

Rule 1.4 [3-500] Communication with Clients
(Commission's Proposed Rule Adopted on March 31 – April 1, 2016
– Clean Version)

- (a) A lawyer shall:
- (1) promptly inform the client of any decision or circumstance with respect to which disclosure or the client's informed consent,* as defined in Rule 1.0.1(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, including promptly complying with reasonable* requests for information and copies of significant documents when necessary to keep the client so informed; and
 - (4) advise the client about any relevant limitation on the lawyer's conduct when the lawyer knows* that the client expects assistance not permitted by the Rules of Professional Conduct 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 may delay transmission of information to a client if the lawyer reasonably believes that the client would be likely to react in a way that may cause imminent harm to the client or others.
- (d) A lawyer's obligation under this Rule to provide information and documents is subject to any applicable protective order, non-disclosure agreement, or statutory limitation.

Comment

[1] A lawyer will not be subject to discipline under paragraph (a)(3) of this rule for failing to communicate insignificant or irrelevant information. (See Bus. & Prof. Code § 6068(m).) Whether a particular development is significant will generally depend on the surrounding facts and circumstances.

[2] A lawyer may comply with paragraph (a)(3) by providing to the client copies of significant documents by electronic or other means. This Rule does not prohibit a lawyer from seeking recovery of the lawyer's expense in any subsequent legal proceeding.

[3] Paragraph (c) applies during a representation and does not alter the obligations applicable at termination of a representation (see Rule 1.16(e)(1)).

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

PROPOSED RULE OF PROFESSIONAL CONDUCT 1.4
(Current Rule 3-500)
Communication with Clients

EXECUTIVE SUMMARY

The Commission for the Revision of the Rules of Professional Conduct (“Commission”) has evaluated current rule 3-500 (Communication) in accordance with the Commission Charter, with a focus on the function of the rules as disciplinary standards, and with the understanding that the rule comments should be included only when necessary to explain a rule and not for providing aspirational guidance. In addition, the Commission considered the national standard of the American Bar Association (“ABA”) counterpart, Model Rule 1.4 (Communications). The Commission also reviewed relevant California statutes, rules, and case law relating to the issues addressed by the proposed rules. The result of this evaluation is proposed rule 1.4 (Communication with Clients). 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.

Proposed rule 1.4 is generally consistent with current rule 3-500 but has adopted clarifying language from ABA Model Rule 1.4 which has been adopted by the majority of jurisdictions. This language is intended to enhance public protection by more clearly stating a lawyer’s obligations to clients with regard to communication.

Paragraph (a)(1) provides a duty to inform clients when written disclosure or informed consent is required.

Paragraph (a)(2) provides a duty to discuss the means by which to accomplish a client’s representation objectives.

Paragraph (a)(3) most closely resembles current rule 3-500 and provides a duty to keep the client reasonably informed about significant developments relating to the representation, including providing access to significant documents.

Paragraph (a)(4) requires a lawyer to advise the client about any ethical limitations the lawyer faces when a client expects assistance barred by the rules or the law.

Paragraph (b) provides a duty to sufficiently explain a matter to a client so that the client can make informed decisions regarding the representation.

Paragraph (c) permits a lawyer to delay transmission of information to the client if doing so would prevent a client from harming himself or others.

Paragraph (d) provides that a lawyer’s obligation to provide information or documents is subject to any applicable order, agreement, or law.

Comment [1] provides that a lawyer will not be disciplined for failing to disclose insignificant or irrelevant information to a client.

Comment [2] provides that a lawyer may provide documents or information electronically and that the rule does not prevent the attorney from recouping expenses for such in a subsequent legal proceeding.

Comment [3] provides that paragraph (c) applies only during the representation and does not alter a lawyer's duties at the termination of the representation.

Comment [4] provides that the rule does not affect a lawyer's obligation to provide work product to a client.

Rule 1.4 [3-500] Communication with Clients
(Redline Comparison of the Proposed Rule to Current California Rule)

- (a) A lawyer shall:
- (1) promptly inform the client of any decision or circumstance with respect to which disclosure or the client's informed consent,* as defined in [Rule 1.0.1(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) ~~A member shall~~ keep at the client reasonably* informed about significant developments relating to the ~~employment or~~ representation, including promptly complying with reasonable* requests for information and copies of significant documents when necessary to keep the client so informed;
and
 - (4) advise the client about any relevant limitation on the lawyer's conduct when the lawyer knows* that the client expects assistance not permitted by the Rules of Professional Conduct 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 may delay transmission of information to a client if the lawyer reasonably believes* that the client would be likely to react in a way that may cause imminent harm to the client or others.
- (d) A lawyer's obligation under this Rule to provide information and documents is subject to any applicable protective order, non-disclosure agreement, or statutory limitation.

Discussion Comment

~~Rule 3-500 is not intended to change a member's duties to his or her clients. It is intended to make clear that, while a client must be informed of significant developments in the matter, a member will not be disciplined for failing to communicate insignificant or irrelevant information. (See Bus. & Prof. Code, §6068, subd. (m).)~~

~~A member may contract with the client in their employment agreement that the client assumes responsibility for the cost of copying significant documents. This rule is not intended to prohibit a claim for the recovery of the member's expense in any subsequent legal proceeding.~~

[1] A lawyer will not be subject to discipline under paragraph (a)(3) of this rule for failing to communicate insignificant or irrelevant information. (See Bus. & Prof. Code §

6068(m).) Whether a particular development is significant will generally depend on the surrounding facts and circumstances.

[2] A lawyer may comply with paragraph (a)(3) by providing to the client copies of significant documents by electronic or other means. This Rule does not prohibit a lawyer from seeking recovery of the lawyer's expense in any subsequent legal proceeding.

[3] Paragraph (c) applies during a representation and does not alter the obligations applicable at termination of a representation (see Rule 1.16(e)(1)).

[4] This Rule ~~3-500~~ is not intended to create, augment, diminish, or eliminate any application of the work product rule. The obligation of the ~~member~~lawyer to provide work product to the client shall be governed by relevant statutory and decisional law. ~~Additionally, this rule is not intended to apply to any document or correspondence that is subject to a protective order or non-disclosure agreement, or to override applicable statutory or decisional law requiring that certain information not be provided to criminal defendants who are clients of the member.~~