

**Rule 1.0 [1-100] Purpose and Function of the Rules of Professional Conduct  
(Commission’s Proposed Rule Adopted on June 2 – 3, 2016 – Clean Version)**

(a) Purpose.

The following rules are intended to regulate professional conduct of lawyers through discipline. They have been adopted by the Board of Trustees of the State Bar of California and approved by the Supreme Court of California pursuant to Business and Professions Code §§ 6076 and 6077 to protect the public, the courts, and the legal profession; protect the integrity of the legal system; and promote the administration of justice and confidence in the legal profession. These Rules together with any standards adopted by the Board of Trustees pursuant to these Rules shall be binding upon all lawyers.

(b) Function.

- (1) A willful violation of any of these rules is a basis for discipline.
- (2) The prohibition of certain conduct in these rules is not exclusive. Lawyers are also bound by applicable law including the State Bar Act (Bus. & Prof. Code, § 6000 et seq.) and opinions of California courts.
- (3) A violation of a rule does not itself give rise to a cause of action for damages caused by failure to comply with the rule. 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) Purpose of Comments.

The comments are not a basis for imposing discipline but are intended only to provide guidance for interpreting and practicing in compliance with the Rules.

(d) These Rules may be cited and referred to as the “California Rules of Professional Conduct.”

**Comment**

[1] The Rules of Professional Conduct are intended to establish the standards for lawyers for purposes of discipline. See *Ames v. State Bar* (1973) 8 Cal.3d 910, 917 [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]. 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. *Id.*; *Mirabito v. Liccardo* (1992) 4 Cal.App.4th 41, 44 [5 Cal.Rptr.2d 571]. A violation of a rule may have other non-disciplinary consequences. See e.g., *Fletcher v. Davis* (2004) 33

Cal.4th 61, 71-72 [14 Cal.Rptr.3d 58] (enforcement of attorney's lien); *Chambers v. Kay* (2002) 29 Cal.4th 142, 161 [126 Cal.Rptr.2d 536] (enforcement of fee sharing agreement).

[2] While the rules are intended to regulate professional conduct of lawyers, a violation of a rule can occur when a lawyer is not practicing law or acting in a professional capacity.

[3] 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 § 6077.

[4] In addition to the sources of guidance identified in paragraph (b)(2), opinions of ethics committees in California, although not binding, should be consulted for guidance on proper professional conduct. Ethics opinions and rules and standards promulgated by other jurisdictions and bar associations may also be considered.

[5] The disciplinary standards created by these Rules are not intended to address all aspects of a lawyer's professional obligations. A lawyer, as a member of the legal profession, is a representative and advisor of clients, an officer of the legal system and a public citizen having special responsibilities for the quality of justice. A lawyer should be aware of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons\* who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers are encouraged to devote professional time and resources and use civic influence to ensure equal access to the system of justice for those who because of economic or social barriers cannot afford or secure adequate legal counsel. In meeting this responsibility, every lawyer should aspire to render at least fifty hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should provide a substantial\* majority of such hours to indigent individuals or to nonprofit organizations with a primary purpose of providing services to the poor or on behalf of the poor or disadvantaged. See Business and Professions Code § 6073 (financial support for programs providing pro bono legal services).

**PROPOSED RULE OF PROFESSIONAL CONDUCT 1.0**  
**(Current Rule 1-100)**  
**Purpose and Function of the Rules of Professional Conduct**

**EXECUTIVE SUMMARY**

The Commission for the Revision of the Rules of Professional Conduct (“Commission”) has evaluated current rule 1-100 (Rules of Professional Conduct, In General) in accordance with the Commission Charter, with a focus on the function of the rule as a disciplinary standard, and with the understanding that the rule comments should be included only when necessary to explain a rule and not for providing aspirational guidance. While there is no direct rule counterpart in the American Bar Association (“ABA”) Model Rules, many jurisdictions have adopted the ABA Preamble and Scope section of the Model Rules and the Commission considered the Preamble and Scope in studying proposed amendments to rule 1-100. The result of the Commission’s evaluation is proposed rule 1.0 (Purpose and Function of the Rules of Professional Conduct). This proposed rule has been adopted by the Commission for submission to the Board of Trustees for public comment authorization. A final recommended rule will follow the public comment process.

Two main issues were considered in drafting proposed Rule 1.0.<sup>1</sup> The first issue was whether to update existing references in the rule 1-100 Discussion concerning the application of the rules in non-disciplinary settings (i.e., to address whether a violation of a rule may be considered as evidence of a breach of a civil standard of care). The second was whether a comment to the rule should be added to address voluntary pro bono as a professional responsibility.

Regarding the application of the rules in non-disciplinary settings, the Commission determined that the existing information in the first paragraph of the rule 1-100 Discussion required updating as the propositions included therein, and the cases cited, did not reflect current California law. The Commission is recommending updated information clarifying that although a rule violation is not itself a basis for civil liability, a lawyer’s violation of a rule may be evidence of a lawyer’s fiduciary breach or other substantive legal duty in a non-disciplinary context. This proposition has been added to the rule as new paragraph (b)(3) with additional explanatory information provided in a new Comment [1]. The information provided is consistent with well-settled California case law and selected cases are included in Comment [1]. For example, Comment [1] includes a citation to the California Supreme Court’s decision in *Chambers v. Kay* (2002) 29 Cal.4th 142, 161 [126 Cal.Rptr.2d 536] in which the Supreme Court found that a lawyer violated the rule governing fee sharing agreements between lawyers who are not in the same law firm and concluded that such violation rendered the enforcement of the fee sharing agreement unenforceable as a matter of public policy.

The second issue concerning voluntary pro bono service arose from the Commission’s consideration of Model Rule 6.1 (Voluntary Pro Bono Publico Service). At the Commission’s

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<sup>1</sup> Rule 1-100 includes the purpose and function of the rules generally (1-100(A)) and also sections on definitions of terms used throughout the rules (1-100(B)) and the geographic scope of the rules (1-100(D)). The Commission is recommending that definitions be moved to a standalone rule, proposed rule 1.0.1 (Terminology). Similarly, the Commission is recommending that the geographic scope of the rules be moved to a standalone rule, proposed rule 8.5 (Disciplinary Authority; Choice of Law). This proposed reorganization is adapted from the national standard of the Model Rule’s numbering system. Proposed rules 1.0.1 and 8.5 are presented in their respective executive summaries.

January 22, 2016 meeting, the Commission determined that a proposed California version of Model Rule 6.1 should not be recommended for adoption because that rule would be an aspirational standard rather than a disciplinary rule.<sup>2</sup> The Commission's Charter provides that the Commission must ensure that any proposed rules state clear and enforceable disciplinary standards as opposed to "purely aspirational objectives." While adoption of a California version of Model Rule 6.1 is not recommended, the Commission is proposing that voluntary pro bono be addressed in a comment to proposed rule 1.0.<sup>3</sup> The emphasis of the proposed comment is that disciplinary standards promulgated in the rules are not intended to address all aspects of a lawyer's professional responsibilities and that the rules do not state the entirety of a lawyer's obligations as an officer of the legal system with special duties for assuring access to justice. At the Commission's June 2 – 3, 2016 meeting, a representative of the Access to Justice Commission was in attendance and provided public comment on this issue.<sup>4</sup> The representative stressed that the Commission's recommendation to include the topic of pro bono in the comments to rule 1.0 was supported by the Access to Justice Commission as necessary to underscore the importance of pro bono and essential for the functioning of the justice system. The Commission agrees with this position; however, one member of the Commission submitted a written dissent asserting, in part, that including a pro bono comment is inconsistent with the Commission's Charter and that the State Bar should instead consider adoption of a rule imposing mandatory reporting of pro bono hours. The full text of the dissent is attached to this summary.

In addition to these two main issues, other proposed amendments include the following.

- In paragraph (a), adding to the purpose of the rules the protection of the integrity of the legal system and promotion of the administration of justice.
- In paragraph (c), explaining the intended function of the rule comments as guidance for interpreting the rules and promoting compliance, but not as a separate basis for imposing discipline.
- In Comment [2], clarifying that a violation of the rules can occur when a lawyer is not practicing law in a professional capacity.
- In Comment [3], providing a case citation and State Bar Act citation to explain that the concept of "willful" misconduct does not require that a lawyer intend to commit a violation of a rule.
- In Comment [4], retaining the language in current rule 1-100(A) which provides that while not binding, ethics opinions should be consulted by lawyers for guidance on professional conduct.

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<sup>2</sup> In part, Model Rule 6.1 states that: "A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year." See Attachment 3 for the summary of the Commission's action concerning Model Rules that were considered but are not recommended for adoption.

<sup>3</sup> The Commission's drafting team assigned to this matter also considered but did not recommend the adoption of a Preamble as an appropriate place within the rules for addressing pro bono. A Preamble was not recommended, in part, because proposed rule 1.0 serves the same function of the Preamble to the Model Rules. California has never had a Preamble to its rules and, unlike the existing Discussion sections that would be renamed as Comments, adding a Preamble could be confusing as to the binding nature of information stated in that Preamble.

<sup>4</sup> The attorney who attended was Amos E. Hartston, currently with the California Department of Justice but formerly with Inner City Law Center, Los Angeles.

**Commission Member Dissent to the Recommended Adoption  
of Comment [5] to Proposed Rule 1.0, Submitted by Daniel E. Eaton**

Paragraph 2 of the Commission Charter reads: "The Commission should consider the historical purpose of the Rules of Professional Conduct in California, and ensure that the proposed rules set forth a clear and enforceable articulation of disciplinary standards, as opposed to purely aspirational objectives." (emphasis added.) Paragraph 5 of the Commission Charter reads in pertinent part: "Official commentary to the proposed rules should not conflict with the language of the rules, and should be used sparingly to elucidate, and not to expand upon, the rules themselves." (emphasis added.)

Notwithstanding this mandate, the Commission adopted the following Comment 5 to Rule 1.0:

"The disciplinary standards created by these Rules are not intended to address all aspects of a lawyer's professional obligations. A lawyer, as a member of the legal profession, is a representative and advisor of clients, an officer of the legal system and a public citizen having special responsibilities for the quality of justice. A lawyer should be aware of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers are encouraged to devote professional time and resources and use civic influence to ensure equal access to the system of justice for those who because of economic or social barriers cannot afford or secure adequate legal counsel. In meeting this responsibility, every lawyer should aspire to render at least fifty hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should provide a substantial majority of such hours to indigent individuals or to nonprofit organizations with a primary purpose of providing services to the poor or on behalf of the poor or disadvantaged. See Business and Professions Code § 6073 (financial support for programs providing pro bono legal services)." (Emphasis added.)

On its face, the Comment states an aspirational objective. That offends Paragraph 2 of the Commission's Charter.

The Comment also deviates from Paragraph 5 of the Commission's Charter. Unlike the other proposed comments to Proposed Rule 1.0, proposed Comment 5 offers no "guidance for interpreting and practicing in compliance with the Rules." Under Proposed Rule 1.0(c), that is the only proper purpose of a Comment. The stated benefits of this Comment that the drafting team identifies, such as enhancing the ability of legal services organizations to recruit, make this point especially clear.

By adding this Comment, the Commission also deviated from an additional aspect of Paragraph 5 of the Charter which directs us to use Comments "sparingly" to "elucidate" the rule to which it is appended. This comment does not do that. Instead, it introduces a distinct concept altogether untethered to its Rule.

The proponents of this Comment admirably acknowledged that this Comment deviates from paragraphs 2 and 5 of the Charter. For me, that was enough to warrant its exclusion. The argument for including the Comment anyway that carried the day was that pro bono service ought to be mentioned somewhere in the disciplinary rules in order to concentrate the profession's collective mind on addressing the unmet need of a substantial underserved population. I am not convinced the approach the Commission took was sound.

There is a different, better way to achieve the objectives of this Comment in an enforceable way. The Commission should have considered adopting a Rule like the one in effect in Florida that requires the mandatory reporting of pro bono hours. Florida Rule of Professional Conduct 4.6.1, subdivision (d) says in full:

(d) Reporting Requirement. Each member of the bar shall annually report whether the member has satisfied the member's professional responsibility to provide pro bono legal services to the poor. Each member shall report this information through a simplified reporting form that is made a part of the member's annual membership fees statement. The form will contain the following categories from which each member will be allowed to choose in reporting whether the member has provided pro bono legal services to the poor:

(1) I have personally provided \_\_\_\_\_ hours of pro bono legal services;

(2) I have provided pro bono legal services collectively by: (indicate type of case and manner in which service was provided);

(3) I have contributed \$\_\_\_\_\_ to: (indicate organization to which funds were provided);

(4) I have provided legal services to the poor in the following special manner: (indicate manner in which services were provided); or

(5) I have been unable to provide pro bono legal services to the poor this year; or

(6) I am deferred from the provision of pro bono legal services to the poor because I am: (indicate whether lawyer is: a member of the judiciary or judicial staff; a government lawyer prohibited by statute, rule, or regulation from providing services; retired, or inactive).

The failure to report this information shall constitute a disciplinary offense under these rules.

This is a specific, enforceable way to induce more lawyers to provide substantial pro bono service to the economically less advantaged. As one commentator put it after reviewing the demonstrated increase in pro bono service that resulted from Florida's mandatory reporting system, "a mandatory reporting system is the most efficient and effective policy to begin the process of narrowing the gap between demand for free legal aid and its availability." L. Boyle, "Meeting the Demands of the Indigent Population: The Choice Between Mandatory and Voluntary Pro Bono Requirements," 20 Geo. J. Legal Ethics 415 (2007). And such a Rule also would accord with each aspect of this Commission's Charter in a way that Comment 5 does not.

Moreover, there are other concepts, such as civility, which lawyers also should be encouraged to embrace. The Rules of Professional Conduct is not the place to offer that encouragement. Why mention pro bono aspirationally and no other "aspects of a lawyer's professional obligations" the violation of which are not subject to discipline? The simple answer to that question is that the Commission would get consumed by debates on ideals or practices to which a lawyer should aspire and those to which a lawyer should not.

If mandatory reporting of pro bono hours is considered objectionable for some reason, the existing State Bar Pro Bono Resolution, similar local bar resolutions, and awards given out by a range of bar and other organizations remain proper vehicles to advance worthy goals such as

this that do not fit in the Rules. A sense of functional humility should restrain this Commission from stuffing the Rules with concepts that exceed our mandate.

Comment 5 is neither necessary nor sufficient to address what is universally recognized as the severe shortfall in providing legal services to those with limited means. I dissent.

**Rule 1.0 [1-100] Purpose and Function of the Rules ~~Of~~ Professional Conduct,  
In-General  
(Redline Comparison of the Proposed Rule to Current California Rule)**

~~(a)~~(A) Purpose ~~and Function.~~

The following rules are intended to regulate professional conduct of ~~members of the State Bar~~lawyers through discipline. They have been adopted by the Board of ~~Governors~~Trustees 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, the courts, and the legal profession; protect the integrity of the legal system; and~~ promote ~~respect~~the administration of justice and confidence in the legal profession. These ~~rules~~Rules together with any standards adopted by the Board of ~~Governors~~Trustees pursuant to these ~~rules~~Rules shall be binding upon all ~~members of the State Bar~~lawyers.

(b) Function.

- (1) For ~~a~~A willful ~~breach~~violation of any of these rules, ~~the Board of Governors has the power to~~ is a basis for discipline ~~members as provided by law.~~
- (2) The prohibition of certain conduct in these rules is not exclusive. ~~Members~~Lawyers are also bound by applicable law including the State Bar Act (Bus. & 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.~~
- (3) A violation of a rule does not itself give rise to a cause of action for damages caused by failure to comply with the rule. 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.

~~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.~~

~~(B)~~—Definitions.

- ~~(1)~~—“Law Firm” means:
  - ~~(a)~~—two or more lawyers whose activities constitute the practice of law, and who share its profits, expenses, and liabilities; or
  - ~~(b)~~—a law corporation which employs more than one lawyer; or

~~(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~~

~~(d) — a publicly funded entity which employs more than one lawyer to perform legal services.~~

~~(2) — “Member” means a member of the State Bar of California.~~

~~(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.~~

~~(4) — “Associate” means an employee or fellow employee who is employed as a lawyer.~~

~~(5) — “Shareholder” means a shareholder in a professional corporation pursuant to Business and Professions Code section 6160 et seq.~~

~~(c)~~ (C) Purpose of Discussions Comments.

The comments are not a basis for imposing discipline but are intended only to provide guidance for interpreting and practicing in compliance with the Rules.

~~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.~~

~~(D) — Geographic Scope of Rules.~~

~~(1) — As to members:~~

~~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.~~

~~(2) — As to lawyers from other jurisdictions who are not members:~~

~~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.~~

~~(d)~~(E) These ~~rules~~Rules may be cited and referred to as the “California Rules of Professional Conduct of the State Bar of California.”

### **Discussion:**Comment

[1] The Rules of Professional Conduct are intended to establish the standards for members~~lawyers~~ for purposes of discipline. ~~(See Ames v. State Bar (1973) 8 Cal.3d 910, 917 [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 Noble v. Sears, Roebuck & Co. (1973) 33 Cal.App.3d 654 [109 Cal.Rptr. 269]; Wilhelm v. Pray, Price, Williams & Russell (1986) 186~~ 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]. 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. Id.; Mirabito v. Liccardo (1992) 4 Cal.App.3d 13244th 41, 44 [2315 Cal.Rptr. 355].) These rules are not intended to supercede existing law relating to members in~~2d 571]. A violation of a rule may have other non-disciplinary contexts~~consequences. (See, e.g., KlemmFletcher 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).) Davis (2004) 33 Cal.4th 61, 71-72 [14 Cal.Rptr.3d 58] (enforcement of attorney's lien); Chambers v. Kay (2002) 29 Cal.4th 142, 161 [126 Cal.Rptr.2d 536] (enforcement of fee sharing agreement).

~~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.~~

[2] While the rules are intended to regulate professional conduct of lawyers\*, a violation of a rule can occur when a lawyer\* is not practicing law or acting in a professional capacity.

[3] 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 § 6077.

[4] In addition to the sources of guidance identified in paragraph (b)(2), opinions of ethics committees in California, although not binding, should be consulted for guidance on proper professional conduct. Ethics opinions and rules and standards promulgated by other jurisdictions and bar associations may also be considered.

[5] The disciplinary standards created by these Rules are not intended to address all aspects of a lawyer's professional obligations. A lawyer, as a member of the legal profession, is a representative and advisor of clients, an officer of the legal system and a public citizen having special responsibilities for the quality of justice. A lawyer should be aware of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons\* who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers are encouraged to devote professional time and resources and use civic influence to ensure equal access to the system of justice for those who because of economic or social barriers cannot afford or secure adequate legal counsel. In meeting this responsibility, every lawyer should aspire to render at least fifty hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should provide a substantial\* majority of such hours to indigent individuals or to nonprofit organizations with a primary purpose of providing services to the poor or on behalf of the poor or disadvantaged. See Business and Professions Code § 6073 (financial support for programs providing pro bono legal services).