

# Proposed Rule 1.0 [RPC 1-100]

## “Purpose and Scope of the Rules”

(Draft #8.1, 10/18/09)

**Summary:** Proposed Rule 1.0 provides a description of the purposes and scope of the Rules of Professional Conduct in place of the Preamble and Scope to the ABA Model Rules. The purposes of the Rules are to protect the public and the interests of the client, to protect and promote the legal system and the administration of justice and to promote respect for and confidence in the legal profession. The Rules apply to members of the State Bar practicing in and outside of California and to other lawyers practicing law in this state. A willful violation of the Rules is a basis for discipline. The Rules are not intended to enlarge or restrict the law regarding the liability of lawyers to others.

<b>Comparison with ABA Counterpart</b>	
<b>Rule</b>	<b>Comment</b>
<input type="checkbox"/> ABA Model Rule substantially adopted <input type="checkbox"/> ABA Model Rule substantially rejected <input type="checkbox"/> Some material additions to ABA Model Rule <input type="checkbox"/> Some material deletions from ABA Model Rule <input checked="" type="checkbox"/> No ABA Model Rule counterpart	<input type="checkbox"/> ABA Model Rule substantially adopted <input type="checkbox"/> ABA Model Rule substantially rejected <input type="checkbox"/> Some material additions to ABA Model Rule <input type="checkbox"/> Some material deletions from ABA Model Rule <input checked="" type="checkbox"/> No ABA Model Rule counterpart

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### Primary Factors Considered

Existing California Law

Rules

RPC 1-100

Statute

Case law

State Rule(s) Variations (In addition, see provided excerpt of selected state variations.)

Other Primary Factor(s)

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## Rule Revision Commission Action/Vote to Recommend Rule Adoption

(14 Members Total – votes recorded may be less than 14 due to member absences)

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Approved on 10-day Ballot, Less than Six Members Opposing Adoption

Vote (see tally below)

Favor Rule as Recommended for Adoption 12

Opposed Rule as Recommended for Adoption 0

Abstain 0

Approved on Consent Calendar

Approved by Consensus

Minority/Position Included on Model Rule Comparison Chart:  Yes  No

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## Stakeholders and Level of Controversy

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No Known Stakeholders

The Following Stakeholders Are Known:

State Bar of California Committee on Professional Liability Insurance

Very Controversial – Explanation:

Moderately Controversial – Explanation:

The Commission recommends that the Model Rule Preamble and Scope not be adopted and that the purpose and scope of the Rules be included in a separate rule of professional conduct. In addition, the Commission recommends including the concept in the Model Rule Scope, paragraph 20, that a violation of a rule will not itself give rise to a civil cause of action; however, a violation of a rule may be evidence of breach of a fiduciary or other substantive duty in a non-disciplinary context.

Not Controversial

# COMMISSION FOR THE REVISION OF THE RULES OF PROFESSIONAL CONDUCT

## Proposed Rule 1.0\* Purpose and Scope of the Rules of Professional Conduct

October 2009

(Draft rule following consideration of public comment.)

### *INTRODUCTION:*

Proposed Rule 1.0 provides a description of the intended purpose and scope of the Rules of Professional Conduct. The Rule does not have a counterpart in the ABA Model Rules. The Model Rules, instead, are preceded by a Preamble describing a lawyer's responsibilities in 13 comments and a Scope that describes how the Rules are to be applied in 8 additional comments. The Preamble and Scope to the Model Rules follows a tradition that began with the preamble to the original ABA Canons of Professional Conduct and continued with the ABA Model Code of Professional Responsibility. California has traditionally described the purpose and scope of its Rules in a separate rule, and the Commission recommends that this tradition be continued in proposed Rule 1.0.

Rule 1.0(a) enumerates four purposes of the Rules: (1) to protect the public; (2) to protect the interests of clients; (3) to protect the integrity of the legal system and promote the administration of justice and (4) to promote respect for, and confidence in, the legal professional. These four purposes are derived from the Rules themselves and from court decisions and ethics opinions that have discussed and applied the Rules. Paragraph (a) is consistent with the Model Rules and provides a more concise statement of the purpose of the Rules than the general orientation contained in the Preamble and Scope to the Model Rules.

Rule 1.0(b) describes the scope of the Rules and is derived in part from current California Rule 1-100 and provisions of the State Bar Act and from comments under the Scope section to the Model Rules. Paragraph (c) tracks Scope paragraph 21 in explaining the purpose of the comments accompanying the Rules. Paragraph (d) explains how the Rules should be cited.

*Variation in other jurisdictions.* Although most states include a preamble and scope section similar to the Model Rules, several states, including Michigan and Nevada, replace the preamble and scope with a rule which incorporates some of the paragraphs of the preface to the Model Rule.

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\* Proposed Rule 1.0, Draft 8.1 (10/18/09).

<p align="center"><b><u>Current California Rule</u></b>  <b>Rule 1-100 Rules of Professional Conduct, in General</b></p>	<p align="center"><b><u>Commission's Proposed Rule*</u></b>  <b>Rule 1.0 <u>Purpose and Scope of the Rules of Professional Conduct</u>, <del>in General</del></b></p>	<p align="center"><b><u>Explanation of Changes to the ABA Model Rule</u></b></p>
<p>(A) Purpose and Function.</p> <p>The following rules are intended to regulate professional conduct of members of the State Bar through discipline. They have been adopted by the Board of Governors of the State Bar of California and approved by the Supreme Court of California pursuant to Business and Professions Code sections 6076 and 6077 to protect the public and to promote respect and confidence in the legal profession. These rules together with any standards adopted by the Board of Governors pursuant to these rules shall be binding upon all members of the State Bar.</p>	<p>(Aa) <del>Purpose and Function. The purposes of the following Rules are:</del></p> <p><del>The following rules are intended to regulate professional conduct of members of the State Bar through discipline. They have been adopted by the Board of Governors of the State Bar of California and approved by the Supreme Court of California pursuant to Business and Professions Code sections 6076 and 6077 to protect the public and to promote respect and confidence in the legal profession. These rules together with any standards adopted by the Board of Governors pursuant to these rules shall be binding upon all members of the State Bar.</del></p>	<p>Paragraph (a) provides a succinct statement of the purposes of the Rules in place of the more general orientation contained in the Preamble and Scope to the Model Rules. Paragraph (a) continues the approach in current California Rule 1-100(A) of describing the policies underlying the Rules. The paragraph expands on the purposes stated in current Rule 1-100 and is intended to provide greater guidance to lawyers in applying the Rules. The four purposes are derived from the Rules themselves and from relevant case law and ethics opinions on the purposes of the Rules. Each of the four stated purposes in paragraph (a) is consistent with the ABA Preamble on A Lawyer's Responsibilities and the Scope section to the Model Rules. See Model Rule, Preamble and Scope, below, particularly paragraphs 1 through 9, 11, 12, and 17.</p>
	<p><u>(1) To protect the public;</u></p>	
	<p><u>(2) To protect the interests of clients;</u></p>	
	<p><u>(3) To protect the integrity of the legal system and to promote the administration of justice; and</u></p>	

\* Proposed Rule 1.0, Draft 8.1 (10/18/09). Redline/strikeout showing changes to the ABA Model Rule

<p align="center"><u>Current California Rule</u></p> <p align="center">Rule 1-100 Rules of Professional Conduct, in General</p>	<p align="center"><u>Commission's Proposed Rule*</u></p> <p align="center">Rule 1.0 <u>Purpose and Scope of the Rules of Professional Conduct</u>, <del>in General</del></p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
	<p><a href="#">(4) To promote respect for, and confidence in, the legal profession.</a></p>	
<p>For a willful breach of any of these rules, the Board of Governors has the power to discipline members as provided by law.</p>	<p><del>For a willful breach of any of these rules, the Board of Governors has the power to discipline members as provided by law.</del></p>	<p>See Explanation of Changes for paragraph (b) and Comments [1], [2] and [4].</p>
<p>The prohibition of certain conduct in these rules is not exclusive. Members are also bound by applicable law including the State Bar Act (Bus. &amp; Prof.Code, § 6000 et seq.) and opinions of California courts. Although not binding, opinions of ethics committees in California should be consulted by members for guidance on proper professional conduct. Ethics opinions and rules and standards promulgated by other jurisdictions and bar associations may also be considered.</p>	<p><del>The prohibition of certain conduct in these rules is not exclusive. Members are also bound by applicable law including the State Bar Act (Bus. &amp; Prof.Code, § 6000 et seq.) and opinions of California courts. Although not binding, opinions of ethics committees in California should be consulted by members for guidance on proper professional conduct. Ethics opinions and rules and standards promulgated by other jurisdictions and bar associations may also be considered.</del></p>	<p>See Explanation of Changes for Comment [3].</p>
	<p><a href="#">(b) Scope of the Rules:</a></p> <p><a href="#">(1) These Rules, together with any standards adopted by the Board of Governors of the State Bar of California pursuant to these Rules, regulate the conduct of lawyers and are binding upon all members of the State Bar and all other lawyers practicing law in this state.</a></p>	<p>Paragraph (b) provides a separate statement of the intended scope of the Rules. Paragraph (b)(1) is derived from the last sentence in current California Rule 1-100(A). The sentence has been modified to clarify that the Rules also apply to lawyers who are not members of the State Bar and who practice law in this state pursuant to California Rules of Court and other law. See Comment [5] and proposed Rules 5.5 and 8.5. A separate statement on the scope of the Rules is consistent with the Model Rules, which have a separate Scope section as an introduction to the Model Rules. See Model Rule, Scope, below.</p>

<p align="center"><u>Current California Rule</u> Rule 1-100 Rules of Professional Conduct, in General</p>	<p align="center"><u>Commission's Proposed Rule</u> Rule 1.0 <u>Purpose and Scope of the Rules of Professional Conduct</u>, <del>in General</del></p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
	<p><a href="#">(2) A willful violation of these Rules is a basis for discipline.</a></p>	<p>Paragraph (b)(2) is based on Model Rule Scope, paragraph 19, and conforms to the second paragraph in current California Rule 1-100(A).</p>
<p>These rules are not intended to create new civil causes of action. Nothing in these rules shall be deemed to create, augment, diminish, or eliminate any substantive legal duty of lawyers or the non-disciplinary consequences of violating such a duty.</p>	<p><del>These rules are not intended to create new civil causes of action. Nothing in these rules shall be deemed to create, augment, diminish, or eliminate any substantive legal duty of lawyers or the non-disciplinary consequences of violating such a duty.</del></p>	<p>See Explanation of Changes for paragraph (b)(3) and Comment [2].</p>
	<p><a href="#">(3) Nothing in these Rules or the comments to the Rules is intended to enlarge or to restrict the law regarding the liability of lawyers to others.</a></p>	<p>Paragraph (b)(3) is based on Model Rule Scope, paragraph 20, and replaces the fourth paragraph in current California Rule 1-100(A). Paragraph (b)(3), as amplified by Comment [2] below, embodies the concept stated in Model Rule Scope, paragraph 20, and existing case law, that a violation of a rule does not itself give rise to a civil cause of action; however, a violation of a rule may be evidence of breach of a lawyer's fiduciary or other legal duty in a non-disciplinary context.</p>
<p>(B) Definitions.</p> <p>(1) "Law Firm" means:</p> <p>(a) two or more lawyers whose activities constitute the practice of law, and who share its profits, expenses, and liabilities; or</p>	<p><del>(B) Definitions.</del></p> <p><del>(1) "Law Firm" means:</del></p> <p><del>(a) two or more lawyers whose activities constitute the practice of law, and who share its profits, expenses, and liabilities; or</del></p>	<p>The definitions in current California Rule 1-100(B) have been moved to a separate terminology rule (proposed Rule 1.0.1) to conform to Model Rule 1.0 on "Terminology."</p>

<p align="center"><u>Current California Rule</u></p> <p align="center">Rule 1-100 Rules of Professional Conduct, in General</p>	<p align="center"><u>Commission's Proposed Rule*</u></p> <p align="center">Rule 1.0 <u>Purpose and Scope of the Rules of Professional Conduct</u>, <del>in General</del></p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
<p>(b) a law corporation which employs more than one lawyer; or</p> <p>(c) a division, department, office, or group within a business entity, which includes more than one lawyer who performs legal services for the business entity; or</p> <p>(d) a publicly funded entity which employs more than one lawyer to perform legal services.</p>	<p><del>(b) a law corporation which employs more than one lawyer; or</del></p> <p><del>(c) a division, department, office, or group within a business entity, which includes more than one lawyer who performs legal services for the business entity; or</del></p> <p><del>(d) a publicly funded entity which employs more than one lawyer to perform legal services.</del></p>	
<p>(2) "Member" means a member of the State Bar of California.</p>	<p><del>(2) "Member" means a member of the State Bar of California.</del></p>	
<p>(3) "Lawyer" means a member of the State Bar of California or a person who is admitted in good standing of and eligible to practice before the bar of any United States court or the highest court of the District of Columbia or any state, territory, or insular possession of the United States, or is licensed to practice law in, or is admitted in good standing and eligible to practice before the bar of the highest court of, a foreign country or any political subdivision thereof.</p>	<p><del>(3) "Lawyer" means a member of the State Bar of California or a person who is admitted in good standing of and eligible to practice before the bar of any United States court or the highest court of the District of Columbia or any state, territory, or insular possession of the United States, or is licensed to practice law in, or is admitted in good standing and eligible to practice before the bar of the highest court of, a foreign country or any political subdivision thereof.</del></p>	

<p align="center"><u>Current California Rule</u></p> <p align="center">Rule 1-100 Rules of Professional Conduct, in General</p>	<p align="center"><u>Commission's Proposed Rule*</u></p> <p align="center">Rule 1.0 <u>Purpose and Scope of the Rules of Professional Conduct</u>, <del>in General</del></p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
<p>(4) "Associate" means an employee or fellow employee who is employed as a lawyer.</p>	<p><del>(4) "Associate" means an employee or fellow employee who is employed as a lawyer.</del></p>	
<p>(5) "Shareholder" means a shareholder in a professional corporation pursuant to Business and Professions Code section 6160 et seq.</p>	<p><del>(5) "Shareholder" means a shareholder in a professional corporation pursuant to Business and Professions Code section 6160 et seq.</del></p>	
<p>(C) Purpose of Discussions.</p> <p>Because it is a practical impossibility to convey in black letter form all of the nuances of these disciplinary rules, the comments contained in the Discussions of the rules, while they do not add independent basis for imposing discipline, are intended to provide guidance for interpreting the rules and practicing in compliance with them.</p>	<p><del>(C) Purpose of Discussions.</del></p> <p><del>Because it is a practical impossibility to convey in black letter form all of the nuances of these disciplinary rules, the comments contained in the Discussions of the rules, while they do not add independent basis for imposing discipline, are intended to provide guidance for interpreting the rules and practicing in compliance with them.</del></p>	<p>See Explanation of Changes for paragraph (c).</p>
	<p><u>(c) Comments: The comments following the Rules do not add obligations to the Rules but provide guidance for their interpretation and for acting in compliance with the Rules.</u></p>	<p>Paragraph (c) is derived from the last sentence in Model Rule, Scope, paragraph 14, and the first sentence in ¶ 21. See Model Rule, Preamble and Scope, below. The paragraph is intended to replace current California Rule 1-100(C).</p>

<p align="center"><u>Current California Rule</u> Rule 1-100 Rules of Professional Conduct, in General</p>	<p align="center"><u>Commission's Proposed Rule</u> Rule 1.0 <u>Purpose and Scope of the Rules of Professional Conduct</u>, <del>in General</del></p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
<p>(D) Geographic Scope of Rules.</p> <p>(1) As to members:</p> <p>These rules shall govern the activities of members in and outside this state, except as members lawfully practicing outside this state may be specifically required by a jurisdiction in which they are practicing to follow rules of professional conduct different from these rules.</p> <p>(2) As to lawyers from other jurisdictions who are not members:</p> <p>These rules shall also govern the activities of lawyers while engaged in the performance of lawyer functions in this state; but nothing contained in these rules shall be deemed to authorize the performance of such functions by such persons in this state except as otherwise permitted by law.</p>	<p><del>(D) Geographic Scope of Rules.</del></p> <p><del>(1) As to members:</del></p> <p><del>These rules shall govern the activities of members in and outside this state, except as members lawfully practicing outside this state may be specifically required by a jurisdiction in which they are practicing to follow rules of professional conduct different from these rules.</del></p> <p><del>(2) As to lawyers from other jurisdictions who are not members:</del></p> <p><del>These rules shall also govern the activities of lawyers while engaged in the performance of lawyer functions in this state; but nothing contained in these rules shall be deemed to authorize the performance of such functions by such persons in this state except as otherwise permitted by law.</del></p>	<p>The provision on the disciplinary authority over lawyers who are members of the State Bar practicing in and outside of this state and other lawyers practicing in this state has been moved to proposed Rule 8.5 to be consistent with the Model Rules. As a result, a statement regarding the geographic scope of the Rules is provided in Comment [5] with a cross reference to proposed Rule 8.5.</p>
<p>(E) These rules may be cited and referred to as "Rules of Professional Conduct of the State Bar of California."</p>	<p><del>(E)</del> <u>Title:</u> <del>These rules may be cited and referred to as Rules are the "California Rules of Professional Conduct of the State Bar of California."</del></p>	<p>Paragraph (d) is based on current California Rule 1-100(E) and identifies how the Rules should be referred to and cited.</p>

<p align="center"><b>Current California Rule</b></p> <p align="center"><b>Rule 1-100 Rules of Professional Conduct, in General</b></p> <p align="center"><b>Discussion</b></p>	<p align="center"><b>Commission's Proposed Rule</b></p> <p align="center"><b>Rule 1.0 <u>Purpose and Scope of the Rules of Professional Conduct</u>, <del>in General</del></b></p> <p align="center"><b>Comment</b></p>	<p align="center"><b>Explanation of Changes to the ABA Model Rule</b></p>
<p>Discussion</p>	<p><del>Discussion</del>Comment</p> <p>[1] <a href="#">The Rules of Professional Conduct are Rules of the Supreme Court of California regulating lawyer conduct in this state. (See <i>In re Attorney Discipline System</i> (1998) 19 Cal. 4th 582, 593-597 [79 Cal Rptr.2d 836]; <i>Howard v. Babcock</i> (1993) 6 Cal. 4th 409, 418 [25 Cal Rptr.2d 80]. The Rules have been adopted by the Board of Governors of the State Bar of California and approved by the Supreme Court pursuant to Business and Professions Code sections 6076 and 6077. The Supreme Court of California has inherent power to regulate the practice of law in California, including the power to admit and discipline lawyers practicing in this jurisdiction. (<i>Hustedt v. Workers' Comp. Appeals Bd.</i> (1981) 30 Cal.3d 329, 336 [178 Cal.Rptr. 801]; <i>Santa Clara County Counsel Attorneys Association v. Woodside</i> (1994) 7 Cal.4th 525, 542-543 [28 Cal.Rptr.2d 617] and see Business and Professions Code section 6100.)</a></p>	<p>Comment [1] confirms that the Rules, when approved, are the Rules of the Supreme Court and that the Supreme Court has inherent power to regulate the practice of law in California and ultimate authority over lawyer conduct in this state. The comment is based on case decisions and provisions of the State Bar Act and is derived in part from current California Rule 1-100(A). The comment does not have a direct counterpart in the Model Rules, although it is consistent with provisions in the Preamble to the Model Rules, particularly paragraphs 10–11. See Model Rules, Preamble and Scope, below.</p>
<p>The Rules of Professional Conduct are intended to establish the standards for members for purposes of discipline (See <i>Ames v. State Bar</i> (1973) 8 Cal.3d 910 [106 Cal.Rptr. 489].) The fact that a member has engaged in conduct that may be contrary to these rules does not automatically give rise to a civil cause of action. (See <i>Noble v. Sears Roebuck &amp;</i></p>	<p>[2] The Rules <del>of Professional Conduct</del> are <del>intended</del>designed to <del>establish the standards</del>provide guidance to lawyers and to provide a structure for <del>members for purposes of regulating conduct through</del> discipline. (See <i>Ames v. State Bar</i> (1973) 8 Cal.3d 910 [106 Cal.Rptr. 489].) <del>The fact that a member has engaged in conduct that may be</del></p>	<p>Comment [2] is based on provisions in the Preamble and Scope to the Model Rules, particularly paragraphs 16, 19 and 20, and also on case law in California. The comment reinforces the principle in paragraph (b)(2) that the Rules are not intended to expand civil liability for lawyers. At the same time, the comment recognizes, as does Scope, paragraph 20 of the Model Rules and California case law, that a violation of a rule may be evidence of</p>

<p align="center"><b>Current California Rule</b></p> <p align="center"><b>Rule 1-100 Rules of Professional Conduct, in General</b></p> <p align="center"><b>Discussion</b></p>	<p align="center"><b>Commission's Proposed Rule</b></p> <p align="center"><b>Rule 1.0 <u>Purpose and Scope of the Rules of Professional Conduct</u>, <del>in General</del></b></p> <p align="center"><b>Comment</b></p>	<p align="center"><b>Explanation of Changes to the ABA Model Rule</b></p>
<p>Co. (1973) 33 Cal.App.3d 654 [109 Cal.Rptr. 269]; Wilhelm v. Pray, Price, Williams &amp; Russell (1986) 186 Cal.App.3d 1324 [231 Cal.Rptr. 355].) These rules are not intended to supercede existing law relating to members in non-disciplinary contexts. (See, e.g., Klemm v. Superior Court (1977) 75 Cal.App.3d 893 [142 Cal.Rptr. 509] (motion for disqualification of counsel due to a conflict of interest); Academy of California Optometrists, Inc. v. Superior Court (1975) 51 Cal.App.3d 999 [124 Cal.Rptr. 668] (duty to return client files); Chronometrics, Inc. v. Sysgen, Inc. (1980) 110 Cal.App.3d 597 [168 Cal.Rptr. 196] (disqualification of member appropriate remedy for improper communication with adverse party).</p>	<p><del>contrary</del>Therefore, failure to <del>these rules</del>comply with an obligation or prohibition imposed by a rule is a basis for invoking the disciplinary process. Because the Rules are not designed to be a basis for civil liability, a violation of a rule does not automatically itself give rise to a <del>civil</del> cause of action for enforcement of a rule or for damages caused by failure to comply with the rule. (See <u>Stanley v. Richmond</u> (1995) 35 Cal.App.4th 1070, 1097 [41 Cal.Rptr.2d 768]; <u>Noble v. Sears Roebuck &amp; Co.</u> (1973) 33 Cal.App.3d 654, 658 [109 Cal.Rptr. 269]; <u>Wilhelm v. Pray, Price, Williams &amp; Russell</u> (1986) 186 Cal.App.3d 1324, 1333 [231 Cal.Rptr. 355].) <del>These rules are not intended to supercede existing law relating to members</del>Nevertheless, a lawyer's violation of a rule may be evidence of breach of a lawyer's fiduciary or other substantive legal duty in a non-disciplinary <del>contexts</del>context. (See, <u>Stanley v. Richmond, supra</u>, 35 Cal.App.4th at p. 1086; <u>Mirabito v. Liccardo</u> (1992) 4 Cal.App.4th 41, 44 [5 Cal.Rptr.2d 571].) A violation of the rule may have other non-disciplinary consequences. (See e.g., <u>Klemm v. Superior Court</u> (1977) 75 Cal.App.3d 893 [142 Cal.Rptr. 509] (<del>motion for disqualification of counsel due to a conflict of interest</del>); <u>Academy of California Optometrists, Inc. v. Superior Court</u> (1975) 51 Cal.App.3d 999 [124 Cal.Rptr. 668] (duty to return client files); <u>Fletcher v. Davis</u> (2004) 33 Cal.4th 61 [14 Cal.Rptr.3d 58] (enforcement of attorney's lien); <u>Chambers v. Kay</u> (2002) 29 Cal.4th 142 [126 Cal.Rptr.2d 536] (enforcement of fee sharing agreement); <u>Chronometrics, Inc. v. Sysgen, Inc.</u></p>	<p>breach of a lawyer's fiduciary or other substantive duty in a non-disciplinary context. Relevant cases are included to provide guidance for lawyers in understanding the scope of the Rules. Comment [2] is intended to replace the first paragraph of the Discussion to current California rule 1-100, which is believed to be outdated and would mislead lawyers if retained in the Rules.</p>

<p align="center"><b>Current California Rule</b> Rule 1-100 Rules of Professional Conduct, in General Discussion</p>	<p align="center"><b>Commission's Proposed Rule</b> Rule 1.0 <b>Purpose and Scope of the Rules of Professional Conduct, in General</b> Comment</p>	<p align="center"><b>Explanation of Changes to the ABA Model Rule</b></p>
	<p>(1980) 110 Cal.App.3d 597 [168 Cal.Rptr. 196] (<del>disqualification of member appropriate remedy for improper</del> communication with <del>adverse</del> <u>represented</u> party).)</p>	
	<p>[3] <u>These Rules are not the sole basis of lawyer regulation. Lawyers authorized to practice law in California are also bound by applicable law including the State Bar Act (Business and Professions Code section 6000 et. seq.), other statutes, rules of court, and the opinions of California courts. Although not binding, issued opinions of ethics committees in California should be consulted for guidance on proper professional conduct. Ethics opinions of other bar associations may also be considered to the extent they relate to rules and laws that are consistent with the rules and laws of this state.</u></p>	<p>Comment [3] is based on the third paragraph in current California Rule 1-100(A). It is intended to remind lawyers that the Rules are not the exclusive source of lawyer regulation in California and that lawyers are also bound by the State Bar Act and other law. The comment is consistent with provisions in the Preamble and Scope to the Model Rules, particularly the first sentence in paragraph 7, and paragraphs 15 and 17. See Model Rules, Preamble and Scope, below.</p>
	<p>[4] <u>Under paragraph (b)(2), a willful violation of a rule does not require that the lawyer intend to violate the rule. (<i>Phillips v. State Bar</i> (1989) 49 Cal.3d 944, 952 [264 Cal.Rptr. 346]; and see Business and Professions Code section 6077.)</u></p>	<p>Comment [4] is intended to amplify paragraph (b)(2) by providing guidance on what constitutes a willful violation of the Rules.</p>
	<p>[5] <u>For the disciplinary authority of this state and choice of law, see Rule 8.5.</u></p>	<p>Comment [5] cross-references proposed Rule 8.5, which addresses the disciplinary authority and choice of law in applying these Rules. The cross-reference is intended to direct lawyers to Rule 8.5 on these issues, which currently are addressed in part by California Rule 1-100(D).</p>

<p align="center"><b><u>Current California Rule</u></b>  <b>Rule 1-100 Rules of Professional Conduct, in General</b>  <b>Discussion</b></p>	<p align="center"><b><u>Commission's Proposed Rule</u></b>  <b>Rule 1.0 <u>Purpose and Scope of the Rules of Professional Conduct</u>, <del>in General</del></b>  <b>Comment</b></p>	<p align="center"><b><u>Explanation of Changes to the ABA Model Rule</u></b></p>
<p>Law firm, as defined by subparagraph (B)(1), is not intended to include an association of lawyers who do not share profits, expenses, and liabilities. The subparagraph is not intended to imply that a law firm may include a person who is not a member in violation of the law governing the unauthorized practice of law.</p>	<p><del>Law firm, as defined by subparagraph (B)(1), is not intended to include an association of lawyers who do not share profits, expenses, and liabilities. The subparagraph is not intended to imply that a law firm may include a person who is not a member in violation of the law governing the unauthorized practice of law.</del></p>	<p>See Explanation of Changes for current California rule 1-100(B) (Definitions).</p>

## Rule 1.0 Purpose and Scope of the Rules of Professional Conduct

(Comparison of the Current Proposed Rule to the initial Public Comment Draft)

- (a) Purpose: The purposes of the following Rules are:
- (1) To protect the public;
  - (2) To protect the interests of clients;
  - (3) To protect the integrity of the legal system and to promote the administration of justice; and
  - (4) To promote respect for, and confidence in, the legal profession.
- (b) Scope of the Rules:
- (1) These Rules, together with any standards adopted by the Board of Governors of the State Bar of California pursuant to these Rules, regulate the conduct of lawyers and are binding upon all members of the State Bar and all other lawyers practicing law in this state.
  - (2) A willful violation of these Rules is a basis for discipline.
- (3) Nothing in these Rules or the comments to the Rules is intended to enlarge or to restrict the law regarding the liability of lawyers to others.
- (c) Comments: The comments following the Rules do not add obligations to the Rules but provide guidance for ~~interpreting their interpretation~~ and ~~practicing for acting~~ in compliance with the Rules.

- (d) Title: These Rules are the “California Rules of Professional Conduct.”

### COMMENT

- [1] The Rules of Professional Conduct are Rules of the Supreme Court of California regulating lawyer conduct in this state. (See *In re Attorney Discipline System* (1998) 19 Cal. 4th 582, 593-597 [79 Cal Rptr.2d 836]; *Howard v. Babcock* (1993) 6 Cal. 4th 409, 418 [25 Cal Rptr.2d 80]). The Rules have been adopted by the Board of Governors of the State Bar of California and approved by the Supreme Court pursuant to Business and Professions Code sections 6076 and 6077. The Supreme Court of California has inherent power to regulate the practice of law in California, including the power to admit and discipline lawyers practicing in this jurisdiction. (*Hustedt v. Workers' Comp. Appeals Bd.* (1981) 30 Cal.3d 329, 336 [178 Cal.Rptr. 801]; *Santa Clara County Counsel Attorneys Association v. Woodside* (1994) 7 Cal.4th 525, 542-543 [28 Cal.Rptr.2d 617] and see Business and Professions Code section 6100.)
- [2] The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through discipline. (See *Ames v. State Bar* (1973) 8 Cal.3d 910 [106 Cal.Rptr. 489].) Therefore, failure to comply with an obligation or prohibition imposed by a rule is a basis for invoking the disciplinary process. Because the Rules are not designed to be a basis for civil liability, a violation of a rule does not itself give rise to a cause of action for enforcement of a rule or for damages caused by failure to comply with the rule. (*Stanley v. Richmond* (1995) 35 Cal.App.4th 1070, 1097 [41 Cal.Rptr.2d 768];

Noble v. Sears Roebuck & Co. (1973) 33 Cal.App.3d 654, 658 [109 Cal.Rptr. 269]; *Wilhelm v. Pray, Price, Williams & Russell* (1986) 186 Cal.App.3d 1324, 1333 [231 Cal.Rptr. 355].) Nevertheless, a lawyer's violation of a rule may be evidence of breach of a lawyer's fiduciary or other substantive legal duty in a non-disciplinary context. (See, *Stanley v. Richmond, supra*, 35 Cal.App.4th at p. 1086; *Mirabito v. Liccardo* (1992) 4 Cal.App.4th 41, 44 [5 Cal.Rptr.2d 571].) A violation of the rule may have other non-disciplinary consequences. (See e.g., *Klemm v. Superior Court* (1977) 75 Cal.App.3d 893 [142 Cal.Rptr. 509] (disqualification); *Academy of California Optometrists, Inc. v. Superior Court* (1975) 51 Cal.App.3d 999 [124 Cal.Rptr. 668] (duty to return client files); *Fletcher v. Davis* (2004) 33 Cal.4th 61 [14 Cal.Rptr.3d 58] (enforcement of attorney's lien); *Chambers v. Kay* (2002) 29 Cal.4th 142 [126 Cal.Rptr.2d 536] (enforcement of fee sharing agreement); *Chronometrics, Inc. v. Sysgen, Inc.* (1980) 110 Cal.App.3d 597 [168 Cal.Rptr. 196] (communication with represented party).)

- [3] These Rules are not the sole basis of lawyer regulation. Lawyers authorized to practice law in California are also bound by applicable law including the State Bar Act (Business and Professions Code section 6000 et. seq.), other statutes, rules of court, and the opinions of California courts. Although not binding, issued opinions of ethics committees in California should be consulted for guidance on proper professional conduct. Ethics opinions of other bar associations may also be considered to the extent they relate to rules and laws that are consistent with the rules and laws of this state.
- [4] Under paragraph (b)(2), a willful violation of a rule does not require that the lawyer intend to violate the rule. (*Phillips v. State Bar* (1989) 49 Cal.3d 944, 952 [264 Cal.Rptr. 346]; and see Business and Professions Code section 6077.)

~~[5] These Rules govern the conduct of members of the State Bar in and outside this state, except as members of the State Bar may be specifically required by a jurisdiction in which they are lawfully practicing to follow rules of professional conduct different from these Rules. These Rules also govern the conduct of other lawyers practicing in this state, but nothing contained in these Rules shall be deemed to authorize the practice of law by such persons in this state except as otherwise permitted by law. For the disciplinary authority of this state and choice of law, see Rule [8.5].~~

[5] For the disciplinary authority of this state and choice of law, see Rule 8.5.

**Rule 1.0 Purpose and Scope of the Rules of Professional Conduct**  
(Commission’s Proposed Rule – Clean Version)

- (a) Purpose: The purposes of the following Rules are:
  - (1) To protect the public;
  - (2) To protect the interests of clients;
  - (3) To protect the integrity of the legal system and to promote the administration of justice; and
  - (4) To promote respect for, and confidence in, the legal profession.
- (b) Scope of the Rules:
  - (1) These Rules, together with any standards adopted by the Board of Governors of the State Bar of California pursuant to these Rules, regulate the conduct of lawyers and are binding upon all members of the State Bar and all other lawyers practicing law in this state.
  - (2) A willful violation of these Rules is a basis for discipline.
  - (3) Nothing in these Rules or the comments to the Rules is intended to enlarge or to restrict the law regarding the liability of lawyers to others.
- (c) Comments: The comments following the Rules do not add obligations to the Rules but provide guidance for their interpretation and for acting in compliance with the Rules.
- (d) Title: These Rules are the “California Rules of Professional Conduct.”

**COMMENT**

- [1] The Rules of Professional Conduct are Rules of the Supreme Court of California regulating lawyer conduct in this state. (See *In re Attorney Discipline System* (1998) 19 Cal. 4th 582, 593-597 [79 Cal Rptr.2d 836]; *Howard v. Babcock* (1993) 6 Cal. 4th 409, 418 [25 Cal Rptr.2d 80].) The Rules have been adopted by the Board of Governors of the State Bar of California and approved by the Supreme Court pursuant to Business and Professions Code sections 6076 and 6077. The Supreme Court of California has inherent power to regulate the practice of law in California, including the power to admit and discipline lawyers practicing in this jurisdiction. (*Hustedt v. Workers' Comp. Appeals Bd.* (1981) 30 Cal.3d 329, 336 [178 Cal.Rptr. 801]; *Santa Clara County Counsel Attorneys Association v. Woodside* (1994) 7 Cal.4th 525, 542-543 [28 Cal.Rptr.2d 617] and see Business and Professions Code section 6100.)
- [2] The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through discipline. (See *Ames v. State Bar* (1973) 8 Cal.3d 910 [106 Cal.Rptr. 489].) Therefore, failure to comply with an obligation or prohibition imposed by a rule is a basis for invoking the disciplinary process. Because the Rules are not designed to be a basis for civil liability, a violation of a rule does not itself give rise to a cause of action for enforcement of a rule or for damages caused by failure to comply with the rule. (*Stanley v. Richmond* (1995) 35 Cal.App.4th 1070, 1097 [41 Cal.Rptr.2d 768]; *Noble v. Sears Roebuck & Co.* (1973) 33 Cal.App.3d 654, 658 [109 Cal.Rptr. 269]; *Wilhelm v. Pray, Price, Williams & Russell* (1986) 186 Cal.App.3d 1324, 1333 [231 Cal.Rptr. 355].) Nevertheless, a lawyer's

violation of a rule may be evidence of breach of a lawyer's fiduciary or other substantive legal duty in a non-disciplinary context. (See, *Stanley v. Richmond*, *supra*, 35 Cal.App.4th 1070, 1086 [41 Cal.Rptr.2d 768]; *Mirabito v. Liccardo* (1992) 4 Cal.App.4th 41, 44 [5 Cal.Rptr.2d 571].) A violation of the rule may have other non-disciplinary consequences. (See e.g., *Klemm v. Superior Court* (1977) 75 Cal.App.3d 893 [142 Cal.Rptr. 509] (disqualification); *Academy of California Optometrists, Inc. v. Superior Court* (1975) 51 Cal.App.3d 999 [124 Cal.Rptr. 668] (duty to return client files); *Fletcher v. Davis* (2004) 33 Cal.4th 61 [14 Cal.Rptr.3d 58] (enforcement of attorney's lien); *Chambers v. Kay* (2002) 29 Cal.4th 142 [126 Cal.Rptr.2d 536] (enforcement of fee sharing agreement); *Chronometrics, Inc. v. Sysgen, Inc.* (1980) 110 Cal.App.3d 597 [168 Cal.Rptr. 196] (communication with represented party).)

- [3] These Rules are not the sole basis of lawyer regulation. Lawyers authorized to practice law in California are also bound by applicable law including the State Bar Act (Business and Professions Code section 6000 et. seq.), other statutes, rules of court, and the opinions of California courts. Although not binding, issued opinions of ethics committees in California should be consulted for guidance on proper professional conduct. Ethics opinions of other bar associations may also be considered to the extent they relate to rules and laws that are consistent with the rules and laws of this state.
- [4] Under paragraph (b)(2), a willful violation of a rule does not require that the lawyer intend to violate the rule. (*Phillips v. State Bar* (1989) 49 Cal.3d 944, 952 [264 Cal.Rptr. 346]; and see Business and Professions Code section 6077.)

- [5] For the disciplinary authority of this state and choice of law, see Rule 8.5.

## Rule 1.0: Purpose and Scope of the Rules of Professional Conduct.

### STATE VARIATIONS

(The following is an excerpt from Regulation of Lawyers: Statutes and Standards (2009 Ed.)  
by Steven Gillers, Roy D. Simon and Andrew M. Perlman.)

**Connecticut** adds: “‘Client’ or ‘person’ as used in these Rules includes an authorized representative unless otherwise stated.”

**District of Columbia** defines “matter” as “any litigation, administrative proceeding, lobbying activity, application, claim, investigation, arrest, charge or accusation, the drafting of a contract, a negotiation, estate or family relationship practice issue, or any other representation, except as expressly limited in a particular rule.”

**Illinois** retains the 1983 version of the ABA Terminology, retains the definitions of “confidence” and “secret” derived from DR 4-101(A) of the ABA Model Code of Professional Responsibility, and adds the following terminology:

“Contingent fee agreement” denotes an agreement for the provision of legal services by a lawyer under which the amount of the lawyer’s compensation is contingent in whole or in part upon the successful completion of the subject matter of the agreement, regardless of whether the fee is established by formula or is a fixed amount.

“Disclose” or “disclosure” denotes communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question.

“Person” denotes natural persons, partnerships, business corporations, not-for-profit corporations, public and quasi-public corporations, municipal corporations, State and Federal governmental bodies and agencies, or any other type of lawfully existing entity.

**Massachusetts:** Rule 9.1 retains the 1983 version of the ABA Terminology and adds a definition of a “qualified legal assistance organization.” Amended Comment 3 to Rule 9.1 provides as follows: “The final category of qualified legal assistance organization requires that the organization ‘receives no profit from the rendition of legal services.’ That condition refers to the entire legal services operation of the organization; it does not prohibit the receipt of a court-awarded fee that would result in a ‘profit’ from that particular lawsuit.”

**New York** defines “fraud” as follows:

“Fraud” does not include conduct, although characterized as fraudulent by statute or administrative rule which lacks an element of scienter, deceit, intent to mislead, or knowing failure to correct misrepresentations which can be reasonably expected to induce detrimental reliance by another.

New York also defines “domestic relations matters,” and defines “tribunal” to include “all courts, arbitrators and other adjudicatory bodies.”

**Ohio:** Rule 1.0 defines “fraud” and “fraudulent” as denoting “conduct that has an intent to deceive and is either of the following:”

(1) an actual or implied misrepresentation of a material fact that is made either with knowledge of its falsity or with such utter disregard and recklessness about its falsity that knowledge may be inferred; (2) a knowing concealment of a material fact where there is a duty to disclose the material fact.

**Oregon** adds or alters the meaning of a number of phrases, including “electronic communication, “informed consent,” “law firm,” “knowingly,” and “matter.”

**Texas** generally retains the 1983 version of the ABA Terminology, but modifies some of the 1983 definitions and adds others that are neither in the 1983 nor current versions of the ABA Terminology. Specifically, Texas includes the following definitions:

“Adjudicatory Official” denotes a person who serves on a Tribunal.

“Adjudicatory Proceeding” denotes the consideration of a matter by a Tribunal.

“Competent” or “Competence” denotes possession or the ability to timely acquire the legal knowledge, skill, and training reasonably necessary for the representation of the client.

“Firm” or “Law firm” denotes a lawyer or lawyers in a private firm; or a lawyer or lawyers employed in the legal

department of a corporation, legal services organization, or other organization, or in a unit of government.

“Fitness” denotes those qualities of physical, mental and psychological health that enable a person to discharge a lawyer’s responsibilities to clients in conformity with the Texas Disciplinary Rules of Professional Conduct. Normally a lack of fitness is indicated most clearly by a persistent inability to discharge, or unreliability in carrying out, significant obligations.

“Should know” when used in reference to a lawyer denotes that a reasonable lawyer under the same or similar circumstances would know the matter in question.

“Substantial” when used in reference to degree or extent denotes a matter of meaningful significance or involvement.

“Tribunal” denotes any governmental body or official or any other person engaged in a process of resolving a particular dispute or controversy. “Tribunal” includes such institutions as courts and administrative agencies when engaging in adjudicatory or licensing activities as defined by applicable law or rules of practice or procedure, as well as judges, magistrates, special masters, referees, arbitrators, mediators, hearing officers and comparable persons empowered to resolve or to recommend a resolution of a particular matter; but it does not include jurors, prospective jurors, legislative bodies or their committees, members or staffs, nor does it include other governmental bodies when acting in a legislative or rule-making capacity.

**Virginia** retains the 1983 version of the Terminology section and adds:

“Should’ when used in reference to a lawyer’s action denotes an aspirational rather than a mandatory standard.”

**Wisconsin:** Wisconsin adds or alters the meaning of a number of phrases, including “consultation,” “firm,” “misrepresentation,” and “prosecutor.”

**Rule 1.0 Purpose and Scope of the Rules of Professional Conduct.  
[Sorted by Commenter]**

**TOTAL = 6**    **Agree = 1**  
**Disagree = 0**  
**Modify = 5**  
**NI = 0**

No.	Commenter	Position <sup>1</sup>	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
1	Committee on Professional Responsibility and Conduct, State Bar of California (COPRAC)	A			Supports as drafted.	No action needed.
2	Falk, Richard A.	M			Primary purpose of the rules should not be to facilitate a lawyer's zealous efforts to win a client's case, instead, it should be the protection of the integrity of the legal system, especially the jury system.	Commission did not make the requested revisions. Proposed Rule 1.0(a) already lists protecting the integrity of the legal system and promoting the administration of justice as a purpose of the Rules. A separate rule, proposed Rule 3.5, addresses lawyers' interactions with jurors.
3	Langford, Carol M.	M			Clarify Comment [4] to explain that "willfulness" is not a specific intent element and only goes to the voluntariness of an act which includes acts that are negligent or unintentional.	Commission disagreed and did not make the requested revision. The statement would be misleading; an act can be both willful and intentional.
4	Lieberman, Peter H.	M			Guidance provided by the rule is vague; encouragement to consult opinions of ethics committees is not helpful to the extent that it might be read to require a lawyer to request opinions from various ethics committees.	Revised Comment [3] to clarify that the ethics opinions that should be consulted are opinions that have been issued and published.

<sup>1</sup> A = AGREE with proposed Rule      D = DISAGREE with proposed Rule      M = AGREE ONLY IF MODIFIED      NI = NOT INDICATED

**Rule 1.0 Purpose and Scope of the Rules of Professional Conduct.  
[Sorted by Commenter]**

**TOTAL = 6**    **Agree = 1**  
**Disagree = 0**  
**Modify = 5**  
**NI = 0**

No.	Commenter	Position <sup>1</sup>	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
5	Orange County Bar Association	M			Retain the language from RPC 1 100 stating that nothing in the rules shall be deemed to create, augment, diminish, or eliminate any substantive legal duty of lawyers or the non disciplinary consequences of violating such a duty.	Commission disagreed and did not make the requested revision. As explained in the Explanation for Comment [2], such a statement would be inaccurate in light of case law that holds that a violation of a rule may be evidence of breach of a lawyer's fiduciary or other substantive duty in a non-disciplinary context. See also ABA Scope, ¶. [20].
6	San Diego County Bar Association	M			Delete Rule 1.0(b) Add new subsections (a)(5) and (a)(6) as follows: <p align="center">“(5) To provide guidance to lawyers; and  (6) To provide a basis for the discipline of lawyers “</p>	Commission disagreed and did not make the requested revisions. First, client protection is a core principle in California. Second, providing guidance to lawyers is a means to achieve the four listed purposes. Third, paragraph (b)(2) provides that a willful violation of the Rules is a basis for discipline.