

RULES OF PROFESSIONAL CONDUCT
Chapter 8. Maintaining the Integrity of the Profession (Rules 8.1 – 8.5)

Rule 8.1 False Statement Regarding Application for Admission to Practice Law

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

Comment

[1] A person* who makes a false statement in connection with that person's* own application for admission to practice law may be subject to discipline under this rule after that person* has been admitted. (See, e.g., *In re Gossage* (2000) 23 Cal.4th 1080 [99 Cal.Rptr.2d 130].)

[2] A lawyer's duties with respect to a *pro hac vice* application or other application to a court for admission to practice law are governed by rule 3.3.

[3] A lawyer representing an applicant for admission to practice law is governed by the rules applicable to the lawyer-client relationship, including Business and Professions Code section 6068, subdivision (e)(1) and rule 1.6. A lawyer representing a lawyer who is the subject of a disciplinary proceeding is not governed by this rule but is subject to the requirements of rule 3.3.

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

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

Comment

Other provisions also require a lawyer to comply with agreements in lieu of discipline and conditions of discipline. (See, e.g., Bus. & Prof. Code, § 6068, subs. (k), (l).)

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Rule 8.2 Judicial Officials

- (a) A lawyer shall not make a statement of fact that the lawyer knows* to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge or judicial officer, or of a candidate for election or appointment to judicial office.
- (b) A lawyer who is a candidate for judicial office in California shall comply with canon 5 of the California Code of Judicial Ethics. For purposes of this rule, “candidate for judicial office” means a lawyer seeking judicial office by election. The determination of when a lawyer is a candidate for judicial office by election is defined in the terminology section of the California Code of Judicial Ethics. A lawyer’s duty to comply with this rule shall end when the lawyer announces withdrawal of the lawyer’s candidacy or when the results of the election are final, whichever occurs first.
- (c) A lawyer who seeks appointment to judicial office shall comply with canon 5B(1) of the California Code of Judicial Ethics. A lawyer becomes an applicant seeking judicial office by appointment at the time of first submission of an application or personal data questionnaire to the appointing authority. A lawyer’s duty to comply with this rule shall end when the lawyer advises the appointing authority of the withdrawal of the lawyer’s application.

Comment

To maintain the fair and independent administration of justice, lawyers should defend judges and courts unjustly criticized. Lawyers also are obligated to maintain the respect due to the courts of justice and judicial officers. (See Bus. & Prof. Code, § 6068, subd. (b).)

Rule 8.3 Reporting Professional Misconduct

- (a) A lawyer shall, without undue delay, inform the State Bar, or a tribunal* with jurisdiction to investigate or act upon such misconduct, when the lawyer knows* of credible evidence that another lawyer has committed a criminal act or has engaged in conduct involving dishonesty, fraud,* deceit, or reckless or intentional misrepresentation or misappropriation of funds or property that raises a substantial* question as to that lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects.
- (b) Except as required by paragraph (a), a lawyer may, but is not required to, report to the State Bar a violation of these Rules or the State Bar Act.
- (c) For purposes of this rule, “criminal act” as used in paragraph (a) excludes conduct that would be a criminal act in another state, United States territory, or foreign jurisdiction, but would not be a criminal act in California.
- (d) This rule does not require or authorize disclosure of information gained by a lawyer while participating in a substance use or mental health program, or require disclosure of information protected by Business and Professions Code section 6068, subdivision (e) and rules 1.6 and 1.8.2; mediation confidentiality; the lawyer-client privilege; other

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applicable privileges; or by other rules or laws, including information that is confidential under Business and Professions Code section 6234.

Comment

[1] This rule does not abrogate a lawyer's obligations to report the lawyer's own conduct as required by these rules or the State Bar Act. (See, e.g., rule 8.4.1(d) and (e); Bus. & Prof. Code, § 6068, subd. (o).)

[2] The duty to report under paragraph (a) is not intended to discourage lawyers from seeking counsel. This rule does not apply to a lawyer who is consulted about or retained to represent a lawyer whose conduct is in question, or to a lawyer consulted in a professional capacity by another lawyer on whether the inquiring lawyer has a duty to report a third-party lawyer under this rule. The duty to report under paragraph (a) does not apply if the report would involve disclosure of information that is gained by a lawyer while participating as a member of a state or local bar association ethics hotline or similar service.

[3] The duty to report without undue delay under paragraph (a) requires the lawyer to report as soon as the lawyer reasonably believes* the reporting will not cause material prejudice or damage to the interests of a client of the lawyer or a client of the lawyer's firm.* The lawyer should also consider the applicability of other rules such as rules 1.4 (the duty to communicate), 1.7(b) (material limitation conflict), 5.1 (responsibilities of managerial and supervisory lawyers), and 5.2 (responsibilities of a subordinate lawyer).

[4] This rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this rule. The term "substantial* question" refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware.

[5] Information about a lawyer's misconduct or fitness may be received by a lawyer while participating in a substance use or mental health program, including but not limited to the Attorney Diversion and Assistance Program. (See Bus. & Prof. Code, § 6234.) In these circumstances, providing for an exception to the reporting requirement of paragraph (a) of this rule encourages lawyers to seek treatment through such programs. Conversely, without such an exception, lawyers may hesitate to seek assistance from these programs, which may then result in additional harm to their professional careers and additional injury to the welfare of clients and the public.

[6] The rule permits reporting to either the State Bar or to "a tribunal* with jurisdiction to investigate or act upon such misconduct." A determination whether to report to a tribunal,* instead of the State Bar, will depend on whether the misconduct arises during pending litigation and whether the particular tribunal* has the power to "investigate or act upon" the alleged misconduct. Where the litigation is pending before a non-judicial tribunal,* such as a private arbitrator, reporting to the tribunal* may not be sufficient. If the tribunal* is a proper reporting venue, evidence of lawyer misconduct adduced during those proceedings may be admissible evidence in subsequent disciplinary proceedings. (*Caldwell v. State Bar* (1975) 13 Cal.3d 488,

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497.) Furthermore, a report to the proper tribunal* may also trigger obligations for the tribunal* to report the misconduct to the State Bar or to take other “appropriate corrective action.” (See Bus. & Prof. Code, §§ 6049.1, 6086.7, 6068.8; and Cal. Code of Jud. Ethics, canon 3D(2).)

[7] A report under this rule to a tribunal* concerning another lawyer’s criminal act or fraud* may constitute a “reasonable* remedial measure” within the meaning of rule 3.3(b).

[8] In addition to reporting as required by paragraph (a), a report may also be made to another appropriate agency. A lawyer must not threaten to present criminal, administrative or disciplinary charges to obtain an advantage in a civil dispute in violation of rule 3.10.

[9] A lawyer may also be disciplined for participating in an agreement that precludes the reporting of a violation of the rules. (See rule 5.6(b); and Bus. & Prof. Code, § 6090.5.)

[10] Communications to the State Bar relating to lawyer misconduct are “privileged, and no lawsuit predicated thereon may be instituted against any person.” (Bus. & Prof. Code, § 6094.) However, lawyers may be subject to criminal penalties for false and malicious reports or complaints filed with the State Bar or be subject to discipline or other penalties by offering false statements or false evidence to a tribunal.* (See rule 3.3(a); Bus. & Prof. Code, §§ 6043.5, subd. (a), 6068, subd. (d).)

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).

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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] 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 8.4.1 Prohibited Discrimination, Harassment and Retaliation

- (a) In representing a client, or in terminating or refusing to accept the representation of any client, a lawyer shall not:
 - (1) unlawfully harass or unlawfully discriminate against persons* on the basis of any protected characteristic; or
 - (2) unlawfully retaliate against persons.*
- (b) In relation to a law firm’s operations, a lawyer 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

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- (iii) unlawfully refuse to hire or employ a person*, or refuse to select a person* for a training program leading to employment, or bar or discharge a person* from employment or from a training program leading to employment, or discriminate against a person* in compensation or in terms, conditions, or privileges of employment; or
 - (2) unlawfully retaliate against persons.*
- (c) For purposes of this rule:
 - (1) “protected characteristic” means race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, military and veteran status, or other category of discrimination prohibited by applicable law, whether the category is actual or perceived;
 - (2) “knowingly permit” means to fail to advocate corrective action where the 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.
- (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.
- (f) This rule shall not preclude a lawyer from:
 - (1) representing a client alleged to have engaged in unlawful discrimination, harassment, or retaliation;

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- (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.

Comment

[1] Conduct that violates this rule undermines confidence in the legal profession and our legal system and is contrary to the fundamental principle that all people are created equal. A lawyer may not engage in such conduct through the acts of another. (See rule 8.4(a).) In relation to a law firm's operations, this rule imposes on all law firm* lawyers the responsibility to advocate corrective action to address known* harassing or discriminatory conduct by the firm* or any of its other lawyers or nonlawyer personnel. Law firm* management and supervisory lawyers retain their separate responsibility under rules 5.1 and 5.3. Neither this rule nor rule 5.1 or 5.3 imposes on the alleged victim of any conduct prohibited by this rule any responsibility to advocate corrective action.

[2] The conduct prohibited by paragraph (a) includes the conduct of a lawyer in a proceeding before a judicial officer. (See Cal. Code Jud. Ethics, canon 3B(6) ["A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation against parties, witnesses, counsel, or others."].) A lawyer does not violate paragraph (a) by referring to any particular status or group when the reference is relevant to factual or legal issues or arguments in the representation. While both the parties and the court retain discretion to refer such conduct to the State Bar, a court's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of paragraph (a).

[3] A lawyer does not violate this rule by limiting the scope or subject matter of the lawyer's practice or by limiting the lawyer's practice to members of underserved populations. A lawyer also does not violate this rule by otherwise restricting who will be accepted as clients for advocacy-based reasons, as required or permitted by these rules or other law.

[4] 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.

[5] What constitutes a failure to advocate corrective action under paragraph (c)(2) will depend on the nature and seriousness of the discriminatory policy or practice, the extent to which the lawyer knows* of unlawful discrimination or harassment resulting from that policy or practice, and the nature of the lawyer's relationship to the lawyer or law firm* implementing that policy or practice. For example, a law firm* non-management and non-supervisory lawyer who becomes aware that the law firm* is engaging in a discriminatory hiring practice may advocate corrective action by bringing that discriminatory practice to the attention of a law firm* management lawyer who would have responsibility under rule 5.1 or 5.3 to take reasonable* remedial action upon becoming aware of a violation of this rule.

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[6] Paragraph (d) ensures that the State Bar and the State Bar Court will be provided with information regarding related proceedings that may be relevant in determining whether a State Bar investigation or a State Bar Court proceeding relating to a violation of this rule should be abated.

[7] Paragraph (e) recognizes the public policy served by enforcement of laws and regulations prohibiting unlawful discrimination, by ensuring that the state and federal agencies with primary responsibility for coordinating the enforcement of those laws and regulations is provided with notice of any allegation of unlawful discrimination, harassment, or retaliation by a lawyer that the State Bar finds has sufficient merit to warrant issuance of a notice of a disciplinary charge.

[8] This rule permits the imposition of discipline for conduct that would not necessarily result in the award of a remedy in a civil or administrative proceeding if such proceeding were filed.

[9] 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.

Rule 8.5 Disciplinary Authority; Choice of Law

(a) Disciplinary Authority.

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

(b) Choice of Law.

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

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

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Comment

Disciplinary Authority

The conduct of a lawyer admitted to practice in California is subject to the disciplinary authority of California. (See Bus. & Prof. Code, §§ 6077, 6100.) Extension of the disciplinary authority of California to other lawyers who provide or offer to provide legal services in California is for the protection of the residents of California. A lawyer disciplined by a disciplinary authority in another jurisdiction may be subject to discipline in California for the same conduct. (See, e.g., § 6049.1.)