

**Rule 1.4.1 [3-510] Communication of Settlement Offers**  
**(Commission’s Proposed Rule Adopted on August 14, 2015 – Clean Version)**

- (a) A lawyer shall promptly communicate to the lawyer’s client:
  - (1) all terms and conditions of a proposed plea bargain or other dispositive 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.
- (b) As used in this Rule, “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.

**Comment**

An oral offer of settlement made to the client in a civil matter must also be communicated if it is a “significant development” under Rule 1.4.

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**Note:** [\*] indicates that a reference to a specific subparagraph will be included after the referenced rule has been completed by the Commission.

**PROPOSED RULE OF PROFESSIONAL CONDUCT 1.4.1**  
**(Current Rule 3-510)**  
**Communication of Settlement Offers**

**EXECUTIVE SUMMARY**

The Commission for the Revision of the Rules of Professional Conduct (“Commission”) has evaluated current rule 3-510 (Communication of Settlement Offer) 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 light of the fact that the American Bar Association (“ABA”) Model Rules have no black letter rule on a lawyer’s duty to communicate settlement offers, the Commission considered approaches taken in other national jurisdictions with regard to communication of settlement offers. 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 1.4.1 (Communication of Settlement Offers). 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 1.4.1 carries forward the substance of current rule 3-510 but has been renumbered to correspond to the ABA Model Rules. The renumbering will help lawyers from other jurisdictions authorized to practice law in California to more easily find corresponding California rules to aid in their determination of whether California imposes different duties. Moreover, it will help California lawyers research case law and ethics opinions that address corresponding rules in other jurisdictions. This will assist California lawyers in complying with their duties, particularly when California does not have such authority interpreting the California rule.

Paragraph (a)(1) provides a duty to promptly inform criminal clients regarding certain enumerated settlement offers. Paragraph (a)(1) would eliminate any ambiguity from current rule 3-510 about whether dispositive offers that fall short of a “plea bargain,” e.g., offers made in a pre-charge or pre-indictment context, must also be communicated to a client.

Paragraph (a)(2) carries forward the language of current rule 3-510 and provides a duty to promptly inform a client regarding a written settlement offer in non-criminal matters.

Paragraph (b) carries forward the language of current rule 3-510 and defines to whom a lawyer must communicate settlement offers for purposes of this rule.

The comment carries forward part of the discussion in current rule 3-510 and provides a duty to communicate oral settlement offers in civil cases if the offer constitutes a “significant development” pursuant to proposed rule 1.4.

**Rule 1.4.1 [3-510] Communication of Settlement OfferOffers  
(Redline Comparison of the Proposed Rule to Current California Rule)**

~~(a)~~(A) A ~~member~~ lawyer shall promptly communicate to the ~~member's~~lawyer's client:

- (1) ~~All~~all terms and conditions of ~~anya~~ proposed plea bargain or other dispositive offer made to the client in a criminal matter; and
- (2) ~~All~~all amounts, terms, and conditions of any written\* offer of settlement made to the client in all other matters.

~~(b)~~(B) As used in this ~~rule~~Rule, "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.

**CommentDiscussion**

~~Rule 3-510 is intended to require that counsel in a criminal matter convey all offers, whether written or oral, to the client, as give and take negotiations are less common in criminal matters, and, even were they to occur, such negotiations should require the participation of the accused.~~

~~Any~~An oral ~~offers~~offer of settlement made to the client in a civil matter ~~should~~must also be communicated if ~~they are~~it is a "significant"~~for the purposes of rule 3-500.~~  
development" under Rule 1.4.