- Chapter 3. Professional Relationship with Clients
 - Rule 3-100 Confidential Information of a Client
 - Rule 3-110 Failing to Act Competently
 - Rule 3-120 Sexual Relations with a Client
 - Rule 3-200 Prohibited Objectives of Employment
 - Rule 3-210 Advising the Violation of Law
 - Rule 3-300 Avoiding Interests Adverse to a Client
 - Rule 3-310 Avoiding the Representation of Adverse Interests
 - Rule 3-320 Relationship with Other Party's Lawyer
 - Rule 3-400 Limiting Liability to Client
 - Rule 3-410 Disclosure of Professional Liability Insurance
 - Rule 3-500 Communications
 - Rule 3-510 Communication of a Settlement Offer
 - Rule 3-600 Organization as Client
 - Rule 3-700 Termination of Employment

Table of Contents

Chapter 4

- Chapter 4. Financial Relationships with Clients
 - Rule 4-100 Preserving Identity of Funds and Property of a Client
 - Rule 4-200 Fees for Legal Services
 - Rule 4-210 Payment of Personal or Business Expenses Incurred by or for a Client
 - Rule 4-300 Purchasing Property at a Foreclosure or a Sale Subject to Judicial Review
 - Rule 4-400 Gifts from Client

Table of Contents

Chapter 5

- Chapter 5. Advocacy and Representation
 - Rule 5-100 Threatening Criminal, Administrative, or Disciplinary Charges
 - Rule 5-110 Performing the Duty of Member in Government Service
 - Rule 5-120 Trial Publicity
 - Rule 5-200 Trial Conduct
 - Rule 5-210 Member as Witness
 - Rule 5-220 Suppression of Evidence
 - Rule 5-300 Contact with Officials
 - Rule 5-310 Prohibited Contact with Witnesses
 - Rule 5-320 Contact with Jurors

HISTORY OF THE CALIFORNIA RULES

- Promulgated in 1928
- Amended in 1977
- Amended in 1989
- Amended in 1992
- Superseded in 2018 by new scheme matching ABA Model Rules

CALIFORNIA'S ADOPTED A NEW SCHEME IN 2018

- Same as the Model Rules, but with some structural changes
- Some rules not adopted
- California Variations

HISTORY OF THE AMERICAN BAR ASSOCIATION MODEL RULES

- 1908—Canons of Professional Ethics
- 1969—Model Code of Professional Responsibility
- 1983—Model Rules of Professional Responsibility

STRUCTURE OF THE MODEL RULES

- Client-Lawyer Relationship
- Counselor
- Advocate
- Transactions with Persons Other Than Clients
- Law Firms and Associations
- Public Service
- Information About Legal Services
- Maintaining the Integrity of the Profession

GETTING FAMILIAR WITH THE STRUCTURE OF THE RULES

Client-Lawyer Relationship

Rule 1.1 Competence

Rule 1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer
(who gets to decide what)

Rule 1.2.1 Advising or Assisting the Violation of Law
(discuss below)

Rule 1.3 Diligence

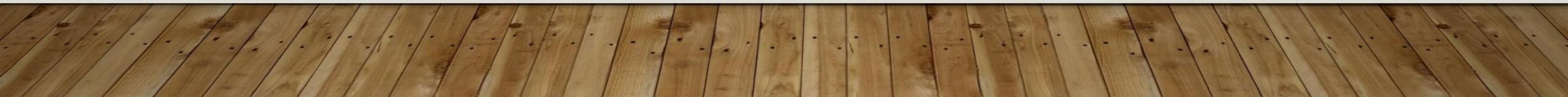
Client-Lawyer Relationship Continued

Rule 1.4 Communications
(keeping client informed)

Rule 1.5 Fees
(reasonableness of fees, contingent fees)

Rule 1.5.1 Fee Divisions Among Lawyers
(fee splitting)

Client-Lawyer Relationship Continued

- Rule 1.6 Confidentiality of Information
(what to keep private/exceptions/not A-C Privilege)
 - Rule 1.7 Conflict of Interest: Current Clients
(directly between 2 clients/between client and another client/between client and lawyer/exceptions)
 - Rule 1.8 Conflict of Interest: Current Clients: Specific Rules
(various rules/discussed below)
 - Rule 1.9 Duties to Former Clients
(duty of loyalty and confidentiality continues)
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Client-Lawyer Relationship Continued

- Rule 1.10 Imputation of Conflicts of Interest: General Rule
(everyone must conflict/screening)
- Rule 1.11 Special Conflicts of Interest for Former and Current Government Officers and Employees
(same, but for government lawyers)
- Rule 1.12 Former Judge, Arbitrator, Mediator, or Other Third-Party Neutral
- Rule 1.13 Organization as Client
(special rules for corporate counsel)

Client-Lawyer Relationship Continued

- Rule 1.15 Safekeeping Property
(client funds & property/commingling)
- Rule 1.16 Declining or Terminating Representation
(mandatory or permissive withdrawal/protecting client)
- Rule 1.17 Sale of Law Practice
- Rule 1.18 Duties to Prospective Client
(when client relationship really begins)

GETTING FAMILIAR with the STRUCTURE of the RULES

Counselor

- Rule 2.1 Advisor
 (professional judgment/candid)

- Rule 2.4 Lawyer Serving as Third-Party Neutral
 (private arbitrator or mediator/explain role)

- Rule 2.4.1 Lawyer as Temporary Judge, Referee, or Court-Appointed Arbitrator

GETTING FAMILIAR with the STRUCTURE of the RULES

Advocate

Rule 3.1 Meritorious Claims and Contentions

Rule 3.2 Delay of Litigation

Rule 3.3 Candor toward the Tribunal
(no false statements/duty to stop or correct client's lies)

Rule 3.4 Fairness to Opposing Party and Counsel
(block evidence/frivolous motions/supported by admissible evidence/dissuade wits)

Advocate

Continued

Rule 3.5 Contact with Judges, Officials, Employees, and Jurors
(influence/ex parte/contact discharged juror/disrupt trial)

Rule 3.6 Trial Publicity

Rule 3.7 Lawyer as Witness
(and its exceptions)

Rule 3.8 Special Responsibilities of a Prosecutor

Rule 3.9 Advocate in Nonadjudicative Proceedings
(like legislatures/commissions/etc)

Rule 3.10 Threatening Criminal, Administrative or Disciplinary Charges



Transactions with Persons Other Than Clients

- Rule 4.1 Truthfulness in Statements to Others
(act or omission/exception)
- Rule 4.2 Communication with Person Represented by Counsel
- Rule 4.3 Dealing with Unrepresented Person
(can't mislead)
- Rule 4.4 Respect for Rights of Third Persons

Law Firms and Associations

- Rule 5.1 Responsibilities of a Partner or Supervisory Lawyer
(where supervisor is responsible for subordinate)
- Rule 5.2 Responsibilities of a Subordinate Lawyer
(no Neuremberg defense, generally)
- Rule 5.3 Responsibilities Regarding Nonlawyer Assistants
(employees of firm)
- Rule 5.3.1 Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Lawyer
(disclosures)

Law Firms and Associations

Continued

- Rule 5.4 Professional Independence of a Lawyer
(fee sharing/partnership with non-lawyer/judgment)
- Rule 5.5 Unauthorized Practice of Law; Multijurisdictional Practice of Law
(including pro hac vice)
- Rule 5.6 Restrictions on Rights to Practice
(prior restraints)

Public Service

Rule 6.3 Membership in Legal Services Organization

Rule 6.5 Limited Legal Services Programs

Maintaining the Integrity of the Profession

Rule 8.1 False Statements Regarding Application for Admission to Practice Law

Rule 8.1.1 Compliance with Conditions of Discipline and Agreements in lieu of Discipline

Rule 8.2 Judicial and Legal Officials

Rule 8.4 Misconduct

Rule 8.4.1 Prohibited Discrimination, Harassment, and Retaliation

Rule 8.5 Disciplinary Authority; Choice of Law

NOTABLE CHANGES



RULE 1.2 & 1.2.1 ABA & CALIFORNIA

- ABA Rule 1.2:
 - a) Client makes the decisions about objectives of representation, including settlement
 - b) Lawyer's representation is not an endorsement of client's views
 - c) Lawyer can limit scope of representation if reasonable
 - d) Lawyer shall not counsel client to engage, or assist a client, in conduct that is criminal or fraudulent
- California Rule 1.2:
 - Client makes the decisions about objectives of representation, including settlement
 - Lawyer can limit scope of representation if reasonable

Rule 1.2 & 1.2.1

ABA & California

- California Rule 1.2.1
 - (a) A lawyer shall not counsel a client to engage in or assist a client in conduct that the lawyer knows* is criminal, fraudulent,* or a violation of any law, rule, or ruling of a tribunal.*
 - (b) Notwithstanding paragraph (a), a lawyer may:
 - (1) discuss the legal consequences of any proposed course of conduct with a client; and
 - (2) counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of a law, rule, or ruling of a tribunal.*

COMMENT 6 TO RULE 1.2.1

Paragraph (b) permits a lawyer to advise a client regarding the validity, scope, and meaning of California laws that might conflict with federal or tribal law. In the event of such a conflict, the lawyer may assist a client in drafting or administering, or interpreting or complying with, California laws, including statutes, regulations, orders, and other state or local provisions, even if the client's actions might violate the conflicting federal or tribal law. If California law conflicts with federal or tribal law, the lawyer must inform the client about related federal or tribal law and policy and under certain circumstances may also be required to provide legal advice to the client regarding the conflict (see rules 1.1 and 1.4).

REMINDER OF CALIFORNIA'S DIFFERENCES ON CONFIDENTIALITY

- ABA Model Rule 1.6:
 - Lawyer may reveal info when necessary to prevent reasonably certain death/substantial bodily harm or to prevent client from committing a crime/fraud likely to result in substantial financial harm to another.
- California Rule 1.6:
 - Lawyer may, but is not required to, reveal information necessary to prevent client from committing a criminal act that is likely to result in death/substantial bodily harm.

CONFLICTS—RULE 1.7(D)

- Under prior California Law (Rule 3.310), most conflicts were waivable with informed, written consent.
- Under new Rule 1.7(d), three circumstances never waivable:
 - Lawyer's belief that he can be competent and diligent despite the conflict must be reasonable
 - The representation is not prohibited by law
 - There is no assertion by one client against another client in the same litigation

ABA RULE 1.8 — CURRENT CLIENTS SPECIFIC RULES

- (a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:
 - (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;
 - (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and
 - (3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.
- (b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.

ABA Rule 1.8 — Current Clients

Specific Rules

Continued

- (c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.
- (d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

ABA Rule 1.8 — Current Clients Specific Rules Continued

- (e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:
 - (1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and
 - (2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.
- (f) A lawyer shall not accept compensation for representing a client from one other than the client unless:
 - (1) the client gives informed consent;
 - (2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and
 - (3) information relating to representation of a client is protected as required by Rule 1.6.

ABA Rule 1.8 — Current Clients Specific Rules Continued

- (g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.
- (h) A lawyer shall not:
 - (1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement; or
 - (2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.

ABA Rule 1.8 — Current Clients

Specific Rules

Continued

- (i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:
 - (1) acquire a lien authorized by law to secure the lawyer's fee or expenses; and
 - (2) contract with a client for a reasonable contingent fee in a civil case.
- (j) A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.
- (k) While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (i) that applies to any one of them shall apply to all of them.

CA RULE 1.8.1— BUSINESS TRANSACTIONS WITH A CLIENT AND PECUNIARY INTERESTS ADVERSE TO A CLIENT

- A lawyer shall not enter into a business transaction with a client, or knowingly* acquire an ownership, possessory, security or other pecuniary interest adverse to a client, unless each of the following requirements has been satisfied:
 - (a) the transaction or acquisition and its terms are fair and reasonable* to the client and the terms and the lawyer's role in the transaction or acquisition are fully disclosed and transmitted in writing* to the client in a manner that should reasonably* have been understood by the client;
 - (b) the client either is represented in the transaction or acquisition by an independent lawyer of the client's choice or the client is advised in writing* to seek the advice of an independent lawyer of the client's choice and is given a reasonable* opportunity to seek that advice; and
 - (c) the client thereafter provides informed written consent* to the terms of the transaction or acquisition, and to the lawyer's role in it.

CA RULE 1.8.2 – USE OF CURRENT CLIENT’S INFORMATION

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

CA RULE 1.8.3 – GIFTS FROM CLIENT

- (a) A lawyer shall not:
 - (1) solicit a client to make a substantial* gift, including a testamentary gift, to the lawyer or a person* related to the lawyer, unless the lawyer or other recipient of the gift is related to the client, or
 - (2) prepare on behalf of a client an instrument giving the lawyer or a person* related to the lawyer any substantial* gift, unless
 - (i) the lawyer or other recipient of the gift is related to the client, or
 - (ii) the client has been advised by an independent lawyer who has provided a certificate of independent review that complies with the requirements of Probate Code section 21384.
- (b) For purposes of this rule, related persons* include a person* who is “related by blood or affinity” as that term is defined in California Probate Code section 21374, subdivision (a).

RULE 1.8.4 — NOT ADOPTED IN CALIFORNIA

“Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.”

-ABA Rule 1.8(d)

CA RULE 1.8.5 – PAYMENT OF PERSONAL OR BUSINESS EXPENSES INCURRED BY OR FOR A CLIENT

- (a) A lawyer shall not directly or indirectly pay or agree to pay, guarantee, or represent that the lawyer or lawyer's law firm* will pay the personal or business expenses of a prospective or existing client. (b) Notwithstanding paragraph (a), a lawyer may:
 - (1) pay or agree to pay such expenses to third persons,* from funds collected or to be collected for the client as a result of the representation, with the consent of the client;
 - (2) after the lawyer is retained by the client, agree to lend money to the client based on the client's written* promise to repay the loan, provided the lawyer complies with rules 1.7(b), 1.7(c), and 1.8.1 before making the loan or agreeing to do so;

CA RULE 1.8.5 – **CONTINUED**

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

CA RULE 1.8.6 – COMPENSATION FROM ONE OTHER THAN CLIENT

- A lawyer shall not enter into an agreement for, charge, or accept compensation for representing a client from one other than the client unless:
 - (a) there is no interference with the lawyer's independent professional judgment or with the lawyer-client relationship;
 - (b) information is protected as required by Business and Professions Code section 6068, subdivision (e)(1) and rule 1.6; and
 - (c) the lawyer obtains the client's informed written consent* at or before the time the lawyer has entered into the agreement for, charged, or accepted the compensation, or as soon thereafter as reasonably* practicable, provided that no disclosure or consent is required if:
 - (1) nondisclosure or the compensation is otherwise authorized by law or a court order; or
 - (2) the lawyer is rendering legal services on behalf of any public agency or nonprofit organization that provides legal services to other public agencies or the public.

CA RULE 1.8.7 – AGGREGATE SETTLEMENTS

- (a) A lawyer who represents two or more clients shall not enter into an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregate agreement as to guilty or nolo contendere pleas, unless each client gives informed written consent.* The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person* in the settlement.
- (b) This rule does not apply to class action settlements subject to court approval.

CA RULE 1.8.8 – LIMITING LIABILITY TO CLIENT

- A lawyer shall not:
 - (a) Contract with a client prospectively limiting the lawyer's liability to the client for the lawyer's professional malpractice; or
 - (b) Settle a claim or potential claim for the lawyer's liability to a client or former client for the lawyer's professional malpractice, unless the client or former client is either:
 - (1) represented by an independent lawyer concerning the settlement; or
 - (2) advised in writing* by the lawyer to seek the advice of an independent lawyer of the client's choice regarding the settlement and given a reasonable* opportunity to seek that advice.

CA RULE 1.8.9 – PURCHASING PROPERTY **AT A FORECLOSURE OR A SALE** **SUBJECT TO JUDICIAL REVIEW**

- (a) A lawyer shall not directly or indirectly purchase property at a probate, foreclosure, receiver's, trustee's, or judicial sale in an action or proceeding in which such lawyer or any lawyer affiliated by reason of personal, business, or professional relationship with that lawyer or with that lawyer's law firm* is acting as a lawyer for a party or as executor, receiver, trustee, administrator, guardian, or conservator.
- (b) A lawyer shall not represent the seller at a probate, foreclosure, receiver, trustee, or judicial sale in an action or proceeding in which the purchaser is a spouse or relative of the lawyer or of another lawyer in the lawyer's law firm* or is an employee of the lawyer or the lawyer's law firm.*
- (c) This rule does not prohibit a lawyer's participation in transactions that are specifically authorized by and comply with Probate Code sections 9880 through 9885, but such transactions remain subject to the provisions of rules 1.8.1 and 1.7.

CA RULE 1.8.10 – SEXUAL RELATIONS WITH CURRENT CLIENT

- (a) A lawyer shall not engage in sexual relations with a current client who is not the lawyer's spouse or registered domestic partner, unless a consensual sexual relationship existed between them when the lawyer-client relationship commenced.
- (b) For purposes of this rule, "sexual relations" means sexual intercourse or the touching of an intimate part of another person* for the purpose of sexual arousal, gratification, or abuse.
- (c) If a person* other than the client alleges a violation of this rule, no Notice of Disciplinary Charges may be filed by the State Bar against a lawyer under this rule until the State Bar has attempted to obtain the client's statement regarding, and has considered, whether the client would be unduly burdened by further investigation or a charge.

CA RULE 1.8.11 – IMPUTATION OF **PROHIBITIONS UNDER** **RULES 1.8.1 TO 1.8.9**

- While lawyers are associated in a law firm,* a prohibition in rules 1.8.1 through 1.8.9 that applies to any one of them shall apply to all of them.

DIFFERENCES BETWEEN ABA MODEL RULE AND CALIFORNIA RULE

- Model Rule:

(i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

- (1) acquire a lien authorized by law to secure the lawyer's fee or expenses; and
- (2) contract with a client for a reasonable contingent fee in a civil case.

- California Rule 1.8.9:

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

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

TWO CHANGES FROM CALIFORNIA LAW

- Sex with Clients:
 - Rule 3.120
 - Can't require sex as a condition of representation, use coercion to enter into sexual relations, or continue representation if sex causes lawyer to be incompetent.
 - Rule 1.8.10
 - Can't have sex with non-spouse/domestic partner client at all, unless relationship pre-existed.
- Payment of Personal/Business Expenses of Client (loans permitted)
 - Rule 4.210
 - Rule 1.8.5—expands what “costs” are in advancing amounts to client

RULES 1.10, 1.11 AND 1.12

- These rules involve imputing conflicts and ethical screens
- There were no California counterparts, but they are consistent with case law.

RULE 1.13 — CORPORATE LAWYERS

- Strengthens concept that the client is the corporation itself.
- Old Rule permitted Lawyers to go to higher ups when a constituent of the corporation is going to act not in the best interests of the corporation
- New rule requires the attorney to do so, and requires the lawyer to always act in the corporation's best interests. If higher ups proceed anyway, may permit lawyer to continue to act in bests interest, or to resign or withdraw.

RULE 1.15—SAFEKEEPING FUNDS

- Three major changes:
 - 1. Obligation to deposit funds in trust account now extends to unearned fees
 - 2. Must also deposit funds payable to non-client under contract (e.g., lienholders)
 - 3. Provides that flat fees are not earned upon receipt *and* must be deposited into trust account until they are earned, absent *express written consent* of client.

Rule 1.15 — Safekeeping Funds Continued

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

- (1) the lawyer or law firm* discloses to the client in writing*
 - (i) that the client has a right under paragraph (a) to require that the flat fee be deposited in an identified trust account until the fee is earned, and
 - (ii) that the client is entitled to a refund of any amount of the fee that has not been earned in the event the representation is terminated or the services for which the fee has been paid are not completed; and
- (2) if the flat fee exceeds \$1,000.00, the client’s agreement to deposit the flat fee in the lawyer’s operating account and the disclosures required by paragraph (b)(1) are set forth in a writing* signed by the client.”

Rule 1.15 — Safekeeping Funds Continued

- See also, Rule 1.5(d):
- “(d) A lawyer may make an agreement for, charge, or collect a fee that is denominated as “earned on receipt” or “non-refundable,” or in similar terms, only if the fee is a true retainer and the client agrees in writing* after disclosure that the client will not be entitled to a refund of all or part of the fee charged. A true retainer is a fee that a client pays to a lawyer to ensure the lawyer’s availability to the client during a specified period or on a specified matter, but not to any extent as compensation for legal services performed or to be performed.”

RULE 1.14 — CLIENTS WITH DIMINISHED CAPACITY *(NOT ADOPTED IN CALIFORNIA)*

- (a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.
- (b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.
- (c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

RULE 2.3 — EVALUATION BY THIRD PARTIES *(NOT ADOPTED IN CALIFORNIA)*

- (a) A lawyer may provide an evaluation of a matter affecting a client for the use of someone other than the client if the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client.
- (b) When the lawyer knows or reasonably should know that the evaluation is likely to affect the client's interests materially and adversely, the lawyer shall not provide the evaluation unless the client gives informed consent.
- (c) Except as disclosure is authorized in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by Rule 1.6.

RULE 6.1 — PRO BONO SERVICE

(NOT ADOPTED IN CALIFORNIA)

Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

(a) provide a substantial majority of the (50) hours of legal services without fee or expectation of fee to:

- (1) persons of limited means or
- (2) charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means; and

Rule 6.1 — PRO BONO SERVICE

(NOT ADOPTED IN CALIFORNIA)

CONTINUED

(b) provide any additional services through:

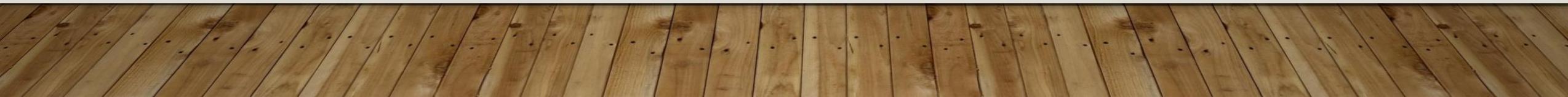
- (1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;
- (2) delivery of legal services at a substantially reduced fee to persons of limited means; or
- (3) participation in activities for improving the law, the legal system or the legal profession.

In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

RULE 6.2 — ACCEPTING APPOINTMENTS

(NOT ADOPTED IN CALIFORNIA)

A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

- (a) representing the client is likely to result in violation of the Rules of Professional Conduct or other law;
 - (b) representing the client is likely to result in an unreasonable financial burden on the lawyer; or
 - (c) the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client.
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RULE 6.4 — LAW REFORM ACTIVITIES

(NOT ADOPTED IN CALIFORNIA)

A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially benefitted by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client.

RULE 8.3 —

REPORTING PROFESSIONAL MISCONDUCT

(NOT ADOPTED IN CALIFORNIA)

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

RULE 8.4.1 — PROHIBITED DISCRIMINATION, ETC...

(a) In representing a client, or in terminating or refusing to accept the representation of any client, a lawyer shall not:

- (1) unlawfully harass or unlawfully discriminate against persons* on the basis of any protected characteristic; or
- (2) unlawfully retaliate against persons.*

Rule 8.4.1 — PROHIBITED DISCRIMINATION, ETC... **CONTINUED**

(b) In relation to a law firm's operations, a lawyer shall not:

(1) on the basis of any protected characteristic,

(i) unlawfully discriminate or knowingly* permit unlawful discrimination;

(ii) unlawfully harass or knowingly* permit the unlawful harassment of an employee, an applicant, an unpaid intern or volunteer, or a person* providing services pursuant to a contract; or

(iii) unlawfully refuse to hire or employ a person*, or refuse to select a person* for a training program leading to employment, or bar or discharge a person* from employment or from a training program leading to employment, or discriminate against a person* in compensation or in terms, conditions, or privileges of employment; or

(2) unlawfully retaliate against persons.*

Rule 8.4.1 — PROHIBITED DISCRIMINATION, ETC... **CONTINUED**

(c) For purposes of this rule:

- (1) “protected characteristic” means race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, military and veteran status, or other category of discrimination prohibited by applicable law, whether the category is actual or perceived;
- (2) “knowingly permit” means to fail to advocate corrective action where the lawyer knows* of a discriminatory policy or practice that results in the unlawful discrimination or harassment prohibited by paragraph (b);
- (3) “unlawfully” and “unlawful” shall be determined by reference to applicable state and federal statutes and decisions making unlawful discrimination or harassment in employment and in offering goods and services to the public; and
- (4) “retaliate” means to take adverse action against a person* because that person* has (i) opposed, or (ii) pursued, participated in, or assisted any action alleging, any conduct prohibited by paragraphs (a)(1) or (b)(1) of this rule.

Rule 8.4.1 — PROHIBITED DISCRIMINATION, ETC... **CONTINUED**

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

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

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

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

Rule 8.4.1 — PROHIBITED DISCRIMINATION, ETC... **CONTINUED**

(f) This rule shall not preclude a lawyer from:

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

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

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

THE END

THANK

YOU!

