

Rule 1.4 Communication
(Commission's Proposed Rule – Clean Version)

- (a) A lawyer shall:
- (1) promptly inform the client of any decision or circumstance with respect to which written disclosure or the client's informed consent, as defined in Rule 1.0(e), is required by these Rules or the State Bar Act;
 - (2) reasonably consult with the client about the means by which to accomplish the client's objectives in the representation;
 - (3) keep the client reasonably informed about significant developments relating to the representation;
 - (4) promptly comply with reasonable requests for information;
 - (5) promptly comply with reasonable client requests for access to significant documents necessary to keep the client reasonably informed about significant developments relating to the representation, which the lawyer may satisfy by permitting the client to inspect the documents or by furnishing copies of the documents to the client; and
 - (6) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by these Rules or other law.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

- (c) A lawyer shall promptly communicate to the lawyer's client:
- (1) all terms and conditions of any offer made to the client in a criminal matter; and
 - (2) all amounts, terms, and conditions of any written offer of settlement made to the client in all other matters.

COMMENT

- [1] Whether a particular development is significant will generally depend upon the surrounding facts and circumstances. For example, a change in lawyer personnel might be a significant development depending on whether responsibility for overseeing the client's work is being changed, whether the new attorney will be performing a significant portion or aspect of the work, and whether staffing is being changed from what was promised to the client. Other examples of significant developments may include the receipt of a demand for further discovery or a threat of sanctions, a change in a criminal abstract of judgment or re-calculation of custody credits, and the loss or theft of information concerning the client's identity or information concerning the matter for which representation is being provided. Depending upon the circumstances, a lawyer may also be obligated pursuant to paragraphs (a)(2) or (a)(3) to communicate with the client concerning the opportunity to engage in, and the advantages and disadvantages of, alternative dispute resolution processes. Conversely, examples of developments or circumstances that generally are not significant include the payment of a motion fee and

the application for or granting of an extension of time for a time period that does not materially prejudice the client's interest.

- [2] A lawyer may comply with paragraph (a)(5) by providing to the client copies of significant documents by electronic or other means. A lawyer may agree with the client that the client assumes responsibility for the cost of copying significant documents the lawyer provides pursuant to paragraph (a)(5). A lawyer must comply with paragraph (a)(5) without regard to whether the client has complied with an obligation to pay the lawyer's fees and costs. This Rule is not intended to prohibit a claim for the recovery of the lawyer's expense in any subsequent legal proceeding.
- [3] The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so.
- [4] As used in paragraph (c), "client" includes a person who possesses the authority to accept an offer of settlement or plea, or, in a class action, all the named representatives of the class.
- [5] Because of the liberty interests involved in a criminal matter, paragraph (c)(1) requires that counsel in a criminal matter convey to the client all offers, whether written or oral. As used in this Rule, "criminal matters" includes all legal proceedings where violations of criminal laws are alleged, and liberty interests are involved, including juvenile proceedings.
- [6] Paragraph (c)(2) requires a lawyer to advise a client promptly of all written settlement offers, regardless of whether the offers are

considered by the lawyer to be significant. Notwithstanding paragraph (c)(2), a lawyer need not inform the client of the substance of a written offer of a settlement in a civil matter if the client has previously instructed that such an offer will be acceptable or unacceptable, or has previously authorized the lawyer to accept or to reject the offer, and there has been no change in circumstances that requires the lawyer to consult with the client. See Rule [1.2(a)].

- [7] Any oral offers of settlement made to the client in a civil matter must also be communicated if they are significant.
- [8] Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for example, where the client is a child or suffers from diminished capacity. See Rule 1.14. When the client is an organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the lawyer should address communications to the appropriate officials of the organization. See Rule 1.13. Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client.
- [9] In some circumstances, a lawyer may be justified in delaying or withholding transmission of information when the client would be likely to react imprudently to an immediate communication. For example, a lawyer might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. A lawyer may not withhold information to serve the lawyer's own interest or convenience or the interests or convenience of another person. This Rule does not require a lawyer to disclose to a client any information or document that a court order or non-disclosure

agreement prohibits the lawyer from disclosing to that client. This Rule is not intended to override applicable statutory or decisional law requiring that certain information not be provided to defendants in criminal cases who are clients of the lawyer. Compare Rule [1.16(e)(1) and Comment [9]].

- [10] This Rule is not intended to create, augment, diminish, or eliminate any application of the work product doctrine. The obligation of the lawyer to provide work product to the client shall be governed by relevant statutory and decisional law.